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

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 221201–0257]

RIN 0694–AI96

Additions of Entities to the Entity List; Removal of an Entity From the Entity List

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce is amending the Export Administration Regulations (EAR) by adding twenty-four entities under twenty-six entries to the Entity List. These entities have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States and will be listed on the Entity List under the destinations of Latvia, Pakistan, Russia, Singapore, Switzerland, and the United Arab Emirates (U.A.E.). In addition, this final rule removes from the Entity List one entity listed in three entries under Oman, Saudi Arabia, and the U.A.E.

DATES: This rule is effective December 8, 2022.

FOR FURTHER INFORMATION CONTACT: Chair, End-User Review Committee, Office of the Assistant Secretary for Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Email: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Entity List (supplement no. 4 to part 744 of the EAR (15 CFR parts 730–774)) identifies entities for which there is reasonable cause to believe, based on specific and articulable facts, that the entities have been involved, are involved, or pose a significant risk of being or becoming involved in activities contrary to the national security or foreign policy interests of the United States, pursuant to § 744.11(b). The EAR impose additional license requirements on, and limit the availability of, most license exceptions for exports, reexports, and transfers (in-country) when a listed entity is a party to the transaction. The license review policy for each listed entity is identified in the ''License Review Policy'' column on the Entity List, and the impact on the availability of license exceptions is described in the relevant **Federal Register** document that added the entity to the Entity List. The Bureau of Industry and Security (BIS) places entities on the Entity List pursuant to part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and makes all decisions to remove or modify an entry by unanimous vote.

Additions to the Entity List

The ERC has determined to add Fiber Optic Solutions under the destination of Latvia, and AO Kraftway Corporation PSC, AO Scientific Research Center for Electronic Computing, LLC Fibersense, and Scientific Production Company Optolink under the destination of Russia to the Entity List based on information that these companies significantly contribute to Russia's military and/or defense industrial base. In addition, the ERC determined to add AO PKK Milandr; Milandr EK OOO; Milandr ICC JSC; Milur IS, OOO; (OOO) Microelectronic Production Complex (MPK) Milandr; and Ruselectronics JSC under the destination of Russia and Milur SA under the destination of Switzerland to the Entity List due to their contributions to the Russian military and/or defense industrial base. The activity of these entities is contrary to the national security and foreign policy interests of the United States under §§ 744.11 and 744.21 of the EAR. These entities will receive a footnote 3 designation because the ERC has determined that they are Russian or Belarusian 'military end users' in accordance with § 744.21. A footnote 3 designation subjects these entities to the Russia/Belarus-Military End User Foreign Direct Product (FDP) rule, detailed in § 734.9(g). These entities are added with a license requirement for all items subject to the EAR. They are added with a license review policy of denial for all items subject to the EAR other than food and medicine designated as EAR99, license applications for which will be reviewed on a case-by-case basis.

The ERC determined to add Falcon Trading International Trading Company, Hawk Electronic Supply, Merlin Trading Company, and Pulse Tech International Company under the destination of Singapore based on their actions and activities that are contrary to the national security and foreign policy interests of the United States. Specifically, these companies have supplied and/or attempted to supply items subject to the EAR to Pardazan System Namad Arman (PASNA), an entity located in Iran designated by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) as a Specially Designated National (SDN). For these four entities added to the Entity List, BIS imposes a license requirement for all items subject to the EAR and will review license applications under a presumption of denial.

The ERC determined to add Dynamic Engineering Corporation to the Entity List because it poses an unacceptable risk of using or diverting items subject to the EAR for Pakistan's unsafeguarded nuclear activities, contrary to the national security and foreign policy interests of the United States. The ERC determined to add Rainbow Solutions, under the destination of Pakistan, based on its involvement in unsafeguarded nuclear activities and missile proliferation-related activities that are contrary to the national security and foreign policy of the United States. The ERC determined to add EnerQuip Private, Ltd., and Universal Drilling Engineers under the destination of Pakistan and Enerquip Limited (UAE) under the destination of the U.A.E. to the Entity List based on their contributions to unsafeguarded nuclear activities and missile proliferation-

related activities. The ERC determined to add NAR Technologies General Trading LLC and TROJANS to the Entity List under the destinations of Pakistan and the U.A.E., based on their actions and activities that are contrary to the national security and foreign policy interests of the United States. Specifically, these companies have supplied and/or attempted to supply items subject to the EAR to Pakistan's unsafeguarded nuclear activities and ballistic missile program. The ERC determined to add Zain Enterprises FZE, under the destination of U.A.E., based on its involvement in unsafeguarded nuclear activities and missile proliferation-related activities that are contrary to the national security and foreign policy of the United States. For these eight entities under ten entries, BIS imposes a license requirement for all items subject to the EAR and will review license applications in accordance with §§ 744.2(d) and/or 744.3(d).

For the reasons described above, this final rule adds the following twenty-four entities under twenty-six entries to the Entity List and includes, where appropriate, aliases:

Latvia

- Fiber Optic Solutions.

Pakistan

- Dynamic Engineering Corporation,
- EnerQuip Private, Ltd.,
- NAR Technologies General Trading LLC,
- Rainbow Solutions,
- TROJANS, *and*
- Universal Drilling Engineers.

Russia

- AO Kraftway Corporation PSC,
- AO PKK Milandr,
- AO Scientific Research Center for Electronic Computing,
- LLC Fibersense,
- Milandr EK OOO,
- Milandr ICC JSC,
- Milur IS, OOO,
- (OOO) Microelectronic Production Complex (MPK) Milandr,
- Ruselectronics JSC, *and*
- Scientific Production Company Optolink.

Singapore

- Falcon International Trading Company,
- Hawk Electronic Supply Company,
- Merlin Trading Company, *and*
- Pulse Tech International Company.

Switzerland

- Milur SA.

United Arab Emirates

- Enerquip Ltd. (UAE),
- NAR Technologies General Trading LLC,
- TROJANS; *and*
- Zain Enterprises FZE.

Removals From the Entity List

This rule implements a decision of the ERC to remove one entity listed under three entries from the Entity List. The ERC determined to remove Safe Technical Supply Co., LLC from the Entity List based on information that BIS received pursuant to § 744.16(e) of the EAR and the review the ERC conducted in accordance with procedures described in supplement no. 5 to part 744 of the EAR. Prior to removal from the Entity List by this rule, Safe Technical Supply Co., LLC was listed under Oman, Saudi Arabia, and the U.A.E.

Savings Clause

For the changes being made in this final rule, shipments of items removed from eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export, reexport, or transfer (in-country), on December 8, 2022, pursuant to actual orders for export, reexport, or transfer (in-country) to or within a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR).

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4801–4852). ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and commodity classifications, and carries a burden estimate of 29.4 minutes for a manual or electronic submission for a total burden estimate of 33,133 hours. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule.

3. This rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to section 1762 of the Export Control Reform Act of 2018, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 19, 2022, 87 FR 57569 (September 21, 2022); Notice of November 8, 2022, 87 FR 68015 (November 10, 2022).

■ 2. Supplement No. 4 to part 744 is amended by:

■ a. Under LATVIA, adding in alphabetical order, an entry for ''Fiber Optic Solutions'';

■ b. Under OMAN, removing the entry for ''Safe Technical Supply Co., LLC'';

■ c. Under PAKISTAN, adding, in alphabetical order, entries for ''Dynamic Engineering Corporation;'' ''Enerquip Private, Ltd.;'' ''NAR Technologies General Trading LLC;'' ''Rainbow Solutions;'' ''TROJANS;'' and ''Universal Drilling Engineers'';

■ d. Under RUSSIA, adding, in alphabetical order, entries for ''AO Kraftway Corporation PSC;'' ''AO PKK Milandr;'' ''AO Scientific Research Center for Electronic Computing;'' ''LLC Fibersense;'' ''Milandr EK OOO;'' ''Milandr ICC JSC;'' ''Milur IS, OOO;'' ''(OOO) Microelectronic Production Complex (MPK) Milandr;'' ''Ruselectronics JSC;''and ''Scientific Production Company Optolink'';

■ e. Under SINGAPORE, adding, in alphabetical order, entries for ''Falcon International Trading Company;'' ''Hawk Electronic Supply Company;'' ''Merlin Trading Company;'' and ''Pulse Tech International Company'';

■ f. Under SAUDI ARABIA, removing the entry for ''Safe Technical Supply Co., LLC'';

■ g. Under SWITZERLAND adding, in alphabetical order, an entry for ''Milur SA''; *and*

■ h. Under UNITED ARAB EMIRATES, by:

■ i. Adding in alphabetical order, entries for ''Enerquip Ltd. (UAE)'' and ''NAR Technologies General Trading LLC'';

■ ii. Removing the entry for ''Safe Technical Supply Co., LLC;'' and

■ iii. Adding in alphabetical order, entries for ''TROJANS'' and ''Zain Enterprises FZE''.

The additions read as follows:

Supplement No. 4 to Part 744—Entity List

* * * * *

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	* *	*	* *	*
LATVIA	* *	*	* *	*
	Fiber Optic Solutions, a.k.a., the following one alias: —Fiber Optical Solutions. Podraga Street 2a, LV–1007, Riga, Latvia.	For all items subject to the EAR. (See. §§ 734.9(g),[3] 744.21(b) and 746.8(a)(3) of the EAR).	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER] 12/8/22.
	* *	*	* *	*
PAKISTAN	* *	*	* *	*
	Dynamic Engineering Corporation, a.k.a., the following three aliases: —DEC; —Diagnostic Engineering Corporation; *and* —Scientific Engineering Corporation. Unit No. 312, Al-Amin Tower, NIPA Chowrangi, Main University Road, Karachi, 74000, Pakistan; *and* E2, Block 10, Chase Centre, Karachi, Pakistan; *and* 11, 2nd Floor, Jamal Plaza F–10, Islamabad, Pakistan; *and* Q–27, Block 16/A, Karachi, 74000, Pakistan; *and* P.O. Box #18781, Q–27, Block 16/A, Karachi, 74000, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	See § 744.2(d) of the EAR ...	87 FR [INSERT FR PAGE NUMBER 12/8/22].
	EnerQuip Private, Ltd., Suite 2, 2nd Floor, Nasim Arcade, 1–9, Markaz, Islamabad, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	See §§ 744.2(d), and 744.3(d) of the EAR.	87 FR [INSERT FR PAGE NUMBER 12/8/22].
	* *	*	* *	*
	NAR Technologies General Trading LLC, a.k.a., the following two aliases: —NAR Technologies; and —Nartechnologies. Plot. 33 Islamabad City Center, Services Housing Society E–11/2, Islamabad, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	See §§ 744.2(d), and 744.3(d) of the EAR.	87 FR [INSERT FR PAGE NUMBER 12/8/22].
	* *	*	* *	*
	Rainbow Solutions, GS Plaza No. 220, 3rd Floor, Hotel View Park, Spring North Commercial, Phase-7, Bahria Town, Islamabad 44000, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	See §§ 744.2(d), and 744.3(d) of the EAR.	87 FR [INSERT FR PAGE NUMBER 12/8/22].
	* *	*	* *	*
	TROJANS, a.k.a., the following three aliases: —TROJANS Solutions; —TROJANS Pakistan Ltd; *and* —M/S TROJANS.	For all items subject to the EAR. (See § 744.11 of the EAR).	See §§ 744.2(d), and 744.3(d) of the EAR.	87 FR [INSERT FR PAGE NUMBER 12/8/22].

Country	Entity	License requirement	License review policy	**Federal Register** citation
	House No. 271–A-Street No. 55 Sector F–11/4, Islamabad, Pakistan; *and* Plot No. 48 Fechs Commercial Area Service Road North Northern Strip Sect E–11/2 44000 Islamabad, Pakistan; *and* No. 237–C, Faisal Town Lahore, Punjab, 54000, Pakistan; *and* No. 306-Anum Empire, Block 7/8, K.C.H Society, Main Shahrah-e-Faisal, Kirachi, Sindh,74200, Pakistan; *and* Plot. 33 Islamabad City Center, Services Housing Society E–11/2, Islamabad, Pakistan; *and* Block 6, PECHS, Shahrah-e-Faisal Karachi, Sindh 75400, Pakistan. (See alternate address in U.A.E).			
	* *	*	* *	*
	Universal Drilling Engineers, 6-Main Water Land Park Road, Melad Chowk Near Saggian Ravi Bridge, Lahore, Pakistan.	For all items subject to the EAR (See § 744.11 of the EAR).	See §§ 744.2(d), and 744.3(d) of this part.	87 FR [INSERT FR PAGE NUMBER 12/8/22].
	* *	*	* *	*
RUSSIA	* *	*	* *	*
	AO Kraftway Corporation PSC, a.k.a., the following three aliases: —Craftway Corporation PLS; —JSC Kraftway Corporation PLS; *and* —KRAFTVEI KORPOREISHN PLS, AO. 16, 3rd Mytishchinskaya Street, Moscow, 129626, Russia; *and* 64 Kievskoe Hwy, Obninsk, Kaluga Region, 249032, Russia.	For all items subject to the EAR. (See. §§ 734.9(g),[3] 744.21(b) and 746.8(a)(3). of the EAR).	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER 12/8/22].
	* *	*	* *	*
	AO PKK Milandr, a.k.a., the following four aliases: —JSC PKK Milandr; —Milandr; —MPK Milandr, OOO; *and* —PKK Milandr AO. Georgievsky Prospekt, 5, Floor 2, Room 38, Zelenograd, Moscow, 124498, Russia; *and* Office 38, Premises I, 2nd Floor, 5, Georgievskiy Prospekt, Zelenograd, 124498, Moscow, Russia.	For all items subject to the EAR. (See. §§ 734.9(g),[3] 744.21(b), and 746.8(a)(3) of the EAR).	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER 12/8/22].
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	AO Scientific Research Center for Electronic Computing, a.k.a., the following eight aliases: —NITsEVT; —NICEVT; —The Research Center for Electronic Computer Engineering (NICEVT); —Joint Stock Company Scientific Research Center for Electronic Computer Engineering (JSC NICEVT); —Scientific Research Center Electronic Computing Techniques; —NITSEVT, PAO; —OAO NICEVT; *and* —NITSEVT, AO. 125 Varshavskoye Hwy Moscow, 117587, Russia; *and* 125 Warsaw Highway, Moscow, 117587, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 744.21(b) and 746.8(a)(3). of the EAR).	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER 12/8/22].

Country	Entity	License requirement	License review policy	Federal Register citation
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	LLC Fibersense, a.k.a., the following two aliases: —LLC Fibersens; *and* —OOO Fibersense. 6A Sosnovaya Alley, Building 5, Zelenograd, Moscow, 124489, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 744.21(b) and 746.8(a)(3). of the EAR).	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER 12/8/22].
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	Milandr EK OOO, Georgievskiy Prospekt, 5, Floor 2, Room 40, Zelenograd, Moscow, 124498, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 744.21(b), and 746.8(a)(3) of the EAR).	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER 12/8/22].
	Milandr ICC JSC, Office 38, Premises 1, 2nd Floor, 5, Georgievskiy Prospekt, Zelenograd, 124498, Moscow, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 744.21(b), and 746.8(a)(3) of the EAR).	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER 12/8/22].
	Milur IS, OOO, Georgievskiy Prospekt, 5, Zelenograd, Moscow, 124498, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 744.21(b), and 746.8(a)(3) of the EAR).	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER 12/8/22].
	* *	*	* *	*
	(OOO) Microelectronic Production Complex (MPK) Milandr, Georgievskiy Prospekt, 5, Floor 3, Room 1, Room 13, Zelenograd, Moscow, 124498, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 744.21(b), and 746.8(a)(3) of the EAR).	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER 12/8/22].
	* *	*	* *	*
	Ruselectronics JSC, Bldg. 1, 38, Berezhkovskaya Naberezhnaya, Moscow, Russia; *and* 12 Volkova Kosmonavta Moscow Russia; *and* Tverskaya, 9, Building 7, Moscow, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 744.21(b), and 746.8(a)(3) of the EAR).	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER 12/8/22].
	* *	*	* *	*
	Scientific Production Company Optolink, a.k.a., the following six aliases: —Limited Liability Company Research and Production Company Optolink; —OOO NPK Optolink; —LLC RPC Optolink —SPC Optolink; —NPK Optolink LLC; *and* —Optolink RPC LLC. 6A Sosnovaya Alley, Building 5, Zelenograd, Moscow, 124489, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 744.21(b) and 746.8(a)(3). of the EAR).	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER 12/8/22].
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SINGAPORE	* *	*	* *	*
	Falcon International Trading Company, Level 39 Marina Bay Financial Center, Tower 2, 10 Marina Boulevard Singapore 018983.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	87 FR [INSERT FR PAGE NUMBER 12/8/22].
	* *	*	* *	*
	Hawk Electronic Supply Company, Level 39 Marina Bay Financial Center, Tower 2, 10 Marina Boulevard, Singapore 018983.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	87 FR [INSERT FR PAGE NUMBER 12/8/22].

Country	Entity	License requirement	License review policy	**Federal Register** citation
	* *	*	* *	*
	Merlin Trading Company, a.k.a, the following one alias: —Merlin International Company. 195 Upper Paya Lebar Road, Singapore 534873.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	87 FR [INSERT FR PAGE NUMBER 12/8/22].
	* *	*	* *	*
	Pulse Tech International Company, Level 39 Marina Bay Financial Center, Tower 2, 10 Marina Boulevard, Singapore 018983.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	87 FR [INSERT FR PAGE NUMBER 12/8/22].
	* *	*	* *	*
SWITZERLAND	* *	*	* *	*
	Milur SA, Chemin des Planches 42, VAUD, AO 1066 Epalinges, Switzerland.	For all items subject to the EAR. (See §§ 734.9(g),[3] 744.21(b), and 746.8(a)(3) of the EAR).	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	87 FR [INSERT FR PAGE NUMBER 12/8/22].
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UNITED ARAB EMIRATES.	* *	*	* *	*
	Enerquip Ltd. (UAE), Office 214, Block B1, Ajman Free Zone, United Arab Emirates.	For all items subject to the EAR. (See § 744.11 of the EAR).	See §§ 744.2(d), and 744.3(d) of this part.	87 FR [INSERT FR PAGE NUMBER 12/8/22].
	* *	*	* *	*
	NAR Technologies General Trading LLC, a.k.a., the following two aliases: —NAR Technologies; *and* —Nartechnologies. 1903 Reef Tower Jumeirah Lake Tower, P.O. Box 122016, Dubai, U.A.E.; *and* Building R239–1, Plot Number 58–0, Warehouse No. 57, Al Goze Industrial Third, Al Quoz 3, Dubai, U.A.E.; *and* 404-Royal Plaza, Rigga Street Deira Dunai, P.O. Box No: 181258 Dubai, U.A.E.; *and* Plot 597/751, Building 2, Dubai Investments Park, P.O. Box 122016 Dubai, U.A.E. (See alternate address in Pakistan).	For all items subject to the EAR. (See § 744.11 of the EAR).	See §§ 744.2(d), and 744.3(d) of this part.	87 FR [INSERT FR PAGE NUMBER 12/8/22].
	* *	*	* *	*
	TROJANS, a.k.a., the following three aliases: —TROJANS Solutions; —TROJANS Pakistan Ltd; *and* —M/S TROJANS. 1903 Reef Tower, Jumeirah Lakes Tower Dubai, U.A.E. (See alternate address in Pakistan).	For all items subject to the EAR. (See § 744.11 of the EAR).	See §§ 744.2(d), and 744.3(d) of this part.	87 FR [INSERT FR PAGE NUMBER 12/8/22].
	* *	*	* *	*
	Zain Enterprises FZE, Business Center, A1 Shmookh Building, P.O. Box 3–28612, Sharjah, U.A.E.	For all items subject to the EAR. (See § 744.11 of the EAR).	See §§ 744.2(d), and 744.3(d) of this part.	87 FR [INSERT FR PAGE NUMBER 12/8/22].
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Thea D. Rozman Kendler,

Assistant Secretary for Export Administration.

[FR Doc. 2022–26622 Filed 12–7–22; 8:45 am]

BILLING CODE 3510–33–P

Proposed Rules

Federal Register
Vol. 87, No. 235
Thursday, December 8, 2022

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1312; Project Identifier AD–2022–00551–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 777 airplanes. This proposed AD was prompted by reports of cracks found in the station (STA) 2370 pivot bulkhead forward outer chord. Analysis revealed higher bending stresses across the chord than originally assessed. This proposed AD would require repetitive detailed and high frequency eddy current (HFEC) inspections of the STA 2370 pivot bulkhead forward outer chord and longeron fitting for cracking and applicable on-condition actions. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by January 23, 2023.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1312; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com*.
- You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* by searching for and locating Docket No. FAA–2022–1312.

FOR FURTHER INFORMATION CONTACT: Luis Cortez-Muniz, Aerospace Engineer, Airframe Sections, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3958; email: *luis.a.cortez-muniz@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1312; Project Identifier AD–2022–00551–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov*, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Luis Cortez-Muniz, Aerospace Engineer, Airframe Sections, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3958; email: *luis.a.cortez-muniz@faa.gov*. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA received a report indicating that cracks larger than 0.16 inch were found in the STA 2370 pivot bulkhead forward outer chord on airplanes with flight cycles lower than the inspection threshold of 16,000 flight cycles that was specified in certain Boeing service bulletins, which apply to airplanes having line numbers 1 through 244, inclusive. As of February 1, 2020, there were reports of 32 airplanes with crack findings before 16,000 flight cycles, and the lowest finding was at approximately 12,000 flight cycles. Boeing's finite-element model revealed higher bending stresses across the chord than originally assessed. The FAA issued AD 2022–06–07, Amendment 39–21973 (87 FR 24267, April 25, 2022) to address this unsafe condition for airplanes having line numbers 1 through 244, inclusive.

Further, based on those findings, Boeing and the FAA determined that airplanes having line number 245 and subsequent are also subject to such cracking. Boeing subsequently

developed new service information to ensure any crack in the STA 2370 pivot bulkhead forward outer chord and longeron fitting for airplanes having line number 245 and on are found and repaired. The FAA is proposing this AD to address cracking in the STA 2370 pivot bulkhead forward outer chord for airplanes having line numbers 245 and subsequent. Such cracking, if not detected and corrected, could result in a severed pivot bulkhead outer chord, loss of horizontal stabilizer control, and loss of controllability of the airplane.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 777–53A0098 RB, dated April 5, 2022. This service information specifies procedures for repetitive detailed and HFEC inspections of the STA 2370 pivot bulkhead forward outer chord and longeron fitting for cracking and applicable on-condition actions. On-condition actions include replacing the pivot bulkhead forward outer chord and splice angle; a detailed inspection of the upper aft longeron extension fittings at STA 2370 to STA 2380 and open hole HFEC inspection of the STA 2370 pivot bulkhead web, aft outer chord, upper and lower outer chord, and skin for any crack; and repair.

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described except for any differences identified as exceptions in the regulatory text of this proposed AD.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 223 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Detailed and HFEC inspections	10 work-hours × $85 per hour = $850 per inspection cycle.	$0	$850 per inspection cycle.	$189,550 per inspection cycle.

The FAA estimates the following costs to do any necessary replacements or inspections that would be required based on the results of the proposed inspection. The agency has no way of determining the number of aircraft that might need these replacements or inspections:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	7 work-hours × $85 per hour = $595	$37,720	$38,315
Detailed and open hole HFEC inspections	5 work-hours × $85 per hour = $425	0	425

The FAA has received no definitive data on which to base the cost estimates for the on-condition repairs specified in this proposed AD.

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2022–1312; Project Identifier AD–2022–00551–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by January 23, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 777–200, –200LR, –300, –300ER, and 777F airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin 777–53A0098 RB, dated April 5, 2022.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by reports of cracks found in the station (STA) 2370 pivot bulkhead forward outer chord. Analysis revealed higher bending stresses across the chord than originally assessed. The FAA is issuing this AD to address cracking in the STA 2370 pivot bulkhead forward outer chord. Such cracking, if not detected and corrected, could result in a severed pivot bulkhead outer chord, loss of horizontal stabilizer control, and loss of controllability of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 777–53A0098 RB, dated April 5, 2022, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 777–53A0098 RB, dated April 5, 2022.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 777–53A0098, dated April 5, 2022, which is referred to in Boeing Alert Requirements Bulletin 777–53A0098 RB, dated April 5, 2022.

(h) Exceptions to Service Information Specifications

(1) Where the Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 777–53A0098 RB, dated April 5, 2022, use the phrase ''the original issue date of Requirements Bulletin 777–53A0098 RB,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Alert Requirements Bulletin 777–53A0098 RB, dated April 5, 2022, specifies contacting Boeing for repair instructions: This AD requires doing the repair using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(j) Related Information

For more information about this AD, contact Luis Cortez-Muniz, Aerospace Engineer, Airframe Sections, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3958; email: *luis.a.cortez-muniz@faa.gov*.

(k) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin 777–53A0098 RB, dated April 5, 2022.

(ii) [Reserved]

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com*.

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

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

Issued on October 21, 2022.

Christina Underwood,

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

[FR Doc. 2022–26591 Filed 12–7–22; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1416; Project Identifier AD–2022–00725–E]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2012–02–07, which applies to certain General Electric Company (GE) CF6–45 and CF6–50 series model turbofan engines with a specified low-pressure turbine (LPT) rotor stage 3 disk installed. AD 2012–02–07 requires inspections of high-pressure turbine (HPT) and LPT rotors, engine checks, vibration surveys, an optional LPT rotor stage 3 disk removal after a failed HPT blade borescope inspection (BSI) or a failed engine core vibration survey, establishes a lower life limit for the affected LPT rotor stage 3 disks, and requires removing these disks from service at times determined by a drawdown plan. Since the FAA issued AD 2012–02–07, four additional events of separation of the LPT rotor assembly have been reported resulting in the LPT rotor assembly departing the rear of the engine. The manufacturer has improved the design of the LPT rotor stage 3 disk. This proposed AD would continue to require inspections of HPT and LPT rotor stage 1 and stage 2 blades, vibration surveys, and use of a lower life limit for the affected LPT rotor stage 3 disks. As a terminating action to the inspections, engine checks, and vibration surveys, this proposed AD would require removal and replacement of the LPT rotor stage 3 disk with a redesigned LPT rotor stage 3 disk. This proposed AD would also revise the compliance time of the drawdown plan for the removal and replacement of the LPT rotor stage 3 disk. This proposed AD would also prohibit the installation

or reinstallation of certain LPT rotor stage 3 disks. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by January 23, 2023.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1416; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Sungmo Cho, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7241; email: *Sungmo.D.Cho@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1416; Project Identifier AD–2022–00725–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov*, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Sungmo Cho, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2012–02–07, Amendment 39–16930 (77 FR 4650, January 31, 2012) (AD 2012–02–07), for GE CF6–45A, CF6–45A2, CF6–50A, CF6–50C, CF6–50CA, CF6–50C1, CF6–50C2, CF6–50C2B, CF6–50C2D, CF6–50E, CF6–50E1, CF6–50E2, and CF6–50E2B model turbofan engines, including engines marked on the engine data plate as CF6–50C2–F and CF6–50C2–R, with a specified LPT rotor stage 3 disk, identified by part number (P/N), installed. AD 2012–02–07 superseded AD 2011–02–07, Amendment 39–16580 (76 FR 6323, February 4, 2011) and AD 2011–18–01, Amendment 39–16783 (76 FR 52213, August 22, 2011). AD 2012–02–07 was prompted by the determination that a new lower life limit for the affected LPT rotor stage 3 disks was necessary. AD 2012–02–07 retained the requirements of the two superseded ADs, which required inspections of HPT and LPT rotors, ultrasonic inspection (UI) of the LPT rotor stage 3 disk forward spacer arm, exhaust gas temperature (EGT) resistance check, EGT thermocouple inspection, cleaning, fluorescent-penetrant inspection (FPI) of the LPT rotor stage 3 disk, engine checks, and vibration surveys. AD 2012–02–07 also added an optional LPT rotor stage 3 disk removal after a failed HPT BSI or a failed engine core vibration survey, established a new lower life limit for the affected LPT rotor stage 3 disks, and required removing those disks from service at times determined by a drawdown plan. The agency issued AD 2012–02–07 to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

Actions Since AD 2012–02–07 Was Issued

Since the FAA issued AD 2012–02–07, the FAA has received reports of four additional events of separation of the LPT rotor assembly, which resulted in the LPT rotor assembly departing the rear of the engine. Following the most recent separation event, the FAA determined that due to the complexity of AD 2012–02–07, the limitations of certain operators to access required equipment and training needed to accomplish the inspections, and the manufacturer's redesign of the LPT rotor stage 3 disk, AD 2012–02–07 should be superseded. The redesigned LPT rotor stage 3 disk, P/N 2453M80P01, has a thicker forward spacer arm, which reduces stress on the forward arm area and increases its high cycle fatigue alternating stress capability.

Accordingly, the FAA is proposing to require the replacement of the affected LPT rotor stage 3 disk with a redesigned LPT rotor stage 3 disk, P/N 2453M80P01, as a terminating action to the HPT blade inspection, vibration survey, UI, EGT resistance check, EGT thermocouple inspection, cleaning, and FPI. This proposed AD would also revise the installation prohibition for affected LPT rotor stage 3 disks. AD 2012–02–07 prohibited the installation or reinstallation of an affected LPT rotor stage 3 disk if it had exceeded 6,200 cycles since new. This proposed AD would prohibit installing an affected LPT rotor stage 3 disk onto any engine.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type designs.

Proposed AD Requirements in This NPRM

This proposed AD would retain certain requirements of AD 2012–02–07. As a terminating action to the HPT blade inspection, vibration survey, UI, EGT resistance check, EGT thermocouple inspection, cleaning, and FPI of the LPT rotor stage 3 disk, this proposed AD would require removal and replacement of the LPT rotor stage 3 disk with improved design LPT rotor

stage 3 disk P/N 2453M80P01 within 18 months of the effective date of the AD. This proposed AD would also prohibit the installation or reinstallation of certain LPT rotor stage 3 disks on any engine.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 26 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
HPT blade inspection, vibration survey, UI, EGT resistance check, EGT thermocouple inspection, cleaning and FPI of the LPT rotor stage 3 disk.	28 work-hours × $85 per hour = $2,380	$0	$2,380	$61,880
Remove and replace LPT rotor stage 3 disk	620 work-hours × $85 per hour = $52,700	276,300	329,000	8,554,000

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive AD 2012–02–07, Amendment 39–16930 (77 FR 4650, January 31, 2012); and

■ b. Adding the following new airworthiness directive:

General Electric Company: Docket No. FAA–2022–1416; Project Identifier AD–2022–00725–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) action by January 23, 2023.

(b) Affected ADs

This AD replaces AD 2012–02–07, Amendment 39–16930 (77 FR 4650, January 31, 2012) (AD 2012–02–07).

(c) Applicability

This AD applies to General Electric Company (GE) CF6–45A, CF6–45A2, CF6–50A, CF6–50C, CF6–50CA, CF6–50C1, CF6–50C2, CF6–50C2B, CF6–50C2D, CF6–50E, CF6–50E1, CF6–50E2, and CF6–50E2B model turbofan engines, including engines marked on the engine data plate as CF6–50C2–F and CF6–50C2–R, with an installed low-pressure turbine (LPT) rotor stage 3 disk having a part number listed in Table 1 to paragraph (c) of this AD.

TABLE 1 TO PARAGRAPH (c)—APPLICABLE LPT ROTOR STAGE 3 DISK PART NUMBERS

9061M23P06	9061M23P07	9061M23P08	9061M23P09	9224M75P01
9061M23P10	1473M90P01	1473M90P02	1473M90P03	1473M90P04
9061M23P12	9061M23P14	9061M23P15	9061M23P16	1479M75P01
1479M75P02	1479M75P03	1479M75P04	1479M75P05	1479M75P06
1479M75P07	1479M75P08	1479M75P09	1479M75P11	1479M75P13
1479M75P14	N/A	N/A	N/A	N/A

(d) Subject

Joint Aircraft System Component (JASC) Code 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by the occurrence of four events of separation of the LPT rotor assembly, occurring after the effective date of AD 2012–02–07, which resulted in the LPT rotor assembly departing the rear of the engine. The FAA is issuing this AD to prevent critical life-limited rotating engine part failure. The unsafe condition, if not addressed, could result in an uncontained engine failure and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) Borescope Inspections (BSI) of High-Pressure Turbine (HPT) Rotor Stage 1 and Stage 2 Blades:

For the BSIs required by paragraphs (g)(1)(i) through (iii) of this AD, inspect the blades from the forward and aft directions. Inspect all areas of the blade airfoil. The inspection must include blade leading and trailing edges and their convex and concave airfoil surfaces. Inspect for signs of impact, cracking, burning, damage, and distress.

(i) Within 75 cycles since last inspection (CSLI) or before further flight, whichever occurs later, perform an initial BSI of the HPT rotor stage 1 and stage 2 blades.

(ii) Thereafter, within every 75 CSLI, repeat the BSI of the HPT rotor stage 1 and stage 2 blades.

(iii) Within the cycle limits after the engine has experienced any of the events specified in Table 1 to paragraph (g)(1) of this AD, borescope-inspect the HPT rotor stage 1 and stage 2 blades.

(iv) If the engine fails any of the BSIs required by this AD, before further flight, remove the engine from service.

TABLE 2 TO PARAGRAPH (g)(1)—CONDITIONAL BSI CRITERIA

If the engine has experienced:	Then borescope inspect:
(i) An exhaust gas temperature (EGT) above redline	Within 10 cycles.
(ii) A shift in the smoothed EGT trending data that exceeds 18 °F (10 °C), but is less than or equal to 36 °F (20 °C).	Within 10 cycles.
(iii) A shift in the smoothed EGT trending data that exceeds 36 °F (20 °C)	Before further flight.
(iv) Two consecutive raw EGT trend data points that exceed 18 °F (10 °C), but are less than or equal to 36 °F (20 °C), above the smoothed average.	Within 10 cycles.
(v) Two consecutive raw EGT trend data points that exceed 36 °F (20 °C) above the smoothed average	Before further flight.

(2) Engines with Damaged HPT Rotor Blades:

For those engines that fail any BSI requirements of this AD, before returning the engine to service, accomplish the actions required by paragraph (g)(2)(i) or (ii) of this AD:

(i) Remove the LPT rotor stage 3 disk from service; or

(ii) Perform a fluorescent-penetrant inspection (FPI) of the inner diameter surface forward cone body (forward spacer arm) of the LPT rotor stage 3 disk as specified in paragraphs (g)(6)(i)(A) through (C) of this AD.

(3) EGT Thermocouple Probe Inspections.

(i) Within 750 CSLI, or before further flight, whichever occurs later, inspect the EGT thermocouple probe for damage.

Note 1 to paragraph (g)(3)(i): Damage to the EGT thermocouple probe may be indicated by wear through the thermocouple guide sleeve or contact between the turbine mid-frame liner and the EGT thermocouple probe.

(ii) Thereafter, within every 750 CSLI, re-inspect the EGT thermocouple probe for damage.

(iii) If any EGT thermocouple probe shows wear through the thermocouple guide sleeve or contact between the turbine mid-frame liner and the EGT thermocouple probe, before further flight, remove and replace the EGT thermocouple probe and ensure the turbine mid-frame liner does not contact the EGT thermocouple probe.

(4) EGT System Resistance Checks.

(i) Within 750 cycles since the last resistance check on the EGT system or before further flight, whichever occurs later, perform an EGT system resistance check.

(ii) Thereafter, within every 750 cycles since the last resistance check, repeat the EGT system resistance check.

(iii) If an EGT system component fails the resistance system check, before further flight, remove and replace, or repair the EGT system component.

(5) Engine Core Vibration Survey.

(i) Within 350 cycles since the last engine core vibration survey or before further flight, whichever occurs later, perform an initial engine core vibration survey.

(ii) Use about a one-minute acceleration and a one-minute deceleration of the engine between ground idle and 84% N2 (about 8,250 rpm) to perform the engine core vibration survey.

(iii) Use a spectral/trim balance analyzer or equivalent to measure the N2 rotor vibration.

(iv) If the vibration level is above 5 mils Double Amplitude then, before further flight, remove the engine from service.

(v) For those engines that fail any engine core vibration survey requirements of this AD, then before returning the engine to service:

(A) Remove the LPT rotor stage 3 disk from service; or

(B) Perform an FPI of the inner diameter surface forward spacer arm of the LPT rotor stage 3 disk as specified in paragraph (g)(6)(i)(A) through (C) of this AD.

(vi) Thereafter, within every 350 cycles since the last engine core vibration survey, perform the engine core vibration survey as required in paragraphs (g)(5)(i) through (v) of this AD.

(vii) If the engine has experienced any vibration reported by maintenance or flight crew that is suspected to be caused by the engine core (N2), within 10 cycles after the report, perform the engine core vibration survey as required in paragraphs (g)(5)(i) through (v) of this AD.

(viii) Vibration surveys carried out in an engine test cell as part of an engine manual performance run fulfill the vibration survey requirements of paragraphs (g)(5)(ii) and (iii) of this AD.

(6) Initial and Repetitive FPI of LPT Rotor Stage 3 Disk.

(i) At the next shop visit after accumulating 1,000 cycles since the last FPI of the LPT rotor stage 3 disk forward spacer arm or before further flight, whichever occurs later:

(A) Clean the LPT rotor stage 3 disk forward spacer arm, including the use of a wet-abrasive blast, to eliminate residual or background fluorescence.

(B) Perform an FPI of the LPT rotor stage 3 disk forward spacer arm for cracks and for a band of fluorescence. Include all areas of the disk forward spacer arm and the inner diameter surface forward spacer arm of the LPT rotor stage 3 disk.

(C) If a crack or a band of fluorescence is present, before further flight, remove the disk from service.

(ii) Thereafter, at each engine shop visit that occurs after accumulating 1,000 cycles since the last FPI of the LPT rotor stage 3 disk forward spacer arm, clean and perform an FPI of the LPT rotor stage 3 disk forward spacer arm, as specified in paragraph (g)(6)(i)(A) through (C) of this AD.

(7) Removal of LPT Rotor Stage 3 Disk.

(i) For any installed LPT rotor stage 3 disk having a part number listed in Table 1 to paragraph (c) of this AD, at the first occurrence of any one of the conditions identified in paragraphs (g)(7)(i)(A) through (C) of this AD, remove the LPT rotor stage 3 disk from service and replace with LPT rotor stage 3 disk part number 2453M80P01.

(A) For a disk that has accumulated fewer than 3,200 cycles since new (CSN) as of March 6, 2012 (the effective date of AD 2012–02–07), remove the disk from service before accumulating 6,200 CSN.

(B) For a disk that accumulated 3,200 or more CSN as of March 6, 2012 (the effective date of AD 2012–02–07), do the actions required by paragraphs (g)(7)(i)(B)(*1*) or (*2*) of this AD, as applicable to your engine.

(*1*) If the engine has a shop visit before the disk accumulates 6,200 CSN, remove the disk from service at that shop visit.

(*2*) If the engine does not have a shop visit before the disk accumulates 6,200 CSN, remove the disk from service at the next shop visit after accumulating 6,200 CSN, not to exceed 3,000 cycles from March 6, 2012 (the effective date of AD 2012–02–07).

(C) Before exceeding 18 months from the effective date of this AD.

(h) Terminating Action

Replacement of the LPT rotor stage 3 disk in accordance with paragraph (g)(7) of this AD constitutes terminating action for the inspections, engine checks and vibration surveys required by paragraphs (g)(1) through (6) of this AD.

(i) Installation Prohibition

After the effective date of this AD, do not install or reinstall onto any engine an LPT rotor stage 3 disk listed in Table 1 to paragraph (c) of this AD that has accumulated 6,200 CSN or more.

(j) Definitions

(1) For the purposes of this AD, an EGT above redline is a confirmed over-temperature indication that is not a result of EGT system error.

(2) For the purposes of this AD, a shift in the smoothed EGT trending data is a shift in a rolling average of EGT readings that can be confirmed by a corresponding shift in the trending of fuel flow or fan speed/core speed (N1/N2) relationship. You can find further guidance about evaluating EGT trend data in GE Company Service Rep Tip 373 ''Guidelines For Parameter Trend Monitoring.''

(3) For the purposes of this AD, an engine shop visit is the induction of an engine into the shop, where the separation of a major engine flange occurs; except the following maintenance actions, or any combination, are not considered engine shop visits:

(i) Induction of an engine into a shop solely for removal of the compressor top or bottom case for airfoil maintenance or variable stator vane bushing replacement.

(ii) Induction of an engine into a shop solely for removal or replacement of the stage 1 fan disk.

(iii) Induction of an engine into a shop solely for replacement of the turbine rear frame.

(iv) Induction of an engine into a shop solely for replacement of the accessory gearbox or transfer gearbox, or both.

(v) Induction of an engine into a shop solely for replacement of the fan forward case.

(4) For the purposes of this AD, a raw EGT trend data point above the smoothed average is a confirmed temperature reading over the rolling average of EGT readings that is not a result of EGT system error.

(k) Credit for Previous Actions

You may take credit for the actions required by paragraph (g) of this AD if they were performed before the effective date of this AD using GE Service Bulletin (SB) No. CF6–50 SB 72–1315, Initial Issue, dated June 3, 2011, or GE SB No. CF6–50 SB 72–1315, Revision 1, dated June 30, 2011.

(l) Alternative Methods of Compliance (AMOCs)

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

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

(3) AMOCs approved previously for AD 2010–12–10, Amendment 39–16331 (75 FR 32649, June 9, 2010), AD 2011–02–07, Amendment 39–16580 (76 FR 6323, February 4, 2011), or AD 2011–18–01, Amendment 39–16783 (76 FR 52213, August 22, 2011) are approved as AMOCs for the corresponding provisions of this AD.

(m) Related Information

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

(n) Material Incorporated by Reference

None.

Issued on November 3, 2022.

Christina Underwood,

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

[FR Doc. 2022–26579 Filed 12–7–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–106134–22]

RIN 1545–BQ39

Syndicated Conservation Easement Transactions as Listed Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that identify certain syndicated conservation easement transactions and substantially similar transactions as listed transactions, a type of reportable transaction. Material advisors and certain participants in these listed transactions are required to file disclosures with the IRS and are subject to penalties for failure to disclose. The proposed regulations affect participants in these transactions as well as material advisors. In addition, while the proposed regulations exclude qualified organizations from being treated as participants or parties to a prohibited tax shelter transaction subject to excise tax, this notice of proposed rulemaking requests comments on whether the final regulations should remove the exclusion from the application of the excise tax for qualified organizations that facilitate syndicated conservation easement transactions. Finally, this document provides notice of a public hearing on the proposed regulations.

DATES: *Comment date:* Electronic or written comments must be received by February 6, 2023.

Public hearing: The public hearing is scheduled to be held by teleconference on March 1, 2023, at 10 a.m. ET. Requests to speak and outlines of topics to be discussed at the public hearing must be received by February 6, 2022. If no outlines are received by February 6, 2023, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5 p.m. ET on February 27, 2023. The telephonic hearing will be made accessible to people with disabilities. Requests for special assistance during the telephonic hearing must be received by February 24, 2023.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–106134–22). Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish any comments to the public docket. Send paper submissions to: CC:PA:LPD:PR (REG–106134–22), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

For those requesting to speak during the hearing, send an outline of topic submissions electronically via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–106134–22).

Individuals who want to testify by telephone at the public hearing must send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–106134–22 and the word TESTIFY. For example, the subject line may say: Request to TESTIFY at Hearing for REG–106134–22. The email should include a copy of the speaker's public comments and outline of topics. Individuals who want to attend by telephone the public hearing must also send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–106134–22 and the word ATTEND. For example, the subject line may say: Request to ATTEND Hearing for REG–106134–22. To request special assistance during the telephonic hearing, contact the Publications and Regulations Branch of the Office of

Associate Chief Counsel (Procedure and Administration) by sending an email to *publichearings@irs.gov* (preferred) or by telephone at (202) 317–5177 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Theresa Melchiorre of the Office of Associate Chief Counsel (Income Tax and Accounting), (202) 317–7011; concerning submissions of comments and requests for hearing, Regina L. Johnson at (202) 317–5177 or *publichearings@irs.gov* (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Comments and Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any comments submitted will be made available at *www.regulations.gov* or upon request.

A public hearing is being held by teleconference on March 1, 2023, beginning at 10 a.m. ET unless no outlines are received by February 6, 2023.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to comment by telephone at the hearing must submit written or electronic comments and an outline of the topics to be discussed as well as the time to be devoted to each topic by February 6, 2023, as prescribed in the preamble under the **ADDRESSES** section.

A period of ten minutes will be allocated to each person for making comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available at *www.regulations.gov*, search IRS and REG–106134–22. Copies of the agenda will also be available by emailing a request to *publichearings@irs.gov.* Please put ''REG–106134–22 Agenda Request'' in the subject line of the email.

Announcement 2020–4, 2020–17 I.R.B. 667 (April 20, 2020), provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

Background

This document contains proposed additions to 26 CFR part 1 (Income Tax Regulations) under section 6011 of the Internal Revenue Code (Code). The additions identify certain transactions that are ''listed transactions'' for purposes of section 6011.

I. Overview of the Reportable Transaction Regime

Section 6011(a) generally provides that, when required by regulations prescribed by the Secretary of the Treasury or her delegate (Secretary), ''any person made liable for any tax imposed by this title, or with respect to the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement shall include therein the information required by such forms or regulations.''

On February 28, 2000, the Treasury Department and the IRS issued a series of temporary regulations (T.D. 8877; T.D. 8876; T.D. 8875) and cross-referencing notices of proposed rulemaking (REG–103735–00; REG–110311–98; REG–103736–00) under sections 6011, 6111, and 6112. The temporary regulations and cross-referencing notices of proposed rulemaking were published in the **Federal Register** (65 FR 11205, 65 FR 11269; 65 FR 11215, 65 FR 11272; 65 FR 11211, 65 FR 11271) on March 2, 2000 (2000 Temporary Regulations). The 2000 Temporary Regulations were modified several times before March 4, 2003, the date on which the Treasury Department and the IRS, after providing notice and opportunity for public comment and considering the comments received, published final regulations (T.D. 9046) in the **Federal Register** (68 FR 10161) under sections 6011, 6111, and 6112 (2003 Final Regulations). The 2000 Temporary Regulations and 2003 Final Regulations consistently provided that reportable transactions include listed transactions and that a listed transaction is a transaction that is the same as or substantially similar to one of the types of transactions that the IRS has determined to be a tax avoidance transaction and has identified by notice, regulation, or other form of published guidance as a listed transaction.

Following the 2003 promulgation of § 1.6011–4, Congress passed the American Jobs Creation Act of 2004 (AJCA), Public Law 108–357, 118 Stat. 1418 (October 22, 2004), which added sections 6707A, 6662A, and 6501(c)(10) to the Code, and revised sections 6111, 6112, 6707, and 6708 of the Code. *See* sections 811–812 and 814–817 of the AJCA. The AJCA's legislative history explains that Congress incorporated in the statute the method that the Treasury Department and the IRS had been using to identify reportable transactions, and provided incentives, via penalties, to encourage taxpayer compliance with the new disclosure reporting obligations. As the Committee on Ways and Means explained in its report accompanying H.R. 4520, which became the AJCA:

> The Committee believes that the best way to combat tax shelters is to be aware of them. The Treasury Department, using the tools available, issued regulations requiring disclosure of certain transactions and requiring organizers and promoters of tax-engineered transactions to maintain customer lists and make these lists available to the IRS. Nevertheless, the Committee believes that additional legislation is needed to provide the Treasury Department with additional tools to assist its efforts to curtail abusive transactions. Moreover, the Committee believes that a penalty for failing to make the required disclosures, when the imposition of such penalty is not dependent on the tax treatment of the underlying transaction ultimately being sustained, will provide an additional incentive for taxpayers to satisfy their reporting obligations under the new disclosure provisions.

House Report 108–548(I), 108th Cong., 2nd Sess. 2004, at 261 (June 16, 2004) (House Report).

In Footnote 232 of the House Report, the Committee on Ways and Means notes that the statutory definitions of ''reportable transaction'' and ''listed transaction'' were intended to incorporate the pre-AJCA regulatory definitions while providing the Secretary with leeway to make changes to those definitions:

> The provision states that, except as provided in regulations, a listed transaction means a reportable transaction, which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011. For this purpose, it is expected that the definition of ''substantially similar'' will be the definition used in Treas. Reg. sec. 1.6011–4(c)(4). However, the Secretary may modify this definition (as well as the definitions of ''listed transaction'' and ''reportable transactions'') as appropriate.

Id. at 261 n.232.

Section 6707A(c)(1) defines a ''reportable transaction'' as ''any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion.'' A ''listed transaction'' is defined by section 6707A(c)(2) as ''a reportable transaction which is the same as, or substantially similar to, a transaction specifically identified by the Secretary

as a tax avoidance transaction for purposes of section 6011.''

Section 6111(a), as revised by the AJCA, provides that each material advisor with respect to any reportable transaction must make a return setting forth: (1) information identifying and describing the transaction, (2) information describing any potential tax benefits expected to result from the transaction, and (3) such other information as the Secretary may prescribe. Such return must be filed not later than the date specified by the Secretary. Section 6111(b)(2) provides that a reportable transaction has the meaning given to such term by section 6707A(c).

Section 6112(a), as revised by the AJCA, provides that each material advisor with respect to any reportable transaction (as defined in section 6707A(c)) must (whether or not required to file a return under section 6111 with respect to such transaction) maintain a list (1) identifying each person with respect to whom such advisor acted as a material advisor and (2) containing such other information as the Secretary may by regulations require.

On August 3, 2007, the Treasury Department and the IRS published final regulations in the **Federal Register** (72 FR 43146–01, 72 FR 43157–01, 72 FR 43154–01) under sections 6011, 6111, and 6112 modifying the rules relating to the disclosure of reportable transactions by participants in reportable transactions under section 6011, the disclosure of reportable transactions by material advisors under section 6111, and the list maintenance requirements of material advisors with respect to reportable transactions under section 6112 in response to the changes in the AJCA.

II. Disclosure of Reportable Transactions by Participants and Penalties for Failure To Disclose

Section 1.6011–4(a) provides that every taxpayer that has participated in a reportable transaction within the meaning of § 1.6011–4(b) and who is required to file a tax return must file a disclosure statement within the time prescribed in § 1.6011–4(e).

Section 1.6011–4(d) and (e) provide that the disclosure statement—Form 8886, *Reportable Transaction Disclosure Statement* (or successor form)—must be attached to the taxpayer's tax return for each taxable year for which a taxpayer participates in a reportable transaction. A copy of the disclosure statement must be sent to the IRS's Office of Tax Shelter Analysis (OTSA) at the same time that any disclosure statement is first filed by the taxpayer pertaining to a particular reportable transaction.

Reportable transactions include listed transactions, confidential transactions, transactions with contractual protection, loss transactions, and transactions of interest. *See* § 1.6011–4(b)(2) through (6). Consistent with the definitions previously provided in the 2000 Temporary Regulations and later in the 2003 Final Regulations, as promulgated in 2007, § 1.6011–4(b)(2) continues to define a ''listed transaction'' as a transaction that is the same as or substantially similar to one of the types of transactions that the IRS has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction.

Section 1.6011–4(c)(4) provides that a transaction is ''substantially similar'' if it is expected to obtain the same or similar types of tax consequences and is either factually similar or based on the same or similar tax strategy. Receipt of an opinion regarding the tax consequences of the transaction is not relevant to the determination of whether the transaction is the same as or substantially similar to another transaction. Further, the term substantially similar must be broadly construed in favor of disclosure. For example, a transaction may be substantially similar to a listed transaction even though it may involve different entities or use different Code provisions.

Section 1.6011–4(c)(3)(i)(A) provides that a taxpayer has participated in a listed transaction if the taxpayer's tax return reflects tax consequences or a tax strategy described in the published guidance that lists the transaction under § 1.6011–4(b)(2). Published guidance may identify other types or classes of persons that will be treated as participants in a listed transaction. Published guidance may also identify types or classes of persons that will not be treated as participants in a listed transaction.

Section 1.6011–4(e)(2)(i) provides that if a transaction becomes a listed transaction after the filing of a taxpayer's tax return reflecting the taxpayer's participation in the listed transaction and before the end of the period of limitations for assessment for any taxable year in which the taxpayer participated in the listed transaction, then a disclosure statement must be filed with OTSA within 90 calendar days after the date on which the transaction becomes a listed transaction. This requirement extends to an amended return and exists regardless of whether the taxpayer participated in the transaction in the year the transaction became a listed transaction. The Commissioner of Internal Revenue (Commissioner) may also determine the time for disclosure of listed transactions in the published guidance identifying the transaction.

Participants required to disclose these transactions under § 1.6011–4 who fail to do so are subject to penalties under section 6707A. Section 6707A(b) provides that the amount of the penalty is 75 percent of the decrease in tax shown on the return as a result of the reportable transaction (or which would have resulted from such transaction if such transaction were respected for Federal tax purposes), subject to minimum and maximum penalty amounts. The minimum penalty amount is $5,000 in the case of a natural person and $10,000 in any other case. For a listed transaction, the maximum penalty amount is $100,000 in the case of a natural person and $200,000 in any other case.

Additional penalties may also apply. In general, section 6662A imposes a 20 percent accuracy-related penalty on any understatement (as defined in section 6662A(b)(1)) attributable to an adequately disclosed reportable transaction. If the taxpayer had a requirement to disclose participation in the reportable transaction but did not adequately disclose the transaction in accordance with the regulations under section 6011, the taxpayer is subject to an increased penalty rate equal to 30 percent of the understatement. *See* section 6662A(c). Section 6662A(b)(2) provides that section 6662A applies to any item which is attributable to any listed transaction and any reportable transaction (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of Federal income tax.

Participants required to disclose listed transactions who fail to do so are also subject to an extended period of limitations under section 6501(c)(10). That section provides that the time for assessment of any tax with respect to the transaction shall not expire before the date that is one year after the earlier of the date the participant discloses the transaction or the date a material advisor discloses the participation pursuant to a written request under section 6112(b)(1)(A).

III. Disclosure of Reportable Transactions by Material Advisors and Penalties for Failure To Disclose

Section 301.6111–3(a) of the Procedure and Administration Regulations provides that each material advisor with respect to any reportable

transaction, as defined in § 1.6011–4(b), must file a return as described in § 301.6111–3(d) by the date described in § 301.6111–3(e).

Section 301.6111–3(b)(1) provides that a person is a material advisor with respect to a transaction if the person provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction, and directly or indirectly derives gross income in excess of the threshold amount as defined in § 301.6111–3(b)(3) for the material aid, assistance, or advice. Under § 301.6111–3(b)(2)(i) and (ii), a person provides material aid, assistance, or advice if the person provides a tax statement, which is any statement (including another person's statement), oral or written, that relates to a tax aspect of a transaction that causes the transaction to be a reportable transaction as defined in § 1.6011–4(b)(2) through (7).

Material advisors must disclose transactions on Form 8918, *Material Advisor Disclosure Statement* (or successor form), as provided in § 301.6111–3(d) and (e). Section 301.6111–3(e) provides that the material advisor's disclosure statement for a reportable transaction must be filed with the OTSA by the last day of the month that follows the end of the calendar quarter in which the advisor becomes a material advisor with respect to a reportable transaction or in which the circumstances necessitating an amended disclosure statement occur. The disclosure statement must be sent to the OTSA at the address provided in the instructions for Form 8918 (or successor form).

Section 301.6111–3(d)(2) provides that the IRS will issue to a material advisor a reportable transaction number with respect to the disclosed reportable transaction. Receipt of a reportable transaction number does not indicate that the disclosure statement is complete, nor does it indicate that the transaction has been reviewed, examined, or approved by the IRS. Material advisors must provide the reportable transaction number to all taxpayers and material advisors for whom the material advisor acts as a material advisor as defined in § 301.6111–3(b). The reportable transaction number must be provided at the time the transaction is entered into, or, if the transaction is entered into prior to the material advisor receiving the reportable transaction number, within 60 calendar days from the date the reportable transaction number is mailed to the material advisor.

Additionally, material advisors must prepare and maintain lists identifying each person with respect to whom the advisor acted as a material advisor with respect to the reportable transaction in accordance with § 301.6112–1(b) and furnish such lists to the IRS in accordance with § 301.6112–1(e).

Section 6707(a) provides that a material advisor who fails to file a timely disclosure, or files an incomplete or false disclosure statement, is subject to a penalty. Pursuant to section 6707(b)(2), for listed transactions, the penalty is the greater of (A) $200,000, or (B) 50 percent of the gross income derived by such person with respect to aid, assistance, or advice which is provided with respect to the listed transaction before the date the return is filed under section 6111.

A material advisor may also be subject to a penalty under section 6708 for failing to maintain a list under section 6112(a) and failing to make the list available upon written request to the Secretary in accordance with section 6112(b) within 20 business days after the date of such request. Section 6708(a) provides that the penalty is $10,000 per day for each day of the failure after the 20th day. However, no penalty will be imposed with respect to the failure on any day if such failure is due to reasonable cause.

IV. Tax-Exempt Entities as Parties to Prohibited Tax Shelter Transactions

Section 4965 of the Code, which was enacted in 2006, is intended to deter certain ''tax-exempt entities'' (as defined in section 4965(c)) from facilitating prohibited tax shelter transactions, which include listed transactions. Section 4965(a)(1) provides, in part, that if a transaction is a prohibited tax shelter transaction at the time a tax-exempt entity becomes a party to the transaction, the entity must pay a tax for the taxable year and any subsequent taxable year as provided in section 4965(b)(1). Tax-exempt entities subject to the tax are listed in section 4965(c)(1)–(3) and include, among others, entities and governmental units described in sections 501(c) and 170(c) (other than the United States). A tax-exempt entity that is a party to a prohibited tax shelter transaction generally is also subject to various reporting and disclosure obligations. Additionally, an entity manager is subject to excise taxes under section 4965(a)(2) if the manager approves the entity as a party (or otherwise causes the entity to be a party) to a prohibited tax shelter transaction and knows or has reason to know that the transaction is a prohibited tax shelter transaction.

A. The Excise Taxes

The amount of the section 4965 tax owed by a tax-exempt entity depends on whether the tax-exempt entity knows, or has reason to know, that a transaction is a prohibited tax shelter transaction at the time the entity becomes a party to the transaction. A tax-exempt entity is treated as knowing or having reason to know that a transaction is a prohibited tax shelter transaction if one or more of its entity managers knew or had reason to know that the transaction was a prohibited tax shelter transaction at the time the entity manager(s) approved the entity as (or otherwise caused the entity to be) a party to the transaction.[1] The tax-exempt entity is also attributed the knowledge or reason to know of certain entity managers—those persons with authority or responsibility similar to that exercised by an officer, director, or trustee of an organization—even if the entity manager does not approve the entity as (or otherwise cause the entity to be) a party to the transaction.

Section 53.4965–4(a)(1) provides that a tax-exempt entity is a ''party'' to a prohibited tax shelter transaction if it facilitates a prohibited tax shelter transaction by reason of its tax-exempt, tax-indifferent, or tax-favored status. In addition, under § 53.4965–4(a)(2) and (b), the Secretary may issue published guidance to identify tax-exempt entities by type, class, or role that will or will not be treated as parties to a prohibited tax shelter transaction.

If the tax-exempt entity unknowingly becomes a party to a prohibited tax shelter transaction, the section 4965 tax generally equals the greater of (1) the product of the highest rate of tax under section 11 (currently 21 percent) and the entity's net income attributable to the prohibited tax shelter transaction, or (2) the product of the highest rate of tax under section 11 and 75 percent of the proceeds received by the entity that are attributable to the prohibited tax shelter transaction. If the tax-exempt entity knew or had reason to know that the transaction was a prohibited tax shelter transaction at the time the tax-exempt entity became a party to the transaction, the section 4965 tax increases to the greater of (1) 100 percent of the entity's net income attributable to the prohibited tax shelter transaction, or (2) 75 percent of the entity's proceeds attributable to the prohibited tax shelter transaction.

The terms ''net income'' and ''proceeds'' are defined in § 53.4965–8.

[1] Section 53.4965–6 of the Foundation and Similar Excise Tax Regulations provides factors to be considered in determining whether an entity manager knows or has reason to know that a transaction is a prohibited tax shelter transaction.

In general, a tax-exempt entity's net income attributable to a prohibited tax shelter transaction is its gross income derived from the transaction, reduced by those deductions that are attributable to the transaction and that would be allowed by chapter 1 of the Code if the tax-exempt entity were treated as a taxable entity for this purpose, and further reduced by the taxes imposed by subtitle D of the Code (other than the tax imposed by section 4965) with respect to the transaction. In the case of a tax-exempt entity that is a party to the transaction by reason of facilitating a prohibited tax shelter transaction by reason of its tax-exempt, tax-indifferent, or tax-favored status, the term ''proceeds,'' solely for purposes of section 4965, means the gross amount of the tax-exempt entity's consideration for facilitating the transaction, not reduced for any costs or expenses attributable to the transaction. Published guidance with respect to a particular prohibited tax shelter transaction may designate additional amounts as proceeds from the transaction for purposes of section 4965. In addition, for all tax-exempt entities that are parties to a prohibited tax shelter transaction, any amount that is a gift or a contribution to a tax-exempt entity and that is attributable to a prohibited tax shelter transaction is treated as proceeds for purposes of section 4965, unreduced by any associated expenses.

The amount of the section 4965 tax on an ''entity manager'' equals $20,000 for each time the manager approves the tax-exempt entity as (or otherwise causes such entity to be) a party to a prohibited tax shelter transaction and knows or has reason to know that the transaction is a prohibited tax shelter transaction. This liability is not joint and several.

B. Disclosures

Section 53.6011–1 requires that a tax-exempt entity subject to the section 4965 excise tax must file Form 4720, *Return of Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code,* to report the liability and pay the tax due under section 4965(a)(1). Under § 1.6033–5, a tax-exempt entity that is a party to a prohibited tax shelter transaction must file Form 8886–T, *Disclosure by Tax-Exempt Entity Regarding Prohibited Tax Shelter Transaction,* to disclose that it is a party to a prohibited tax shelter transaction, the identity of any other party (whether taxable or tax-exempt) to such transaction that is known to the tax-exempt entity, and certain other information. Under § 1.6033–2, if the tax-exempt entity is required to file Form 990, *Return of Organization Exempt From Income Tax,* it must disclose on that form that it is a party to a prohibited tax shelter transaction, whether any taxable party notified the tax-exempt entity that it was or is a party to a prohibited tax shelter transaction, and whether the tax-exempt entity filed Form 8886–T.

Section 6011(g) and § 301.6011(g)–1 provide that any taxable party to a prohibited tax shelter transaction must disclose to each tax-exempt entity that the taxable party knows or has reason to know is a party to such transaction that the transaction is a prohibited tax shelter transaction.

V. Conservation Easements

Section 170(f)(3)(A) provides that, in the case of a contribution (not made by a transfer in trust) of an interest in property that consists of less than the taxpayer's entire interest in such property, a deduction will be allowed only to the extent that the value of the interest contributed would be allowable as a deduction under section 170 if such interest had been transferred in trust.

Section 170(f)(3)(B)(iii) provides that section 170(f)(3)(A) does not apply to a qualified conservation contribution.

Section 170(h)(1) provides that, for purposes of section 170(f)(3)(B)(iii), the term ''qualified conservation contribution'' means a contribution (1) of a qualified real property interest, (2) to a qualified organization, (3) exclusively for conservation purposes.

Under section 170(h)(2), the term ''qualified real property interest'' means any of the following interests in real property: (A) the entire interest of the donor other than a qualified mineral interest as defined in section 170(h)(6); (B) a remainder interest; and (C) a restriction (granted in perpetuity) on the use that may be made of the real property.

Section 170(h)(3) provides that the term ''qualified organization'' generally includes governmental units, certain public charities, and Type I supporting organizations thereto.

Section 170(h)(4)(A) generally provides that the term ''conservation purpose'' includes (1) the preservation of land areas for outdoor recreation by, or the education of, the general public; (2) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem; (3) the preservation of open space (including farmland and forest land) where such preservation is either for the scenic enjoyment of the general public, or pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and that will yield a significant public benefit, or (4) the preservation of an historically important land area or a certified historic structure (as defined in section 170(h)(4)(C)).

Section 170(h)(4)(B) provides a special rule with respect to buildings in registered historic districts. Among other requirements, any contribution of a qualified real property interest that is a restriction with respect to the exterior of a building described in section 170(h)(4)(C)(ii) is not considered to be exclusively for conservation purposes unless such interest includes a restriction which preserves the entire exterior of the building (including the front, sides, rear, and height of the building), and prohibits any change in the exterior of the building which is inconsistent with the historical character of such exterior.

Section 170(h)(4)(C) provides that, for purposes of section 170(h)(4)(A)(iv), the term ''certified historic structure'' means any building, structure, or land area which is listed in the National Register, or any building which is located in a registered historic district (as defined in section 47(c)(3)(B) of the Code) and is certified by the Secretary of the Interior to the Secretary as being of historic significance to the district. A building, structure, or land area satisfies section 170(h)(4)(C) if it satisfies that definition either at the time of the transfer or on the due date (including extensions) for filing the transferor's return under chapter 1 of the Code for the taxable year in which the transfer is made.

Section 170(h)(5)(A) provides that, for purposes of section 170(h), a contribution is not treated as exclusively for conservation purposes unless the conservation purpose is protected in perpetuity. Section 170(h)(2)(C) and section 1.170A–14(b)(2) provide in part that a perpetual conservation restriction is a restriction granted in perpetuity on the use that may be made of real property including an easement or other interest in property that under state law has attributes similar to an easement.

VI. Syndicated Conservation Easement Transactions and Notice 2017–10

Some promoters have been syndicating conservation easement transactions that purport to give investors in a partnership or other pass-through entity (pass-through entity) the opportunity to claim a charitable contribution deduction in amounts that significantly exceed the amounts invested. In one type of an abusive syndicated conservation easement transaction, the promoter obtains an appraisal that purports to be a qualified appraisal as defined in section

170(f)(11)(E)(i). The appraisal greatly inflates the value of the conservation easement based on unreasonable and unrealistic conclusions about the highest and best use of the real property and does not take into account all of the factors necessary to support the valuation, such as the time and costs to achieve that highest and best use. In addition, investors who held their direct or indirect interests in the pass-through entity for one year or less take into account under section 1223 of the Code the pass-through entity's holding period in the conservation easement for purposes of section 1222 of the Code (taking into account any modification required by section 1061 of the Code) for purposes of potential treatment of the donated conservation easement as long-term capital gain property under section 170(e)(1).

On December 23, 2016, the IRS released Notice 2017–10, 2017–4 I.R.B. 544, which was subsequently modified by Notice 2017–29, 2017–20 I.R.B. 1243, and Notice 2017–58, 2017–42 I.R.B. 326, alerting taxpayers and their representatives that syndicated conservation easement transactions described in Notice 2017–10, and substantially similar transactions, are tax avoidance transactions and identifying them as listed transactions for purposes of § 1.6011–4(b)(2) and sections 6111 and 6112. Notice 2017–10 also alerts persons involved with the transactions that certain responsibilities may arise from their involvement. Notice 2017–10, as modified by Notice 2017–29, specifically excludes a donee described in section 170(c) from being treated as a party to the transaction under section 4965 of the Code (''section 4965 carve-out''), a participant under § 1.6011–4, or a material advisor under section 6111(b)(1). Notice 2017–10 applies to easements placed on any real property, including historically important land areas and certified historic structures.

Notice 2017–10 describes the following transaction as a listed transaction. An investor receives promotional materials that offer investors in a pass-through entity the possibility of a charitable contribution deduction that equals or exceeds an amount that is two and one-half times (that is, 250 percent of) the amount of the investor's investment. The promotional materials may be oral or written. For purposes of Notice 2017–10, promotional materials include, but are not limited to, documents described in § 301.6112–1(b)(3)(iii)(B). The investor purchases an interest, directly or indirectly (through one or more tiers of pass-through entities), in the pass-through entity that holds real property. The pass-through entity that holds the real property contributes a conservation easement encumbering the property to a tax-exempt entity and allocates, directly or through one or more tiers of pass-through entities, a charitable contribution deduction to the investor. Following that contribution, the investor reports on his or her federal income tax return a charitable contribution deduction with respect to the conservation easement.

Notice 2017–10 creates a rule only for purposes of reporting and penalties under the reportable transaction rules. No inference should be drawn from Notice 2017–10 (or these regulations) regarding the appropriateness of any deduction in any specific case, including cases in which the deduction is less than two and one-half times the amount of an investor's investment.

The foregoing efforts to combat abuse notwithstanding, the Treasury Department and IRS fully support otherwise proper deductions attributable to the voluntary contribution of a properly valued restriction on real property requiring the real property to be granted and protected for conservation purposes in perpetuity.

VII. Purpose of Proposed Regulations

On March 3, 2022, the Sixth Circuit issued an order in *Mann Construction* v. *United States,* 27 F.4th 1138, 1147 (6th Cir. 2022), holding that Notice 2007–83, 2007–2 C.B. 960, which identified certain trust arrangements claiming to be welfare benefit funds and involving cash value life insurance policies as listed transactions, violated the Administrative Procedure Act (APA), 5 U.S.C. 551–559, because the notice was issued without following the notice-and-comment procedures required by section 553 of the APA. The Sixth Circuit concluded that Congress did not clearly express an intent to override the notice-and-comment procedures required by section 553 of the APA when it enacted the AJCA. *Id.* at 1148. The Sixth Circuit reversed the decision of the district court, which held that Congress had authorized the IRS to identify listed transactions without notice and comment. *See Mann Construction, Inc.* v. *United States,* 539 F.Supp.3d 745, 763 (E.D. Mich. 2021). *See also GBX Associates, LLC,* v. *United States,* 1:22cv401 (N.D. Ohio, Nov. 14, 2022).

Relying on an analysis similar to the Sixth Circuit's analysis in *Mann Construction,* the Tax Court, in a reviewed decision with two judges dissenting, recently held that Notice 2017–10 was improperly issued because it was issued without following the APA's notice and comment procedures. See *Green Valley Investors, LLC, et al.* v. *Commissioner,* 159 T.C. No. 5 (Nov. 9, 2022). Accordingly, the court granted the petitioner's cross-motion for partial summary judgment on the application of section 6662A penalties. A final decision has not been entered in the case.

The Treasury Department and the IRS disagree with the Sixth Circuit's decision in *Mann Construction* and the Tax Court's decision in *Green Valley* and are continuing to defend the validity of Notice 2017–10 and other notices identifying transactions as listed transactions in circuits other than the Sixth Circuit. At the same time, however, to eliminate any confusion and ensure consistent enforcement of the tax laws throughout the nation, the Treasury Department and the IRS are issuing these proposed regulations to identify certain syndicated conservation easement transactions as listed transactions for purposes of all relevant provisions of the Code and Treasury Regulations.

These proposed regulations inform taxpayers that participate in syndicated conservation easement transactions, and substantially similar transactions, and persons who act as material advisors with respect to these transactions, and substantially similar transactions, that, once these proposed regulations are published in final form, those taxpayers and material advisors must disclose the transactions in accordance with the final regulations and the regulations issued under section 6011 and 6111. Material advisors must also maintain lists as required by section 6112. Prior to the date these regulations are published as final regulations, it is the position of the Treasury Department and the IRS that disclosure and list maintenance requirements for syndicated conservation easement transactions identified as listed transactions in Notice 2017–10 continue to be in effect, other than in the Sixth Circuit. In addition, taxpayers, including taxpayers in the Sixth Circuit, who have filed a tax return reflecting their participation in a syndicated conservation easement transaction before the final regulations are published and who have not disclosed the transaction pursuant to Notice 2017–10 will be required to file a disclosure statement within 90 calendar days after the date on which the final regulations are published if the period of limitations for assessment for any taxable year in which the taxpayer participated in the transaction remains

open. Material advisors also have disclosure and list maintenance obligations with respect to such transactions. See Part VI. of the Explanation of Provisions section of this preamble.

The IRS intends to challenge the purported tax benefits from these syndicated conservation easement transactions based on the overvaluation of the conservation easement. The IRS may also challenge the purported tax benefits from these transactions based on failure to comply with the requirements of section 170 (including, for example, lack of donative intent or the failure to comply with requirements of section 170(h)), lack of economic substance, lack of business purpose, violation of the partnership anti-abuse rule, or application of other rules or doctrines based on the facts of a particular case.

Explanation of Provisions

I. Definition of Syndicated Conservation Easement Transactions

Proposed § 1.6011–9(a) provides that a transaction that is the same as, or substantially similar to, a syndicated conservation easement transaction described in proposed § 1.6011–9(b) is a listed transaction for purposes of § 1.6011–4(b)(2) and sections 6111 and 6112. ''Substantially similar to'' is defined in § 1.6011–4(c)(4) to include any transaction that is expected to obtain the same or similar types of tax consequences and that is either factually similar or based on the same or a similar tax strategy. In the context of a syndicated conservation easement transaction, that would include, for example, transactions in which the contributed property is described in section 170(h)(2)(A) or (B) or a fee interest in real property.

Proposed § 1.6011–9(b) defines a syndicated conservation easement transaction as a transaction in which the four elements described in proposed § 1.6011–9(b)(1) through (4) occur (regardless of the order in which they occur). These four elements are as follows:

A. Promotional Materials Satisfy the 2.5 Times Rule

A taxpayer receives promotional materials that offer investors in a pass-through entity the possibility of a charitable contribution deduction that equals or exceeds an amount that is two and one-half times the amount of the taxpayer's investment in the pass-through entity. The proposed regulations refer to this element as the ''2.5 times rule.'' Proposed § 1.6011–9(c)(4) states that, for this purpose, the term ''promotional materials'' includes materials described in § 301.6112–1(b)(3)(iii)(B) and any other written or oral communication regarding the transaction provided to investors, such as marketing materials, appraisals (including preliminary appraisals, draft appraisals, and the appraisal that is attached to the taxpayer's return), websites, transactional documents such as the deed of conveyance, private placement memoranda, tax opinions, operating agreements, subscription agreements, statements of the anticipated value of the conservation easement, and statements of the anticipated amount of the charitable contribution deduction. These proposed regulations provide additional guidance on how to determine whether the 2.5 times rule is met, as discussed in Part II of the Explanation of Provisions section of this preamble.

B. Taxpayer Invests in the Pass-Through Entity

The taxpayer acquires an interest, directly or indirectly through one or more tiers of pass-through entities, in the pass-through entity that owns real property (that is, the taxpayer becomes an investor in the entity that owns the real property).

C. Pass-Through Entity Contributes the Conservation Easement to a Qualified Organization and Allocates a Charitable Contribution Deduction to Its Partners

The pass-through entity that owns the real property contributes an easement on such real property to a qualified organization and treats the easement as a conservation easement. A conservation easement is defined in these proposed regulations (in proposed § 1.6011–9(c)(2)) as a restriction, exclusively for conservation purposes, granted in perpetuity (per the relevant subsections of section 170), on the use that may be made of specified real property.

The pass-through entity allocates, directly or through one or more tiers of pass-through entities, a charitable contribution deduction to the taxpayer.

D. Taxpayer Reports Charitable Contribution Deduction on Taxpayer's Federal Income Tax Return

The taxpayer reports on the taxpayer's Federal income tax return a charitable contribution deduction with respect to the conservation easement.

II. 2.5 Times Rule

These proposed regulations include three rules to address potential avoidance of the 2.5 times rule. First, to prevent promoters from circumventing the 2.5 times rule by having promotional materials contain language that is ambiguous as to the amount of the potential charitable deduction, the proposed regulations provide that the highest deduction amount stated or implied in the promotional materials, taken as a whole, applies. Thus, if the promotional materials suggest a range of possible charitable contribution deduction amounts, the highest suggested deduction amount determines whether the 2.5 times rule is met. Similarly, if one piece of promotional materials (for example, an appraisal or oral statement) suggests a higher charitable contribution deduction amount than do other promotional materials, then the highest suggested charitable contribution deduction amount will determine whether the 2.5 times rule is met.

Second, the proposed regulations include a rebuttable presumption deeming the 2.5 times rule to be met if (i) the pass-through entity donates a conservation easement within three years following taxpayer's investment in the pass-through entity, (ii) the pass-through entity allocates a charitable contribution deduction to the taxpayer that equals or exceeds two and one-half times the amount of the taxpayer's investment, and (iii) the taxpayer claims a deduction that equals or exceeds two and one-half times the amount of the taxpayer's investment. This presumption is intended to address taxpayers and promoters who may not be forthcoming about the content or receipt of the promotional materials (as broadly defined under the proposed regulations). By the fact that the taxpayer claimed a charitable contribution deduction that equals or exceeds an amount that is two and one-half times the amount of their investment in the pass-through entity, the Treasury Department and the IRS will presume that the taxpayer received promotional materials that offered investors the possibility of being allocated a charitable contribution deduction that equals or exceeds an amount that is two and one-half times the amount of the taxpayer's investment in the pass-through entity. The presumption may be rebutted if the taxpayer establishes to the satisfaction of the Commissioner that none of the promotional materials contained a suggestion or implication that investors might receive a charitable contribution deduction that equals or exceeds an amount that is two and one-half times the amount of their investment in the pass-through entity. The Treasury

Department and the IRS request comments on this rule.

Finally, to prevent taxpayers from investing excess amounts in the pass-through entity to avoid meeting the 2.5 times rule, the proposed regulations contain an ''anti-stuffing'' rule. The anti-stuffing rule provides that the amount of a taxpayer's investment in the pass-through entity for purposes of determining application of the 2.5 times rule is limited to the portion of the taxpayer's investment that is attributable to the portion of the real property on which a conservation easement is placed and that produces the charitable contribution deduction described in paragraph (b)(3) of this section. For example, if a portion of the taxpayer's investment in the pass-through entity is attributable to property held directly or indirectly by the pass-through entity other than the real property on which a conservation easement is placed (including any other real property, cash, cash equivalents, digital assets, marketable securities, or other assets), that portion of the taxpayer's investment is not attributable to the portion of the real property on which a conservation easement is placed for purposes of the 2.5 times rule. The proposed regulations include an example illustrating the application of this rule.

III. Participant

Whether a taxpayer has participated in the listed transaction described in proposed § 1.6011–9(b) is determined under § 1.6011–4(c)(3)(i)(A). Participants include, but are not limited to, an owner of a pass-through entity, the pass-through entity (any tier, if multiple tiers are involved in the transaction), or any other taxpayer whose tax return reflects tax consequences or a tax strategy described in these proposed regulations. The proposed regulations provide, consistent with Notice 2017–10, that a qualified organization to which a syndicated conservation easement described in proposed § 1.6011–9(b) is donated is not treated as a participant under § 1.6011–4(c)(3)(i)(A) to the listed transaction described in these proposed regulations.

IV. Material Advisors

Material advisors, including promoters, appraisers and return preparers who make a tax statement with respect to transactions described in proposed § 1.6011–9(b), have disclosure and list maintenance obligations under sections 6111 and 6112. *See* §§ 301.6111–3 and 301.6112–1. Notice 2017–10, as modified by Notice 2017–29, provided that a qualified organization is not treated as a material advisor under section 6111. These proposed regulations differ from Notice 2017–10, as modified, in that they do not contain this rule. One of the requirements to be a material advisor under section 6111(b)(1) is that the person must directly or indirectly derive gross income in excess of the threshold amount provided in section 6111(b)(1)(B) for providing material aid, assistance, or advice with respect to the listed transaction. The regulations under section 6111 provide that gross income includes all fees for a tax strategy, for services for advice (whether or not tax advice), and for the implementation of a reportable transaction. However, a fee does not include amounts paid to a person, including an advisor, in that person's capacity as a party to the transaction. *See* § 301.6111–3(b)(3)(ii). The Treasury Department and the IRS request comments on whether qualified organizations are receiving fees for providing material aid, assistance, or advice with respect to transactions described in these proposed regulations, the nature of the services being provided, and why a carve-out from the definition of material advisor is needed.

V. Party to a Prohibited Tax Shelter Transaction

The proposed regulations provide, consistent with Notice 2017–10, that a qualified organization [2] is not treated as a party to the transaction under section 4965. However, the Treasury Department and the IRS are considering whether a qualified organization that facilitates an abusive syndicated conservation easement transaction described in these proposed regulations should be subject to section 4965. Since the issuance of Notice 2017–10, the IRS has received tens of thousands of listed transaction disclosures under sections 6011 and 6111. These disclosures indicate that a small number of qualified organizations facilitate abusive syndicated conservation easement transactions, sometimes for several hundreds of investors per year. Eliminating or limiting the scope of the section 4965 carve-out could deter qualified organizations from facilitating these abusive transactions. Any elimination or limitation of the section 4965 carve-out would apply only to transactions occurring after the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**.

While some land trusts facilitate syndicated conservation easement transactions that the land trusts know, or have reason to know, are abusive, other land trusts take affirmative steps to avoid participating in abusive transactions. For example, some land trusts, when engaging in transactions with pass-through entities of unrelated parties, require a donor's appraisal and will decline to participate in any transaction in which, among other things: (i) the appraisal indicates an increase in value of more than two and one-half times the basis in the property; (ii) the easement or property is donated within 36 months of the pass-through entity's acquisition of the property; and (iii) the value of the donation (not the deduction) is $1 million or greater.

The Treasury Department and the IRS request comments on specific ways that qualified organizations can engage in due diligence to avoid entering into abusive syndicated conservation easement transactions described in these proposed regulations. For example: what questions should qualified organizations ask donors to avoid entering into a syndicated conservation easement transaction described in these proposed regulations; when is the qualified organization best positioned to make the inquiries; and what written information or materials could the donor provide to the qualified organization to ensure the qualified organization will not be participating in an inappropriate transaction?

A. Eliminating the Section 4965 Carve-Out

Tax-exempt entities that facilitate abusive syndicated conservation easement transactions described in these proposed regulations do so by reason of their tax-exempt, tax-indifferent, or tax-favored status. Thus, if the final regulations were to eliminate the section 4965 carve-out, a qualified organization that accepts a syndicated conservation easement described in these proposed regulations would be subject to the section 4965 excise tax. However, if the qualified organization did not know, or have reason to know, that the contribution of the easement was part of a syndicated conservation

[2] As noted in Part V of the Background section of this preamble, a donation of a qualified conservation contribution must be made to a ''qualified organization,'' generally defined in section 170(h)(3) to include governmental units, certain public charities, and Type I supporting organizations thereto. Under section 4965(c), the term ''tax-exempt entity'' includes, among others, entities and governmental units described in sections 501(c) and 170(c) (other than the United States). Thus, absent the section 4965 carve-out, tax-exempt entities that would be affected are donees that are qualified organizations described in section 170(h)(3), other than the United States, that accept a conservation easement as part of the syndicated conservation easement transaction described in these proposed regulations.

easement transaction described in these proposed regulations, then the qualified organization would be subject only to the lesser section 4965 entity-level tax provided in section 4965(b)(1)(A). *See* discussion in Part IV.A. of the Background section of this preamble. Further, if at the time an entity manager approves or otherwise causes the qualified organization to accept the contribution the manager does not know, or have reason to know, that the contribution is part of a syndicated conservation easement transaction described in these proposed regulations, the manager would not be subject to the tax imposed by section 4965(a)(2).

Conversely, if the qualified organization knows or has reason to know (under the rules discussed in Part IV.A. of the Background section of this preamble) that a contribution of an easement is part of a syndicated conservation easement transaction described in these proposed regulations, the qualified organization would be subject to the increased section 4965 entity-level tax provided in section 4965(b)(1)(B). In addition, any entity manager who approves or otherwise causes the qualified organization to accept the contribution of an easement that the entity manager knows or has reason to know is part of a syndicated conservation easement transaction described in these proposed regulations would be subject to the $20,000 tax imposed by section 4965(a)(2).

The Treasury Department and the IRS request comments on eliminating the section 4965 carve-out in final regulations, including whether there are specific situations in which a qualified organization should or should not be considered to know or have reason to know that a conservation easement contribution is part of a syndicated conservation easement transaction described in these proposed regulations.

B. Limiting the Section 4965 Carve-Out

As described in Part IV.A. of the Background section of this preamble, § 53.4965–4(b) provides that the Secretary can identify tax-exempt entities that will not be treated as parties to a prohibited tax shelter transaction in published guidance by type, class, or role. As an alternative to eliminating the section 4965 carve-out in final regulations, the Treasury Department and the IRS are considering whether to include a more limited carve-out in the final regulations. Such a limited carve-out could provide, for example, that a tax-exempt entity that conducted an adequate amount of due diligence before entering into a transaction is not treated as a party to a syndicated conservation easement transaction.

The Treasury Department and the IRS request comments on what would constitute adequate due diligence to warrant relieving a tax-exempt entity from potential liability for the section 4965 excise tax and what additional safeguards might be needed. For example, the Treasury Department and the IRS request comments on whether, if final regulations include a more limited carve-out, the carve-out should provide relief only for organizations that have not previously been involved [3] in a syndicated conservation easement transaction.

C. Net Income and Proceeds

As noted in Part IV.A. of the Background section of this preamble, the section 4965 excise tax is based on an entity's net income attributable to the prohibited tax shelter transaction or proceeds received by the entity that are attributable to a prohibited tax shelter transaction. The Treasury Department and the IRS request comments on determining the amount of net income and proceeds attributable to the prohibited tax shelter transaction in the context of a syndicated conservation easement transaction, including what gross income (if any) typically is derived from (and what deductions are attributable to) the transaction; the value of the gift or contribution that would be treated as proceeds for purposes of section 4965; and whether the IRS should designate additional amounts as proceeds for section 4965 purposes, as permitted by § 53.4965–8.

D. General Request for Comments

In addition to the specific comment requests above, the Treasury Department and the IRS request comments regarding all aspects of the potential elimination or limitation of the section 4965 carve-out in final regulations, including any alternative ways to deter tax-exempt entities from acting as parties to syndicated conservation easement transactions and whether any additional guidance is needed on the application of section 4965 in the syndicated conservation easement context.

[3] A tax-exempt entity might be considered ''involved'' for these purposes, for example, if it previously accepted a syndicated conservation easement or if any person who established the tax-exempt entity, or related persons to any such person, were participants, material advisors, or involved in any other capacity with a previous syndicated conservation easement transaction.

VI. Effect of Transaction Becoming a Listed Transaction Under These Regulations

Participants required to disclose these transactions under § 1.6011–4 who fail to do so are subject to penalties under section 6707A. Participants required to disclose these transactions under § 1.6011–4 who fail to do so are also subject to an extended period of limitations under section 6501(c)(10). Material advisors required to disclose these transactions under section 6111 who fail to do so are subject to penalties under section 6707. Material advisors required to maintain lists of investors under section 6112 who fail to do so (or who fail to provide such lists when requested by the IRS) are subject to penalties under section 6708(a). In addition, the IRS may impose other penalties on persons involved in these transactions or substantially similar transactions, including accuracy-related penalties under section 6662 or section 6662A, the section 6694 penalty for understatements of a taxpayer's liability by a tax return preparer, the section 6695A penalty for certain valuation misstatements attributable to incorrect appraisals, the section 6700 penalty for promoting abusive tax shelters, and the section 6701 penalty for aiding and abetting understatement of tax liability.

Taxpayers who have filed a tax return (including an amended return (or Administrative Adjustment Request (AAR) for certain partnerships)) reflecting their participation in these transactions prior to [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**] and who have not previously disclosed their participation in the transactions pursuant to Notice 2017–10 must disclose the transactions as provided in § 1.6011–4(d) and (e) provided that the period of limitations for assessment of tax, including any applicable extensions, for any taxable year in which the taxpayer participated in the transaction has not ended on or before [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**]. Taxpayers that disclosed their participation in a transaction pursuant to Notice 2017–10 before final regulations are published will be treated as having made the disclosure pursuant to the final regulations for the years covered by that disclosure.

In addition, material advisors have disclosure requirements with regard to transactions occurring in prior years. However, notwithstanding § 301.6111–3(b)(4)(i) and (iii), material advisors are required to disclose only if they have made a tax statement on or after [DATE

6 YEARS BEFORE DATE OF PUBLICATION OF FINAL RULE].

VII. Applicability Date

Proposed § 1.6011–9(a) would identify syndicated conservation easement transactions described in proposed § 1.6011–9(b) as listed transactions effective as of the date of publication in the **Federal Register** of a Treasury decision adopting these regulations as final regulations.

VIII. Effect on Other Documents

These proposed regulations do not revoke or modify Notice 2017–10.

Special Analyses

I. Paperwork Reduction Act

The collection of information contained in these proposed regulations is reflected in the collection of information for Forms 8886 and 8918 that have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(c)) under control numbers 1545–1800 and 1545–0865.

To the extent there is a change in burden as a result of these regulations, the change in burden will be reflected in the updated burden estimates for the Forms 8886 and 8918. The requirement to maintain records to substantiate information on Forms 8886 and 8918 is already contained in the burden associated with the control number for the forms and remains unchanged.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

II. Regulatory Flexibility Act

The Secretary of the Treasury hereby certifies that the proposed regulations will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). As previously explained, the basis for these proposed regulations is Notice 2017–10, 2017–4 I.R.B. 544 (modified by Notice 2017–29, 2017–20 I.R.B. 1243, and Notice 2017–58, 2017–42 I.R.B. 326). The following chart sets forth the gross receipts of respondents to Notice 2017–10 that report federal tax information using Form 1065 (U.S. Return of Partnership Income) and Form 1120–S (U.S. Income Tax Return for an S Corporation):

NOTICE 2017–10—ALL FILINGS 2017 TO 2021, RESPONDENTS BY SIZE

Receipts	Respondents %	Filings %
Under 5M	93.3	88.3
5M to 10M	3.1	5.2
10M to 15M	1.2	2.9
15M to 20M	0.6	0.4
20M to 25M	0.6	0.7
Over 25M	1.2	2.5

This chart shows that the majority of respondents to Notice 2017–10 reported gross receipts under $5 million. Even assuming that these respondents constitute a substantial number of small entities, the proposed regulations will not have a significant economic impact on these entities because the proposed regulations implement sections 6111 and 6112 and § 1.6011–4 by specifying the manner in which and time at which an identified transaction must be reported. Accordingly, because the proposed regulations are limited in scope to time and manner of information reporting and definitional information, the economic impact of the proposal is expected to be minimal. Further, the Treasury Department and the IRS expect that the reporting burden is low; the information sought is necessary for regular annual return preparation and ordinary recordkeeping. The estimated burden for any taxpayer required to file Form 8886 is approximately 10 hours, 16 minutes for recordkeeping, 4 hours, 50 minutes for learning about the law or the form, and 6 hours, 25 minutes for preparing, copying, assembling, and sending the form to the IRS. The IRS's Research, Applied Analytics, and Statistics division estimates that the appropriate wage rate for this set of taxpayers is $98.87 (2021 dollars) per hour. Thus, it is estimated that a respondent will incur costs of approximately $2,127.00 per filing. Disclosures received to date by the Treasury Department and the IRS in response to the reporting requirements of Notice 2017–10 indicate that this small amount will not pose any significant economic impact for those taxpayers now required to disclose under the proposed regulations.

For the reasons stated, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required. The Treasury Department and the IRS invite comments on the impact of the proposed regulations on small entities. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

III. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million (updated annually for inflation). This proposed rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

IV. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or 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.

V. Regulatory Planning and Review

The Administrator of the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, has determined that this proposed rule is not a significant regulatory action, as that term is defined in section 3(f) of Executive Order 12866. Therefore, OIRA has not reviewed this proposed rule pursuant to section 6(a)(3)(A) of Executive Order 12866 and the April 11, 2018, Memorandum of Agreement between the Treasury Department and the Office of Management and Budget (OMB).

Statement of Availability of IRS Documents

Guidance cited in this preamble is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *https://www.irs.gov.*

Drafting Information

The principal author of these proposed regulations is Theresa Melchiorre, Office of Associate Chief Counsel (Income Tax & Accounting).

However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income Taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.6011–9 also issued under 26 U.S.C. 6001 and 26 U.S.C. 6011. * * *

■ **Par. 2.** Section 1.6011–9 is added to read as follows:

§ 1.6011–9 Syndicated conservation easement listed transactions.

(a) *Identification as listed transaction.* Transactions that are the same as, or substantially similar to, a transaction described in paragraph (b) of this section are identified as listed transactions for purposes of § 1.6011–4(b)(2).

(b) *Syndicated conservation easement transaction.* The term *syndicated conservation easement transaction* means a transaction in which the following steps occur (regardless of the order in which they occur)—

(1) A taxpayer receives promotional materials that offer investors in a pass-through entity the possibility of being allocated a charitable contribution deduction that equals or exceeds an amount that is two and one-half times the amount of the taxpayer's investment in the pass-through entity as determined under paragraph (d) of this section (2.5 times rule);

(2) The taxpayer acquires an interest directly, or indirectly through one or more tiers of pass-through entities, in the pass-through entity that owns real property (that is, becomes an investor in the entity);

(3) The pass-through entity that owns the real property contributes an easement on such real property, which it treats as a conservation easement within the meaning of paragraph (c)(2) of this section, to a qualified organization and allocates, directly or through one or more tiers of pass-through entities, a charitable contribution deduction to the taxpayer; and

(4) The taxpayer claims a charitable contribution deduction with respect to the conservation easement on the taxpayer's Federal income tax return.

(c) *Definitions.* The following definitions apply for purposes of this section:

(1) *Charitable contribution deduction.* The term *charitable contribution deduction* means a deduction under section 170 of the Internal Revenue Code (Code), which includes a deduction arising from a qualified conservation contribution as defined in section 170(h)(1).

(2) *Conservation easement.* The term *conservation easement* means a restriction, within the meaning of section 170(h)(2)(C), exclusively for conservation purposes, within the meaning of section 170(h)(1)(C) and section 170(h)(4), granted in perpetuity, on the use that may be made of specified real property.

(3) *Pass-through entity.* The term *pass-through entity* means a partnership, S corporation, or trust (other than a grantor trust within the meaning of subchapter J of chapter 1 of the Code).

(4) *Promotional materials.* The term *promotional materials* includes materials described in § 301.6112–1(b)(3)(iii)(B) of this chapter and any other written or oral communication regarding the transaction provided to investors, such as marketing materials, appraisals (including preliminary appraisals, draft appraisals, and the appraisal that is attached to the taxpayer's return), websites, transactional documents such as the deed of conveyance, private placement memoranda, tax opinions, operating agreements, subscription agreements, statements of the anticipated value of the conservation easement, and statements of the anticipated amount of the charitable contribution deduction.

(5) Qualified organization. The term *qualified organization* means an organization described in section 170(h)(3).

(6) *Real property.* The term *real property* includes all land, structures, and buildings, including a certified historic structure defined in section 170(h)(4)(C).

(d) *Application of 2.5 times rule*—(1) *Multiple suggested deduction amounts.* If the promotional materials, as defined in paragraph (c)(4) of this section and described in paragraph (b)(1) of this section, suggest or imply a range of possible charitable contribution deduction amounts that may be allocated to the taxpayer, the highest suggested or implied deduction amount will determine whether the 2.5 times rule is met. In addition, if one piece of promotional materials (for example, an appraisal or oral statement) suggests or implies a higher charitable contribution deduction amount than suggested or implied by other promotional materials, then the highest suggested charitable contribution deduction amount determines whether the 2.5 times rule is met.

(2) *Rebuttable presumption.* The 2.5 times rule is deemed to be met if the pass-through entity donates a conservation easement within three years following taxpayer's investment in the pass-through entity, the pass-through entity allocates a charitable contribution deduction to the taxpayer that equals or exceeds two and one-half times the amount of the taxpayer's investment, and the taxpayer claims a charitable contribution deduction that equals or exceeds two and one-half times the amount of the taxpayer's investment. This presumption may be rebutted if the taxpayer establishes to the satisfaction of the Commissioner that none of the promotional materials contained a suggestion or implication that investors might be allocated a charitable contribution deduction that equals or exceeds an amount that is two and one-half times the amount of their investment in the pass-through entity.

(3) *Anti-stuffing rule.* For purposes of paragraph (b)(1) of this section, the amount of a taxpayer's investment in the pass-through entity is limited to the portion of the taxpayer's investment described in paragraph (b)(2) of this section that is attributable to the portion of the real property on which a conservation easement is placed and that produces the charitable contribution deduction described in paragraph (b)(3) of this section. For example, if a portion of the taxpayer's investment in the pass-through entity is attributable to property held directly or indirectly by the pass-through entity other than the real property on which a conservation easement is placed as described in paragraph (b)(3) of this section (including any other real property, cash, cash equivalents, digital assets, marketable securities, or other assets), that portion of the taxpayer's investment is not attributable to the portion of the real property on which a conservation easement is placed for purposes of paragraph (b)(1) of this section.

(4) *Example illustrating anti-stuffing rule.*—(i) *Facts.* An individual (A) purchased an interest in a partnership (P) that owns real property with a fair market value of $500,000 and marketable securities with a fair market value of $500,000. A is one of four equal investors in P, each of whom purchased its interest in P for $250,000 of cash. With respect to an investor's $250,000 payment for its interest in P, the

promotional materials stated that P expected to allocate a $500,000 charitable contribution deduction to the investor (that is, a charitable deduction that is two times the amount an investor paid for its interest in P). After all four investors have purchased their interests in P, P donates a conservation easement to a qualified organization as defined in section 170(h)(3) of the Code and reports a $2,000,000 charitable contribution deduction on its Form 1065 based on P obtaining an appraisal indicating that the value of the conservation easement is $2,000,000. The Schedule K–1 (Form 1065) that P furnishes to A indicates that P allocated a $500,000 charitable contribution deduction to A for the taxable year.

(ii) *Analysis.* Under paragraph (d)(2) of this section, for purposes of paragraph (b)(1) of this section, the amount of A's investment in P that is attributable to the real property on which a conservation easement is placed described in paragraph (b)(3) of this section is $125,000 (that is, only the portion of the investment that is attributable to the real property on which a conservation easement is placed and that produces the charitable contribution deduction described in paragraph (b)(3) of this section). Because A's investment for purposes of the 2.5 times rule is $125,000 and A's expected charitable contribution deduction, based on the promotional materials, is $500,000 (that is, an expected deduction that is four times the investor's investment), the requirements of the 2.5 times rule of paragraph (b)(1) of this section are satisfied.

(e) *Participation in a syndicated conservation easement transaction*—(1) *In general.* Whether a taxpayer has participated in a syndicated conservation easement transaction described in paragraph (b) of this section is determined under § 1.6011–4(c)(3)(i)(A).

(2) *Class of participants.* For purposes of § 1.6011–4(c)(3)(i)(A), participants in a syndicated conservation easement transaction described in paragraph (b) of this section include—

(i) An owner of a pass-through entity;

(ii) A pass-through entity;

(iii) Any other taxpayer whose Federal income tax return reflects tax consequences or a tax strategy arising from the syndicated conservation easement transaction described in paragraph (b) of this section.

(3) *Exclusion.* A qualified organization to which the conservation easement is donated is not treated as a participant under § 1.6011–4(c)(3)(i)(A) in a syndicated conservation easement transaction described in paragraph (b) of this section.

(f) *Application of section 4965.* A qualified organization is not treated under section 4965 of the Code as a party to the transaction described in paragraph (b) of this section.

(g) *Applicability date.* This section's identification of transactions that are the same as, or substantially similar to, the transactions described in paragraph (b) of this section as listed transactions for purposes of § 1.6011–4(b)(2) and sections 6111 and 6112 of the Code is effective [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**].

Melanie R. Krause,

Acting Deputy Commissioner for Services and Enforcement.

[FR Doc. 2022–26675 Filed 12–6–22; 11:15 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 38

RIN 2900–AR36

Allowances for Caskets and Urns for Unclaimed Remains of Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to revise its regulation that governs the program that furnishes caskets and urns for the burial of remains of veterans with no known next-of-kin (NOK) where sufficient resources are not available for this purpose. First, VA proposes to implement the Charles Duncan Buried with Honor Act of 2016 that expanded the casket and urn authority to apply to eligible veteran burials in State and Tribal cemeteries that received a VA cemetery grant. Further, VA proposes to issue flat-rate allowances for caskets and urns rather than calculate the average cost for those items on an annual basis. Using flat-rate allowances would promote consistency and efficiency in the administration of this program. Additionally, we propose an update to the casket specifications based on feedback from funeral directors and other funeral industry professionals. Finally, VA proposes to amend the regulation by eliminating the retroactive reimbursement provisions. This change would reflect the fact that these provisions are no longer needed because the relevant applicability period has passed.

DATES: Comments must be received by VA on or before February 6, 2023.

ADDRESSES: Comments must be submitted through *www.regulations.gov.* Except as provided below, comments received before the close of the comment period will be available at *www.regulations.gov* for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on the following website as soon as possible after they have been received: *https://www.regulations.gov.* VA will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm an individual. VA encourages individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period's closing date is considered late and will not be considered in the final rulemaking.

FOR FURTHER INFORMATION CONTACT: Daniel Catron, Supervisory Program Analyst, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; *Daniel.Catron@va.gov,* telephone: (314) 416–6324 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Implementing Regulations for Statutory Program Expansion

Section 2306(f) of title 38, United States Code (U.S.C.), authorizes VA to furnish a casket or urn for burial of the unclaimed remains of veterans for whom VA cannot identify the NOK and determines that sufficient resources for the furnishing of a casket or urn for burial are not available. In 2016, Congress authorized an expansion of the casket and urn program to include VA grant-funded State and Tribal veterans' cemeteries. Therefore, burial of an eligible veteran must take place in a VA national cemetery or a veterans' cemetery of a State or Tribal Organization for which VA has provided a grant under 38 U.S.C. 2408. VA proposes to amend its regulations in 38 CFR 38.628 to reflect the expanded scope of the program. To implement this change, we propose to revise the introductory text of paragraph (a) and the text of paragraph (c)(1) of § 38.628.

Flat-Rate Allowances

Consistent with other VA burial-related benefits, VA proposes to pay flat-rate allowances to individuals or entities that purchase caskets and urns for burial of unclaimed remains of veterans who die without NOK and sufficient resources for burial. Under current § 38.628(a), VA will reimburse any individual or entity for the actual cost of a casket or urn purchased for an eligible veteran, and under § 38.628(d), reimbursements will be capped by the average market cost for a 20-gauge metal casket or a durable urn during the fiscal year preceding the calendar year of the claim. In this proposed rule, VA would replace reimbursements based on actual costs capped by annual average market prices with flat-rate allowances that are based on historical payment averages.

Since the inception of the casket and urn reimbursement program eight years ago, VA has received feedback from funeral homes expressing dissatisfaction with VA's annual calculations of the average market costs, which many have stated do not reflect what they normally charge private individuals and entities, because the calculations do not include commercial mark-ups for caskets or urns. VA appreciates this input. We note that the purpose of the casket and urn program is to offset costs for individuals and entities that bring eligible veterans to VA national and grant-funded cemeteries, and not to purchase caskets or urns from funeral homes at the same rates funeral homes would charge in connection with commercial funerals or to reimburse the full cost of caskets and urns that may far exceed the regulatory standards. In order to avoid confusion regarding the ''actual cost'' standard, VA clarified the regulation by requiring that actual costs be shown by invoices reflecting the purchase price of the casket or urn purchased by the individual or entity requesting reimbursement.

Funeral homes have also expressed a lack of confidence in VA's annual average market cost calculations, given the wide variance in the maximum reimbursement rates from year to year. VA acknowledges the variations in the calculated maximum rates do not reflect actual variations in market costs over the same period, which have remained relatively static. Since the program began, the maximum reimbursement rate based on average market cost for a casket has fluctuated 96.8 percent, with a high of $2,681 and a low of $1,362. The maximum reimbursement rate based on average market cost for an urn has been as high as $244 and as low as $120, producing a 103.3-percent variance.

VA is also concerned that reimbursement at the purchase price as shown by an invoice has encouraged certain individuals and entities to attempt to inflate reimbursements. VA has frequently received invoices showing purchase prices equal to the year's maximum reimbursement rate. Because those rates were based on cost averages of market prices from the previous fiscal year, VA questioned the validity of those invoices. Actual fraud in these cases, however, is difficult to prove and costly for the government to prosecute.

After VA clarified the regulatory standard requiring an invoice showing purchase prices and began challenging questionable invoices, however, program utilization decreased.

In response to these issues, VA proposes to cease the annual calculation and payment of reimbursement rates that vary from year to year, which have created confusion and caused lack of confidence among those who participate in the program. VA believes those issues would be eliminated by the proposed payment of flat-rate allowances for eligible claims. This would be a more consistent and predictable method of offsetting the costs of caskets and urns purchased for the dignified interment of unclaimed veterans' remains.

To effectuate the flat-rate allowances, VA proposes to amend § 38.628 to remove all references to ''reimburse'' and ''reimbursement'' and replace them with ''allowance''. These references would appear in the section heading of the regulation, the introductory text of paragraph (a), the introductory text of paragraph (c), and paragraph (d). We also propose to remove the text referring to actual cost in paragraph (a), and we propose to clarify in paragraph (a) that the amount of the allowances would be established in paragraph (d). As shown in proposed paragraph (e), VA would, on an annual basis, make cost-of-living adjustments for the flat-rate allowances using the Consumer Price Index, a methodology used in similar VA monetary allowances. Consistent with the Veterans Benefits Administration (VBA) cost increases for monetary allowances under 38 U.S.C. 2303, from June to June each year, the National Cemetery Administration (NCA) would apply the percentage increase (rounded to the nearest dollar) for caskets and urns. Use of VBA's cost-of-living increase analysis would promote consistency across VA benefit programs and ensure the casket and urn allowances meet current costs, to the extent practicable.

For urns, VA proposes to use historical average payments made by VA, which were based on invoices showing the purchase prices of urns meeting the regulatory specifications. VA reviewed maximum reimbursement rates for urns applicable for calendar years 2015 ($172), 2016 ($244), 2017 ($163), 2018 ($169), 2019 ($162), 2020 ($149), and 2021 ($145), which equates to an average annual reimbursement cap of $172 during that period. VA also found that the average actual reimbursement rate during that period was $138, which was the same as the average actual cost, shown by invoices, for a total of 77 urn claims. This payment average based on invoice price is lower than the $172 average of annual reimbursement caps calculated from 2015 to 2021. We note that during that time frame, based on VA historical payment data, invoice prices for urns that met § 38.628(c)(5)(ii) specifications did not have any significant increases or decreases. A flat rate allowance based on historical invoice payment data, which remained relatively static when compared to previously calculated maximum reimbursement rates based on market price cost averages that changed more significantly from year to year, is a more logical means of administering this benefit. Additionally, we believe this standard would encourage potential claimants to choose urns that meet the regulatory standards priced within the predictable and consistent flat-rate reimbursement amount. Based on this information, we propose the flat-rate allowance in paragraph (d) for urns to be $138, which is reflective of the average VA reimbursement based on actual cost from 2015 to 2021 for urns meeting regulatory specifications. And, as noted previously, VA would annually assess the allowance for cost-of-living increases.

For caskets, VA proposes to revise the definition of a ''casket'' for allowance purposes in § 38.628(c)(5)(i) by removing the requirement for a gasketed seal. Based on input from funeral homes and other funeral industry professionals, the gasketed seal is not necessary, except when remains are transported by air in pressurized settings. Most claimants present casketed remains for interment that are locally transported by land from funeral homes, rendering the gasketed seal unnecessary. Also, gasketed caskets are more costly than non-gasketed caskets that still serve the purpose of safely containing human remains.

Similar to VA's analysis supporting the proposed flat-rate urn allowance, VA considered historical payment data for caskets that met regulatory

specifications for calendar years 2015 through 2021. The maximum reimbursement rates for gasketed caskets payable for claims from 2015 to 2021 were as follows: $1,967, $2,421, $2,069, $2,131, $2,681, $1,903, and $1,984, which equate to an average annual reimbursement cap of $2,165 during that period. However, the average actual reimbursement rate was $1,426, which was the same as the average actual cost, shown by invoice, for a total of 1,912 casket claims. VA conducted market research for the proposed 20-gauge, metal, *non-gasketed* casket with external rails or swing arms costs for 2021, which showed an average market cost of $801, which was $227 less than the average market cost of $1,028 for comparable gasketed-seal caskets in 2021. VA would deduct the $227 average cost of a gasket from the $1,426 historical payment average for gasketed-seal caskets to calculate the proposed flat-rate allowance of $1,199. Elimination of the unnecessary expense of a gasketed casket for funeral homes and other purchasers of caskets for veteran burials would be a more cost-effective means of providing dignified burials of eligible unclaimed veterans' remains to be safely handled by cemetery employees. Additionally, use of the flat-rate allowance for caskets that are based on historical payment costs would be reflective of the average actual costs paid by claimants that bring unclaimed veterans to VA national and grant-funded cemeteries for burial. Although the historical payment data includes caskets allegedly priced at the maximum reimbursement rate, we do not believe that undermines our rationale for using this standard for calculating the casket flat-rate allowance because the casketprices at the maximum reimbursement rate were outliers and of questionable accuracy. We believe the revised flat-rate casket allowance would address expressed claimant concerns and impose practical internal controls for VA. For these reasons, VA proposes to adopt a flat-rate allowance for non-gasketed caskets, which we would continue to require to be of metal construction and at least 20-gauge thickness, designed for containing human remains, and include external fixed rails or swing arm handles. The flat-rate casket allowance would also be assessed annually for cost-of-living increases.

Eliminate Retroactive Reimbursement Provision

Finally, VA proposes to amend the regulation by eliminating the retroactive reimbursement provisions by removing paragraph (e) from § 38.628. Current paragraph (e) allows for retroactive reimbursement for caskets or urns purchased before July 2, 2014, for burial of the remains of a veteran who died on or after January 10, 2014, to be paid at the calendar year 2015 rates. This provision was included because the casket and urn authority took effect on January 10, 2014, before the regulations were finalized on April 13, 2015. However, the paragraph is no longer necessary because the relevant time periods have passed. VA would pay the allowances that apply based on the date of claim for reimbursement.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612, because the number of claims and the amounts involved are expected to be small. We estimate the average cost of a burial receptacle that meets regulatory specifications under this rule would be $1,199 for caskets and $138 for urns in 2023. We also estimate that the total number of allowances for 2023 would be 259 for caskets and 18 for urns. Because the proposed rulemaking would provide for issuance of an allowance, the individual or entity purchasing the burial receptacle would only be entitled to recoup the allowance rate, regardless of the actual purchase price. The purpose of the casket and urn reimbursement is to help offset a claimant's cost for bringing unclaimed veterans' remains to burial in a VA national or grant-funded cemetery. Generally, because the allowance is calculated based on historical average payments from qualifying purchase prices, this would result in the individual or entity avoiding a significant financial loss or gain for having made the purchase.

Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

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

Paperwork Reduction Act

Although this action contains provisions constituting collections of information at 38 CFR 38.628, under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), no new or revised collections of information are associated with this proposed rule. The information collection for 38 CFR 38.628 is currently approved by the Office of Management and Budget (OMB) and has been assigned OMB control number 2900–0799.

List of Subjects 38 CFR Part 38

Administrative practice and procedure, Cemeteries, Claims, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on November 30, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 38 as set forth below:

PART 38—NATIONAL CEMETERIES OF THE DEPARTMENT OF VETERANS AFFAIRS

■ 1. The authority citation for part 38 continues to read as follows:

Authority: 38 U.S.C. 107, 501, 512, 2306, 2400, 2402, 2403, 2404, 2407, 2408, 2411, 7105.

■ 2. Amend § 38.628 by revising the section heading, the introductory text of paragraphs (a) and (c), and paragraphs (c)(1), (c)(5)(i), (d), and (e) to read as follows:

§ 38.628 Allowance for caskets and urns for unclaimed remains of veterans.

(a) VA will issue a flat-rate allowance, as established in paragraph (d) of this section, to any individual or entity for a casket or urn, purchased by the individual or entity for the burial in a national cemetery or in a veterans' cemetery of a State or Tribal Organization that has received a grant under 38 U.S.C. 2408, of an eligible deceased veteran for whom VA:

* * * * *

(c) An individual or entity may request an allowance from VA under paragraph (a) of this section by completing and submitting VA Form 40–10088 and supporting documentation, in accordance with the instructions on the form. Prior to approving issuance of an allowance, VA must find all of the following:

(1) The veteran is eligible for burial in a VA national cemetery or in a veterans' cemetery of a State or Tribal Organization that has received a grant under 38 U.S.C. 2408;

* * * * *

(5) * * *

(i) Caskets must be of metal construction of at least 20-gauge thickness, designed for containing human remains, sufficient to contain the remains of the deceased veteran, and include external fixed rails or swing arm handles.

* * * * *

(d) The allowance for a claim received in any calendar year under paragraph (a) of this section is $1,199.00 for a metal casket and $138.00 for an urn of durable material.

(e) VA will make cost-of-living adjustments for the flat-rate casket and urn allowances using the Consumer Price Index (CPI). Each fiscal year, VA will provide a percentage increase (rounded to the nearest dollar) in the casket and urn flat-rate allowances equal to the percentage by which the CPI (all items, United States city average) for the 12-month period (June to June) preceding the beginning of the fiscal year for which the percentage increase is made exceeds the CPI for the 12-month period preceding the 12-month period described in this paragraph (e). VA will only make cost-of-living increases to the flat rate allowances when the CPI has increased.

* * * * *

(Authority: 38 U.S.C. 2306, 2402, 2411)

[FR Doc. 2022–26672 Filed 12–7–22; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 03–123, 10–51, 13–24; FCC 22–51; FR ID 114538]

VRS Rules Governing Communications Assistants and International Calling

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission (FCC or Commission) proposes to modify or eliminate certain provisions of its Video Relay Service (VRS) rules. Specifically, the Commission proposes to: increase from 50% to 80% the portion of a VRS provider's monthly minutes that may be handled by Communications Assistants (CAs) working from home; reduce or eliminate the three-year experience rule for CAs working from home, and allow VRS providers to use contract CAs for 30% of the providers' monthly call minutes; and allow Telecommunications Relay Services (TRS) Fund compensation of calls placed by registered VRS users to the United States from outside the country, for up to one year after leaving the country, as long as they notify their provider of such travel at any time before placing the first such call. The Commission also requests comment on whether any other at-home VRS rules should be modified.

DATES: Comments are due January 9, 2023. Reply comments are due February 6, 2023.

ADDRESSES: You may submit comments, identified by CG Docket Nos. 03–123, 10–51, and 13–24, by either of the following methods:

- *Federal Communications Commission's Website: https://www.fcc.gov/ecfs/filings.* Follow the instructions for submitting comments.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

For detailed instructions for submitting comments and additional information on the rulemaking process, *see* document FCC 22–51 at *https://docs.fcc.gov/public/attachments/FCC-22-51A1.pdf.*

FOR FURTHER INFORMATION CONTACT: William Wallace, Disability Rights Office, Consumer and Governmental Affairs Bureau, at 202–418–2716, or *William.Wallace@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, document FCC 22–51, adopted on June 28, 2022, released on June 30, 2022, in CG Docket Nos. 03–123, 10–51, and 13–24. The full text of document FCC 22–51 is available for public inspection and copying via the Commission's Electronic Comment Filing System (ECFS).

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

Ex Parte Rules. This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200 *et seq.* Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments,

memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b) of the Commission's rules. In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Synopsis

Background

1. Under section 225 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. 225, the Commission must ensure that TRS is available ''to the extent possible and in the most efficient manner'' to persons ''in the United States'' who are deaf, hard of hearing, or deafblind, or who have speech disabilities, so that they can communicate by telephone in a manner that is functionally equivalent to voice communication service. VRS, a form of TRS, enables people with hearing or speech disabilities who use sign language to make telephone calls over a broadband connection using a video communication device. The video link allows a CA to view and interpret the party's signed conversation and relay the conversation back and forth with a voice caller. Providers of VRS are compensated from the TRS Fund for service provided in accordance with applicable rules. To be eligible to receive payment from the TRS Fund, a VRS provider must be granted certification by the Commission. To allow TRS users to choose among competing service providers, the Commission has certified multiple firms to offer each of these services.

2. *Adoption of Anti-Fraud Rules in 2011.* More than ten years ago, a wave of fraud and abuse ''plagued the [VRS] program and threatened its long-term sustainability.'' Numerous uncertified entities were providing VRS or purporting to do so, without effective supervision, while using certified VRS providers as billing agents to obtain payment—sometimes fraudulently—from the TRS Fund. In response, the Commission prohibited or restricted a number of VRS provider practices that increased the likelihood of fraud and abuse. The Commission prohibited TRS Fund compensation for VRS calls handled by CAs working at home and prohibited compensation arrangements that tie a CA's compensation to the number of minutes or calls processed by a CA. In addition, the Commission amended its rules to prohibit an eligible (*i.e.,* FCC-certified) VRS provider from contracting with or otherwise authorizing any third party to provide interpretation services or call center functions (including call distribution, call routing, call setup, mapping, call features, billing, and registration) on its behalf, unless that authorized third party also is an eligible VRS provider. Further, the Commission sharply restricted compensation of VRS providers for calls placed to the United States from foreign locations, prohibiting TRS Fund compensation for such VRS calls, subject to a limited exception for calls placed during travel—by a U.S. resident who has pre-registered with his or her default provider prior to leaving the country, during specified periods of time while on travel and from specified regions of travel, for which there is an accurate means of verifying the identity and location of such callers.

3. *Reauthorization of At-Home VRS Call Handling.* In 2017, recognizing that anti-fraud safeguards and advances in network technology appeared to have reduced the fraud and abuse risks associated with CAs working at home, the Commission authorized a pilot program whereby participating VRS providers could permit some CAs to work at home, so long as the provider complied with the Commission's mandatory minimum standards and with specified personnel, technical, and environmental safeguards, as well as with monitoring, oversight, and reporting requirements. Three years later, the Commission further amended its rules to allow at-home call-handling on a permanent basis, subject to safeguards similar to those of the pilot program. Among other requirements, the current rules limit at-home call handling to a maximum of 50% of a provider's monthly VRS minutes and require that CAs working at home have at least three years of American Sign Language (ASL) interpreting experience.

4. *COVID–19 Pandemic Waivers.* During the COVID–19 pandemic national emergency, to ensure the uninterrupted availability of VRS, the Commission temporarily waived several rules applicable to VRS providers. At the beginning of the pandemic, VRS providers reported sharp increases in the volume of calls and decreases in call center staffing, which made it difficult to comply with certain minimum TRS standards. Providers also moved CAs to home workstations to comply with social distancing requirements and stay-at-home orders. To address these extraordinary circumstances, the Consumer and Governmental Affairs Bureau (CGB or Bureau), on its own motion, temporarily waived several VRS rules, including the three that the Commission proposes to modify or eliminate in this document. Due to the pandemic's continuing impact on VRS operations, all the above waivers were extended for additional periods in successive orders, including one by the full Commission.

5. *Convo Petition for Rulemaking.* On June 4, 2021, Convo Communications, LLC (Convo) filed a petition requesting that the Commission initiate a rulemaking proceeding to modify several of the VRS rules that had previously been waived. Convo urged the Commission to raise the percentage of permitted VRS at-home call-handling to 80% of a provider's monthly minutes and to allow a VRS provider to use contract CAs for up to 30% of its monthly minutes. On June 17, 2021, the Bureau released a public notice seeking comment on Convo's Petition.

Proposed Rules

6. VRS providers report an increasing shortage of ASL interpreters able and willing to work as VRS CAs. This shortage, which appears to have begun before the onset of the COVID–19 pandemic, has been aggravated by the pandemic but appears likely to continue well beyond its end. In light of these developments, the Commission proposes to eliminate or modify certain requirements that may be no longer needed in their current form and that may unnecessarily restrict the available pool of ASL interpreters who are able and willing to work as VRS CAs.

7. *Cap on VRS Minutes Handled by CAs Working at Home.* The Commission proposes to increase from 50% to 80% the percentage of a VRS provider's monthly minutes that may be handled by CAs working at home. In adopting permanent rules to allow at-home call handling, the Commission found that allowing CAs to work at home could improve the efficiency and effectiveness of VRS by enabling VRS providers to attract and retain qualified CAs for whom working at the companies' call centers was not a practical option. The Commission also noted that working at home could reduce CA stress and

improve productivity and performance. Based on its experience with at-home call handling to date, the Commission believes these benefits can be enhanced by allowing VRS providers, on a permanent basis, more flexibility to employ additional teleworking CAs if warranted by a provider's own assessment of the effects on efficiency and service quality. The Commission also believes that, in general, VRS providers are unlikely to add more teleworking CAs if doing so will detract from service quality. Finally, the Commission believes the safeguards of its at-home rules are sufficient to ensure that a permanent increase in reliance on at-home call handling, up to the proposed 80% maximum, does not adversely affect call confidentiality or increase the risk of waste, fraud, and abuse. The Commission also believes that permanently raising the at-home cap is a necessary measure to help maintain a sufficient supply of qualified VRS CAs, many of whom are reluctant, unable, or unwilling to work from a call center.

8. The Commission seeks comment on this proposal, including the assumptions above and the costs, risks, and benefits. If the cap is permanently raised, would VRS providers maintain or increase the percentage of CAs working at home? What factors do providers consider (apart from public health considerations related to the pandemic) in deciding whether to maintain or increase reliance on CAs working from home? For example, do providers consider primarily the opportunity to save costs, or to improve or maintain service quality, *e.g.,* by maintaining or adding CAs who may be unable or unwilling to work in call centers, and in particular more experienced CAs? Would permanently raising the cap substantially expand the pool of interpreters potentially able to work as VRS CAs, and if so, by how much? Would a return to the 50% cap result in a loss of CAs and a reduction in service quality? What kinds of costs savings, if any, have resulted or will result from increased at-home call-handling, and how are the new costs or cost savings of this practice calculated? For example, do hourly wages differ for CAs working at home or in call centers—and if so, by how much? The Commission also asks commenters to provide quantitative data on the extent to which increasing the percentage of at-home CAs has resulted in or will result in a reduction in call center overhead costs over the costs of establishing and maintaining at-home workstations. To the extent that there are both benefits and harms from increasing the use of at-home CAs, how should they be balanced?

9. What are the possible adverse effects, if any, of raising the cap? How is the quality of interpreting affected, if at all, when calls are handled by CAs working at home? Are consumers able to discern that a call is being handled by a CA working at home? If so, what differences, if any, do consumers detect in the quality of at-home versus call-center calls? The Commission also invites VRS providers to share the results of any analyses they have conducted regarding differences, if any, in call quality or complaint frequency for call-center and teleworking CAs.

10. What specific concerns, if any, would be raised by permanently raising the cap, with respect to providers' ability to serve demand efficiently, protect the confidentiality of conversations, and prevent waste, fraud, and abuse? What technical, operational, training, or other challenges have been faced by providers, and how have they responded to ensure that service quality, confidentiality, and other requirements do not suffer? What specific lessons have VRS providers learned about the advantages, disadvantages, and challenges of having calls handled by CAs working at home?

11. The Commission also seeks information on how providers select and train CAs allowed to work at home. Do providers require CAs to work in call centers if one is available within commuting distance and there is no valid reason why the CA must work at home? Or is each CA allowed to choose where to work, if qualified to work at home? Should the Commission impose any additional training or other requirements in connection with increased use of CAs working at home or other proposals in the NPRM?

12. The Commission also seeks comment, supported by quantitative data where possible, on whether 80%—or a different percentage—is an appropriate limit for monthly at-home minutes. Alternatively, should the Commission eliminate the cap altogether, and rely solely on VRS providers' business judgement to determine to what extent it is appropriate to rely on at-home CAs? Is a minimum level of call center staffing necessary to ensure continuity of service? Alternatively, is such a minimum necessary to ensure that certain types of calls are handled appropriately—*e.g.,* emergency calls? Are there other types of calls or call scenarios, *e.g.,* those requiring multiple interpreters, that are more effectively handled at a call center? How frequent are such calls? Would it be feasible to transfer such calls to a call center once it is determined that multiple CAs are required?

13. *Three-Year Experience Rule.* The Commission proposes to reduce or eliminate the requirement that an at-home CA have at least three years of experience providing interpretation services. This rule was adopted to ensure that CAs working at home are able to handle and interpret VRS calls without in-person supervision. However, the Commission also sought to avoid imposing requirements that impede VRS providers' ability to recruit CAs from an expanded pool of skilled labor. The Commission revisits the need for this rule in light of the ongoing shortage of VRS CAs. Based on the past two years of experience with at-home call-handling—during which this requirement has been waived—the Commission now believes that the three-year requirement is not needed to maintain service quality. VRS providers, like other employers, report that during the pandemic, VRS CAs have demonstrated an ability to work effectively in the home environment. In addition, the Commission notes that its personnel safeguards for at-home CAs require that a CA must be ''a qualified interpreter'' who ''has the experience, skills, and knowledge necessary to effectively interpret VRS calls without in-person supervision, has learned the provider's protocols for at-home call handling, and understands and follows the TRS mandatory minimum standards.'' VRS providers must also provide at-home CAs with the same support and supervision as CAs in call centers. These rules, coupled with the technical requirements for effective supervision, help ensure that teleworking CAs will handle calls efficiently and effectively in the home environment.

14. The Commission also believes that competition among VRS providers will help ensure that VRS providers make appropriate decisions regarding the qualifications of CAs they allow to work at home. Pursuant to the Commission's longstanding policy to allow VRS users to choose among multiple providers, consumers have the opportunity to choose the VRS provider that offers the highest quality of service. Therefore, it appears that VRS providers have a substantial incentive to ensure that any CA allowed to work at home is qualified to do so. The Commission seeks comment on its proposal and these underlying assumptions. What are the costs and benefits of maintaining a three-year experience requirement for at-home CAs? How should the

Commission balance the need for effective interpretation skills with allowing VRS providers access to a larger pool of available interpreters?

15. The Commission seeks comment on alternative ways to modify the rule. For example, should the Commission retain an experience requirement? Would one or two years of interpreting experience meet the goal of ensuring effective interpretation without direct supervision? Is it necessary for initial VRS training to be conducted at a call center? Should CAs have logged a certain number of minutes of supervised, call-center-based VRS call handling before being allowed to work at home? Or are the remaining requirements in § 64.604(b)(8)(ii)(A) of the Commission's rules sufficient to provide assurance that a VRS CA can work effectively without in-person supervision? Are there any other conditions that may be warranted to support continued high quality VRS service in connection with any of the Commission's proposals?

16. The Commission seeks comment on whether other changes should be made in the at-home VRS call-handling rules, based on experience over the last two years. Commenters should identify any current rule that they think should be modified, explain in detail why such modifications would advance the purposes of section 225 of the Act, and provide factual support for their recommendations based on actual experience.

17. *Contracting for CAs.* The Commission proposes to modify the restriction on VRS providers' ability to contract for CA services, to allow VRS providers to contract for interpretation services for up to 30% of their monthly call minutes. The Commission adopted this rule in 2011 to end the proliferation of arrangements whereby uncertified entities were providing VRS pursuant to subcontracting agreements with eligible providers. Due to the obstacles they posed to effective oversight, the Commission reasoned, such arrangements encouraged and facilitated fraudulent billing of the TRS Fund for non-compensable calls. To reduce fraud and establish better oversight of the VRS program, the Commission amended its rules to prohibit the subcontracting of interpreting and call-center functions to third parties whose operations are not under the direct supervision of the Commission.

18. The Commission believes that its proposed modification of the current restriction on contracting for interpretation services (which would not change the rule's restriction on contracting for call center functions) will help alleviate the ongoing shortage of VRS CAs. The restriction on contracting for interpretation services has been waived on an emergency basis during the COVID–19 pandemic, but the shortage of VRS CAs, while aggravated by the pandemic, is likely to outlast it.

19. The record suggests that permanently allowing VRS providers to contract for interpretation services will enable providers to continue retaining the services of many qualified ASL interpreters who prefer not to sign up as VRS provider employees. According to Convo, many of the VRS interpreters it hires through a contractor only want a short assignment or want to supplement their community-interpreting income by working limited shifts as a VRS CA. Convo also asserts that contract CAs can help providers respond to short term fluctuations in both demand and CA availability, for example, when a weather event causes both a spike in traffic and the closing of a call center. The Commission believes that VRS providers and users can benefit from the flexibility that contracting allows providers during short-time fluctuations in demand. Does allowing VRS providers to contract for up to 30% of their monthly minutes provide sufficient flexibility for that purpose? The Commission seeks comment on its proposal, these underlying assumptions, and the costs and benefits of allowing VRS providers to contract for interpretation services from uncertified entities.

20. The Commission also seeks comment on any risks of harm currently posed by the use of contract CAs. Some commenters on the Convo Petition raised the concern that relaxing the rule could reinstate incentives and opportunities for fraud and abuse by VRS providers. Have there been changes in the VRS industry in the last 10 years that reduce these concerns? Are other measures instituted by the Commission sufficient to prevent fraud and abuse? Since April 2020, when the Bureau initially waived the prohibition on contracting for CA services as part of the Commission's pandemic emergency measures, has there been any indication of increased waste, fraud, and abuse? Would allowing VRS providers to contract for interpretation services on a permanent basis run the risk of changing providers' incentives regarding the making of VRS calls that would not otherwise be made?

21. The Commission also seeks comment on what conditions it could impose to limit any risk of waste, fraud, and abuse that may result from the use of contract CAs? In adopting the contracting restriction, the Commission explained that the proliferation of ineligible VRS providers prior to 2011 had frustrated its ability to exercise effective oversight of the VRS program. Should organizations contracting with a VRS provider for interpretation services be required to register with the Commission and agree to direct oversight, including audits, inspection of records, etc.? Alternatively, should the Commission require the VRS provider to expressly accept responsibility for any fraud or abuse committed by a contracting CA or agency? In addition, what records should the Commission require VRS providers to keep regarding transactions with and services provided by contracting CAs or agencies, in addition to copies of the contracts themselves? What information about the use of contract CAs should be included in VRS providers' annual reports? For example, should the Commission require VRS providers to identify each entity with which it has contracted for interpretation services and the number of conversation minutes handled by each? Should the Commission allow contract CAs to be stationed outside the United States?

22. The Commission also seeks comment on permissible payment arrangements for contract CAs. For example, the Commission's current rules prohibit VRS providers from providing compensation or other benefits to CAs in any manner that is based upon the number of VRS minutes or calls that the CA relays, either individually or as part of a group. Is this rule sufficient—and sufficiently clear—to prevent incentives to generate minutes that would not otherwise have been made by individuals using VRS, artificially lengthen the time of a call, or create fictional calls where no relaying takes place? To limit incentives for fraud and abuse, should the Commission expressly require VRS providers to pay contract interpreters or agencies based on hours of availability, rather than call or session minutes? Are there other safeguards that the Commission should require in contracts with contracting CAs or agencies?

23. Is 30% an appropriate cap on the number of minutes handled by contract interpreters? Would a different percentage cap strike a more appropriate balance between the need for provider flexibility and the risk of waste, fraud, and abuse? Should the Commission direct the Consumer and Governmental Affairs Bureau to conduct a review of the level of the cap, *e.g.,* three years after the effective date of the rules, to determine if the 30% limit continues to be necessary to prevent waste, fraud,

and abuse, or if adjustments are needed in light of experience?

24. To enable enforcement of the cap and facilitate review of the need for or possible changes in the cap, the Commission proposes to require VRS providers to identify, in their monthly call reports, those CAs that are working on a contract basis. The Commission seeks comment on this proposal.

25. The Commission also seeks comment on how its rules on at-home call-handling should be amended to address the use of contract CAs to work from home workstations. Should contract CAs be allowed to work from home? What amendments to the Commission's rules, if any, would be needed to ensure compliance with the Commission's at-home call-handling requirements? Because contract CAs are not employees of the VRS provider, should VRS providers be required to obtain written assurance from contract CAs that they will comply with each relevant requirement if they are allowed to work from home?

26. *International Calling Restrictions.* The Commission proposes to modify the current restriction on TRS Fund compensation for calls placed to the United States by registered VRS users temporarily located abroad. The Commission proposes to modify the current notice requirement for such calls, to allow payment of compensation if the default VRS provider has been notified of the user's travel plans at any time before such a call is placed. In addition, the Commission proposes to codify the Declaratory Ruling in document FCC 22–51, by amending its rules to provide that such calls may be compensated if placed up to one year after a user leaves the United States.

27. The Commission's rules currently prohibit TRS Fund compensation for any VRS calls placed to the United States from foreign IP addresses, except calls made by a U.S. resident who has pre-registered with his or her default provider prior to leaving the United States, during specified periods of time while on travel and from specified regions of travel, for which there is an accurate means of verifying the identity and location of such callers. In adopting this rule, the Commission stated, in a footnote, that ''specified periods of time'' was not intended to mean extended periods of time, which it defined as more than four weeks.

28. In the Declaratory Ruling in document FCC 22–51, the Commission finds that interpreting this exception as limited to periods of no longer than four weeks imposes unnecessary restrictions on registered VRS users who are traveling internationally. That interpretation was adopted at a time when the VRS program was plagued by fraud and abuse, much of which involved international calls placed to the United States from foreign IP addresses. Since then, however, the anti-fraud measures adopted by the Commission appear to have been effective in suppressing illegal VRS calling. Further, in 2019, the Commission implemented the User Database, in which the identity of each registered VRS user is entered and verified in a central database. The vetting of each VRS user by the TRS Fund administrator provides additional assurance against payment of compensation for fraudulent VRS calls, including calls from unknown users located outside the United States.

29. The Commission proposes to amend its rules to clarify that calls originating from international IP addresses may be compensated if placed within one year after a user leaves the United States. The proposed revision would: relax the current preregistration requirement to allow notification to the user's default VRS provider at any time prior to placing such calls; and clarify that such notifications may specify travel periods for up to one year. Under this proposed modification, the content of the required notification must include the specific regions of travel, the date of departure from the United States, and the approximate date when the individual intends to return to the United States. The Commission seeks comment on the proposal and its costs and benefits. Does the proposed revision, in conjunction with the existing User Database rules and other fraud prevention measures, sufficiently address the risk of waste, fraud and abuse that the current rule was intended to prevent?

30. The Commission also notes that as a result of the pandemic waiver orders, the prohibition on calling the United States from abroad has been largely waived. Is there evidence of waste, fraud, or abuse in international calling during that period? If so, does such evidence warrant changes to this proposal?

31. *Statutory Authority.* The Commission seeks comment on whether these proposed revisions are consistent with section 225 of the Act, which directs the Commission to ensure the availability of TRS to persons with hearing or speech disabilities ''in the United States.'' Other than requiring that compensable calls must either originate or terminate in the United States, the Commission has not formally determined what limits this statutory language places on TRS Fund support for calls placed by persons located abroad. However, the Commission requires that, to register for internet-based TRS, a consumer must establish that he or she is a U.S. resident, at least on a temporary basis. In the Declaratory Ruling in document FCC 22–51, the Commission finds that one year is long enough to cover most reasons why U.S. residents would be traveling abroad and is a reasonable ''default'' time limit to prevent the use of TRS funds to support VRS calls by persons who can no longer be considered U.S. residents.

32. The Commission seeks comment on codifying these determinations. Is one year an appropriate maximum duration? For example, is this period long enough to cover students studying abroad, employees on temporary work assignments abroad, or individuals on extended travel? Is a one-year limit, combined with other safeguards such as the User Database, an effective means of ensuring that the use of VRS by individuals located outside the United States is limited to U.S. residents who are only temporarily living abroad and have an intent to return to the United States?

33. *Extensions.* The Commission also seeks comment on whether to allow extensions of the one-year limit. For example, should the Commission adopt an informal process for individuals to apply to the Disability Rights Office for an extension of the one-year maximum period, and be granted such an extension upon a showing that the individual's primary residence remains in the United States, even though the individual will remain abroad longer than one year?

34. *Proposed Exception for Military and U.S. Government Personnel.* The Commission proposes an exception to the one-year maximum time period for calls to the United States by registered VRS users who are U.S. military personnel, federal government employees, or federal contractors (or their accompanying immediate family members) temporarily stationed outside the United States. Under this proposed exception, the content of the required notification to the default provider must include the specific regions of foreign assignment, the date of departure from the United States, the contemplated end date for the foreign assignment, and that the user (or a family member of the user) is a member of the military services, or is employed by a federal government agency or federal contractor, and is temporarily stationed outside the United States. If the user's foreign assignment does not contain an end date, the user may specify an end date that is one year after the date of

departure. The Commission proposes that this exception apply for the duration of the user's (or family member's) foreign assignment plus an additional time period following the end of such assignment to allow the user additional time to travel abroad and return to the United States. How long should the Commission allow as an additional time period beyond the end of the foreign assignment? The Commission also proposes that, if the foreign assignment is extended (or an assignment that does not contain an end date lasts more than one year), the user must notify his or her default provider of the new end date of the assignment to continue making VRS calls during such extension (plus the permitted additional time period). The Commission seeks comment on this proposed exception, including its costs and benefits. The Commission also proposes to apply this exception to individuals placing calls to the United States from U.S. military and government organizations with enterprise VRS registrations.

35. Should the scope or conditions of this proposed exception be modified? For example, are there other categories of users who should be included in the exception? In the case of lengthy foreign assignments, how should providers (and indirectly the Fund administrator) be made aware of the status of such users—via an ad hoc notice from the user, from the relay official or other responsible individual specified in an enterprise registration, *see* 47 CFR 64.611(a)(6)(ii)(A), or in some other way? Should confirmation of the user's eligibility for this exception be required?

Initial Regulatory Flexibility Analysis

36. As required by the Regulatory Flexibility Act of 1980, as amended, the Commission has prepared the Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this document. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments provided in this document.

37. *Need for, and Objective of, the Proposed Rules.* The Commission proposes to increase from 50% to 80% the cap on call minutes that can be handled by VRS communications assistants from home work stations, eliminate the three-year experience requirement for at-home VRS CAs, and allow VRS providers to contract for interpretation services from entities that are not also certified VRS providers for up to 30% of their monthly call minutes. These changes would increase the pool of available VRS CAs and give VRS providers more flexibility in ensuring that they have sufficient staff to meet the demand from VRS users, which can fluctuate during a day and over longer periods of time. The Commission also proposes to allow compensation from the TRS Fund for VRS calls originating from international IP addresses to the United States for up to one year while the user is on travel, and for the duration of their required service overseas for United States miliary personnel and federal government works and contractors who are stationed abroad, including their immediate family members living with them.

38. *Legal Basis.* The authority for this proposed rulemaking is contained in sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 225.

39. *Description and Estimate of the Number of Small Entities Impacted.* If the proposed rules are adopted, the rules will affect the obligations of Video Relay Service providers. These services can be included within the broad economic category of All Other Telecommunications.

40. *Description of Reporting, Recordkeeping, and Other Compliance Requirements.* The Commission's existing rules require VRS providers to report on the use of CAs utilizing at-home work stations. The proposed rule would increase from 50% to 80% the percentage of a VRS provider's monthly call minutes that may be handled by at-home CAs. VRS providers who rely on at-home CAs would have to separately track the monthly call minutes handled by those CAs.

41. The Commission proposes to allow VRS providers to employ contract CAs and to permit contract CAs to handle up to 30% of a provider's total monthly call minutes. VRS providers may have to separately track call minutes handled by contract CAs. If a VRS provider employs contract CAs, it may be required to, upon request, make available to the Commission and the TRS Fund administrator written copies of such contracts. VRS providers who employ contract CAs also may be required to submit reports on such personnel at regular intervals.

42. The Commission proposes to allow VRS users to make calls to the United States from international locations for up to one year while on travel and require VRS users to notify their default VRS providers of their travel plans before they start making such calls. The Commission also proposes to allow federal employees, contractors, and their immediate family members to make VRS calls from international locations for the length of their service while stationed abroad plus up to an additional 90 days to allow for travel while returning to the United States after such individuals notify their default VRS provider of where they are stationed and the length of their service tour. New or modified reporting, recordkeeping, or other compliance obligations may be imposed on VRS providers in association with tracking VRS users while on international travel.

43. *Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.* Participation in the at-home call-handling program would continue to be optional for VRS providers. The Commission is not proposing any new requirements that would increase regulatory requirements beyond those that are already required as part of the at-home call-handling program. The existing and proposed requirements would apply equally to all VRS providers and are necessary to prevent waste, fraud, and abuse of the TRS Fund by ensuring that CAs are subject to proper supervision and accountability. To the extent there are differences in operating costs resulting from economies of scale, those costs are reflected in the different rate structures applicable to large and small VRS providers.

44. The proposal to permit VRS providers to hire contract CAs is designed to increase the pool of American Sign Language interpreters available and willing to work as VRS CAs. Hiring contract CAs would be optional for VRS providers. Those VRS providers that choose to hire contract CAs may be subject to certain reporting, recordkeeping, and other obligations associated with the hiring of such personnel. The proposed requirements would apply equally to all VRS providers using contract CAs and are necessary to prevent waste, fraud, and abuse of the TRS Fund. To the extent there are differences in operating costs resulting from economies of scale, those costs are reflected in the different rate structures applicable to large and small VRS providers.

45. The proposal to modify from four weeks to one year the time period during which VRS users may make calls to the United States from international locations is designed to provide more flexibility to VRS users and bring the specified period of time in line with the Commission's updated interpretation of

this rule. Similarly, the Commission is proposing to allow federal military, employees, and contractors, and their immediate family members to make international VRS calls to the United States for the time period of their tour of duty abroad plus an additional 90 days to allow for travel back to the United States. The Commission is not proposing any new requirements that would increase regulatory requirements beyond those that are already required of VRS providers handling international calls. The existing and proposed requirements would apply equally to all VRS providers and are necessary to prevent waste, fraud, and abuse of the TRS Fund by ensuring that only U.S. residents are permitted to make VRS calls to the United States from abroad. To the extent there are differences in operating costs resulting from economies of scale, those costs are reflected in the different rate structures applicable to large and small VRS providers.

46. *Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals.* None.

Initial Paperwork Reduction Act of 1995 Analysis

The Commission seeks comment on proposed rule amendments that may result in modified information collection requirements. If the Commission adopts any modified information collection requirements, the Commission will publish another notice in the **Federal Register** inviting the public to comment on the requirements, as required by the Paperwork Reduction Act. Public Law 104–13; 44 U.S.C. 3501–3520. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees. Public Law 107–198; 44 U.S.C. 3506(c)(4).

List of Subjects in 47 CFR Part 64

Individuals with disabilities, Telecommunications, Telecommunications relay services.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

Proposed Regulations

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend Title 47 of the Code of Federal Regulations as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

Authority: 47 U.S.C. 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 255, 262, 276, 403(b)(2)(B), (c), 616, 617, 620, 1401–1473, unless otherwise noted; Public Law 115–141, Div. P, sec. 503, 132 Stat. 348, 1091.

■ 2. Amend § 64.604 by revising paragraphs (a)(7), (b)(8)(i)(A), (B), and (ii)(A), and (c)(5)(iii)(N)(*1*)(*iii*) to read as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(a) * * *

(7) *International calls.*

(i) VRS calls that originate from an international IP address will not be compensated, except in accordance with this section. For purposes of this section, an international IP address is defined as one that indicates that the individual initiating the call is located outside the United States and its territories.

(ii) A VRS provider may seek TRS Fund compensation for VRS calls placed to the United States by a United States resident who is a registered VRS user, if:

(A) Such calls are placed one year or less after the VRS user departs the United States; and

(B) At any time prior to placing such calls, the VRS user notifies the user's default provider of the specific region(s) of travel, the date of departure from the United States, and the intended date of return to the United States.

(iii) A registered VRS user may request approval from the Commission's Disability Rights Office for an extension of the one-year international calling period. Such request shall include a showing that the user's primary residence remains in the United States, even though the user will remain outside the United States longer than one year. Upon approval of such an extension, the user shall notify the user's default VRS provider of such change, and the provider may seek compensation for international calls placed by the user through the end of such extended return date.

(iv) A VRS provider may seek TRS Fund compensation for VRS calls placed to the United States, pursuant to an individual or enterprise VRS registration, by a United States resident who is a United States military or federal government employee or contractor temporarily stationed abroad, or an immediate family member of such employee or contractor, if:

(A) Such calls are placed either during the period of such foreign assignment or within 90 days after the end date of such foreign assignment; and

(B) At any time prior to placing such calls, the registered VRS user, or the Relay official or other responsible individual designated in an enterprise registration, notifies the default VRS provider of the specific regions of foreign assignment, the date of departure from the United States, and the intended end date of the foreign assignment, and that the user (or an immediate family member of the user) is a United States military or federal employee or contractor, and is temporarily stationed outside the United States. If the foreign assignment is extended, the registered VRS user, or the Relay official or other responsible individual designated in an enterprise registration, shall notify the default VRS provider of the new end date of such foreign assignment and of any change of the region where the user is stationed.

(C) For purposes of this section, an ''immediate family member'' is a parent, spouse, or child of a United States military or federal government employee or contractor.

(D) If the intended end date of the foreign assignment is not known as of the time of notification to the default VRS provider, the notification may specify one-year from the date of departure from the United States as the end date.

(b) * * *

(8) * * *

(i) * * *

(A) Eighty percent (80%) of a VRS provider's total minutes for which compensation is paid in that month; or

(B) Eighty percent (80%) of the provider's average projected monthly conversation minutes for the calendar year, according to the projections most recently filed with the TRS Fund administrator.

(ii) * * *

(A) Allow a CA to work at home only if the CA is a qualified interpreter who has the experience, skills, and knowledge necessary to effectively interpret VRS calls without in-person supervision, has learned the provider's protocols for at-home call handling, and understands and follows the TRS mandatory minimum standards set out in this section; and

* * * * *

(c) * * *

(5) * * *

(iii) * * *

(N) * * *

(*1*) * * *

(*iii*) *Contracting of call center functions.* An eligible VRS provider shall not contract with or otherwise authorize any third party to provide call center functions (including call distribution, call routing, call setup, mapping, call features, billing, and registration, but not including interpretation services) on its behalf, unless that authorized third party also is an eligible provider. An eligible VRS provider may contract with third parties to provide interpretation services for up to a maximum of the greater of: thirty percent (30%) of a VRS provider's total minutes for which compensation is paid in that month; or thirty percent (30%) of the provider's average projected monthly conversation minutes for the calendar year, according to the projections most recently filed with the TRS Fund administrator. A VRS provider that contracts for interpretation services shall submit a written report every six months that identifies each entity with which it contracted for interpretation services and the number of conversation minutes handled by each such contractor. Such reports shall be submitted on August 1 covering the six months from January through June and February 1 covering the six months from July through December, and shall be included with the semi-annual call center reports required by section 64.604(c)(5)(iii)(N)(*2*) of this chapter.

* * * * *

[FR Doc. 2022–25341 Filed 12–7–22; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 390

[Docket No. FMCSA–2022–0028]

RIN 2126–AC53

Clarification to the Applicability of Emergency Exemptions

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FMCSA is proposing to narrow the scope of regulations from which relief is provided automatically for motor carriers providing direct assistance when an emergency has been declared. Through the proposed changes, the Agency would ensure that the relief granted through emergency declarations is appropriate and tailored to the specifics of the circumstances and emergency being addressed. The Agency also proposes revisions to the process for extending an automatic emergency exemption where circumstances warrant.

DATES: Comments must be received on or before February 6, 2023.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–2022–0028 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov/docket/*FMCSA–2022–0028. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.
- *Fax:* (202) 493–2251.

FOR FURTHER INFORMATION CONTACT: Ms. Kathryn Sinniger, Regulatory Law Division, Office of the Chief Counsel, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, (202) 570–8062, *Kathryn.Sinniger@dot.gov.* If you have questions on viewing or submitting material to the docket, call Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION: FMCSA organizes this NPRM as follows:

I. Public Participation and Request for Comments
  A. Submitting Comments
  B. Viewing Comments and Documents
  C. Privacy
  D. Comments on the Information Collection
II. Executive Summary
  A. Purpose and Summary of the Regulatory Action
  B. Summary of Major Provisions
  C. Costs and Benefits
III. Abbreviations
IV. Legal Basis
V. Background
VI. Discussion of Proposed Rulemaking
VII. Section-by-Section Analysis
IX. Regulatory Analyses
  A. E.O. 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures
  B. Congressional Review Act
  C. Waiver of Advance Notice of Proposed Rulemaking
  D. Regulatory Flexibility Act (Small Entities)
  E. Assistance for Small Entities
  F. Unfunded Mandates Reform Act of 1995
  G. Paperwork Reduction Act (Collection of Information)
  H. E.O. 13132 (Federalism)
  I. Privacy
  J. E.O. 13175 (Indian Tribal Governments)
  K. National Environmental Policy Act of 1969

I. Public Participation and Request for Comments

A. Submitting Comments

If you submit a comment, please include the docket number for this NPRM (FMCSA–2022–0028), indicate the specific section of this document to which your comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *https://www.regulations.gov/docket/*FMCSA–2022–0028, click on this NPRM, click ''Comment,'' and type your comment into the text box on the following screen.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

Confidential Business Information (CBI)

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to the NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as ''PROPIN'' to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be

placed in the public docket of the NPRM. Submissions containing CBI should be sent to Mr. Brian Dahlin, Chief, Regulatory Evaluation Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this rulemaking.

B. Viewing Comments and Documents

To view any documents mentioned as being available in the docket, go to *https://www.regulations.gov/docket/* FMCSA–2022–0028 and choose the document to review. To view comments, click this NPRM, then click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy

DOT solicits comments from the public to better inform its regulatory process, in accordance with 5 U.S.C. 553(c). DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL 14—Federal Docket Management System), which can be reviewed at *https://www.govinfo.gov/content/pkg/FR-2008-01-17/pdf/E8-785.pdf.*

D. Comments on the Information Collection

Written comments and recommendations for the information collection discussed in this NPRM should be sent within 60 days of publication to the docket for this rulemaking, as indicated above in paragraph A. ''Submitting Comments.''

II. Executive Summary

A. Purpose and Summary of the Regulatory Action

Section 390.23 of title 49, Code of Federal Regulations (CFR), automatically creates a 30-day exemption from 49 CFR parts 390 through 399 when the President, a Governor, or FMCSA issues a declaration of an *emergency,* as defined in §§ 390.5 and 390.5T, and a motor carrier or driver provides *direct assistance* to supplement State and local *emergency relief* efforts in response to that emergency, as those terms are defined in §§ 390.5 and 390.5T.[1]

Based on Agency subject matter expertise and input from States, affected localities, industry groups and others, FMCSA believes that most emergencies justify allowing carriers and drivers providing direct assistance in responding to the emergency relief from the normal hours of service (HOS) limits to deliver critical supplies and services to the communities in need. However, other safety regulations, including the driver qualification requirements of part 391, the vehicle inspection and other operating requirements such as prohibitions on operating while ill or fatigued in part 392, or the parts and accessories required by part 393 often have no direct bearing on the motor carrier's ability to provide assistance to the emergency relief efforts.

Safety regulations ensure that companies, vehicles, and drivers meet the minimum requirements to operate safely. While the temporary relief from some regulations may be necessary during an emergency, waiving every regulation in parts 390–399 could negatively impact the safety of commercial motor vehicles (CMVs) operating on the roadways. However, the Agency has no information that suggests that past or existing emergency exemptions have in fact negatively impacted road safety.[2]

In order to provide clarity on which emergency exemptions are necessary during an emergency, FMCSA proposes to narrow the automatic applicability of § 390.23 to the HOS limits in §§ 395.3 and 395.5. This change would clarify that carriers and drivers are not authorized to overlook other important safety requirements while performing direct assistance to emergency relief efforts. By limiting the scope of the current rule on emergency regulatory relief, the NPRM would clarify that the Federal Motor Carrier Safety Regulations (FMCSRs) not relevant to most emergency situations remain in effect while retaining the Agency's flexibility to tailor emergency regulatory relief to the specific circumstances of an emergency.

B. Summary of Major Provisions

This NPRM proposes changes to the definitions in §§ 390.5 and 390.5T. It would modify the definition for *emergency* to clarify that emergency regulatory relief under § 390.23 generally does not apply to economic conditions that are caused by market forces, including shortages of raw materials or supplies, labor strikes, driver shortages, inflation, or fluctuations in freight shipment or brokerage rates, unless such conditions or events cause an immediate threat to human life and result in a declaration of an emergency. The NPRM would also remove the definition for *emergency relief* as that term would no longer be used in § 390.23 and would amend the definition of *direct assistance* to incorporate the essential components of the former *emergency relief* definition. It would also move the definition for *residential heating fuel* from the text of § 390.23 and place it in the definition sections, §§ 390.5T and 390.5. These reorganizational changes would simplify the regulatory text in § 390.23, without changing the regulation's meaning.

This NPRM would revise § 390.23 in several ways. While Presidential declarations of emergency would continue to trigger a 30-day exemption from all FMCSRs in parts 390 through 399, the proposed rule would limit the duration and scope of the existing automatic regulatory relief that takes effect upon a regional declaration of an emergency by a Governor, a Governor's authorized representative, or FMCSA. The automatic regulatory relief would apply for only 5 days, as opposed to 30 days, and would exempt CMV drivers only from the HOS regulations in §§ 395.3 and 395.5, as opposed to all regulations in parts 390 through 399. This change would both shorten the time the automatic regulatory relief is in place as well as limit the scope of relief provided, ensuring that any impact on safety continues to be minimized during the period of the automatic regulatory relief. FMCSA determined that the period of 5 days for automatic relief was appropriate for regional declarations of emergency, as its experience in monitoring emergency declarations demonstrated that in most cases, the actual emergency (*e.g.,* the specific weather event or highway accident) is over within 5 days. Any emergency relief efforts extending beyond that time are typically geared to rebuilding and not to the emergency response scenarios envisioned when this rule was first issued.

[1] Section 390.5 of title 49 is currently suspended and replaced by 49 CFR 390.5T, however the definitions for the listed terms are identical in both sections.

[2] The Agency recently requested comment on the extent to which motor carriers are continuing to rely on the COVID–19 emergency declaration to deliver certain commodities and whether there has been any impact on safety. (Sept. 7, 2022, 87 FR 54630) While some commenters noted an overall increase in truck crash fatalities, there were no comments linking those fatalities to the emergency exemption.

Section 390.23 would maintain the statutory requirement from the Reliable Home Heating Act (49 U.S.C. 31136 note) that when a Governor declares a state of emergency due to a shortage of residential heating fuel, the automatic regulatory relief lasts for a period of 30 days and exempts any motor carrier or driver operating a CMV to provide residential heating fuel in the geographic area so designated as under a state of emergency from all regulations in parts 390 through 399. Consistent with the statute, the initial automatic exemption may be extended two times by the Governor, for a total of 90 days, if the Governor determines that the emergency shortage has not ended.

Third, for local emergencies, the automatic regulatory relief would be limited to the HOS regulations in §§ 395.3 and 395.5. This regulatory relief was already limited to 5 days, thus no change to the length of the automatic relief is needed. As with the changes proposed for regional declarations, this change would ensure that any impact on safety continues to be minimized during the period of the automatic regulatory relief.

Finally, this NPRM proposes to revise § 390.25 to simplify the language allowing FMCSA to extend and modify the regulatory relief outlined in § 390.23. It would also require that requests for extensions or modifications to exemptions be made via email. The proposal would maintain the provision allowing FMCSA to establish a new time limit and place any restrictions upon the emergency relief and proposes specifically naming reporting requirements as one of the restrictions FMCSA may choose to include. FMCSA will request approval from the Office of Information and Regulatory Affairs (OIRA) in OMB for a collection of information as part of this rulemaking process.

C. Costs and Benefits

The Agency does not expect this proposed rule to result in substantive incremental impacts relative to the baseline established in the FMCSRs. Most of the changes proposed in this rule have already been in practice through modifications to existing exemptions, including those related to the Coronavirus Disease 2019 (COVID–19) emergency. FMCSA presents a qualitative analysis of the potential costs and benefits of limiting emergency exemptions, as there is uncertainty surrounding the number of motor carriers and drivers who currently utilize exemptions beyond HOS waivers.

In limiting the exemptions to the HOS regulations in §§ 395.3 and 395.5, as opposed to all of 49 CFR parts 390 through 399, this change may result in costs to certain motor carriers and drivers using those additional exemptions. However, as most emergency exemptions are limited to HOS requirements, including the current COVID–19 emergency exemption, the Agency believes this change would not result in incremental costs relative to the baseline.

Because automatic regulatory relief would decrease from 30 to 5 days for some non-Presidential declarations of emergencies, the proposed rule may result in an increase in the number of extension requests from motor carriers and drivers. An increase in the number of extension requests would increase the burden on drivers and motor carriers to prepare and submit extension requests, as well as the burden on the Agency to review and respond to them. FMCSA presents a quantitative analysis of the impacts of the proposed requirement for individuals to request extensions or modifications to exemptions via email.

While the existing FMCSRs offer relief from safety regulations in parts 390 through 399, FMCSA believes that most exemptions used during emergencies have been related to relief from the HOS requirement. The Agency has no information that suggests that existing emergency exemptions have negatively impacted road safety. This rule would provide clarity on which exemptions are necessary during an emergency and would ensure the public continues to benefit from the other important safety requirements in parts 390 through 399.

III. Abbreviations

ANPRM Advance Notice of Proposed Rulemaking
CBI Confidential Business Information
CE Categorical Exclusion
CFR Code of Federal Regulations
CMV Commercial Motor Vehicle
COVID–19 Coronavirus Disease 19
DOT Department of Transportation
E.O. Executive Order
FHWA Federal Highway Administration
FMCSA Federal Motor Carrier Safety Administration
FMCSRs Federal Motor Carrier Safety Regulations
FR Federal Register
HOS Hours of Service
NPRM Notice of Proposed Rulemaking
OIRA Office of Information and Regulatory Affairs
OMB Office of Management and Budget
PTA Privacy Threshold Assessment
SBA The Small Business Administration
The Secretary The Secretary of Transportation
UMRA The Unfunded Mandates Reform Act of 1995
U.S.C. United States Code

IV. Legal Basis for the Rulemaking

Under 49 U.S.C. 31136(a)(1), DOT is required to adopt regulations to ensure that ''commercial motor vehicles are maintained, equipped, loaded, and operated safely,'' but in accordance with 31136(e) may ''grant in accordance with section 31315 waivers and exemptions from, or conduct pilot programs with respect to, any regulations prescribed under this section.'' Section 31315(a) of 49 U.S.C. provides that the Secretary may grant waivers or exemptions from compliance in whole or in part with a regulation issued under section 31136 in certain situations. Section 31502(e) of 49 U.S.C. provides that certain regulations issued under 49 U.S.C. 31502 or 31136 shall not apply to the driver of a utility service vehicle during an emergency period, as declared by an elected official of one or more State or local governments having jurisdiction.

Title 49 U.S.C. 31136 note requires that the Secretary issue the regulations found within this document as proposed 49 CFR 390.23(a)(1)(ii)(B).

Finally, 49 U.S.C. 31133 provides that the Secretary of Transportation may perform other acts the Secretary considers appropriate. These responsibilities and authorities have been delegated by the Secretary to FMCSA. (49 U.S.C. 113 and 49 CFR 1.87)

V. Background

For nearly 30 years, FMCSA has cited 49 CFR 390.23 ''Relief from regulations'' to provide automatic relief to motor carriers from various regulations. These relief provisions originated with the July 30, 1992, **Federal Register** publication of a final rule (57 FR 33638, 1992 final rule) by the Federal Highway Administration (FHWA), which amended the regulations to exempt motor carriers and drivers from certain parts of the regulations when directly responding to emergencies. This specific rulemaking constituted the FHWA's final action on three proposed rulemakings, two of which were to exempt motor carriers and drivers from most of the regulations when responding to regional disasters or local emergency situations, and the third proposed rule was for certain relief from the HOS regulations for tow truck operations and tow truck drivers. As one other part of this final rule, the FHWA also made certain technical amendments to the 49 CFR part 395 HOS regulations with an effective date of August 31, 1992 (July 30, 1992, 57 FR 33638).

FHWA undertook this rulemaking to address emergencies created by regional disasters. The 1992 final rule exempts motor carriers and drivers operating in interstate commerce from the requirements of parts 390 through 399 of the regulations when providing direct assistance as part of a disaster relief effort. To accomplish this, the rule provided that the exemption would be utilized only when a disaster had occurred and the President of the United States, a Governor of a State, or his or her authorized representative had publicly declared that assistance was needed to supplement State and local efforts to save lives and property, to protect public health and safety, or otherwise to lessen the impact of a disaster in any part of the U.S. The exemption would last the length of the emergency or 30 days from the time of the initial declaration, whichever was less, except that a motor carrier could apply for, and the Agency could approve, an extension of time prior to the expiration of the relief exemption. The Agency believed that the rule's definitions of *direct assistance; emergency;* and *emergency relief* covered most disasters. Those definitions remain basically unchanged since their initial establishment in § 390.5 of the regulations, as finalized in the 1992 final rule.

After a disaster has been declared, the exemption may be used by all motor carriers providing direct assistance to the disaster relief effort. The authorized individual declaring the disaster need not specify individual motor carriers allowed to use the exemption; rather, an individual motor carrier will decide if it wishes to participate in the relief effort and operate under the exemption. The final rule established the 30-day relief period, however, the time period lasts only as long as there is direct assistance being provided to the emergency relief effort, not to exceed 30 calendar days, unless extended by the Agency.

In the 1992 final rule, FHWA included a provision in the rule to deal with local emergencies by exempting motor carriers and drivers from parts 390 through 399 after a Federal, State, or local government official having authority to declare public emergencies has made such a declaration. Any motor carrier or driver providing direct assistance once a declaration of an emergency has been made by a government official may utilize this exemption. The exemption is effective for the motor carrier and/or driver as long as they are providing direct assistance to the emergency relief effort, but for no longer than 5 calendar days including the initial day of the emergency.

FHWA included a provision allowing for extension of the relief from regulations in § 390.25. This section provides that the Agency may extend the 30-day time period of the exemption contained in § 390.23(a)(1) (regional emergencies), but not the 5-day time period contained in § 390.23(a)(2) (local emergencies) or the 24-hour period contained in § 390.23(a)(3) (dealing with tow trucks). Any motor carrier or driver seeking to extend the 30-day limit shall obtain approval from the Agency in the region in which the motor carrier's principal place of business is located before the expiration of the 30-day period. The motor carrier or driver shall give full details of the additional relief requested. The Agency shall determine if such relief is necessary, taking into account both the severity of the ongoing emergency and the nature of the relief services to be provided by the carrier or driver. If the Agency approves an extension of the exemption, it shall establish a new time limit and place on the motor carrier or driver any other restrictions deemed necessary. In the 1992 final rule, FHWA stated that it did not believe that motor carriers and drivers should be allowed an extension of a local emergency or tow truck exemption in the absence of a declared regional emergency.

In the 1992 final rule, FHWA argued that emergencies are events that require immediate action to protect human life and the public welfare, and that the final rule removed regulatory requirements that could slow emergency response efforts by drivers and motor carriers. There have been technical amendments to §§ 390.23 and 390.25 published since the 1992 final rule, including revisions to reflect the transfer of authority for the regulations from FHWA to FMCSA; however, these amendments did not substantively amend either section.

On March 13, 2020, the President issued an emergency declaration in light of the COVID–19 pandemic. On the same date, FMCSA issued a regional declaration of emergency. Both declarations automatically triggered relief from all regulations in 49 CFR parts 390 through 399 for a period of 30 days in accordance with § 390.23(a). FMCSA has continually extended the emergency declaration since then in accordance with § 390.25(a). In its extensions of the COVID–19 emergency declaration,[3] FMCSA modified the emergency relief granted by the emergency exemption as the circumstances of the emergency changed, eventually limiting the relief provided by the emergency exemption to the HOS rules in §§ 395.3 and 395.5, relying upon the authority in § 390.25 to restrict blanket exemptions from parts 390 through 399. The unprecedented time-period and geographical breadth of that emergency exemption brought into focus the need to ensure that the regulatory relief granted under emergency exemptions is appropriate and tailored to the specific circumstances being addressed.

Some Agency stakeholders have raised concerns in this regard. In October 2020, for example, the Commercial Vehicle Safety Alliance submitted a petition for a rulemaking asking FMCSA to revise §§ 390.23 and 390.25, and noting the potential safety risks posed by the blanket exemption provision:

> For example, while it may be appropriate that during an emergency, all, or portions of, the hours-of-service regulations be waived to expedite the delivery of emergency supplies, there are many other critical safety components and driver requirements that are necessary to safely operate a commercial motor vehicle. Waiving Part 392, for example, which contains drug and alcohol requirements, as well as safe driving practices for a commercial motor vehicle, does nothing to expedite the delivery of emergency products or services, but may have a serious negative impact on highway safety.

Letter dated October 7, 2020, from Collin Mooney, Executive Director, CVSA, to Wiley Deck, then FMCSA Deputy Administrator. (A copy of the CVSA letter has been added to the docket (FMCSA–2022–0028).) The Agency has met with other groups in the past 18 months that have expressed similar concerns. Additionally, the Agency recently requested comment on the extent to which motor carriers are continuing to rely on the COVID–19 emergency declaration to deliver certain commodities and whether there has been any impact on safety (Sept. 7, 2022, 87 FR 54630), and received over three hundred comments.[4]

FMCSA agrees that blanket relief from all the FMCSRs in all emergencies is not appropriate and that motor carriers and drivers of CMVs generally need relief only from the HOS regulations found in §§ 395.3 and 395.5 in order to provide direct assistance to emergency relief efforts. FMCSA initiated this rulemaking to ensure that any impact on safety would continue to be minimized

[3] The emergency declaration is available online at *https://www.fmcsa.dot.gov/emergency-declarations.*

[4] The Agency is currently reviewing those comments and determining its next steps with regard to the COVID–19 emergency declaration.

during the period of the automatic regulatory relief.

VI. Discussion of Proposed Rulemaking

As noted above, FMCSA believes that the automatic emergency regulatory relief authorized by § 390.23 is unnecessarily broad for the intended purpose, as the primary, immediate constraint that drivers and carriers face when providing direct assistance during an emergency is the HOS limits.

FMCSA proposes to revise, remove, and add definitions to reflect changes made to the emergency exemption rules. These changes include removing an obsolete term, moving the definition of one term to the definition section, and revising two definitions (as discussed below in the ''section-by-section'' portion of this NPRM).

FMCSA also proposes to shorten the duration and limit the scope of the initial, automatic regulatory relief triggered by an emergency declaration in certain situations. The scope of relief would be limited to specific provisions of the HOS regulations unless the emergency declaration is made by the President under the authority of 42 U.S.C. 5191(b). The relief would also be limited to a period of 5 days unless the emergency declaration is made by the President under the authority of 42 U.S.C. 5191(b). Presidential declarations will continue to trigger a 30-day exemption from all FMCSRs in parts 390 through 399.

Any party, including a State or local official, who believes an extension of the HOS relief or broader regulatory relief is necessary, would be required to request relief and/or an extension from FMCSA. The Agency would evaluate any such request and could approve, modify, or deny the request, as appropriate. FMCSA would also have independent authority to extend or modify the emergency relief. No formal request or form would be required to request relief. Requests would be submitted to FMCSA's emergency declaration email inbox (*FMCSAdeclaration@dot.gov*).

More sharply focused regulatory relief will continue to authorize emergency transportation in the public interest while allowing the Agency to better tailor regulatory relief to specific needs in emergencies. It will also avoid automatic suspension of the rest of the FMCSRs in 49 CFR parts 390 through 399, which pose no serious obstacles to drivers and carriers providing direct assistance to emergency relief efforts but could encourage an unwelcome indifference to compliance with safety regulations.

Beginning with the extension effective in September 2021, FMCSA included a reporting requirement as part of the COVID–19 emergency exemption, requiring motor carriers or drivers to inform FMCSA on how often they relied upon the emergency relief from the HOS regulations in the previous month. This data is used to determine whether the emergency regulatory relief should continue to be extended.

The usefulness of this data prompted FMCSA to propose adding language to § 390.25 to expressly note that one of the conditions FMCSA may include when extending an emergency exemption is to collect information from those carriers and drivers relying upon the regulatory relief. Information on the burden of such a collection of information may be found later in this NPRM.

VIII. Section-by-Section Analysis

This section-by-section analysis describes the proposed changes in numerical order.

49 CFR 390.5/49 CFR 390.5T

This NPRM proposes changes to the definitions found in §§ 390.5 and 390.5T. The definition for *emergency relief* would be removed, as this term would no longer appear in § 390.23 or § 390.25. FMCSA would add a definition for *residential heating fuel,* which currently appears in § 390.23. It would be moved to the definitions section, § 390.5, to make proposed § 390.23 easier to read, and to ensure all definitions appear in one section. The definition would also be modified to include additional common shipping names for petroleum, Liquefied Petroleum Gas or Petroleum Gas Liquified.

The definition for *direct assistance* would be revised to incorporate the definition of *emergency relief.* In turn, the separate definition of *emergency relief* would be deleted. The definition of *emergency* would be revised to clarify what does and does not qualify as an emergency that could trigger the automatic exemptions of § 390.23.

49 CFR 390.23

This NPRM proposes several revisions to § 390.23. Paragraph (a) would be clarified to include only those Presidential declarations of emergency issued under 42 U.S.C. 5191(b). These declarations would continue to trigger automatic regulatory relief from parts 390 through 399 for the duration of the emergency, or 30 days from the declaration, whichever is less. This change is being made to ensure that the broader relief triggered by a Presidential declaration of emergency is limited to those situations where a President ''determines that an emergency exists for which the primary responsibility for response rests with the United States because the emergency involves a subject area for which, under the Constitution or laws of the United States, the United States exercises exclusive or preeminent responsibility and authority.'' In addition, this change clarifies the relevant time periods for emergency regulatory relief and eliminates overlapping and potentially conflicting periods where a Presidential disaster or emergency declaration is issued in response to a request from a State when the State has already declared an emergency resulting in relief from certain Federal motor carrier safety regulations. Paragraph (b) of § 390.23 would be used for the emergency declaration scenarios laid out in 42 U.S.C. 5191(a) and (c), where the Presidential declaration is based on an underlying State or Indian Tribal request.

Paragraph (c) would cover local emergencies, whether declared by a Federal, State, or local government official with authority to declare an emergency. The automatic regulatory relief in this case would be limited to a period of 5 days or for the period of assistance (whichever is less) and provide relief only from the HOS requirements in §§ 395.3 and 395.5.

Paragraph (d) of proposed § 390.23 carries forward the special provision for tow trucks from existing paragraph (a)(3). The emergency regulatory relief provided in this paragraph applies only to the HOS regulations in § 395.3 and lasts for no more than 24 hours. No substantive changes are proposed.

Paragraph (e) would carry forward the provisions in existing paragraph (b), outlining the details of when direct assistance to an emergency effort terminates, and the impact of that termination on the terms of the emergency regulatory relief. Changes to this paragraph are made only to clarify the rule; no substantive changes are proposed.

49 CFR 390.25

FMCSA is proposing to change the section heading to indicate that the section applies not only to extensions of emergency relief, but also to their modification. The section would be divided into two paragraphs. Proposed paragraph (a) of § 390.25 would provide that FMCSA may extend or modify any of the emergency regulatory relief issued under § 390.23 on its own initiative, or upon request by an interested party who provides a detailed explanation of the

need for an extension through the FMCSA emergency declarations email address (*FMCSAdeclaration@dot.gov*). This would not be a change to the current regulation. Proposed paragraph (b) would carry forward the existing language requiring that the FMCSA official issuing or approving an extension or modification must set a new expiration date for the emergency regulatory relief. It would also continue to allow the FMCSA official to include any other restriction deemed necessary but would be revised to allow FMCSA to include reporting requirements as a restriction.

IX. Regulatory Analyses

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

FMCSA has considered the impact of this NPRM under E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review, and DOT's regulatory policies and procedures. OIRA within OMB determined that this notice of proposed rulemaking is not a significant regulatory action under section 3(f) of E.O. 12866, as supplemented by E.O. 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. Accordingly, OMB has not reviewed it under that order.

As described above, the changes proposed in this NPRM would exempt CMV drivers and motor carriers only from the HOS regulations in §§ 395.3 and 395.5, as opposed to all regulations in 49 CFR parts 390 through 399, following a regional or local declaration of emergency. In addition, when a regional declaration of emergency is triggered, the automatic regulatory relief would apply for only 5 days, as opposed to the current 30-day standard. The proposed rule would retain the existing automatic regulatory relief of 30 days under Presidential and 5 days under local declarations of emergencies.

Baseline for This Analysis

We do not expect this proposed rule to result in substantive incremental impacts relative to the baseline established in the FMCSRs. Most of the changes proposed in this rule have already been in practice through modifications to existing exemptions, including the COVID–19 emergency exemption.

Since the publication of the 1992 final rule, the FMCSRs have provided the option for motor carriers and drivers to be exempt from the requirements in parts 390 through 399 following a declaration of a Presidential, regional, or local emergency. Beginning in 2020, the COVID–19 related emergency exemption has been utilized to aid with supply chain shortages during the pandemic, as well as with distributing medical products for dealing with COVID–19 (such as tests, treatments, and vaccines). The unprecedented need to continually extend an emergency exemption prompted FMCSA to reevaluate the rule for exemptions issued in response to an emergency declaration.

In September 2021, FMCSA modified the COVID–19 exemption to narrow the issued relief to just the HOS requirements in §§ 395.3 and 395.5. Based on Agency experience and expertise, FMCSA believes the HOS limits are the primary, immediate constraints drivers and carriers face when providing direct assistance during an emergency. As such, any driver currently operating under the COVID–19 exemption is already afforded only HOS-related exemptions and not a broad exemption from all requirements of parts 390 through 399.

Need for the Proposed Rule

The need for practical and effective exemptions has been highlighted since the COVID–19 pandemic of 2020. The NPRM emphasizes the need for ensuring that relief granted by emergency declarations is appropriate and tailored to the specifics of the circumstances and emergency being addressed. FMCSA believes that a blanket relief from all FMCSRs in parts 390 through 399 is not necessary. Most often, motor carriers and drivers of CMVs need relief from only the HOS regulations in §§ 395.3 and 395.5 in order to provide direct assistance to emergency relief efforts.

Uncertainties

FMCSA presents a qualitative analysis of the potential costs and benefits of limiting emergency exemptions to HOS waivers. There is uncertainty surrounding the number of motor carriers and drivers who currently utilize exemptions beyond the HOS regulations in §§ 395.3 and 395.5 because FMCSA has not previously collected data on the use of the exemptions, and therefore cannot quantitively inform the potential impacts of limiting emergency exemptions. While the Agency did begin collecting data on COVID–19 exemption use in September of 2021, this data is insufficient to quantitatively estimate these impacts. It provides FMCSA with a basis for the number of respondents to potential data collections on extensions of emergency exemptions, but it does not provide insight into the use of exemptions beyond HOS exemptions. In order to quantify these impacts, the Agency would need historical data on how many motor carriers and drivers operating during emergency declarations use exemptions from the requirements in parts 390 through 399, excluding the HOS regulations in §§ 395.3 and 395.5, as well as data on how many trips drivers make during those periods. Comprehensive and verifiable data in this area are likely unavailable.

Costs

In narrowing the exemptions to the HOS regulations in §§ 395.3 and 395.5, as opposed to all of parts 390 through 399, this proposed rule may result in costs to certain motor carriers and drivers using those additional exemptions. As mentioned above, FMCSA does not have data to indicate how many carriers and drivers are using emergency-related exemptions beyond the HOS exemptions. However, most emergency exemptions are limited to HOS requirements, including the COVID–19 emergency exemption; therefore, the Agency believes this change would not result in incremental costs relative to the baseline.

As discussed in the Paperwork Reduction Act (PRA) section below, FMCSA estimates that there could be 477 monthly respondents if the Agency adds a reporting requirement to an extension or modification of an exemption. This estimate is based on the average number of responses the Agency received from the COVID–19 emergency exemption data collection. This would represent an upper-bound estimate for how many motor carriers the Agency expects would be required to report their use of an extension and thus be subject to an information collection. The costs of this proposed rule are associated with the cost of compliance to all parts of 390 through 399 except the HOS regulations in §§ 395.3 and 395.5, whereas the 477 respondents denoted below represent all individuals using extensions of emergency exemptions which include a reporting requirement. The number of individuals who may incur costs to comply with parts 390 through 399 would be a subset of the individuals using extensions of emergency exemptions. As such, the number of affected entities would likely be fewer than 477 individuals. The Agency does

not have a means of inferring how many individuals would be affected by the changes proposed in this rulemaking and, therefore, does not use the estimate of 477 respondents as a basis for a quantitative analysis.

The proposed rule may result in an increase in the number of extension requests from motor carriers and drivers, as exemption periods resulting from non-Presidential emergency declarations would be reduced from 30 to 5 days. This rule would require individuals to request extensions or modifications to exemptions via email whenever they seek such action from FMCSA. These requests are currently made to local FMCSA offices, but they may be made by any means.

A requirement for drivers and motor carriers to submit extension requests would increase the burden on drivers and motor carriers to prepare and submit such requests, as well as the burden on the Agency to review and respond to them. As mentioned in the PRA section below, the Agency estimates that 50 individuals [5] would submit requests for extensions per year. These extension requests would take 15 minutes to complete and total to 12.5 hours of labor (50 respondents × 15 minutes). The Agency assumes a motor carrier employee equivalent to General and Operations Managers with a loaded hourly wage of $83.79 would submit the extension request.[6] As such, there would be a total annual cost of $1,047.39 ($83.79 × 12.5 hours) to submit extension requests.

The Agency estimates that requests for extensions would take 15 minutes each to review. The requests would be reviewed by a GS–13, step 5 in the Washington, DC area with a loaded hourly wage of $117.69. The total annual cost to review these extension requests is $1,471.10 ($117.69 × 12.5 hours).[7]

Benefits

While the existing FMCSRs offer relief from safety regulations in parts 390 through 399, FMCSA believes that most exemptions used during emergencies have been related to HOS requirement relief. The Agency has no information that suggests that existing emergency exemptions have negatively impacted road safety. This rule would provide clarity on which exemptions are necessary during an emergency and would ensure the public continues to benefit from the other important safety requirements in parts 390 through 399. In addition, in requiring that individuals request extensions or modifications to exemptions via email, the Agency would be able to more efficiently track exemption requests.

B. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801–808), OIRA designated this rule as not a *major rule.*[8]

C. Advance Notice of Proposed Rulemaking

Under 49 U.S.C. 31136(g), FMCSA is required to publish an advance notice of proposed rulemaking (ANPRM) or proceed with a negotiated rulemaking, if a proposed rule is likely to lead to the promulgation of a major rule. As this proposed rule is not likely to result in the promulgation of a major rule, the Agency is not required to issue an ANPRM or to proceed with a negotiated rulemaking.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996,[9] requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term *small entities* comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000 (5 U.S.C. 601(6)). Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses.

The proposed rule would affect motor carriers and drivers. Drivers are not considered small entities because they do not meet the definition of a small entity in section 601 of the RFA. Specifically, drivers are considered neither a small business under section 601(3) of the RFA, nor are they considered a small organization under section 601(4) of the RFA. The Small Business Administration's (SBA) size standard for a small entity (13 CFR 121.201) differs by industry code. The entities affected by this rule fall into many different industry codes. In order to determine if this rule would have an impact on a significant number of small entities, FMCSA examined the 2017 Economic Census data [10] for two different industries; truck transportation (Subsector 484) and transit and ground transportation (Subsector 485).

According to the 2017 Economic Census, approximately 99.4 percent of truck transportation firms, and approximately 99.2 percent of transit and ground transportation firms, had annual revenue less than the SBA's revenue thresholds of $30 million and $16.5 million, respectively, to be defined as a small entity. Therefore, FMCSA has determined that this rule would impact a substantial number of small entities. However, as emergencies are generally infrequent and the primary impact of the rule would be to marginally limit the breadth of the automatic exemptions that apply after a regional or local emergency declaration, FMCSA has determined that this rule would not have a significant impact on the affected entities.

Consequently, I certify that the proposed action would not have a significant economic impact on a substantial number of small entities.

E. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996,[11] FMCSA wants to assist small entities in understanding this proposed rule so they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the proposed

[5] The Agency is estimating 50 requests per year based on the expertise of the FMCSA Crisis Management Center.

[6] The loaded hourly wage is a product of the median hourly wage of a General and Operations multiplied by the fringe benefits rate of 50 percent and overhead costs of 27 percent. The median hourly wage of a General and Operations Manager is $47.10. A General Operations Manager falls under Bureau of Labor Statistics [BLS] Occupation Code 11–1021.

[7] The hourly wage for a GS–13 Step 5 in the Washington, DC region was multiplied by the federal government fringe benefits rate of 45 percent and the federal government overhead rate of 64 percent to arrive at the loaded hourly wage. The hourly wage denoted in the OPM schedule for a GS–15 step 5 is $56.31. *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2021/DCB_h.pdf.*

[8] A *major rule* means any rule that the OMB finds has resulted in or is likely to result in (a) an annual effect on the economy of $100 million or more; (b) a major increase in costs or prices for consumers, individual industries, geographic regions, Federal, State, or local government agencies; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (49 CFR 389.3).

[9] Public Law 104–121, 110 Stat. 857 (Mar. 29, 1996).

[10] U.S. Census Bureau, *2017 US Economic Census.* Available at: *https://data.census.gov/cedsci/table?q=United%20States&t=Value%20of%20Sales,%20Receipts,%20Revenue,%20or%20Shipments&n=484&tid=ECNSIZE2017.EC1700SIZEREVEST&hidePreview=true* (last accessed Oct. 29, 2021).

[11] Public Law 104–121, 110 Stat. 857 (Mar. 29, 1996).

rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman (Office of the National Ombudsman, see *https://www.sba.gov/about-sba/oversight-advocacy/office-national-ombudsman*) and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their discretionary regulatory actions. The Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $178 million (which is the value equivalent of $100 million in 1995, adjusted for inflation to 2021 levels) or more in any 1 year. Though this NPRM would not result in such an expenditure, and the analytical requirements of UMRA do not apply as a result, the Agency discusses the effects of this rule elsewhere in this preamble.

G. Paperwork Reduction Act

This NPRM contains information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), *collection of information* comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Emergency Declaration Exemption Reporting under 49 CFR 390.25.

OMB Control Number: [2126–NEW].

Summary of the Information Collection: Proposed 49 CFR 390.25 would allow FMCSA to add a reporting requirement to an extension of an emergency exemption, requiring motor carriers operating under the extension's terms to report their continued use of and reliance on the exemption. It would also require that individuals request extensions or modifications to exemptions via an email whenever they seek such action from FMCSA.

Need for Information: The collection of information is necessary for FMCSA to determine the extent to which motor carriers continue to rely upon an extended emergency exemption.

Proposed Use of Information: FMCSA would use the information collected as one piece of data to determine whether or not to extend or modify emergency exemptions under 49 CFR 390.25.

Description of the Respondents: Motor carriers that operate under the terms of an extended emergency exemption, originally triggered by a declaration of emergency. Individuals who want to request an extension or modification of an emergency exemption.

Number of Respondents: 477 per month for reporting requirements; 50 per year for requests for extension or modification of exemptions.

Frequency of Response: Monthly for reporting requirements; as necessary for requests for extension or modification of exemptions.

Burden of Response: 15 minutes per response for reporting requirements and for requests for extension or modification of exemptions.

Estimate of Total Annual Burden: The public burden for this information collection is estimated to average 1,444 hours per year (1,431 for reporting + 13 for requests for extension or modification).

As required by the Paperwork Reduction Act of 1995, FMCSA will submit a copy of this NPRM to OMB for review.

You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for FMCSA to perform its functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

H. E.O. 13132 (Federalism)

A rule has implications for federalism under section 1(a) of E.O. 13132 if it has ''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.''

FMCSA has determined that this rule would not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

I. Privacy

The Consolidated Appropriations Act, 2005,[12] requires the Agency to assess the privacy impact of a regulation that will affect the privacy of individuals. This NPRM would not require the collection of personally identifiable information.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency that receives records contained in a system of records from a Federal agency for use in a matching program.

The E-Government Act of 2002,[13] requires Federal agencies to conduct a Privacy Impact Assessment (PIA) for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form.

No new or substantially changed technology would collect, maintain, or disseminate information as a result of this proposed rule. Accordingly, FMCSA has not conducted a PIA.

In addition, the Agency submitted a Privacy Threshold Assessment (PTA) to evaluate the risks and effects the proposed rulemaking might have on collecting, storing, and sharing personally identifiable information. The PTA has been submitted to FMCSA's Privacy Officer for review and preliminary adjudication and to DOT's Privacy Officer for review and final adjudication.

J. E.O. 13175 (Indian Tribal Governments)

This rule does not have Tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect

[12] Public Law 108–447, 118 Stat. 2809, 3268, note following 5 U.S.C. 552a (Dec. 4, 2014).

[13] Public Law 107–347, sec. 208, 116 Stat. 2899, 2921 (Dec. 17, 2002).

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.

K. National Environmental Policy Act of 1969

FMCSA analyzed this proposed rule pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680), Appendix 2, paragraph 6.y(4). The categorical exclusion (CE) in paragraph 6.y(4). covers relief during regional and local emergencies. The proposed requirements in this rule are covered by this CE.

List of Subjects in 49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, FMCSA proposes to amend 49 CFR part 390 as follows:

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

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

Authority: 49 U.S.C. 113, 504, 508, 31132, 31133, 31134, 31136, 31137, 31144, 31149, 31151, 31502; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; secs. 212 and 217, Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 229, Pub. L. 106–159 (as added and transferred by sec. 4115 and amended by secs. 4130–4132, Pub. L. 109–59, 119 Stat. 1144, 1726, 1743, 1744), 113 Stat. 1748, 1773; sec. 4136, Pub. L. 109–59, 119 Stat. 1144, 1745; secs. 32101(d) and 32934, Pub. L. 112–141, 126 Stat. 405, 778, 830; sec. 2, Pub. L. 113–125, 128 Stat. 1388; secs. 5403, 5518, and 5524, Pub. L. 114–94, 129 Stat. 1312, 1548, 1558, 1560; sec. 2, Pub. L. 115–105, 131 Stat. 2263; and 49 CFR 1.81, 1.81a, 1.87.

■ 2. Amend § 390.5 as follows:
■ a. Lift the suspension of the section;
■ b. Revise the definitions of ''Direct assistance'' and ''Emergency'';
■ c. Remove the definition of ''Emergency relief'';
■ d. Add, in alphabetical order, a definition of ''Residential heating fuel''; and
■ e. Suspend the section indefinitely.

The revisions and addition read as follows:

§ 390.5 Definitions.

* * * * *

Direct assistance means transportation operations in which a motor carrier or driver of a commercial motor vehicle (CMV) is supplementing State and local efforts and capabilities to save lives or property or to protect public health and safety as a result of an emergency as defined in this section involving transportation and other relief services provided by a motor carrier or its driver(s) incident to the immediate restoration of essential services (*e.g.,* electricity, medical care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (*e.g.,* food and fuel). It does not include transportation related to long-term rehabilitation of damaged physical infrastructure or routine commercial deliveries after the initial threat to life and property has passed.

* * * * *

Emergency means any hurricane, tornado, storm (*e.g.,* thunderstorm, snowstorm, ice storm, blizzard, sandstorm, etc.), high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, mud slide, drought, forest fire, explosion, blackout, or other occurrence, natural or man-made, which interrupts the delivery of essential services (*e.g.,* electricity, medical care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (*e.g.,* food and fuel) or otherwise immediately threatens human life or public welfare, provided such hurricane, tornado, or other event results in a declaration of an emergency by the President of the United States, the Governor of a State, or their authorized representatives having authority to declare emergencies; by the Federal Motor Carrier Safety Administration (FMCSA); or by other Federal, State, or local government officials having authority to declare emergencies; or a request by a police officer for tow trucks to move wrecked or disabled motor vehicles. *Emergency* does not include events from economic conditions that are caused by market forces, including price increases, shortages of raw materials or labor strikes, (*e.g.,* driver shortages, other supply chain issues) unless such event causes an immediate threat to human life and results in a declaration of an emergency by the President of the United States; the Governor of a State, or their authorized representatives having authority to declare emergencies; FMCSA; or other Federal, State, or local government officials having authority to declare emergencies.

* * * * *

Residential heating fuel includes heating oil, natural gas, and propane (also known as Liquefied Petroleum Gas or Petroleum Gas Liquified).

* * * * *

■ 3. Amend § 390.5T as follows:
■ a. Revise the definitions of ''Direct assistance'' and ''Emergency'';
■ b. Remove the definition of ''Emergency relief''; and
■ c. Add, in alphabetical order, a definition of ''Residential heating fuel''.

The revisions and addition read as follows:

§ 390.5T Definitions.

* * * * *

Direct assistance means transportation operations in which a motor carrier or driver of a commercial motor vehicle (CMV) is supplementing State and local efforts and capabilities to save lives or property or to protect public health and safety as a result of an emergency as defined in this section involving transportation and other relief services provided by a motor carrier or its driver(s) incident to the immediate restoration of essential services (*e.g.,* electricity, medical care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (*e.g.,* food and fuel). It does not include transportation related to long-term rehabilitation of damaged physical infrastructure or routine commercial deliveries after the initial threat to life and property has passed.

* * * * *

Emergency means any hurricane, tornado, storm (*e.g.,* thunderstorm, snowstorm, ice storm, blizzard, sandstorm, etc.), high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, mud slide, drought, forest fire, explosion, blackout, or other occurrence, natural or man-made, which interrupts the delivery of essential services (*e.g.,* electricity, medical care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (*e.g.,* food and fuel) or otherwise immediately threatens human life or public welfare, provided such hurricane, tornado, or other event results in a declaration of an emergency by the President of the United States, the Governor of a State, or their authorized representatives having authority to declare emergencies; by the Federal Motor Carrier Safety Administration (FMCSA); or by other Federal, State, or local government officials having authority to declare emergencies; or a request by a police officer for tow trucks to move wrecked

or disabled motor vehicles. *Emergency* does not include events from economic conditions that are caused by market forces, including shortage of raw materials or labor strikes, (*e.g.,* driver shortages, computer chip shortages, other supply chain issues) unless such event causes an immediate threat to human life and results in a declaration of an emergency by the President of the United States, the Governor of a State, or their authorized representatives having authority to declare emergencies; by FMCSA; or by other Federal, State, or local government officials having authority to declare emergencies.

* * * * *

Residential heating fuel includes heating oil, natural gas, and propane also known as Liquefied Petroleum Gas or Petroleum Gas Liquified.

* * * * *

■ 4. Revise § 390.23 to read as follows:

§ 390.23 Automatic relief from regulations in this chapter.

(a) *Presidential declaration of emergency.* During an emergency declared by the President of the United States pursuant to 42 U.S.C. 5191(b) or for 30 days from the date of the initial declaration of the emergency, whichever is less, parts 390 through 399 of this chapter shall not apply to any motor carrier or driver operating a commercial motor vehicle, so long as the motor carrier or driver is providing direct assistance.

(b) *Regional declarations of emergency.* Except as provided in paragraph (b)(1) of this section, §§ 395.3 and 395.5 of this chapter shall not apply to a motor carrier or driver operating a commercial motor vehicle so long as the motor carrier or driver is providing direct assistance during an emergency declared by the Governor of a State, their authorized representative, or FMCSA during the emergency period or 5 days from the date of the initial declaration of emergency, whichever is less.

(1) *Residential heating fuel shortages.* Parts 390 through 399 of this chapter shall not apply to a motor carrier or driver operating a commercial motor vehicle to provide residential heating fuel in the geographic area designated in an emergency declaration issued by the Governor of a State. If the Governor of a State declares an emergency caused by a shortage of residential heating fuel and, at the conclusion of the 30-day period immediately following the declaration, determines that the emergency shortage has not ended, and extends the declaration of an emergency for up to two additional 30-day periods, this regulatory relief shall remain in effect up to the end of such additional periods. The total length of the emergency shall not exceed 90 days.

(2) [Reserved]

(c) *Local emergencies.* Sections 395.3 and 395.5 of this chapter shall not apply to a motor carrier or driver operating a commercial motor vehicle so long as the motor carrier or driver is providing direct assistance during an emergency declared by a Federal, State, or local government official having authority to declare an emergency for the period of such assistance or 5 days from the date of the initial declaration of emergency, whichever is less.

(d) *Tow trucks responding to emergencies.* Section 395.3 of this chapter shall not apply to a motor carrier or driver operating a commercial motor vehicle so long as the motor carrier or driver is providing direct assistance during an emergency when a request has been made by a Federal, State, or local police officer for tow trucks to move wrecked or disabled motor vehicles. This regulatory relief shall not exceed the length of the motor carrier's or driver's direct assistance in providing emergency relief or 24 hours from the time of the initial request for assistance by the Federal, State, or local police officer, whichever is less.

(e) *Termination of regulatory relief.* (1) Upon termination of direct assistance to the emergency relief effort, the motor carrier or driver is subject to all previously exempted sections with the following exception: A driver may return empty to the motor carrier's terminal or the driver's normal work reporting location without complying with the previously exempted sections. However, a driver who informs the motor carrier that he or she needs immediate rest must be permitted at least 10 consecutive hours off duty before the driver is required to return to such terminal or location. Having returned to the terminal or other location, the driver must be relieved of all duty and responsibilities.

(2) Direct assistance terminates when a driver or commercial motor vehicle is used in interstate commerce to transport cargo not destined for the emergency relief effort, or when the motor carrier dispatches such driver or commercial motor vehicle to another location to begin operations in commerce.

(3) When the driver has been relieved of all duty and responsibilities upon termination of direct assistance to an emergency relief effort, no motor carrier shall permit or require any driver used by it to drive nor shall any such driver drive in commerce until the driver has met the requirements of §§ 395.3(a) and (c) and 395.5(a) of this chapter.

■ 5. Revise § 390.25 to read as follows:

§ 390.25 Extension or modification of relief from regulations in this chapter—emergencies.

(a) FMCSA may extend the period of the regulatory relief or modify the scope of emergency relief contained in § 390.23. Interested parties may also request an extension or modification by providing a detailed explanation of the need for an extension or modification of the relief. Any interested party seeking to extend the period of regulatory relief shall send its request to the FMCSA emergency declarations mailbox, *FMCSAdeclaration@dot.gov,* before the expiration of the period of relief. FMCSA will determine if such relief is necessary by evaluating the circumstances of the ongoing emergency, the need for relief, and the nature of the relief to be provided.

(b) If FMCSA initiates or approves an extension of the regulatory relief, it shall establish a new time limit and may place terms and conditions on motor carriers or drivers relying upon the continued or modified relief. These terms and conditions may include reporting requirements concerning operations under the exemption.

Issued under authority delegated in 49 CFR 1.87.

Robin Hutcheson,

Administrator.

[FR Doc. 2022–26506 Filed 12–7–22; 8:45 am]

BILLING CODE 4910–EX–P

Notices

Federal Register

Vol. 87, No. 235

Thursday, December 8, 2022

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

USAID COVID–19 Performance Monitoring

AGENCY: United States Agency for International Development (USAID).

ACTION: Notice of request for emergency OMB approval.

SUMMARY: In accordance with the emergency review procedures of the Paperwork Reduction Act of 1995 (PRA), the United States Agency for International Development (USAID), is announcing that it has submitted a request to the Office of Management and Budget (OMB) for emergency approval of a new information collection to inform technical approaches to implementing USAID's COVID–19 Implementation Plan. If granted, this emergency approval will be valid for six months from the date of approval.

DATES: If this request for approval is granted, USAID plans to collect performance data for a period of six months, beginning on or about December 15, 2022.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Megan McGuire, *mmcguire@usaid.gov,* +1 (202) 705 6136.

SUPPLEMENTARY INFORMATION: The proposed collection would request reporting from USAID award recipients (Implementing Partners) of performance indicators to be submitted through USAID's Development Information Solution (DIS) on the frequency designated in their awards. This activity-level information, in conjunction with contextual data, will allow USAID to track progress against the objectives of the U.S. Global COVID–19 Response and Recovery Framework. It will be used for adaptive management, evidence-based strategic decision-making, and accountability. Information will be requested of contracts and grants in the Global VAX surge countries (Angola, Côte d'Ivoire, Eswatini, Ghana, Lesotho, Nigeria, Senegal, South Africa, Tanzania, Uganda, and Zambia) and for contracts and grants receiving more than $500,000 in COVID–19 funds obligated after 9/1/2022 in Ethiopia, Liberia, Madagascar, Malawi, Mozambique, Haiti and the Philippines.

Description of Proposed Use of Information

The performance data would supplement contextual, country-level data currently analyzed by USAID and will provide critical, timely insight into the Agency's COVID–19 response. The collection and reporting of performance indicators by USAID's IPs will facilitate adaptive management, strategic planning, and ensure that COVID–10 response activities are continually aligned with the Agency's primary objectives and the evolving nature of the pandemic. The data will inform the strategic and operational approaches of both the Agency's Washington offices and field-based Missions involved in the COVID–19 response.

Time Burden

USAID estimates an annual time burden of 333 hours per award or 83 hours per response, assuming most awards report on a quarterly basis. USAID expects that a total of 41 awards will be subject to the information collection requirements; for these awards, the time burden is expected to total 13,653 hours per year, or 6,827 hours for the six-month period specified in the emergency information collection review.

Beth Tritter,

Director, USAID COVID–19 Response Team.

[FR Doc. 2022–26618 Filed 12–7–22; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are required regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by January 9, 2023 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: 7 CFR 764, Direct Loan Making.

OMB Control Number: 0560–0237.

Summary of Collection: The Farm Loan Program (FLP) in the Farm Service Agency (FSA) provides loans to family farmers to purchase real estate and equipment and finance agricultural production. The regulation under the 7 CFR 764 covered by this collection describes the policies and procedures that FSA uses to provide supervised credit to FLP applicants requesting direct loan assistance to comply with the provisions of the Consolidated Farm and Rural Development Act (CONACT; Pub. L. 87–128), as amended. Direct loan making information collection requirements include financial and production records of the operation, as

well as information necessary to obtain liens on collateral, provide evidence of the indebtedness, and ensure repayment of the loan. FSA will use several forms and non-forms to collect the information.

In the Executive Order 14058, the Secretary of Agriculture tasked FSA with simplifying the direct loan application process. As such, forms FSA–2001, FSA–2002, FSA–2003, FSA–2004, FSA–2005, FSA–2006, FSA–2037, FSA–2038, FSA–2302, and FSA–2330 have been consolidated into a single form for the purposes of direct loan making and that consolidation is reflected in this collection.

Need and Use of the Information: Information is submitted by the applicants to the local agency office serving the county in which their business is headquartered. The information is necessary to thoroughly evaluate the applicant's request for a direct loan and is used by FSA officials to: (1) Ensure that cash flow projections used in determining loan repayment are based on the actual production history of the operation, (2) Ensure that a loan is adequately secured; (3) Ensure the applicant meets the statutorily established program eligibility requirements; and (4) Obtain assignment on income or sales proceeds, when appropriate, to ensure timely repayment of the loans. Since the agency is mandated to provide supervised credit, failure to collect the information, or collecting it less frequently, could result in the failure of the farm operation or loss of agency security property.

Description of Respondents: Business or other for-profit and Farms.

Number of Respondents: 177,394.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 295,850.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–26693 Filed 12–7–22; 8:45 am]

BILLING CODE 3410–05–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Louisiana Advisory Committee; Cancellation

AGENCY: Commission on Civil Rights.

ACTION: Notice; cancellation of meeting.

SUMMARY: The Commission on Civil Rights published a notice in the **Federal Register** concerning a meeting of the Louisiana Advisory Committee.

DATES: The meeting scheduled for Wednesday, December 21, 2022, at 2:00 p.m. (ET) is cancelled.

FOR FURTHER INFORMATION CONTACT: Ivy Davis, (202) 539–8468.

SUPPLEMENTARY INFORMATION: The notice is in the **Federal Register** of Tuesday, September 13, 2022, in FR Doc. 2022–19751, in the first column of page 55989. *idavis@usccr.gov.*

Dated: December 2, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–26619 Filed 12–7–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; National Survey of Children's Health

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act (PRA) of 1995, 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 on the proposed revision of the National Survey of Children's Health, prior to the submission of the information collection request (ICR) to OMB for approval.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before February 6, 2023.

ADDRESSES: Interested persons are invited to submit written comments by email to *ADDP.NSCH.List@census.gov.* Please reference National Survey of Children's Health in the subject line of your comments. You may also submit comments, identified by Docket Number USBC–2022–0020, to the Federal e-Rulemaking Portal: *http://www.regulations.gov.* All comments received are part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Carolyn Pickering, Survey Director, by way of phone (301–763–3873) or email (*Carolyn.M.Pickering@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

Sponsored primarily by the U.S. Department of Health and Human Services' Health Resources Services Administration's Maternal and Child Health Bureau (HRSA MCHB), the National Survey of Children's Health (NSCH) is designed to produce data on the physical and emotional health of children under 18 years of age who live in the United States. The United States Department of Agriculture (USDA), the United States Department of Health and Human Services' Centers for Disease Control and Prevention (CDC), the National Center on Birth Defects and Developmental Disabilities (CDC–NCBDDD), and the Division of Nutrition, Physical Activity, and Obesity (CDC–DNPAO) sponsor supplemental content on the NSCH. Additionally, the upcoming cycle of the NSCH plans to include fifteen (15) age, state, or regional oversamples. The age-based oversample would be funded by the United States Department of Health and Human Services' Center for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion (CDC–NCCDPHP). The state- or region-based oversamples would be sponsored by Children's Health Care of Atlanta, the State of California, the State of Colorado, the State of Illinois, the State of Kansas, the State of Louisiana, the State of Minnesota, the State of Nebraska, the State of New Mexico, the State of Ohio, the State of Pennsylvania, the State of Tennessee, the State of Wisconsin, and the State of Wyoming.

The NSCH collects information on factors related to the well-being of children, including access to health care, in-home medical care, family interactions, parental health, school and after-school experiences, and neighborhood characteristics. The goal

of the 2023 NSCH is to provide HRSA MCHB, the supplemental sponsoring agencies, states, regions, and other data users with the necessary data to support the production of national estimates yearly and state- or region-based estimates with pooled samples on the health and well-being of children, their families, and their communities as well as estimates of the prevalence and impact of children with special health care needs.

NSCH is seeking clearance to make the following changes:

• Increased sample size—The MCHB sponsored NSCH sample plus the separately sponsored age-, state-, or region-based oversamples will be approximately 385,000 addresses for the 2023 NSCH, compared with 360,000 in 2022. The increased sample will allow individual states and agencies to produce statistically sound child health estimates in a fewer number of pooled years than if the sample were to remain the same annually, thereby resulting in more timely age-, state- and region-based health estimates of children.

• Revised questionnaire content—The NSCH questionnaires with newly proposed and revised content from the sponsors at HRSA MCHB are currently undergoing two rounds of cognitive testing. This testing request was submitted under the generic clearance package and approved by OMB.[1] Based on the results, a final set of proposed new and modified content will be included in the full OMB ICR for the 2023 NSCH.

• Oversamples [2]—In order to inform various priorities that are otherwise not supported by the NSCH, some stakeholders have shown interest in sponsoring an oversample of particular populations as part of the annual NSCH administration. Currently, there are thirteen (13) states and one region contributing to an oversample as part of the 2023 NSCH. Nine (9) states (California, Colorado, Louisiana, Nebraska, Ohio, Pennsylvania, Tennessee, Wisconsin, and Wyoming) and the Atlanta, GA Metro Area, were initially oversampled in 2020, 2021, or 2022 and are continuing with the option as part of the 2023 NSCH. Four (4) additional states (Kansas, Illinois, New Mexico, and Minnesota) will be oversampled for the first time in 2023. CDC–NCCDPHP is supporting an oversample of households with young children. Additionally, MCHB is requesting oversamples within the states of California, Illinois, Kansas, Louisiana, Nebraska, New Mexico, Ohio, Pennsylvania, Wisconsin, and Wyoming.

Besides the proposed changes listed above, the 2023 NSCH will proceed with the current design outlined in the previous OMB ICR package, including the use of incentives. Response rates for the unconditional monetary incentive group continues to show a statistically significant difference over the control group that did not receive an unconditional monetary incentive. As part of the initial screener mailing, 90% will include $5 and 10% will not receive an incentive. The incentive assignment to each sampled address would still be random as was done in prior cycles and approved by OMB. Additionally, the use of a $5 or $10 incentive with the initial paper topical mailing will be used. Additional incentives and mailing strategies may be used to both reduce nonresponse bias and improve response rates per request of the sponsor and as funding allows. We will continue to make modifications to data collection strategies based on modeled information about paper or internet response preference. Results from prior survey cycles will continue to be used to inform the decisions made regarding future cycles of the NSCH.

From prior cycles of the NSCH, using American Association for Public Opinion Research definitions of response, we can expect for the 2023 NSCH an overall screener completion rate to be about 44.4% and an overall topical completion rate to be about 31.3%.[3] This is different from the overall response rate, which we expect to be about 39.3%.[4]

II. Method of Collection

The 2023 NSCH plan for the web push data collection design includes approximately 70% of the production addresses receiving an initial invite with instructions on how to complete an English or Spanish-language screener questionnaire via the web. Households that decide to complete the web-based survey will be taken through the screener questionnaire to determine if they are eligible for one of three topical instruments. Households that list at least one child who is 0 to 17 years old in the screener are directed into a topical questionnaire immediately after the last screener question. If a household in the web push treatment group decides to complete the paper screener, the household will receive an additional topical questionnaire incentive. This group will receive two web survey invitation letters requesting their participation in the survey prior to receiving up to two additional paper screener questionnaires in the second and third follow-up mailings.

The 2023 NSCH plan for the mixed-mode data collection design includes up to 30% of the production addresses receiving a paper screener questionnaire in either the initial or the first nonresponse follow-up and instructions on how to complete an English or Spanish language screener questionnaire via the web. Households that decide to complete the web-based survey will follow the same screener and topical selection path as the web push. Households that choose to complete the paper screener questionnaire rather than completing the survey on the internet and that have eligible children will be mailed a paper topical questionnaire upon receipt of their completed paper screener at the Census Bureau's National Processing Center. If a household in the mixed-mode group chooses to complete the paper screener instead of completing the web-based screener via the internet, then the household will receive an additional topical questionnaire incentive. This group will receive both a web survey invitation letter along with a mailed paper screener questionnaire with either the initial invitation or the first follow-up and each additional nonresponse follow-up mailing.

III. Data

OMB Control Number: 0607–0990.

Form Number(s): NSCH–S1 (English Screener), NSCH–T1 (English Topical for 0- to 5-year-old children), NSCH–T2 (English Topical for 6- to 11-year-old children), NSCH–T3 (English Topical for 12- to 17-year-old children), NSCH–S–S1 (Spanish Screener), NSCH–S–T1 (Spanish Topical for 0- to 5-year-old children), NSCH–S–T2 (Spanish Topical for 6- to 11-year-old children), and

[1] Generic Clearance Information Collection Request: *https://www.reginfo.gov/public/do/PRAViewIC?ref_nbr=201909-0607-002&icID=248532.*

[2] State Oversampling in the National Survey of Children's Health: Feasibility, Cost, and Alternative Approaches *https://census.gov/content/dam/Census/programs-surveys/nsch/NSCH_State_Oversample_Summary_Document.pdf.*

[3] Screener Completion Rate is the proportion of screener-eligible households (*i.e.,* occupied residences) that completed a screener. It is equal to (S+X)/(S+X+R+e(UR+UO)), where S is the count of completed screeners with children, X is completed screeners without children, R is screener refusals, and e(UR+UO) is the estimated count of screener eligible households among nonresponding addresses.

The Topical Completion Rate is the proportion of topical-eligible households (*i.e.,* occupied residences with children present) that completed a topical questionnaire. It is equal to I/HCt, where I is the count of completed topicals and HCt is the estimated count of households with children in the sample or S+R+(S+R)/(S+X+R)*e(UR+UO).

[4] Overall Response Rate is the probability a resolved address completes a screener questionnaire and then, when eligible, completes a topical questionnaire.

NSCH–S–T3 (Spanish Topical for 12- to 17-year-old children).

Type of Review: Regular submission, Request for a Revision of a Currently Approved Collection.

Affected Public: Parents, researchers, policymakers, and family advocates.

Estimated Number of Respondents: 132,402.

Estimated Time per Response: 5 minutes per screener response and 35–36 minutes per topical response, which in total is approximately 40–41 minutes for households with eligible children.

Estimated Total Annual Burden Hours: 49,431.

Estimated Total Annual Cost to Public: $0 (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. Section 8(b); 42 U.S.C. Section 701; 42 U.S.C. Section 1769d(a)(4)(B); and 42 U.S.C. Section 241.

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. 2022–26701 Filed 12–7–22; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–834]

Certain Carbon and Alloy Steel Cut-To-Length Plate From Italy: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2020–2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that producers and/or exporters subject to this administrative review made sales of subject merchandise at less than normal value during the period of review (POR), May 1, 2020, through April 30, 2021. Additionally, Commerce determines that a company for which we initiated a review had no shipments during the POR.

DATES: Applicable December 8, 2022.

FOR FURTHER INFORMATION CONTACT: Alice Maldonado or David Crespo, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4682 or (202) 482–3693, respectively.

SUPPLEMENTARY INFORMATION:

Background

This review covers 11 producers and/or exporters of the subject merchandise. Commerce selected two companies, NLMK Verona SpA (NVR) and Officine Tecnosider s.r.l. (OTS), for individual examination. One company, Lyman Steel Company (Lyman), reported having no shipments during the POR, *see* ''Determination of No Shipments'' section below. The remaining producers and/or exporters not selected for individual examination are listed in the ''Final Results of the Review'' section of this notice.

On June 6, 2022, Commerce published the *Preliminary Results.*[1] In July 2022, certain of the petitioners,[2] NVR, and OTS submitted case and rebuttal briefs.[3] On September 15, 2022, we extended the deadline for the final results until December 2, 2022.[4] For a description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[5]

Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The products covered by the *Order* are certain carbon and alloy steel hot-rolled or forged flat plate products not in coils, whether or not painted, varnished, or coated with plastics or other non-metallic substances from Italy. Products subject to the order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.[6]

Verification

Commerce was unable to conduct on-site verification of the information relied upon for the final results of this review. However, we took additional steps in lieu of an on-site verification to verify this information, in accordance with section 782(i) of the Act.[7]

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[1] *See Certain Carbon and Alloy Steel Cut-To-Length Plate From Italy: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2020–2021,* 87 FR 34246 (June 6, 2022) (*Preliminary Results*).

[2] Nucor Corporation.

[3] *See* Petitioner's Letter, ''Nucor's Case Brief as to NLMK Verona, S.p.A.,'' dated July 6, 2022; NVR's Letter, ''Case Brief,'' dated July 6, 2022; OTS's Letter, ''OTS's Case Brief,'' dated July 6, 2022; Petitioner's Letter, ''Nucor's Rebuttal Brief,'' dated July 15, 2022; and NVR's Letter, ''Rebuttal Brief,'' dated July 15, 2022.

[4] *See* Memorandum, ''Extension of Deadline for Final Results of 2020–2021 Antidumping Duty Administrative Review,'' dated September 15, 2022.

[5] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2020–2021 Administrative Review of the Antidumping Duty Order on Certain Carbon and Alloy Steel Cut-To-Length Plate From Italy,'' dated concurrently with, and hereby adopted by, these results (Issues and Decision Memorandum).

[6] For a full description of the scope of the order, *see* Issues and Decision Memorandum.

[7] See Commerce's Letters, ''In Lieu of Verification Questionnaire for NVR and OTS,'' dated June 6, 2022; see also NVR's Letter, ''NVR's Response to In Lieu of On-Site Verification Questionnaire,'' dated

Continued

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are listed in the appendix to this notice and addressed in the Issues and Decision Memorandum. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Determination of No Shipments

As noted in the *Preliminary Results,* we received a no-shipment claim from one company involved in this administrative review, Lyman. In the *Preliminary Results,* we preliminarily determined that Lyman had no reviewable transactions during the POR. We received no comments from interested parties with respect to this claim. Therefore, because the record indicates that this company did not export subject merchandise to the United States during the POR, we continue to find that Lyman had no reviewable transactions during the POR. Accordingly, consistent with Commerce's practice, we intend to instruct U.S. Customs and Border Protection (CBP) to liquidate any existing entries of merchandise produced by Lyman, but exported by other parties, at the rate for the intermediate reseller, if available, or at the all-others rate.[8]

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* we made certain changes to the preliminary weighted-average margin calculations for NVR and those companies not selected for individual review.[9]

Rate for Non-Selected Respondents

The Act and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act.

Generally, when calculating margins for non-selected respondents, Commerce looks to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in an investigation. Section 735(c)(5)(A) of the Act provides that when calculating the all-others rate, Commerce will exclude any zero and *de minimis* weighted-average dumping margins, as well as any weighted-average dumping margins based on total facts available. Accordingly, Commerce's usual practice has been to average the margins for selected respondents, excluding margins that are zero, *de minimis,* or based entirely on facts available. In this review, in accordance with section 735(c)(5)(A) of the Act, Commerce assigned the weighted-average calculated rates of the mandatory respondents, NVR and OTS, which are not zero, *de minimis,* or determined entirely on the basis of facts available to the non-selected companies in these final results, based on their publicly ranged sales data.[10]

Final Results of the Review

We are assigning the following weighted-average dumping margins to the firms listed below for the period May 1, 2020, through April 30, 2021:

Producer/exporter	Weighted-average dumping margin (percent)
NLMK Verona SpA	1.47
Officine Tecnosider s.r.l	20.44
Arvedi Tubi Acciaio	4.43
C.M.T. Construzioni Meccaniche di Taglione Emilio & C. S.a.s	4.43
O.ME.P SpA	4.43
Ofar SpA	4.43
Officine Meccaniche M.A.M. s.r.l	4.43
Sesa SpA	4.43
SZ Acroni D.o.o	4.43
Tim-Cop Doo Temerin	4.43

Disclosure

Commerce intends to disclose the calculations performed in connection with these final results of review to parties in this review within five days after public announcement of the final results or, if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b)(1), Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

Pursuant to 19 CFR 351.212(b)(1), where the respondent reported the entered value of its U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where the respondent did not report entered value, we calculated the entered value in order to calculate the assessment rate. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For the companies that were not selected for individual review, we will assign an assessment rate based on the cash deposit rates calculated for NVR and OTS, excluding any rates that are zero, *de minimis,* or determined entirely based on adverse facts available.[11] The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[12]

Commerce's ''automatic assessment'' will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. As indicated above, for Lyman, we will instruct CBP to liquidate any existing entries of merchandise produced by Lyman, but exported by other parties, at the all-others rate if there is no rate for the

June 13, 2022; and OTS's Letter, ''Administrative Review In Lieu of Verification Questionnaire Response, dated June 13, 2022.

[8] *See, e.g., Magnesium Metal from the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 26922, 26923 (May 13, 2010), unchanged in *Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989 (September 17, 2010).

[9] *See* Issues and Decision Memorandum.

[10] *See* Memorandum, ''Calculation of the Cash Deposit Rate for Non-Reviewed Companies,'' dated May 31, 2022 (Non-Reviewed Company Calculation Memorandum).

[11] This rate was calculated as discussed in the Section, ''Rate for Non-Selected Respondents,'' above. *See also* Non-Reviewed Company Calculation Memorandum.

[12] *See* section 751(a)(2)(C) of the Act.

intermediate company(ies) involved in the transaction.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated companies not participating in this review, the cash deposit will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, then the cash deposit rate will be the rate established for the most recent segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 6.08 percent, the all-others rate established in the LTFV investigation.[13] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This notice is being issued in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: December 2, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Changes Since the Preliminary Results
V. Discussion of Issues
NVR-Specific Issues
Comment 1: NVR's Direct Material Costs (DIRMAT)
Comment 2: NVR's Change in Inventory Adjustment
Comment 3: Whether Commerce Should Apply the Transactions Disregarded Rule to the Cost of Services NVR Obtained from Certain Affiliated Parties
Comment 4: Whether Commerce Should Deny NVR's Claimed Offset to Its Reported General and Administrative (G&A) Expense Calculation
Comment 5: Whether Commerce Should Deny NVR's Claimed Offsets to Its Reported Interest Expenses
Comment 6: Whether Section 232 Duties Should be Deducted From U.S. Price
OTS-Specific Issues
Comment 7: Whether Commerce Should Use the Quarterly Cost Averaging Methodology for OTS
Comment 8: Whether Commerce Should Depart From the 90/60 Contemporaneous Period Methodology
VI. Recommendation

[FR Doc. 2022–26716 Filed 12–7–22; 8:45 am]

BILLING CODE 3510–DS–P

[13] *See Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria, Belgium, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, and Taiwan: Amended Final Affirmative Antidumping Determinations for France, the Federal Republic of Germany, the Republic of Korea, and Taiwan, and Antidumping Duty Orders,* 82 FR 24096, 24098 (May 25, 2017).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–979, C–570–980]

Antidumping and Countervailing Duty Orders on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Affirmative Determinations of Circumvention With Respect to Cambodia, Malaysia, Thailand, and Vietnam

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that, except as noted below, imports of certain crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells and modules), that were exported from the Kingdom of Cambodia (Cambodia), Malaysia, the Kingdom of Thailand (Thailand), or the Socialist Republic of Vietnam (Vietnam) using parts and components produced in the People's Republic of China (China), as specified below, are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on solar cells and modules from China.

DATES: Applicable December 8, 2022.

FOR FURTHER INFORMATION CONTACT: Jose Rivera, Toni Page, and Peter Shaw (Cambodia and Malaysia) and Jeff Pedersen and Paola Aleman Ordaz (Thailand and Vietnam), Offices VII and IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0842, (202) 482–1398, (202) 482–0697, (202) 482–2769, and (202) 482–4031, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 7, 2012, Commerce published in the **Federal Register** AD and CVD orders on U.S. imports of solar cells and modules from China.[1] On February 8, 2022, pursuant to section 781(b) of the Tariff Act of 1930, as

[1] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order,* 77 FR 73018 (December 7, 2012) (*Solar Cells AD Order*); *see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Countervailing Duty Order,* 77 FR 73017 (December 7, 2012) (*Solar Cells CVD Order*) (collectively, *Orders*).

amended (the Act), and 19 CFR 351.226(c), Auxin Solar Inc. (Auxin), a domestic producer of solar modules, alleged that solar cells and modules completed in Cambodia, Malaysia, Thailand, or Vietnam using parts and components manufactured in China are circumventing the *Orders*[2] and, accordingly, should be covered by the scope of the *Orders*.[3] On April 1, 2022, Commerce initiated the requested circumvention inquiries.[4]

On May 12, 2022, Commerce selected two respondents from each of the examined third countries as the mandatory respondents in these circumvention inquiries.[5]

On August 22, 2022, Commerce extended the deadline for issuing the preliminary determinations in these circumvention inquiries by 90 days, until November 28, 2022.[6] On November 14, 2022, Commerce further extended the deadline for issuing the preliminary determinations in these circumvention inquiries by three days, until December 1, 2022.[7] For a complete description of the events that followed the initiation of these circumvention inquiries, *see* the Preliminary Decision Memoranda.[8] A list of topics included in the Preliminary Decision Memoranda are included as Appendix I to this notice. The Preliminary Decision Memoranda are public documents and are on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memoranda can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Orders

The products subject to the *Orders* are solar cells and modules. For a full description of the scope of the *Orders, see* the Preliminary Decision Memoranda.

Merchandise Subject to the Circumvention Inquiries

These circumvention inquiries cover certain solar cells and modules that have been completed in Cambodia, Malaysia, Thailand, or Vietnam, using parts and components from China, as specified below, that are then subsequently exported from Cambodia, Malaysia, Thailand, or Vietnam to the United States (inquiry merchandise).

Specifically, these circumvention inquiries cover: (A) crystalline silicon photovoltaic cells that meet the physical description of crystalline silicon photovoltaic cells in the scope of the underlying *Orders,* subject to the exclusions therein, whether or not partially or fully assembled into other products, that were produced in Cambodia, Malaysia, Thailand, or Vietnam, from wafers produced in China; and (B) modules, laminates, and panels consisting of crystalline silicon photovoltaic cells, subject to the exclusions for certain panels in the scope of the underlying orders, whether or not partially or fully assembled into other products, that were produced in Cambodia, Malaysia, Thailand, or Vietnam from wafers produced in China and where more than two of the following components in the module/laminate/panel were produced in China: (1) silver paste; (2) aluminum frames (3) glass; (4) backsheets; (5) ethylene vinyl acetate sheets; and (6) junction boxes.

If modules, laminates, and panels consisting of crystalline silicon photovoltaic cells do not meet both of the conditions in item (B) above, then these circumvention inquiries do not cover the modules, laminates, and panels, or the crystalline silicon photovoltaic cells within the modules, laminates, and panels, even if those crystalline silicon photovoltaic cells were produced in Cambodia, Malaysia, Thailand, or Vietnam from wafers produced in China. Wafers produced outside of China with polysilicon sourced from China are not considered to be wafers produced in China for purposes of these circumvention inquiries.

Methodology

Commerce made these preliminary circumvention findings in accordance with section 781(b) of the Act and 19 CFR 351.226. For a full description of the methodology underlying the preliminary determinations, *see* the Preliminary Decision Memoranda.

Affirmative Preliminary Determinations of Circumvention

As detailed in the Preliminary Decision Memoranda, with the exception of certain U.S. imports from the exporters identified in Appendix III to this notice, we preliminarily determine that U.S. imports of inquiry merchandise are circumventing the *Orders* on a country-wide basis. As a result, we preliminarily determine that this merchandise is covered by the *Orders.*

We preliminarily determine that solar cells/solar modules exported from, and produced in, Cambodia, Malaysia, or Vietnam by the entities identified in Appendix III to this notice using wafers produced in China exported by specific companies are not circumventing the *Orders.* For a detailed explanation of our determinations with respect to the entities identified in Appendix III, *see* the Preliminary Decision Memoranda.

See the ''Suspension of Liquidation and Cash Deposit Requirements'' section below for details regarding suspension of liquidation and cash deposit requirements. *See* the ''Certification'' and ''Certification Requirements'' section below for details regarding the use of certifications.

Use of Adverse Facts Available

Pursuant to section 776(a) of the Act, if necessary information is not available on the record, or an interested party withholds requested information, fails to provide requested information by the deadline or in the form and manner requested, or significantly impeded a proceeding, Commerce shall use the facts otherwise available in reaching the applicable determination. Moreover, pursuant to section 776(b) of the Act, Commerce may use inferences adverse to the interests of an interested party in selecting from among the facts otherwise available if the party fails to cooperate by acting to the best of its ability to provide requested information.

Commerce requested information from certain companies in each of the examined countries related to the

[2] *Id.*

[3] *Id.*

[4] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Initiation of Circumvention Inquiry on the Antidumping Duty and Countervailing Duty Orders,* 87 FR 19071 (April 1, 2022) (*Initiation Notice*).

[5] *See* Memoranda, ''Circumvention Inquiry with Respect to Cambodia: Respondent Selection''; ''Circumvention Inquiries With Respect to Malaysia: Respondent Selection''; ''Circumvention Inquiry With Respect to Thailand: Respondent Selection''; and ''Circumvention Inquiry With Respect to the Socialist Republic of Vietnam: Respondent Selection,'' all dated May 12, 2022.

[6] *See* Auxin's Letter, ''Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Request for Extension of the Deadline for the Preliminary Determination and the Deadline for Pre-Preliminary Comments,'' dated August 11, 2022; and Memorandum, ''Extension of Preliminary Determinations in Circumvention Inquiries,'' dated August 22, 2022.

[7] *See* Commerce's Letter, ''Second Extension of Preliminary and Final Determinations in Circumvention Inquiries,'' dated November 14, 2022.

[8] *See* Memoranda, ''Preliminary Decision Memorandum for the Circumvention Inquiry With Respect to Cambodia;'' ''Preliminary Decision Memorandum for the Circumvention Inquiry With Respect to Malaysia''; ''Preliminary Decision Memorandum for the Circumvention Inquiry With Respect to Thailand''; and ''Preliminary Decision Memorandum for the Circumvention Inquiry With Respect to Vietnam;'' all dated concurrently with, and hereby adopted by, this notice (collectively, Preliminary Decision Memoranda).

quantity and value (Q&V) of their exports during the inquiry period for purposes of respondent selection. In these Q&V questionnaires, Commerce explained that, if the company to which Commerce issued the questionnaire fails to respond to the questionnaire, or fails to provide the requested information, Commerce may find that the company failed to cooperate by not acting to the best of its ability to comply with the request for information, and may use an inference that is adverse to the company's interests in selecting from the facts otherwise available. Certain companies to which Commerce issued the Q&V questionnaire in the Malaysia, Thailand, and Vietnam inquiries received, but failed to timely respond to, the Q&V questionnaire.[9]

Therefore, we preliminarily find that necessary information is not available on the record and that the companies that failed to timely respond to the Q&V questionnaire withheld requested information, failed to provide requested information by the deadline or in the form and manner requested, and significantly impeded these inquiries. Moreover, we find that these companies failed to cooperate to the best of their abilities to provide the requested Q&V information because they did not provide any response to Commerce's Q&V questionnaire. Consequently, we used adverse inferences with respect to these companies in selecting from among the facts otherwise available on the record, pursuant to sections 776(a) and (b) of the Act. For details regarding the adverse facts available used in our decisions, *see* the Preliminary Decision Memoranda.

Based on the adverse facts available used, we preliminarily determine that the companies listed in Appendix II to this notice exported inquiry merchandise and that U.S. entries of that merchandise are circumventing the *Orders.* Additionally, with the exception of the ''Applicable Entries'' certification, which is described in the ''Certification'' section below, we are preliminarily precluding the companies listed in Appendix II to this notice [10] from participating in the certification programs that we are establishing for exports of solar cells and modules from Malaysia, Thailand, and Vietnam.

U.S. entries of inquiry merchandise made on or after April 1, 2022, that are ineligible for certification based on the failure of the companies in Appendix II to cooperate, or for other reasons, shall remain subject to suspension of liquidation until final assessment instructions on those entries are issued, whether by automatic liquidation instructions, or by instructions pursuant to the final results of an administrative review.[11] Interested parties that wish to have their suspended non-''Applicable Entries,'' if any, reviewed, and their ineligibility for the certification program re-evaluated, should request an administrative review of the relevant suspended entries during the next anniversary month of these *Orders* (*i.e.,* December 2022 for the *Solar Cells AD Order* and December 2023 for the *Solar Cells CVD Order*).[12]

Suspension of Liquidation and Cash Deposit Requirements

On June 6, 2022, the President of the United States signed Proclamation 10414, ''Declaration of Emergency and Authorization for Temporary Extensions of Time and Duty-Free Importation of Solar Cells and Modules from Southeast Asia'' (the Proclamation). In the Proclamation, the President directed the Secretary of Commerce (the Secretary) to.

> consider taking appropriate action under section 1318(a) of title 19, United States Code, to permit, until 24 months after the date of this proclamation or until the emergency declared herein has terminated, whichever occurs first, under such regulations and under such conditions as the Secretary may prescribe, the importation, free of the collection of duties and estimated duties, if applicable, under sections 1671, 1673, 1675, and 1677j of title 19, United States Code, {(sections 701, 731, 751 and 781 of the Act)} of certain solar cells and modules exported from the Kingdom of Cambodia, Malaysia, the Kingdom of Thailand, and the Socialist Republic of Vietnam, and that are not already subject to an antidumping or countervailing duty order as of the date of this proclamation . . . .

On September 12, 2022, Commerce added Part 362 to its regulations to implement the Proclamation. Pursuant to 19 CFR 362.103(b)(1)(i), Commerce will direct U.S. Customs and Border Protection (CBP) to discontinue the suspension of liquidation and collection of cash deposits that were ordered based on Commerce's initiation of these circumvention inquiries. In addition, pursuant to 19 CFR 362.103(b)(1)(ii) and (iii), Commerce will not direct CBP to suspend liquidation, and require cash deposits, of estimated ADs and CVDs based on these affirmative preliminary determinations of circumvention on, any ''Applicable Entries.'' However, Commerce will direct CBP to suspend liquidation, and collect cash deposits, of estimated ADs and CVDs based on these affirmative preliminary determinations of circumvention on, imports of ''Southeast Asian-Completed cells and modules'' that are not ''Applicable Entries.''

Pursuant to 19 CFR 362.102, 'Southeast Asian-Completed Cells and Modules'' are:

> crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells and modules), which are completed in the Kingdom of Cambodia, Malaysia, the Kingdom of Thailand, or the Socialist Republic of Vietnam using parts and components manufactured in the People's Republic of China, and subsequently exported from Cambodia, Malaysia, Thailand, or Vietnam to the United States. These are cells and modules subject to the Solar Circumvention Inquiries. Southeast Asian-Completed Cells and Modules does not mean solar cells and modules that, on June 6, 2022, the date Proclamation 10414 was signed, were already subject to Certain Solar Orders.[13]

''Applicable Entries means the entries of Southeast Asian-Completed Cells and Modules that are entered into the United States, or withdrawn from warehouse, for consumption before the Date of Termination and, for entries that enter after November 15, 2022, are used in the United States by the Utilization Expiration Date.'' [14] The ''Date of Termination'' is ''June 6, 2024, or the date the emergency described in Presidential Proclamation 10414 has been terminated, whichever occurs first.'' [15] The ''Utilization Expiration Date'' is ''the date 180 days after the Date of Termination.'' [16] ''Utilization and utilized means the Southeast Asian-Completed Cells and Modules will be used or installed in the United States. Merchandise which remains in inventory or a warehouse in the United States, is resold to another party, is subsequently exported, or is destroyed after importation is not considered utilized for purposes of'' the provisions in Part 362 of the regulations.[17]

Therefore, based on these affirmative preliminary determinations of circumvention, Commerce intends to direct CBP to suspend liquidation of,

[9] *See* Appendix II for a list of companies that failed to respond to Commerce's request for Q&V information.

[10] *Id.*

[11] Commerce continues to consider the process by which companies may demonstrate eligibility for the certification program in future segments of the solar cells proceedings. Commerce encourages interested parties to provide comments on this topic in their case briefs.

[12] *See* 19 CFR 351.213(b).

[13] ''Certain Solar Orders'' refers to the following orders: (1) *Solar Cells AD Order;* (2) *Solar Cells CVD Order;* and (3) *Certain Crystalline Silicon Photovoltaic Products from Taiwan: Antidumping Duty Order,* 80 FR 8596 (February 18, 2015).

[14] *See* 19 CFR 362.102.

[15] *Id.*

[16] *Id.*

[17] *Id.*

and collect cash deposits of the applicable estimated ADs and CVDs on, U.S. imports of Southeast Asian-Completed solar cells and solar modules that are not ''Applicable Entries'' that were entered, or withdrawn from warehouse, for consumption on or after April 1, 2022, the date of publication of initiation of these circumvention inquiries in the **Federal Register**,[18] but prior to the Date of Termination of the Proclamation. Specifically, with the exception of the entries for which the importer and exporter have met the requirements of the relevant certifications described in the ''Certified Entries'' section of this notice below, Commerce will direct CBP to implement the following cash deposit requirements for U.S. entries of ''Southeast Asian-Completed cells and modules'' that are not ''Applicable Entries'': (1) for exporters of the solar cells or solar modules that have a company-specific cash deposit rate under the *Solar Cells AD Order* and/or *Solar Cells CVD Order,* the cash deposit rate will be the company-specific AD and/or CVD cash deposit rate established for that company in the most recently-completed segment of the solar cells proceedings; (2) for exporters of the solar cells or solar modules that do not have a company-specific cash deposit rate under the *Solar Cells AD Order* and/or *Solar Cells CVD Order,* the cash deposit rate will be the company-specific cash deposit rate established under the *Solar Cells AD Order* and/or *Solar Cells CVD Order* for the company that exported the wafers to the producer/exporter in the relevant third country (*i.e.,* Cambodia, Malaysia, Thailand or Vietnam) that were incorporated in the imported solar cells or solar modules; and (3) if neither the exporter of the solar cells or solar modules nor the exporter of the wafers described in item (2) above has a company-specific cash deposit rate, the AD cash deposit rate will be the China-wide rate (238.95 percent), and the CVD cash deposit rate will be the ''All-Others'' rate (15.24 percent). Commerce has established the following third-country case numbers in the Automated Commercial Environment (ACE) for such entries: Cambodia A–555–902–000/C–555–903–000; Malaysia A–557–988–000/C–557–989–000; Thailand A–549–988–000/C–549–989–000; and Vietnam A–552–988–000/C–552–989–000. If the exporter of the wafers described in the cash deposit requirements above has its own company-specific cash deposit rate under the *Orders,* the importer, producer, or exporter of inquiry merchandise containing those wafers may file a request in ACCESS on the record of the applicable proceeding segment that Commerce establish a case number in ACE for the *Orders* for the applicable third-country that is specific to the Chinese wafer exporter. CBP may also submit such a request to Commerce through the ACE AD/CVD Portal Inquiry System.

[18] *See Initiation Notice.*

Entries on or After Termination of the Proclamation

Upon termination of the Proclamation, Commerce will issue instructions to CBP that are described in 19 CFR 362.103(b)(2). Moreover, given the instant preliminary country-wide affirmative determinations of circumvention with respect to Cambodia, Malaysia, Thailand, and Vietnam, and the fact that the ''Date of Termination'' is currently June 6, 2024, pursuant to 19 CFR 362.103(b)(3), Commerce intends to issue an instruction to CBP in which it: (1) informs CBP that the Date of Termination is June 6, 2024; and (2) with the exception of the entries for which the importer and exporter have met the requirements of the relevant certifications described in the ''Certified Entries'' section of this notice below, directs CBP to begin suspension of liquidation, and require a cash deposit of estimated ADs and CVDs, at the applicable rate described below, for each unliquidated entry of inquiry merchandise entered, or withdrawn from warehouse, for consumption on or after the Date of Termination of the Proclamation. The applicable cash deposit rates are as follows: (1) for exporters of inquiry merchandise that have a company-specific cash deposit rate under the *Solar Cells AD Order* and/or *Solar Cells CVD Order,* the cash deposit rate will be the company-specific AD and/or CVD cash deposit rate established for that company in the most recently completed segment of the solar cells proceedings; (2) for exporters of inquiry merchandise that do not have a company-specific cash deposit rate under the *Solar Cells AD Order* and/or *Solar Cells CVD Order,* the cash deposit rate will be the company-specific cash deposit rate established under the *Solar Cells AD Order* and/or *Solar Cells CVD Order* for the company that exported the wafers to the producer/exporter in the relevant third country (*i.e.,* Cambodia, Malaysia, Thailand or Vietnam) that were incorporated in the imported inquiry merchandise; and (3) if neither the exporter of the inquiry merchandise, nor the exporter of the wafers described in item (2) above has a company-specific cash deposit rate, the AD cash deposit rate will be the China-wide rate (238.95 percent), and the CVD cash deposit rate will be the ''All-Others'' rate (15.24 percent). As noted above, Commerce has established the following third-country case numbers in ACE for such entries: Cambodia A–555–902–000/C–555–903–000; Malaysia A–557–988–000/C–557–989–000; Thailand A–549–988–000/C–549–989–000; and Vietnam A–552–988–000/C–552–989–000. Other third-country case numbers may be established following the process described above.

Certified Entries

Entries prior to the Date of Termination for which the importer and exporter have met the certification requirements described below and in Appendix IV, V,[19] or VI to this notice, and entries on or after the Date for Termination for which the importer and exporter have met the certification requirements described below and in Appendix V [20] or VI to this notice, will not be subject to suspension of liquidation, or the cash deposit requirements described above. Failure to comply with the applicable requisite certification requirements may result in the merchandise being subject to ADs and CVDs.

Certifications

In order to administer these preliminary country-wide affirmative determinations of circumvention, and the preliminary company-specific negative determinations of circumvention, and to implement the Proclamation, Commerce has established the following types of certifications: (1) importer and exporter certifications that specific entries meet the regulatory definition of ''Applicable Entries'' (*see* Appendix IV to this notice); (2) importer and exporter certifications that specific entries are not subject to suspension of liquidation or the collection of cash deposits based on the preliminary negative circumvention determinations with respect to the exporters listed in

[19] The certification in Appendix V is specific to Boviet Solar Technology Co., Ltd. Issuance of similar certifications with respect to Hanwha Q CELLS Malaysia Sdn. Bhd., Jinko Solar Technology Sdn. Bhd./Jinko Solar (Malaysia) Sdn. Bhd., and New East Solar (Cambodia) Co., Ltd. is predicated upon the public disclosure of the names of their wafer exporters to Commerce by no later than 14 days after the publication date of this notice in the **Federal Register**. If such disclosure is made, Commerce will place the additional certification(s) on ACCESS within 30 days of publication of this notice in the **Federal Register**.

[20] This is subject to the caveat noted above with respect to the public disclosure of the names of certain wafer exporters.

Appendix III in combination with certain wafer exporters (*see* Appendix V to this notice);[21] and (3) importer and exporter certifications that specific entries of solar cells or solar modules from Cambodia, Malaysia, Thailand, or Vietnam are not subject to suspension of liquidation or the collection of cash deposits pursuant to these preliminary country-wide affirmative determinations of circumvention because the merchandise meets the component content requirements described in the certification (*see* Appendix VI to this notice). The non-cooperative companies listed in Appendix II are not eligible to use the certification described in items (2) or (3) above for the relevant inquiry country.[22]

Importers and exporters that claim that: (1) an entry of ''Southeast Asian-Completed cells and modules'' is an ''Applicable Entry''; (2) an entry of solar cells or solar modules is not subject to suspension of liquidation or the collection of cash deposits based on the preliminary negative circumvention determination with respect to one of the companies listed in Appendix III; or (3) the entry of solar cells or solar modules is not subject to suspension of liquidation or the collection of cash deposits based on the inputs used to manufacture such merchandise, must complete the applicable certification and meet the certification and documentation requirements described below, as well as the requirements identified in the applicable certification.

Certification Requirements

Importers are required to complete and maintain the applicable importer certification, and maintain a copy of the applicable exporter certification, and retain all supporting documentation for both certifications. With the exception of the entries described below, the importer certification must be completed, signed, and dated by the time the entry summary is filed for the relevant entry. The importer, or the importer's agent, must submit both the importer's certification and the exporter's certification to CBP as part of the entry process by uploading them into the document imaging system (DIS) in ACE. Where the importer uses a broker to facilitate the entry process, it should obtain the entry summary number from the broker. Agents of the importer, such as brokers, however, are not permitted to certify on behalf of the importer.

Exporters are required to complete and maintain the applicable exporter certification and provide the importer with a copy of that certification and all supporting documentation (*e.g.,* invoice, purchase order, production records, *etc.*). With the exception of the entries described below, the exporter certification must be completed, signed, and dated by the time of shipment of the relevant entries. The exporter certification should be completed by the party selling the solar cells or solar modules that were manufactured in Cambodia, Malaysia, Thailand, or Vietnam to the United States.

Additionally, the claims made in the certifications and any supporting documentation are subject to verification by Commerce and/or CBP. Importers and exporters are required to maintain the certifications and supporting documentation for the later of: (1) the date that is five years after the latest entry date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries.

For all solar cells or solar modules from Cambodia, Malaysia, Thailand, or Vietnam that were entered, or withdrawn from warehouse, for consumption during the period April 1, 2022, (the date of initiation of these circumvention inquiries) through the date of publication of the preliminary determinations in the **Federal Register**, where the entry has not been liquidated (and entries for which liquidation has not become final), the relevant certification should be completed and signed as soon as practicable, but not later than 45 days after the date of publication of these preliminary determinations in the **Federal Register**. For such entries, importers, and exporters each have the option to complete a blanket certification covering multiple entries, individual certifications for each entry, or a combination thereof. The exporter must provide the importer with a copy of the exporter certification within 45 days of the date of publication of these preliminary determinations in the **Federal Register**.

For unliquidated entries (and entries for which liquidation has not become final) of solar cells and solar modules that were declared as non-AD/CVD type entries (*e.g.,* type 01) and entered, or withdrawn from warehouse, for consumption in the United States during the period April 1, 2022 (the date of initiation of these circumvention inquiries) through the date of publication of the preliminary determinations in the **Federal Register**, for which none of the above certifications may be made, importers must file a Post Summary Correction with CBP, in accordance with CBP's regulations, regarding conversion of such entries from non-AD/CVD type entries to AD/CVD type entries (*e.g.,* type 01 to type 03). Importers should report those AD/CVD type entries using the following third-country case numbers: Cambodia A–555–902–000/C–555–903–000; Malaysia A–557–988–000/C–557–989–000; Thailand A–549–988–000/C–549–989–000; and Vietnam A–552–988–000/C–552–989–000. Other third-country case numbers may be established following the process described above. The importer should pay cash deposits on those entries consistent with the regulations governing post summary corrections that require payment of additional duties.

If it is determined that an importer and/or exporter has not met the certification and/or related documentation requirements for certain entries, Commerce intends to instruct CBP to suspend, pursuant to these preliminary country-wide affirmative determinations of circumvention and the *Orders,*[23] all unliquidated entries for which these requirements were not met and require the importer to post applicable AD and CVD cash deposits equal to the rates noted above.

Interested parties may comment on these certification requirements, and on the certification language contained in the appendices to this notice in their case briefs.

Verification

As provided in 19 CFR 351.226(f)(3), Commerce intends to verify the information relied upon in making its final determinations.

Public Comment

Case briefs or other written comments for a particular country should be

[21] The certification in Appendix V is specific to Boviet Solar Technology Co., Ltd. Issuance of similar certifications with respect to Hanwha Q CELLS Malaysia Sdn. Bhd., Jinko Solar Technology Sdn. Bhd./Jinko Solar (Malaysia) Sdn. Bhd., and New East Solar (Cambodia) Co., Ltd. is predicated upon the public disclosure of the names of their wafer exporters to Commerce by no later than 14 days after the publication date of this notice in the **Federal Register**. If such disclosure is made, Commerce will place the additional certification(s) on ACCESS within 30 days of publication of this notice in the **Federal Register**.

[22] *See* Preliminary Decision Memoranda at ''Use of Facts Available with an Adverse Inference''; and, *e.g., Anti-circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order,* 63 FR 18364, 18366 (April 15, 1998), unchanged in *Anti-Circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Final Determination of Circumvention of the Antidumping Duty Order,* 63 FR 54672, 54675–76 (October 13, 1998).

[23] *See Orders.*

submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report for that country is issued. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline for case briefs.[24] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in these circumvention inquiries are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[25]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing for a particular country, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice in the **Federal Register**. Requests should contain: (1) the requesting party's name, address, and telephone number; (2) the number of individuals from the requesting party that will attend the hearing and whether any of those individuals is a foreign national; and (3) a list of the issues that the party intends to discuss at the hearing. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date of the hearing.

U.S. International Trade Commission Notification

Commerce, consistent with section 781(e) of the Act, will notify the U.S. International Trade Commission (ITC) of these preliminary determinations to include the merchandise subject to these circumvention inquiries within the *Orders.* Pursuant to section 781(e) of the Act, the ITC may request consultations concerning Commerce's proposed inclusion of the inquiry merchandise. If, after consultations, the ITC believes that a significant injury issue is presented by the proposed inclusion, it will have 60 days from the date of notification by Commerce to provide written advice.

Notification to Interested Parties

These determinations are issued and published in accordance with section 781(b) of the Act and 19 CFR 351.226(g)(1).

Dated: December 1, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix No.	Appendix name
I	List of Topics Discussed in the Preliminary Decision Memoranda.
II	List of Companies to Which Commerce Applied AFA.
III	List of Companies Preliminarily Found Not To Be Circumventing.
IV	Certification for "Applicable Entries".
V	Certification for Entries of Inquiry Merchandise from Companies Preliminarily Found Not To Be Circumventing.
VI	Certification Regarding Chinese Components.

Appendices

Appendix I

List of Topics Discussed in the Preliminary Decision Memoranda

Cambodia

I. Summary
II. Background
III. Scope of the *Orders*
IV. Merchandise Subject to Circumvention Inquiry
V. Period of the Circumvention Inquiry
VI. Non-Market Economy Methodology for Valuing Material Inputs from China
VII. Statutory and Regulatory Framework for the Circumvention Inquiry
VIII. Statutory Analysis for the Circumvention Inquiry
IX. Summary of Statutory Analysis
X. Verification
XI. Certification Process and Country-Wide Affirmation Determination of Circumvention
XII. Presidential Proclamation
XIII. Recommendation

Malaysia and Thailand

I. Summary
II. Background
III. Scope of the *Orders*
IV. Merchandise Subject to Circumvention Inquiry
V. Period of the Circumvention Inquiry
VI. Non-Market Economy Methodology for Valuing Material Inputs from China
VII. Statutory and Regulatory Framework for the Circumvention Inquiry
VIII. Use of Facts Available with Adverse Inferences
IX. Statutory Analysis for the Circumvention Inquiry
X. Summary of Statutory Analysis
XI. Verification
XII. Certification Process and Country-Wide Affirmation Determination of Circumvention
XIII. Presidential Proclamation
XIV. Recommendation

Vietnam

I. Summary
II. Background
III. Scope of the *Orders*
IV. Merchandise Subject to Circumvention Inquiry
V. Period of the Circumvention Inquiry
VI. Non-Market Economy Methodology for Valuing Material Inputs from China
VII. Non-Market Economy Methodology for Valuing the Process of Assembly or Completion in Vietnam
VIII. Statutory and Regulatory Framework for the Circumvention Inquiry
IX. Use of Facts Available with Adverse Inferences
X. Statutory Analysis for the Circumvention Inquiry
XI. Summary of Statutory Analysis
XII. Verification
XIII. Certification Process and Country-Wide Affirmation Determination of Circumvention
XIV. Presidential Proclamation
XV. Recommendation

Appendix II

List of Companies to Which Commerce Applied AFA

Malaysia

1. AMC Cincaria Sdn Bhd
2. Flextronic Shah Alam Sdn. Bhd.
3. Funing Precision Component Co., Ltd.
4. Samsung Sds Malaysia Sdn. Bhd.
5. Vina Solar Technology Co., Ltd.

Thailand

1. Celestica (Thailand) Limited
2. Green Solar Thailand Co., Ltd.
3. Lightup Creation CO., Ltd.
4. Thai Master Frame Co., Ltd.
5. Three Arrows (Thailand) Co., Ltd.
6. Yuan Feng New Energy
7. Solar PPM.
8. Sunshine Electrical Energy Co., Ltd.

Vietnam

1. Cong Ty Co Phan Cong Nghe Nang (Global

[24] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[25] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

Energy)
2. GCL System Integration Technology
3. Green Wing Solar Technology Co., Ltd.
4. HT Solar Vietnam Limited Company
5. Irex Energy Joint Stock Company
6. S-Solar Viet Nam Company Limited
7. Venergy Solar Industry Company
8. Vietnam Sunergy Joint Stock Company
9. Red Sun Energy Co., Ltd.

Appendix III

List of Companies Preliminarily Found Not To Be Circumventing

Cambodia

1. New East Solar (Cambodia) Co., Ltd.

Malaysia

1. Hanwha Q CELLS Malaysia Sdn. Bhd.
2. Jinko Solar Technology Sdn. Bhd./Jinko Solar (Malaysia) Sdn. Bhd.

Vietnam

1. Boviet Solar Technology Co., Ltd.

Appendix IV

Certification for ''Applicable Entries'' Under 19 CFR Part 362 Importer Certification

I hereby certify that:

(A) My name is {IMPORTING COMPANY OFFICIAL'S NAME} and I am an official of {NAME OF IMPORTING COMPANY}, located at {ADDRESS OF IMPORTING COMPANY}.

(B) I have direct personal knowledge of the facts regarding importation of the solar cells and solar modules produced in {SELECT ONE OF THE FOLLOWING COUNTRIES: KINGDOM OF CAMBODIA, MALAYSIA, THE KINGDOM OF THAILAND, OR THE SOCIALIST REPUBLIC OF VIETNAM} that were entered into the Customs territory of the United States under the entry summary number(s) identified below which are covered by this certification. ''Direct personal knowledge'' refers to the facts the certifying party is expected to have in its own records. For example, the importer should have direct personal knowledge of the exporter and/or seller's identity and location.

(C) If the importer is acting on behalf of the first U.S. customer, include the following sentence as paragraph C of this certification:

The solar cells and/or solar modules covered by this certification were imported by {NAME OF IMPORTING COMPANY} on behalf of {NAME OF U.S. CUSTOMER}, located at {ADDRESS OF U.S. CUSTOMER}.

If the importer is not acting on behalf of the first U.S. customer, include the following sentence as paragraph C of this certification:

{NAME OF IMPORTING COMPANY} is not acting on behalf of the first U.S. customer.

(D) The solar cells and/or solar modules covered by this certification were shipped to {NAME OF PARTY IN THE UNITED STATES TO WHOM THE MERCHANDISE WAS FIRST SHIPPED}, located at {U.S. ADDRESS TO WHICH MERCHANDISE WAS SHIPPED}.

(E) I have personal knowledge of the facts regarding the production and exportation of the solar cells and modules identified below. ''Personal knowledge'' includes facts obtained from another party, (*e.g.,* correspondence received by the importer (or exporter) from the producer of the imported products regarding production).

(F) The imported solar cells and/or solar modules covered by this certification:

1. Were produced in {SELECT ONE OF THE FOLLOWING COUNTRIES: KINGDOM OF CAMBODIA, MALAYSIA, THE KINGDOM OF THAILAND, OR THE SOCIALIST REPUBLIC OF VIETNAM} using parts and components manufactured in the People's Republic of China;

2. Were exported to the United States from {SELECT ONE OF THE FOLLOWING COUNTRIES: KINGDOM OF CAMBODIA, MALAYSIA, THE KINGDOM OF THAILAND, OR THE SOCIALIST REPUBLIC OF VIETNAM} without further assembly in another country;

3. Are not covered by: (a) the antidumping duty or countervailing duty orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, from the People's Republic of China; or (b) the antidumping duty order on certain crystalline silicon photovoltaic products from Taiwan;

4. Were entered into the United States, or were withdrawn from warehouse, for consumption before 06/06/2024, or before the date the emergency described in Presidential Proclamation 10414 is terminated, whichever occurs first; and

5. If entered, or withdrawn from warehouse, after November 15, 2022, the solar cells and/or solar modules will be utilized in the United States by no later than 180 days after the earlier of 06/06/2024, or the date the emergency described in Presidential Proclamation 10414 is terminated. Utilized means the solar cells or solar modules will be used or installed in the United States. Solar cells or solar modules which remain in inventory or in a warehouse in the United States, are resold to another party, are subsequently exported, or are destroyed after importation are not considered utilized.

(G) This certification applies to the following entries (repeat this block as many times as necessary):

Entry Summary #:
Applicable Line Item # of the Entry Summary:
Foreign Seller:
Foreign Seller's Address:
Foreign Seller's Invoice #:
Applicable Line Item # on the Foreign Seller's Invoice:
Producer:
Producer's Address:

(H) I understand that {NAME OF IMPORTING COMPANY} is required to maintain a copy of this certification and sufficient documentation supporting this certification (*i.e.,* documents maintained in the normal course of business, or documents obtained by the certifying party, for example, product specification sheets, production records, invoices, *etc.*) until the later of: (1) the date that is five years after the latest entry date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries.

(I) I understand that {NAME OF IMPORTING COMPANY} is required to maintain a copy of the exporter's certification (attesting to information regarding the production and/or exportation of the imported merchandise identified above), and any supporting documentation provided to the importer by the exporter, until the later of: (1) the date that is five years after the latest entry date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries.

(J) I understand that {NAME OF IMPORTING COMPANY} is required to provide U.S. Customs and Border Protection (CBP) and/or the U.S. Department of Commerce (Commerce) with the importer certification, and any supporting documentation, and a copy of the exporter's certification, and any supporting documentation provided to the importer by the exporter, upon the request of either agency.

(K) I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or Commerce.

(L) I understand that failure to maintain the required certifications and supporting documentation, or failure to substantiate the claims made herein, or not allowing CBP and/or Commerce to verify the claims made herein, may result in a *de facto* determination that all entries to which this certification applies are not ''Applicable Entries.'' I understand that such a finding may result in:

(i) suspension of liquidation of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met;

(ii) the importer being required to post the antidumping duty and countervailing duty cash deposits determined by Commerce; and

(iii) the importer no longer being allowed to participate in the certification process.

(M) I understand that agents of the importer, such as brokers, are not permitted to make this certification.

(N) This certification was completed and signed on, or prior to, the date of the entry summary if the entry date is more than 14 days after the date of publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**. If the entry date is on or before the 14th day after the date of publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**, this certification was completed and signed by no later than 45 days after publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**.

(O) I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make materially false statements to the U.S. government.

Signature
{NAME OF COMPANY OFFICIAL}
{TITLE OF COMPANY OFFICIAL}

_____
Date

Exporter Certification

The party that made the sale to the United States should fill out the exporter certification.

I hereby certify that:

(A) My name is {COMPANY OFFICIAL'S NAME} and I am an official of {NAME OF FOREIGN COMPANY THAT MADE THE SALE TO THE UNITED STATES}, located at {ADDRESS OF FOREIGN COMPANY THAT MADE THE SALE TO THE UNITED STATES};

(B) I have direct personal knowledge of the facts regarding the production and exportation of the solar cells and solar modules for which sales are identified below. ''Direct personal knowledge'' refers to facts the certifying party is expected to have in its own records. For example, an exporter should have direct personal knowledge of the producer's identity and location.

(C) The solar cells and/or solar modules covered by this certification were shipped to {NAME OF PARTY IN THE UNITED STATES TO WHOM MERCHANDISE WAS FIRST SHIPPED}, located at {U.S. ADDRESS TO WHICH MERCHANDISE WAS SHIPPED}.

(D) The solar cells and/or solar modules covered by this certification:

1. Were produced in {SELECT ONE OF THE FOLLOWING COUNTRIES: KINGDOM OF CAMBODIA, MALAYSIA, THE KINGDOM OF THAILAND, OR THE SOCIALIST REPUBLIC OF VIETNAM} using parts and components manufactured in the People's Republic of China;

2. Were exported to the United States from {SELECT ONE OF THE FOLLOWING COUNTRIES: KINGDOM OF CAMBODIA, MALAYSIA, THE KINGDOM OF THAILAND, OR THE SOCIALIST REPUBLIC OF VIETNAM} without further assembly in another country; and

3. Are not covered by: (a) the antidumping duty or countervailing duty orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, from the People's Republic of China; or (b) the antidumping duty order on certain crystalline silicon photovoltaic products from Taiwan.

(E) This certification applies to the following sales to {NAME OF U.S. CUSTOMER}, located at {ADDRESS OF U.S. CUSTOMER} (repeat this block as many times as necessary):

of the Foreign Seller's Invoice to the U.S. Customer:
Applicable Line Item # of the Foreign Seller's Invoice to the U.S. Customer:
Producer Name:
Producer's Address:
Invoice # of the Producer's Invoice to the Foreign Seller (if the foreign seller and the producer are the same party, report ''NA'' here):

(F) I understand that {NAME OF FOREIGN COMPANY THAT MADE THE SALE TO THE UNITED STATES} is required to maintain a copy of this certification and sufficient documentation supporting this certification (*i.e.,* documents maintained in the normal course of business, or documents obtained by the certifying party, for example, product specification sheets, customer specification sheets, production records, invoices, *etc.*) until the later of: (1) the date that is five years after the latest entry date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries.

(G) I understand that {NAME OF FOREIGN COMPANY THAT MADE THE SALE TO THE UNITED STATES}is required to provide the U.S. importer with a copy of this certification and is required to provide U.S. Customs and Border Protection (CBP) and/or the U.S. Department of Commerce (Commerce) with a copy of this certification, and any supporting documents, upon the request of either agency.

(H) I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or Commerce.

(I) I understand that failure to maintain the required certification and supporting documentation, or failure to substantiate the claims made herein, or not allowing CBP and/or Commerce to verify the claims made herein, may result in a *de facto* determination that all sales to which this certification applies are sales of merchandise that was not entered into the United States in ''Applicable Entries.'' I understand that such a finding may result in:

(i) suspension of liquidation of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met;

(ii) the importer being required to post the antidumping and countervailing duty cash deposits determined by Commerce; and

(iii) the seller/exporter no longer being allowed to participate in the certification process.

(J) I understand that agents of the seller/exporter, such as freight forwarding companies or brokers, are not permitted to make this certification.

(K) This certification was completed and signed, and a copy of the certification was provided to the importer, on, or prior to, the date of shipment if the shipment date is more than 14 days after the date of publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**. If the shipment date is on or before the 14th day after the date of publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**, this certification was completed and signed, and a copy of the certification was provided to the importer, by no later than 45 days after publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**.

(L) I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make materially false statements to the U.S. government.

Signature
{NAME OF COMPANY OFFICIAL}
{TITLE OF COMPANY OFFICIAL}

_____
Date

Appendix V

Certification for Entries of Inquiry Merchandise From Companies Preliminarily Found Not To Be Circumventing

Company Name: Boviet Solar Technology Co., Ltd.

Importer Certification

I hereby certify that:

(A) My name is {IMPORTING COMPANY OFFICIAL'S NAME} and I am an official of {NAME OF IMPORTING COMPANY}, located at {ADDRESS OF IMPORTING COMPANY}.

(B) I have direct personal knowledge of the facts regarding importation of the solar cells and solar modules produced in Vietnam that were entered into the Customs territory of the United States under the entry summary number(s) identified below which are covered by this certification. ''Direct personal knowledge'' refers to the facts the certifying party is expected to have in its own records. For example, the importer should have direct personal knowledge of the exporter and/or seller's identity and location.

(C) If the importer is acting on behalf of the first U.S. customer, include the following sentence as paragraph C of this certification:

The solar cells and/or solar modules covered by this certification were imported by {NAME OF IMPORTING COMPANY} on behalf of {NAME OF U.S. CUSTOMER}, located at {ADDRESS OF U.S. CUSTOMER}.

If the importer is not acting on behalf of the first U.S. customer, include the following sentence as paragraph C of this certification:

{NAME OF IMPORTING COMPANY} is not acting on behalf of the first U.S. customer.

(D) The solar cells and/or solar modules covered by this certification were shipped to {NAME OF PARTY IN THE UNITED STATES TO WHOM THE MERCHANDISE WAS FIRST SHIPPED}, located at {U.S. ADDRESS TO WHICH MERCHANDISE WAS SHIPPED}.

(E) I have personal knowledge of the facts regarding the production and exportation of the solar cells and modules identified below. ''Personal knowledge'' includes facts obtained from another party, (*e.g.,* correspondence received by the importer (or exporter) from the producer of the imported products regarding production).

(F) The solar cells and/or solar modules covered by this certification were:

1. Sold to the United States by Boviet Solar Technology Co., Ltd.

2. Exported to the United States by Boviet Solar Technology Co., Ltd.

3. Produced in Vietnam by Boviet Solar Technology Co., Ltd., using wafers manufactured in the People's Republic of China that were exported to Vietnam by Ningbo Kyanite International Trade Co., Ltd.

(G) The U.S. Department of Commerce (Commerce) found that solar cells and/or solar modules produced by Boviet Solar Technology Co., Ltd., using wafers manufactured in China that were exported by the wafer supplier listed in item F above, and exported by Boviet Solar Technology Co., Ltd. are not circumventing the antidumping duty and countervailing duty orders on

crystalline silicon photovoltaic cells, whether or not assembled into modules, from the People's Republic of China.

(H) This certification applies to the following entries (repeat this block as many times as necessary):

Entry Summary #:
Applicable Line Item # of the Entry Summary:
Foreign Seller's Invoice #:
Applicable Line Item # on the Foreign Seller's Invoice:

(I) I understand that {NAME OF IMPORTING COMPANY} is required to maintain a copy of this certification and sufficient documentation supporting this certification (*i.e.,* documents maintained in the normal course of business, or documents obtained by the certifying party, for example, product specification sheets, production records, invoices, *etc.*) until the later of: (1) the date that is five years after the latest entry date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries.

(J) I understand that {NAME OF IMPORTING COMPANY} is required to maintain a copy of the exporter's certification (attesting to information regarding the production and/or exportation of the imported merchandise identified above), and any supporting documentation provided to the importer by the exporter, until the later of: (1) the date that is five years after the latest entry date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries.

(K) I understand that {NAME OF IMPORTING COMPANY} is required to provide U.S. Customs and Border Protection (CBP) and/or Commerce with the importer certification, and any supporting documentation, and a copy of the exporter's certification, and any supporting documentation provided to the importer by the exporter, upon the request of either agency.

(L) I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or Commerce.

(M) I understand that failure to maintain the required certifications and supporting documentation, or failure to substantiate the claims made herein, or not allowing CBP and/or Commerce to verify the claims made herein, may result in a *de facto* determination that all entries to which this certification applies are entries of merchandise that is covered by the scope of the antidumping and countervailing duty orders on solar cells and solar modules from China. I understand that such a finding will result in:

(i) suspension of liquidation of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met;

(ii) the importer being required to post the antidumping duty and countervailing duty cash deposits determined by Commerce; and

(iii) the importer no longer being allowed to participate in the certification process.

(N) I understand that agents of the importer, such as brokers, are not permitted to make this certification.

(O) This certification was completed and signed on, or prior to, the date of the entry summary if the entry date is more than 14 days after the date of publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**. If the entry date is on or before the 14th day after the date of publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**, this certification was completed and signed by no later than 45 days after publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**.

(P) I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make materially false statements to the U.S. government.

Signature
{NAME OF COMPANY OFFICIAL}
{TITLE OF COMPANY OFFICIAL}

_____
Date

Exporter Certification

Certification for Entries of Inquiry Merchandise From Companies Preliminarily Found Not To Be Circumventing

Company Name: Boviet Solar Technology Co., Ltd.

The party that made the sale to the United States should fill out the exporter certification.

I hereby certify that:

(A) My name is {COMPANY OFFICIAL'S NAME} and I am an official of Boviet Solar Technology Co., Ltd., located at B5, B6, Song Khe Industrial Zone, Noi Hoang District Bac Giang Province, Vietnam;

(B) I have direct personal knowledge of the facts regarding the production and exportation of the solar cells and solar modules for which sales are identified below. ''Direct personal knowledge'' refers to facts the certifying party is expected to have in its own records. For example, an exporter should have direct personal knowledge of the producer's identity and location.

(C) The solar cells and/or solar modules covered by this certification were shipped to {NAME OF PARTY IN THE UNITED STATES TO WHOM MERCHANDISE WAS FIRST SHIPPED}, located at {U.S. ADDRESS TO WHICH MERCHANDISE WAS SHIPPED}.

(D) The solar cells and/or solar modules covered by this certification were:

1. Sold to the United States by Boviet Solar Technology Co., Ltd.

2. Exported to the United States by Boviet Solar Technology Co., Ltd.

3. Produced in Vietnam by Boviet Solar Technology Co., Ltd. using wafers manufactured in the People's Republic of China (China) that were exported to Vietnam by Ningbo Kyanite International Trade Co., Ltd.

(E) The U.S. Department of Commerce (Commerce) found that solar cells and/or solar modules produced by Boviet Solar Technology Co., Ltd., using wafers manufactured in China that were exported by the wafer supplier listed in item D above, and exported by Boviet Solar Technology Co., Ltd. are not circumventing the antidumping duty and countervailing duty orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, from the People's Republic of China.

(F) This certification applies to the following sales to {NAME OF U.S. CUSTOMER}, located at {ADDRESS OF U.S. CUSTOMER} (repeat this block as many times as necessary):

of the Foreign Seller's Invoice to the U.S. Customer:
Applicable Line Item # of the Foreign Seller's Invoice to the U.S. Customer:

(G) I understand that Boviet Solar Technology Co., Ltd. is required to maintain a copy of this certification and sufficient documentation supporting this certification (*i.e.,* documents maintained in the normal course of business, or documents obtained by the certifying party, for example, product specification sheets, customer specification sheets, production records, invoices, *etc.*) until the later of: (1) the date that is five years after the latest entry date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries.

(H) I understand that Boviet Solar Technology Co., Ltd. is required to provide the U.S. importer with a copy of this certification and is required to provide U.S. Customs and Border Protection (CBP) and/or Commerce with a copy of this certification, and any supporting documents, upon the request of either agency.

(I) I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or Commerce.

(J) I understand that failure to maintain the required certification and supporting documentation, or failure to substantiate the claims made herein, or not allowing CBP and/or Commerce to verify the claims made herein, may result in a *de facto* determination that all sales to which this certification applies are sales of merchandise that is covered by the scope of the antidumping and countervailing duty orders on solar cells and solar modules from China. I understand that such a finding will result in:

(i) suspension of liquidation of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met;

(ii) the importer being required to post the antidumping and countervailing duty cash deposits determined by Commerce; and

(iii) the seller/exporter no longer being allowed to participate in the certification process.

(K) I understand that agents of the exporter, such as freight forwarding companies or brokers, are not permitted to make this certification.

(L) This certification was completed and signed, and a copy of the certification was provided to the importer, on, or prior to, the date of shipment if the shipment date is more

than 14 days after the date of publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**. If the shipment date is on or before the 14th day after the date of publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**, this certification was completed and signed, and a copy of the certification was provided to the importer, by no later than 45 days after publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**.

(M) I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make materially false statements to the U.S. government.

Signature
{NAME OF COMPANY OFFICIAL}
{TITLE OF COMPANY OFFICIAL}

_____
Date

Appendix VI

Certification Regarding Chinese Components

Importer Certification

I hereby certify that:

(A) My name is {IMPORTING COMPANY OFFICIAL'S NAME} and I am an official of {NAME OF IMPORTING COMPANY}, located at {ADDRESS OF IMPORTING COMPANY}.

(B) I have direct personal knowledge of the facts regarding importation of the solar cells and solar modules produced in {COUNTRY} that were entered into the Customs territory of the United States under the entry summary number(s) identified below which are covered by this certification. ''Direct personal knowledge'' refers to the facts the certifying party is expected to have in its own records. For example, the importer should have direct personal knowledge of the exporter and/or seller's identity and location.

(C) If the importer is acting on behalf of the first U.S. customer, include the following sentence as paragraph C of this certification:

The solar cells and/or solar modules covered by this certification were imported by {NAME OF IMPORTING COMPANY} on behalf of {NAME OF U.S. CUSTOMER}, located at {ADDRESS OF U.S. CUSTOMER}.

If the importer is not acting on behalf of the first U.S. customer, include the following sentence as paragraph C of this certification:

{NAME OF IMPORTING COMPANY} is not acting on behalf of the first U.S. customer.

(D) The solar cells and/or solar modules covered by this certification were shipped to {NAME OF PARTY IN THE UNITED STATES TO WHOM THE MERCHANDISE WAS FIRST SHIPPED}, located at {U.S. ADDRESS TO WHICH MERCHANDISE WAS SHIPPED}.

(E) I have personal knowledge of the facts regarding the production and exportation of the solar cells and modules identified below. ''Personal knowledge'' includes facts obtained from another party, (*e.g.,* correspondence received by the importer (or exporter) from the producer of the imported products regarding production).

(F) If the imported products covered by this certification are solar cells that are not in solar modules or products that contain solar cells that are not in a solar module, then the importer certifies that the solar cells produced in {COUNTRY} that are covered by this certification were not manufactured using wafers produced in China, regardless of whether sourced directly from a Chinese producer or from a downstream supplier.

(G) If the imported products covered by this certification are solar modules or products that contain solar modules, then the importer certifies that the solar modules produced in {COUNTRY} that are covered by this certification were not manufactured using wafers produced in China, regardless of whether sourced directly from a Chinese producer or from a downstream supplier, or the solar modules produced in {COUNTRY} that are covered by this certification were manufactured using wafers produced in China but no more than two of the following inputs that were used to manufacture the solar modules were produced in China, regardless of whether sourced directly from a Chinese producer or from a Chinese downstream supplier:

a. Silver Paste
b. Aluminum Frames
c. Glass
d. Backsheets
e. Ethylene-Vinyl Acetate
f. Junction Boxes

(H) The solar cells and/or solar modules covered by this certification are not covered by: (a) the antidumping duty or countervailing duty orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, from the People's Republic of China; or (b) the antidumping duty order on certain crystalline silicon photovoltaic products from Taiwan.

(I) This certification applies to the following entries (repeat this block as many times as necessary):

Entry Summary #:
Applicable Line Item # of the Entry Summary:
Foreign Seller:
Foreign Seller's Address:
Foreign Seller's Invoice #:
Applicable Line Item # on the Foreign Seller's Invoice:
Producer:
Producer's Address:

(J) I understand that {NAME OF IMPORTING COMPANY} is required to maintain a copy of this certification and sufficient documentation supporting this certification (*i.e.,* documents maintained in the normal course of business, or documents obtained by the certifying party, for example, product specification sheets, production records, invoices, *etc.*) until the later of: (1) the date that is five years after the latest entry date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries.

(K) I understand that {NAME OF IMPORTING COMPANY} is required to maintain a copy of the exporter's certification (attesting to information regarding the production and/or exportation of the imported merchandise identified above), and any supporting documentation provided to the importer by the exporter, until the later of: (1) the date that is five years after the latest entry date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries.

(L) I understand that {NAME OF IMPORTING COMPANY} is required to provide U.S. Customs and Border Protection (CBP) and/or the U.S. Department of Commerce (Commerce) with the importer certification, and any supporting documentation, and a copy of the exporter's certification, and any supporting documentation provided to the importer by the exporter, upon the request of either agency.

(M) I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or Commerce.

(N) I understand that failure to maintain the required certifications and supporting documentation, or failure to substantiate the claims made herein, or not allowing CBP and/or Commerce to verify the claims made herein, may result in a *de facto* determination that all entries to which this certification applies are entries of merchandise that is covered by the scope of the antidumping and countervailing duty orders on solar cells and solar modules from China. I understand that such a finding will result in:

(i) suspension of liquidation of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met;

(ii) the importer being required to post the antidumping duty and countervailing duty cash deposits determined by Commerce; and

(iii) the importer no longer being allowed to participate in the certification process.

(O) I understand that agents of the importer, such as brokers, are not permitted to make this certification.

(P) This certification was completed and signed on, or prior to, the date of the entry summary if the entry date is more than 14 days after the date of publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**. If the entry date is on or before the 14th day after the date of publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**, this certification was completed and signed by no later than 45 days after publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**.

(Q) I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make materially false statements to the U.S. government.

Signature
{NAME OF COMPANY OFFICIAL}
{TITLE OF COMPANY OFFICIAL}

_____
Date

Exporter Certification

The party that made the sale to the United States should fill out the exporter certification.

I hereby certify that:

(A) My name is {COMPANY OFFICIAL'S NAME} and I am an official of {NAME OF FOREIGN COMPANY THAT MADE THE SALE TO THE UNITED STATES}, located at {ADDRESS OF FOREIGN COMPANY THAT MADE THE SALE TO THE UNITED STATES};

(B) I have direct personal knowledge of the facts regarding the production and exportation of the solar cells and solar modules for which sales are identified below. ''Direct personal knowledge'' refers to facts the certifying party is expected to have in its own records. For example, an exporter should have direct personal knowledge of the producer's identity and location.

(C) The solar cells and/or solar modules covered by this certification were shipped to {NAME OF PARTY IN THE UNITED STATES TO WHOM MERCHANDISE WAS FIRST SHIPPED}, located at {U.S. ADDRESS TO WHICH MERCHANDISE WAS SHIPPED}.

(D) If the exported products covered by this certification are solar cells that are not in solar modules or products that contains solar cells that are not in a solar module, then the seller certifies that the solar cells produced in {COUNTRY} that are covered by this certification were not manufactured using wafers produced in China, regardless of whether sourced directly from a Chinese producer or from a downstream supplier.

(E) If the exported products covered by this certification are solar modules or products that contain solar modules, then the seller certifies that the solar modules produced in {COUNTRY} that are covered by this certification were not manufactured using wafers produced in China, regardless of whether sourced directly from a Chinese producer or from a downstream supplier, or the solar modules produced in {COUNTRY} that are covered by this certification were manufactured using wafers produced in China but no more than two of the following inputs that were used to manufacture the solar modules were produced in China, regardless of whether sourced directly from a Chinese producer or from a Chinese downstream supplier:

a. Silver Paste
b. Aluminum Frames
c. Glass
d. Backsheets
e. Ethylene-Vinyl Acetate
f. Junction Boxes

(F) The solar cells and/or solar modules covered by this certification are not covered by: (a) the antidumping duty or countervailing duty orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, from the People's Republic of China; or (b) the antidumping duty order on certain crystalline silicon photovoltaic products from Taiwan.

(G) This certification applies to the following sales to {NAME OF U.S. CUSTOMER}, located at {ADDRESS OF U.S. CUSTOMER} (repeat this block as many times as necessary):

of the Foreign Seller's Invoice to the U.S. Customer:
Applicable Line Item # of the Foreign Seller's Invoice to the U.S. Customer:
Producer Name:
Producer's Address:
Invoice # of the Producer's Invoice to the Foreign Seller (if the foreign seller and the producer are the same party, report ''NA'' here):

(H) I understand that {NAME OF FOREIGN COMPANY THAT MADE THE SALE TO THE UNITED STATES} is required to maintain a copy of this certification and sufficient documentation supporting this certification (*i.e.,* documents maintained in the normal course of business, or documents obtained by the certifying party, for example, product specification sheets, customer specification sheets, production records, invoices, *etc.*) until the later of: (1) the date that is five years after the latest entry date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries.

(I) I understand that {NAME OF FOREIGN COMPANY THAT MADE THE SALE TO THE UNITED STATES}is required to provide the U.S. importer with a copy of this certification and is required to provide U.S. Customs and Border Protection (CBP) and/or the U.S. Department of Commerce (Commerce) with a copy of this certification, and any supporting documents, upon the request of either agency.

(J) I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or Commerce.

(K) I understand that failure to maintain the required certification and supporting documentation, or failure to substantiate the claims made herein, or not allowing CBP and/or Commerce to verify the claims made herein, may result in a *de facto* determination that all sales to which this certification applies are sales of merchandise that is covered by the scope of the antidumping and countervailing duty orders on solar cells and solar modules from China. I understand that such a finding will result in:

(i) suspension of liquidation of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met;

(ii) the importer being required to post the antidumping and countervailing duty cash deposits determined by Commerce; and

(iii) the seller/exporter no longer being allowed to participate in the certification process.

(L) I understand that agents of the seller/exporter, such as freight forwarding companies or brokers, are not permitted to make this certification.

(M) This certification was completed and signed, and a copy of the certification was provided to the importer, on, or prior to, the date of shipment if the shipment date is after the date of publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**. If the shipment date is on or before the date of publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**, this certification was completed and signed, and a copy of the certification was provided to the importer, by no later than 45 days after publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**.

(N) I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make materially false statements to the U.S. government.

Signature
{NAME OF COMPANY OFFICIAL}
{TITLE OF COMPANY OFFICIAL}

_____
Date

[FR Doc. 2022–26671 Filed 12–7–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–051, C–570–052]

Certain Hardwood Plywood Products From the People's Republic of China: Preliminary Scope Determination and Affirmative Preliminary Determination of Circumvention of the Antidumping and Countervailing Duty Orders; Extension of Deadline To Certify Certain Entries

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On July 29, 2022, the U.S. Department of Commerce (Commerce) published a notice of a preliminary scope determination and affirmative preliminary circumvention determination in the **Federal Register** concerning the antidumping duty (AD) and countervailing duty (CVD) orders on certain hardwood plywood products (hardwood plywood) from the People's Republic of China (China). This notice informs parties that Commerce has extended the deadline for certain exporters and importers to certify entries of hardwood plywood exported from the Socialist Republic of Vietnam (Vietnam) that were entered, or withdrawn from warehouse, for consumption on or after June 17, 2020, and until August 28, 2022. This notice also informs interested parties that Commerce is requesting comments regarding a potential modification to certification program eligibility, and the process for demonstrating eligibility for the certification program. In addition, this notice provides several other procedural notifications to interested parties.

DATES: Applicable December 1, 2022.

FOR FURTHER INFORMATION CONTACT: Kabir Archuletta, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2593.

SUPPLEMENTARY INFORMATION: In the *Preliminary Determination,* Commerce established a certification program and a deadline for certain exporters and importers to certify that entries of hardwood plywood exported from Vietnam that entered, or were withdrawn from warehouse, for consumption on or after June 17, 2020, and until August 28, 2022, are not subject to the AD and CVD orders on hardwood plywood from China.[1] On September 12, 2022, Commerce extended the deadline for exporters and importers to complete these certifications from September 12, 2022,[2] to December 1, 2022.[3]

Extension and Modification

On November 30, 2022, Commerce issued a memorandum via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) notifying interested parties that it was extending the deadline for certifications of entries on or after June 17, 2020, and until August 28, 2022, until thirty days after the deadline for the final determination of this inquiry. Accordingly, unless the final determination is extended, certifications of entries on or after June 17, 2020, and until August 28, 2022, will be due by March 2, 2023.[4] Also on November 30, 2022, Commerce transmitted instructions to U.S. Customs and Border Protection (CBP) notifying CBP of the extended deadline.[5] The deadline for exporters and importers to complete the certification requirements established in the *Preliminary Determination* for entries on or after June 17, 2020, through August 28, 2022, is now March 2, 2023.

In addition, after considering interested party comments to date, Commerce is considering modifying its eligibility determination and allowing 22 of the companies that Commerce precluded from participating in the certification program in the *Preliminary Determination* (*i.e.,* companies that failed to cooperate by submitting unreliable information)[6] to certify entries during the period beginning on June 17, 2020, through December 31, 2021. However, as detailed below, should they wish to participate in the certification program after December 31, 2021, these 22 companies would still need to demonstrate their eligibility to certify entries occurring on or after January 1, 2022. As such, these 22 companies will not be allowed to participate in the certification program for entries that entered on or after January 1, 2022. Additionally, Commerce does not intend to modify the certification program for the 14 companies that are precluded from participating in this certification program in the *Preliminary Determination* (*i.e.,* companies that failed to respond to Commerce's requests for information)[7] and continue to find these companies are still not eligible to participate in the certification program until they are able to demonstrate their eligibility, as described below. Parties that wish to comment on this potential modification should do so in their case briefs.[8]

In the event of an affirmative final determination, Commerce intends to instruct CBP to liquidate all suspended entries from June 17, 2020, through December 31, 2021, pursuant to the previously issued automatic liquidation instructions (ALIs) applicable to those periods.

Entries made on or after January 1, 2022, that are ineligible for certification (from the 22 companies that failed to cooperate, the 14 companies that failed to respond, or for other reasons) shall remain subject to suspension until final assessment on those entries, whether by ALIs, or final results of administrative review.[9] Interested parties that wish to have their suspended entries reviewed or eligibility for the certification program reevaluated should request an administrative review of the relevant suspended entries during the next anniversary month of these *Orders* (*i.e.,* January 2023).[10]

Notification to Interested Parties

This notice is issued and published in accordance with section 781(b) of the Tariff Act of 1930, as amended and 19 CFR 351.225(f) and (h).[11]

Dated: December 1, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–26670 Filed 12–7–22; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Certain Hardwood Plywood Products from the People's Republic of China: Preliminary Scope Determination and Affirmative Preliminary Determination of Circumvention of the Antidumping and Countervailing Duty Orders,* 87 FR 45753, 45756–58 (July 29, 2022) (*Preliminary Determination*); *see also Certain Hardwood Plywood Products from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order,* 83 FR 504 (January 4, 2018); and *Certain Hardwood Plywood Products from the People's Republic of China: Countervailing Duty Order,* 83 FR 513 (January 4, 2018).

[2] *See Preliminary Determination,* 87 FR at 45756.

[3] *See* Memorandum, ''Extension of Deadline to Certify Certain Entries of Hardwood Plywood and Response to Request to Modify Cash Deposit Instructions,'' dated September 12, 2022; *see also Certain Hardwood Plywood Products from the People's Republic of China: Preliminary Scope Determination and Affirmative Preliminary Determination of Circumvention of the Antidumping and Countervailing Duty Orders; Extension of Deadline To Certify Certain Entries,* 87 FR 58063 (September 23, 2022).

[4] *See* Memorandum, ''Extension of Deadline to Certify Certain Entries of Hardwood Plywood and Response to Ministerial Error Allegations,'' dated November 30, 2022.

[5] *See* CBP Message 2335408, ''Notice of Amended Deadline for Certifications in the Vietnam-wide Circumvention Inquiry of the Antidumping and Countervailing Duty Orders on certain Hardwood Plywood Products and Veneered Panels from the People's Republic of China (A–570–051, C–570–052 and A–552–006, C–552–007),'' dated December 1, 2022; *see also* CBP Message 2335409, ''Notice of Amended Deadline for Certifications in the Scope Inquiry of the Antidumping and Countervailing Duty Orders on Certain Hardwood Plywood Products and Veneered Panels from the People's Republic of China (A–570–051 and C–570–052),'' dated December 1, 2022.

[6] *See Preliminary Determination* at Appendix V.

[7] *Id.*

[8] Commerce intends to establish the schedule for case and rebuttal briefs under 19 CFR 351.309(c) and (d) at a later date.

[9] Commerce continues to consider the process by which companies may demonstrate eligibility for the certification program in future segments and may determine to audit some or all of the certifications during this special excepted period (*i.e.,* June 17, 2020–December 31, 2021) by parties that subsequently seek to participate in the certification program. Commerce encourages interested parties to provide comments on this topic in their case briefs.

[10] *See* 19 CFR 351.213(b).

[11] Commerce significantly revised its scope regulations on September 20, 2021, with an effective date of November 4, 2021. *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 86 FR 52300 (September 20, 2021). The amendments to 19 CFR 351.225 apply to scope inquiries for which a scope ruling application is filed, as well as any scope inquiry self-initiated by Commerce, on or after November 4, 2021. The newly promulgated 19 CFR 351.226 applies to circumvention inquiries for which a circumvention request is filed, as well as any circumvention inquiry self-initiated by Commerce, on or after November 4, 2021. We note that these scope and circumvention inquiries were initiated prior to the effective date of the new regulations, and, thus, any reference to the regulations is to the prior version of the regulations.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC566]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Berth III New Mooring Dolphins Project in Ketchikan, Alaska

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

ACTION: Notice; issuance of incidental harassment authorization.

SUMMARY: NMFS has received a request from the City of Ketchikan, Alaska (COK) for the reissuance of a previously issued incidental harassment authorization (IHA) with the only change being effective dates. The initial IHA authorized take of nine species of marine mammals, by Level A and Level B harassment, incidental to construction.

DATES: This authorization is effective from October 1, 2023, through September 30, 2024.

ADDRESSES: An electronic copy of the final 2021 IHA previously issued to the COK, the Navy's application, and the **Federal Register** notices proposing and issuing the initial IHA may be obtained by visiting *https://www.fisheries.noaa.gov/action/incidental-take-authorization-berth-iii-new-mooring-dolphins-project-ketchikan-alaska.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Rob Pauline, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The construction is associated with the Berth III New Mooring Dolphins Project in Ketchikan, AK (March 3, 2021; 86 FR12411). The project has already been delayed by one year and NMFS had reissued the IHA to the COK (September 10, 2021; 86 FR 50704). None of the work covered in the initial IHA has been conducted. The initial IHA was effective from October 1, 2021, through September 30, 2022. The first reissued IHA was effective from October 1, 2022, through September 30, 2023. The COK has requested a subsequent reissuance of the IHA with new effective dates of October 1, 2023, through September 30, 2024. The scope of the activities and anticipated effects remain the same, authorized take numbers are not changed, and the required mitigation, monitoring, and reporting remains the same as included in the initial IHA. NMFS is, therefore, issuing an identical IHA to cover the incidental take analyzed and authorized in the initial IHA.

Background

Sections 101(a)(5)(A) and (D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On March 3, 2021, NMFS published final notice of our issuance of an IHA authorizing take of marine mammals incidental to the Berth III New Mooring Dolphins Project (86 FR 12411). The effective dates of that IHA were October 1, 2021, through September 30, 2022. On July 21, 2021, the COK informed NMFS that the project would be delayed by one year and requested a reissuance of the initial IHA. NMFS sent the reissued IHA to the COK on September 2, 2021 with effective dates of October 1, 2022, through September 30, 2023 (September 10, 2021; 86 FR 50704). None of the work identified in the initial IHA (*e.g.,* pile driving and removal) had occurred. On July 12, 2022, the COK submitted an additional request that we reissue an identical IHA that would be effective from October 1, 2023, through September 30, 2024, in order to conduct the construction work that was analyzed and authorized through the previously issued initial IHA. Therefore, reissuance of the IHA is appropriate.

Summary of Specified Activity and Anticipated Impacts

The planned activities (including mitigation, monitoring, and reporting), authorized incidental take, and anticipated impacts on the affected stocks are the same as those analyzed and authorized through the previously issued initial IHA and the first reissued IHA.

The purpose of the COK's Berth III construction project is to accommodate a new fleet of large cruise ships (*i.e.,* Bliss class) and to meet the needs of the growing cruise ship industry and its vessels in Southeast Alaska. The location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the initial IHA. The mitigation and monitoring are also as prescribed in the initial IHA.

Species that are expected to be taken by the planned activity include humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*), gray whale (*Eschrichtius robustus*), killer whale (*Orcinus orca*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), Dall's porpoise (*Phocoenoides dalli*), harbor porpoise (*Phocoena phocoena*), harbor seal (*Phoca vitulina*), and Steller sea lion (*Eumetopias jubatus*). A description of the methods and inputs used to estimate take anticipated to occur and, ultimately, the take that was authorized is found in the previous documents referenced above. The data inputs and methods of estimating take are identical to those used in the initial IHA. NMFS has reviewed recent Stock Assessment Reports, information on relevant Unusual Mortality Events, and recent scientific literature, and determined that no new information affects our original

analysis of impacts or take estimate under the initial IHA.

We refer to the documents related to the previously issued IHA, which include the **Federal Register** notice of the issuance of the initial 2021 IHA for the COK's construction work (86 FR 12411; March 3, 2021), the COK's application, the **Federal Register** notice of the proposed IHA (85 FR 71612; November 11, 2021), and all associated references and documents.

Determinations

The COK will conduct activities as analyzed in the initial 2021 IHA. As described above, the number of authorized takes of the same species and stocks of marine mammals are identical to the numbers that were found to meet the negligible impact and small numbers standards and authorized under the initial IHA and no new information has emerged that would change those findings. The reissued 2023 IHA includes identical required mitigation, monitoring, and reporting measures as the initial IHA, and there is no new information suggesting that our analysis or findings should change.

Based on the information contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (4) the Navy's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action with respect to environmental consequences on the human environment.

Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review. This action is consistent with categories of activities identified in CE B4 of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Because the only change to the IHA are effective dates, the CE on record for issuance of the initial IHA applies to this action.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the Alaska Regional Office, whenever we propose to authorize take for endangered or threatened species.

The effects of this proposed Federal action were adequately analyzed in NMFS' Biological Opinion for the Berth III New Mooring Dolphins Project, dated February 11, 2021, which concluded that the take NMFS proposed to authorize through this IHA would not jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify any designated critical habitat.

Authorization

NMFS has issued an IHA to the COK for in-water construction activities associated with the specified activity from October 1, 2023, through September 30, 2024. All previously described mitigation, monitoring, and reporting requirements from the initial 2021 IHA are incorporated.

Dated: December 5, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–26723 Filed 12–7–22; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2010–0041]

Collection of Information; Proposed Extension of Approval; Comment Request—Publicly Available Consumer Product Safety Information Database

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (PRA), the Consumer Product Safety Commission (CPSC) requests comments on a proposed extension of approval of a collection of information for the Publicly Available Consumer Product Safety Information Database. The CPSC will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from the Office of Management and Budget (OMB).

DATES: Submit written or electronic comments on the collection of information by February 6, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2010–0041, by any of the following methods:

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

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

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

Docket: For access to the docket to read background documents or comments received, go to: *https://www.regulations.gov,* and insert the docket number, CPSC–2010–0041, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: For further information, or a copy of the supporting statement, contact: Cynthia

Gillham, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; (301) 504–7791, or by email to: *cgillham@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Section 212 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) added section 6A to the Consumer Product Safety Act (CPSA), which requires the CPSC to establish and maintain a publicly available, searchable database (Database) on the safety of consumer products and other products or substances regulated by the CPSC. Among other things, section 6A of the CPSA requires the CPSC to collect reports of harm from the public for potential publication in the publicly available Database, and to collect and publish comments from manufacturers about reports of harm.

In a proposed rule published on May 24, 2010 (75 FR 29156), the CPSC announced that a proposed collection of information in conjunction with the Database, called the Publicly Available Consumer Product Safety Information Database, had been submitted to OMB for review and clearance under 44 U.S.C. 3501–3520. The CPSC issued a final rule on the Database on December 9, 2010 (75 FR 76832). The final rule interprets various statutory requirements in section 6A of the CPSA pertaining to the information to be included in the Database. The final rule also establishes provisions regarding submitting reports of harm; providing notice of reports of harm to manufacturers; publishing reports of harm and manufacturer comments in the Database; and dealing with confidential and materially inaccurate information.

OMB approved the collection of information for the Database under control number 3041–0146. OMB's most recent extension of approval, issued on March 31, 2020, will expire on March 31, 2023. Accordingly, the CPSC now proposes to request an extension of approval of this collection of information.

B. Information Collected Through the Database

The primary purpose of this information collection is to populate the publicly searchable Database of consumer product safety information mandated by section 6A of the CPSA. The Database information collection has four components: reports of harm, manufacturer comments, branding information, and the Small Batch Manufacturer Registry (SBMR).

Reports of Harm: Reports of harm communicate information regarding an injury, illness, or death, or any risk (as determined by CPSC) of injury, illness, or death, relating to the use of a consumer product or other product or substance regulated by the CPSC. Reports can be submitted to the CPSC by consumers; local, state, or federal government agencies; healthcare professionals; child service providers; public safety entities; and others. Reports may be submitted via the CPSC website (*www.SaferProducts.gov*), by telephone via a CPSC call center, or by email, fax, or mail using the incident report form (available for download or printing via the CPSC website). Reports may also originate as a free-form letter or email. Submitters must consent to including their report of harm in the publicly searchable Database.

Manufacturer Comments: Pursuant to the CPSIA, CPSC transmits a report of harm to the manufacturer or private labeler identified in the report, and the manufacturer or private labeler may then submit a comment to CPSC related to the report of harm (hereinafter ''manufacturer comment''). Manufacturer comments may be submitted through the business portal, by email, mail, or fax. The business portal is a feature of the Database that allows manufacturers and private labelers who register on the business portal to receive reports of harm and comment on such reports through the business portal. Use of the business portal expedites the receipt of reports of harm and business response times.

A manufacturer or private labeler may request that the CPSC designate information in a report of harm as confidential. Such a request may be made using the business portal, by email, by mail, or by fax. Additionally, any person or entity reviewing a report of harm or comment from a manufacturer or private labeler, either before or after publication in the Database, may request that the report or comment, or portions of the report or comment, be excluded from the Database because it contains materially inaccurate information. Such a request may be made by manufacturers or private labelers using the business portal, by email, mail or fax, and may be submitted by anyone else by email, mail, or fax.

Branding Information: Using the business portal, registered businesses may voluntarily submit branding information to assist CPSC in correctly and timely routing to them reports of harm involving their products. Brand names may be licensed to another entity for use in labeling consumer products manufactured by that entity. CPSC's understanding of licensing arrangements for consumer products helps to ensure that the correct manufacturer or private labeler is timely notified regarding a report of harm.

Small Batch Manufacturers Registry: The business portal also contains the SBMR, which is the online mechanism by which ''small batch manufacturers'' (as defined in the CPSA) can identify themselves to obtain relief from certain third-party testing requirements for children's products. To register as a small batch manufacturer, a business must attest that the company's income level, and the number of units of the covered product manufactured for which relief is sought, both fall within the statutory limits to receive relief from third party testing.

C. Estimated Burden

1. Estimated Annual Burden for Respondents

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN FOR REPORTS OF HARM

Collection type	Number of respondents	Response frequency [1]	Total annual responses	Minutes per response	Total burden, in hours [2]
Reports of Harm—submitted through website	4,498	1.45	6,522	12	1,304
Reports of Harm—submitted by phone	1,032	1.33	1,373	10	229
Reports of Harm—submitted by mail, email, fax	296	3.71	1,098	20	366

[1] Frequency of responses is calculated by dividing the number of responses by the number of respondents.

[2] Numbers have been rounded.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN FOR REPORTS OF HARM—Continued

Collection type	Number of respondents	Response frequency [1]	Total annual responses	Minutes per response	Total burden, in hours [2]
Total	5,826		8,993		1,899

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN FOR MANUFACTURER SUBMISSIONS

Collection type	Number of respondents	Response frequency [1]	Total annual responses	Minutes per response	Total burden, in hours [2]
Manufacturer Comments—submitted through website	437	4.53	1,980	117	3,861
Manufacturer Comments—submitted by mail, email, fax	115	1.44	166	147	407
Requests to Treat Information as Confidential—submitted through website	1	1.00	1	42	1
Requests to Treat Information as Confidential—submitted by mail, email, fax	0	N/A	0	72	0
Requests to Treat Information as Materially Inaccurate—submitted through website	97	1.46	142	165	391
Requests to Treat Information as Materially Inaccurate—submitted by mail, email, fax	22	1.23	27	195	88
Voluntary Brand Identification	513	1.00	513	10	86
Small Batch Manufacturer Identification	1,747	1.00	1,747	10	291
Total	2,932		4,576		5,125

Based on the data set forth in Tables 1 and 2 above, the annual reporting cost is estimated to be $443,089. This estimate is based on the sum of two estimated total figures for reports of harm and manufacturer or private labeler submissions. The estimated number of respondents and responses are based on the actual responses received in FY 2022. We assume that the number of responses and respondents will be similar in future years.

Reports of Harm: Table 1 sets forth the data used to estimate the burden associated with submitting reports of harm. Since the previous renewal of the collection, the number of annual reports of harm submitted by mail, email or fax decreased from 15,314 to 1,098; reports of harm submitted by phone decreased from 1,418 to 1,373; and reports of harm submitted through the website increased from 6,023 to 6,522.

We had previously estimated the time associated with the electronic and telephone submission of reports of harm at 12 and 10 minutes, respectively; and because we have had no indication that these estimates are not appropriate or accurate, we used those figures for present purposes as well. We estimate that the time associated with a paper or PDF form would be 20 minutes, on average.

To estimate the costs for submitting reports of harm, we multiplied the estimated total burden hours associated with reports of harm (1,304 hours + 229 hours + 366 hours = 1,899 hours) by an estimated total compensation for all workers in private industry of $38.61 per hour,[3] which results in an estimated cost of $73,320 (1,899 hours × $38.61 per hour = $73,320 FY22).

Manufacturer Submissions: Tables 2 and 3 set forth the data used to estimate the burden associated with manufacturer and private labeler submissions to the Database. We observed that a large percentage of the general comments come from a few businesses, and we assumed that the experience of a business that submits many comments each year would be different from one that submits only a few. Accordingly, previously, we divided all responding businesses into three groups based on the number of general comments submitted, and then we selected several businesses to contact from each group. The first group contacted consisted of businesses that submitted 50 or more comments, accounting for 31 percent of all general comments received. The second group contacted included businesses that submitted 6 to 49 comments, accounting for 39 percent of all general comments received. The last group contacted included businesses that submitted no more than 5 comments, accounting for 30 percent of all general comments received. We asked each company how long it typically takes to research, compose, and enter a comment or a claim of materially inaccurate information.

To estimate the burden associated with submitting a general comment regarding a report of harm through the business portal, we averaged the burden provided by each company within each group, and then we calculated a weighted average from the three groups, weighting each group by the proportion of comments received from that group. We found that the average time to submit a general comment regarding a report of harm is 117 minutes, based on the data in Table 3 (((15 minutes + 45 minutes + 30 minutes + 15 minutes)/4 companies)*.31 + ((105 minutes + 45 minutes + 150 minutes + 15 minutes)/4 companies)*.39 + ((240 minutes + 60 minutes + 480 minutes)/3 companies)*.30 = 117 minutes).

[3] U.S. Department of Labor, Bureau of Labor Statistics, Table 4 of the Employer Costs for Employee Compensation (ECEC), Private Industry workers, by occupational group, Mar 2022 (data extracted on 10/3/2022 from: *https://www.bls.gov/news.release/archives/ecec_06162022.pdf.*

TABLE 3—ESTIMATED BURDEN TO ENTER A GENERAL COMMENT IN THE DATABASE

Group	Company	General comments
Group 1 (≤50 comments)	Company A	15 minutes.
	Company B	45 minutes.
	Company C	30 minutes.
	Company D	15 minutes.
Group 2 (6–49 comments)	Company A	105 minutes.
	Company B	45 minutes.
	Company C	150 minutes.
	Company D	15 minutes.
Group 3 (≤5 comments)	Company A	240 minutes.
	Company B	60 minutes.
	Company C	480 minutes.

Registered businesses generally submit comments through the CPSC website. Unregistered businesses submit comments by mail, email, or fax. We estimate that submitting comments via mail, email, or fax takes a little longer because often, we must ask businesses to amend their submissions to include the required certifications. Thus, we estimated that, on average, comments submitted by mail, email, or fax take 30 minutes longer than comments submitted through the CPSC website (117 minutes + 30 minutes = 147 minutes).

The submission of a claim of materially inaccurate information is a relatively rare event for all respondents, so we averaged all responses together. Eight of the businesses contacted had submitted claims of materially inaccurate information. We found that the average time to submit a claim that a report of harm contains a material inaccuracy is 165 minutes ((30 minutes + 90 minutes + 45 minutes + 90 minutes + 60 minutes + 660 minutes + 45 minutes + 300 minutes)/8 companies = 165 minutes).

Registered businesses generally submit claims of materially inaccurate information through the business portal. Unregistered businesses submit such claims by mail, email, or fax. We estimate that submitting claims via mail, email, or fax takes a little longer because we often must ask businesses to amend their submission to include the required certifications. Thus, we estimate that, on average, claims submitted by mail, email, or fax take 30 minutes longer than those submitted through the CPSC website (165 minutes + 30 minutes = 195 minutes).

The submission of a claim of confidential information is another relatively rare event for all respondents, so we averaged all responses together. Five of the businesses contacted had submitted claims of confidential information. We found that the average time to submit a claim that a report of harm contains confidential information through the CPSC website is 42 minutes ((45 minutes + 15 minutes + 60 minutes + 30 minutes + 60 minutes)/5 companies = 42 minutes).

Registered businesses generally submit confidential information claims through the business portal. Unregistered businesses submit confidential information claims by mail, email, or fax. We estimate that submitting claims by mail, email, or fax takes a little longer because often, we must ask businesses to amend their submission to include the required certifications. Thus, we estimate that a confidential information claim submitted by mail, email, or fax would take 30 minutes longer than those submitted through the CPSC website (42 minutes + 30 minutes = 72 minutes).

For voluntary brand identification, we estimate that a response would take 10 minutes, on average. Most responses consist only of the brand name and a product description. In many cases, a business will submit multiple entries in a brief period of time, and we can see from the date and time stamps on these records that an entry often takes less than 2 minutes. CPSC staff enters the same data in a similar form, based on our own research, and that experience was also factored into our estimate.

For small batch manufacturer identification, we estimate that a response would take 10 minutes, on average. The form consists of three check boxes and the information should be readily accessible to the respondent.

The responses summarized in Table 2 are generally submitted by manufacturers. To avoid underestimating the cost associated with the collection of this data, we assigned the higher hourly wage associated with a manager or professional in goods-producing industries to these tasks. To estimate the cost of manufacturer submissions, we multiplied the estimated total burden hours in Table 2 (5,125 hours), by an estimated total compensation for a manager or professional in goods-producing industries of $72.15 per hour,[4] which results in an estimated cost of $ 369,769 (5,125 hours × $72.15 per hour = $369,769).

Therefore, the total estimated annual cost to respondents is $443,089 ($73,320 burden for reports of harm + $369,769 burden for manufacturer submissions = $443,089).

2. Estimated Annual Burden on Government

We estimate the annualized cost to the CPSC to be $981,516. This figure is based on the costs for four categories of work for the Database: Reports of Harm, Materially Inaccurate Information Claims, Manufacturer Comments, and Small Batch Identification. Each category is described below. No government cost is associated with firms' voluntary brand identification because this information is entered directly into the Database by the manufacturer with no processing required by the government. The information assists the government in directing reports of harm to the correct manufacturer. Because we only have one request to treat information as confidential in FY 2022, we included the government's time to process this claim with the claims of materially inaccurate information.

Reports of Harm: The Reports of Harm category includes many different tasks. Some costs related to this category are from two data entry contracts. Tasks related to these contracts include clerical coding of the report, such as identifying the type of consumer product reported and the appropriate associated hazard, as well as performing quality control on the data in the report. Contractor A spends an estimated 4,940

[4] U.S. Department of Labor, Bureau of Labor Statistics, Table 4 of the Employer Costs for Employee Compensation (ECEC), Private Industry workers, by occupational group, Mar 2022 (data extracted on 8/2/2022 from: *https://www.bls.gov/news.release/ecec.t04.htm.*

hours per year performing these tasks. With an hourly rate of $34.53 for contractor services, the annual cost to the government of contract A is $170,578.

The Reports of Harm category also includes sending consent requests for reports when necessary, processing that consent when received, determining whether a product is out of CPSC's jurisdiction, and confirming that pictures and attachments do not have any personally identifiable information. The Reports of Harm category also entails notifying manufacturers or private labelers when one of their products is reported, completing a risk of harm determination form for every report eligible for publication, referring some reports to a subject matter expert within the CPSC for a determination whether the reports meet the requirement of having a risk of harm, and determining whether a report meets all the statutory and regulatory requirements for publication. Detailed costs are:

TABLE 4—ESTIMATED COSTS FOR REPORTS OF HARM TASK

Grade level	Number of hours (annual)	Total compensation per hour	Total annual cost
Contract A	4,940	$34.53	$170,578
7	2,912	40.44	117,761
9	1,456	49.47	72,028
12	3,328	71.74	238,751
13	1,248	85.31	106,467
14	832	100.81	83,874
Total	14,716	.....	789,459

Materially Inaccurate Information (MII) Claims: The MII claims category includes reviewing and responding to claims, participating in meetings where the claims are discussed, and completing a risk of harm determination on reports when a company alleges that a report does not describe a risk of harm.

TABLE 5—ESTIMATED COSTS FOR MII CLAIMS TASK

Grade level	Number of hours (Annual)	Total compensation per hour	Total annual cost
12	312	$71.74	$22,383
13	208	85.31	17,744
14	312	100.81	31,453
15	21	118.57	2,490
SES	42	132.43	5,562
Total	895	.....	79,632

Manufacturer Comments: The Comments category includes reviewing and accepting or rejecting comments.

TABLE 6—ESTIMATED COSTS FOR MANUFACTURER COMMENTS TASK

Grade level	Number of hours (Annual)	Total compensation per hour	Total annual cost
12	62	$71.74	$4,448
13	104	85.31	8,872
Total	166	.....	13,320

Small Batch Manufacturer Identification: The Small Batch Manufacturer Identification category includes time spent posting the list of small batch registrations, as well as answering companies' questions on registering as a Small Batch Manufacturer and the implications of small batch registration.

TABLE 7—ESTIMATED COSTS FOR SMALL BATCH TASK

Grade level	Number of hours (annual)	Total compensation per hour	Total annual cost
15	642	$118.57	$76,122

TABLE 7—ESTIMATED COSTS FOR SMALL BATCH TASK—Continued

Grade level	Number of hours (annual)	Total compensation per hour	Total annual cost
Total	642		76,122

We estimate the annualized cost to the CPSC of $958,533, by adding the four categories of work related to the Database summarized in Tables 4 through 7 (Reports of Harm ($789,459) + MII Claims ($79,632) + Manufacturer Comments ($13,320) + Small Batch Identification ($76,122) = $958,533).

This information collection renewal request is based on an estimated 7,024 burden hours per year for the Database, which represents a decrease of 6,319 hours since this collection of information was last approved by OMB in 2019. Total burden from reports of harm decreased by 4,647 hours (from 6,546 to 1,899), and total burden for manufacturer's submission decreased by 1,672 hours, from 6,797 to 5,125. Declines in total burden hours are attributed to a decline in the number of reports of harm submitted by mail, email, and fax. However, CPSC staff discovered that the 2019 update for this control number contained an error that increased the estimated burden, by inadvertently including a large number of death certificates collected by CPSC staff in the reports of harm submitted by mail, email, and fax. In addition, for this update there was a decrease in small batch manufacturer activity.

D. Request for Comments

The CPSC solicits written comments from all interested persons about the proposed collection of information. The CPSC specifically solicits information relevant to the following topics:

- Whether the collection of information described above is necessary for the proper performance of the CPSC's functions, including whether the information would have practical utility.
- Whether the estimated burden of the proposed collection of information is accurate.
- Whether the quality, utility, and clarity of the information to be collected could be enhanced.
- Whether the burden imposed by the collection of information could be minimized by using automated, electronic, or other technological collection techniques, or other forms of information technology.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2022–26643 Filed 12–7–22; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Committee Renewal of Department of Defense Federal Advisory Committees—Department of Defense Wage Committee

AGENCY: Department of Defense (DoD).

ACTION: Committee renewal of federal advisory committee.

SUMMARY: The DoD is publishing this notice to announce that it is renewing the Department of Defense Wage Committee (''the DoD Wage Committee'').

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–697–1142.

SUPPLEMENTARY INFORMATION: The DoD Wage Committee is being renewed, pursuant to 5 CFR 532.227(a), as directed by 5 U.S.C. 5343(c), and in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C., Appendix) and 41 CFR 102–3.50(c), and as part of the renewal process, the DoD is filing a new DoD Wage Committee charter along with its membership balance plan. The charter and contact information for the DoD Wage Committee's Designated Federal Officer (DFO) are found at *https://www.facadatabase.gov/FACA/apex/FACAPublicAgencyNavigation*.

The DoD Wage Committee provides independent advice and recommendations on matters relating to the conduct of wage surveys and the establishment of wage schedules for all appropriated fund and non-appropriated fund wage areas. The DoD Wage Committee, as directed by 5 CFR 532.209 and 532.227 and the Office of Personnel Management Operating Manual, Federal Wage System, Appropriated and Non-Appropriated Funds, S3–2 Agency Level, provides the Secretary of Defense or the Deputy Secretary of Defense (''the DoD Appointing Authority''), through the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), independent advice and recommendations on all matters relating to the conduct of wage surveys and the establishment of wage schedules for all appropriated fund and non-appropriated fund wage areas of blue-collar employees within the Federal Wage System.

The DoD Wage Committee shall: (a) consider and makes recommendations to the DoD on any matter involved in developing specifications for a wage survey on which the DoD proposes not to accept the recommendations of a local wage survey committee and any matters on which a minority report has been filed; (b) consider the survey data, upon completion of a wage survey, of the local wage survey committee's report and recommendations, and the statistical analyses and proposed pay schedules derived from them, as well as any other data or recommendations pertinent to the survey, and recommends wage schedules to the pay-fixing authority; and (c) have a majority of the DoD Wage Committee to constitute a decision and recommendation of the DoD Wage Committee, but a member of the minority may file a report with the DoD Wage Committee's recommendations. All DoD Wage Committee work will be in response to written terms of reference approved by the DoD Appointing Authority or the USD(P&R), unless otherwise provided by in statute or Presidential directive.

The DoD Wage Committee; pursuant to 5 CFR 532.227(b), shall consist of five members, with the chairperson and two members designated by the head of the DoD. Of the remaining two members, pursuant to 5 CFR 532.227(b)(1), one member shall be designated by each of the two labor organizations having the largest number of wage employees covered by exclusive recognition in the DoD. The other two members shall have management backgrounds.

The appointment of DoD Wage Committee members will be approved by the DoD Appointing Authority, for a term of service of one-to-two years, with

annual renewal, in accordance with DoD policy and procedures. No member, unless approved by the DoD Appointing Authority, may serve more than two consecutive terms of service on the DoD Wage Committee or serve on more than two DoD Federal advisory committees at one time.

DoD Wage Committee members who are full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, shall be appointed pursuant to 41 CFR 102–3.130(a) to serve as regular government employee members. As determined by the DoD Appointing Authority, the individuals designated by each of the two labor organizations having the largest number of wage employees covered by exclusive recognition in the DoD shall be appointed pursuant to 41 CFR 102–3.130(a) to serve as representative members consistent with 5 CFR 532.227(b)(1). Individual members who are appointed to serve as representative members shall represent the views of their designated labor organizations. All other members of the DoD Wage Committee are appointed to exercise their own best judgment on behalf of the DoD, without representing any particular point of view, and to discuss and deliberate in a manner that is free from conflict of interest. With the exception of reimbursement of official DoD Wage Committee-related travel and per diem, DoD Wage Committee members serve without compensation.

The DoD Appointing Authority shall appoint the DoD Wage Committee's leadership from among the membership previously approved to serve on the DoD Wage Committee in accordance with DoD policy and procedures for a term of service of one-to-two years, with annual renewal, not to exceed the member's approved appointment.

The public or interested organizations may submit written statements to the DoD Wage Committee membership about the DoD Wage Committee's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the DoD Wage Committee. All written statements shall be submitted to the DFO for the DoD Wage Committee, and this individual will ensure that the written statements are provided to the membership for their consideration.

Dated: December 5, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–26725 Filed 12–7–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–19–000]

National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that November 22, 2022, National Fuel Gas Supply Corporation (National Fuel) filed a prior notice request for authorization, in accordance with 18 CFR Sections 157.205, 157.208, 157.210 and 157.216 of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act and National Fuel's blanket certificate issued in Docket No. CP83–4–000 to construct, own, and operate (1) approximately 2.4 miles of new 12-inch-diamet pipeline and appurtenances on the Line SNY Lateral; (2) replace approximately 6.4 miles of 12-inch-diameter vintage bare steel pipe on Line SNY; (3) abandon approximately 8.1 miles of 12-inch-diameter vintage bare steel pipe; and (4) increase the maximum allowable operating pressure of Line SNY. All of the facilities are located in Erie County, New York. National Fuel estimates that the cost of the project will be approximately $30 million, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application should be directed to Margaret Sroka, Senior Attorney, National Fuel Gas Supply Corporation, 6363 Main Street, Williamsville, New York 14221, by telephone at (716) 857–7066, or by email at *srokam@natfuel.com.*

Pursuant to Section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on January 31, 2023. How to file protests, motions to intervene, and comments is explained below.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[2] any person [3] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's

[1] 18 CFR (Code of Federal Regulations) § 157.9.

[2] 18 CFR 157.205.

[3] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

regulations,[4] and must be submitted by the protest deadline, which is January 31, 2023. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [5] and the regulations under the NGA [6] by the intervention deadline for the project, which is January 31, 2023. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/how-guides.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before January 31, 2023. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP23–19–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov)* under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [7]

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP23–19–000.

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To deliver via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FERCOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: Margaret Sroka, Senior Attorney, National Fuel Gas Supply Corporation, 6363 Main Street, Williamsville, New York 14221; or email at *srokam@natfuel.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *https://www.ferc.gov/ferc-online/overview.*

Dated: December 2, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–26687 Filed 12–7–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RD22–4–000]

Notice of Staff Attendance at the ReliabilityFirst Annual Meeting of the Members and the ReliabilityFirst Board of Directors Meeting

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission staff may attend the following meetings:

The ReliabilityFirst Annual Meeting of the Members, The Ritz-Carlton, Pentagon City, 1250 South Hayes Street, Arlington, VA 22202, December 8, 2022 (9 a.m.–10:30 a.m. eastern time), and

The ReliabilityFirst Board of Directors Meeting, The Ritz-Carlton, Pentagon City, 1250 South Hayes Street, Arlington, VA 22202, December 8, 2022 (10:30 a.m.–1 p.m. eastern time).

Further information regarding these meetings may be found at: *https://rfirst.org/about/Pages/Upcoming-Events.aspx.*

The discussions at the meetings, which are open to the public, may address matters at issue in the following Commission proceeding:

Docket No. RD22–4–000—Registration of Inverter-Based Resources

[4] 18 CFR 157.205(e).

[5] 18 CFR 385.214.

[6] 18 CFR 157.10.

[7] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

For further information, please contact Jonathan First, 202–502–8529, or *jonathan.first@ferc.gov.*

Dated: December 2, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–26682 Filed 12–7–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC22–35–000]

Commission Information Collection Activities (FERC–725J); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–725J (Definition of the Bulk Electric System), which will be submitted to the Office of Management and Budget (OMB). The Commission published a 60-day notice in the **Federal Register** on September 28, 2022 and received no comments on the 60-day notice.

DATES: Comments on the collection of information are due January 9, 2023.

ADDRESSES: Send written comments on FERC 725J to OMB through *www.reginfo.gov/public/do/PRAMain,* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB Control Number 1902–0259 (Definition of the Bulk Electric System) in the subject line. Your comments should be sent within 30 days of publication of this notice in the **Federal Register**.

Please submit copies of your comments (identified by Docket No. IC22–35–000 and the form) to the Commission as noted below. Electronic filing through *https://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.
  - *Mail via U.S. Postal Service Only, addressed to:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.
  - *Hand (Including Courier) Delivery to:* Federal Energy Regulatory Commission, Secretary of the Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Please reference the specific collection number(s) and/or title(s) in your comments.

Instructions: OMB submissions must be formatted and filed in accordance with submission guidelines at: *www.reginfo.gov/public/do/PRAMain.* Using the search function under the ''Currently Under Review field,'' select Federal Energy Regulatory Commission; click ''submit'' and select ''comment'' to the right of the subject collection. FERC submissions must be formatted and filed in accordance with submission guidelines at: *https://www.ferc.gov.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *https://www.ferc.gov.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov* and telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC–725J (Definition of the Bulk Electric System).

OMB Control No.: 1902–0259.

Type of Request: Three-year extension of the FERC–725J with no changes to the current reporting requirements.

Abstract: On December 20, 2012, the Commission issued Order No. 773, a Final Rule approving NERC's modifications to the definition of ''bulk electric system'' and the Rules of Procedure exception process to be effective July 1, 2013. On April 18, 2013, in Order No. 773–A, the Commission largely affirmed its findings in Order No. 773. In Order Nos. 773 and 773–A, the Commission directed NERC to modify the definition of bulk electric system in two respects: (1) modify the local network exclusion (exclusion E3) to remove the 100 kV minimum operating voltage to allow systems that include one or more looped configurations connected below 100 kV to be eligible for the local network exclusion; and (2) modify the exclusions to ensure that generator interconnection facilities at or above 100 kV connected to bulk electric system generators identified in inclusion I2 are not excluded from the bulk electric system.[1] Each year the Regions and NERC may need to act on exception requests submitted by U.S. only transmission owners, generator owners and distribution providers. We have revised the estimate for exception requests from 20 exception requests to 10, which is more accurate to the volume of received exception requests. Regarding Implementation Plans and Compliance, FERC estimates that 10% of the U.S. registered entities may have to perform this task on a continuing basis.

Type of Respondents: Generator owners, distribution providers, other NERC-registered entities.

Estimate of Annual Burden.[2] The Commission estimates the annual public reporting burden and cost[3] for the information collection as:

[1] *Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure,* Order No. 773, 141 FERC ¶ 61,236 (2012); *order on reh'g,* Order No. 773–A, 143 FERC ¶ 61,053 (2013); *order on reh'g and clarification,* 144 FERC ¶ 61,174 (2013); *aff'd sub nom., People of the State of New York and the Pub. Serv. Comm'n of New York* v. *FERC,* No. 13–2316 (2d. Cir. 2015). On June 13, 2013, the Commission granted NERC's request for extension of time and extended the effective date for the revised definition of bulk electric system and the Rules of Procedure exception process to July 1, 2014. *Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure,* 143 FERC ¶ 61,231, at P 13 (2013). On March 20, 2014, the Commission approved NERC's revisions to the definition of bulk electric system and determined the revisions either adequately address the Commission's Order Nos. 773 and 773–A directives or provide an equally effective and efficient approach. See *order approving revised definition,* 146 FERC ¶ 61,199 (2014).

[2] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. See 5 CFR 1320 for additional information on the definition of information collection burden.

[3] The estimated hourly cost (salary plus benefits) is based on the figures for August 2022 posted by the Bureau of Labor Statistics for the Utilities sector (available at Sector 22—Utilities—May 2021 OEWS Industry-Specific Occupational Employment and Wage Estimates (*bls.gov*)) and updated June 2022 for benefits information (at Employer Costs for Employee Compensation Summary—2022 Q01 Results (*bls.gov*)). The hourly estimates for salary plus benefits are:

—Legal (code 23–0000), $145.35

—File Clerks (code 43–4071), $34.38

—Electrical Engineer (code 17–2071), $77.02

The average hourly burden cost for this collection is $85.58 [($145.35 + $34.38 + $ 77.02)/3 = $85.58] and is rounded to $86.00 an hour.

FERC–725J (DEFINITION OF THE BULK ELECTRIC SYSTEM)

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden (hrs.) & cost ($) per response (4)	Total annual burden hours & total annual cost ($) (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1)
Generator Owners, Distribution Providers, and Transmission Owners (Exception Request).	10	1	10	120 hrs.; $10,320	1,200 hrs.; $103,200	$10,320
All Registered Entities (Implementation Plans and Compliance).	157	1	157	350 hrs.; $30,100	54,950 hrs.; $4,725,700	30,100
Local Distribution Determinations	1	1	1	92 hrs.; $7,912	92 hrs.; $7,912	7,912
Total			168		56,242 hrs.; $4,836,812	

Comments: Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: December 2, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–26676 Filed 12–7–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC23–6–000]

Empire Pipeline, Inc.; Notice of Filing

Take notice that on November 15, 2022, Empire Pipeline, Inc. submitted a request for waiver of the Federal Energy Regulatory Commission's (Commission) requirement to provide its certified public accountant (CPA) certification statement for the 2022 FERC Form No. 2 on the basis of the calendar year ending December 31.

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 and 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. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

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 FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5 p.m. Eastern Time on January 5, 2023.

Dated: December 2, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–26688 Filed 12–7–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER22–1192–003.
Applicants: Constellation Mystic Power, LLC.
Description: Compliance filing: Compliance Filing of Settlement Tariff Sheets to be effective 6/1/2022.
Filed Date: 12/2/22.
Accession Number: 20221202–5079.
Comment Date: 5 p.m. ET 12/23/22.

Docket Numbers: ER23–175–001.
Applicants: Daggett Solar Power 3 LLC.
Description: Tariff Amendment: Amendment to Market-Based Rate Application to be effective 12/26/2022.
Filed Date: 12/2/22.
Accession Number: 20221202–5111.
Comment Date: 5 p.m. ET 12/23/22.

Docket Numbers: ER23–545–000.
Applicants: PacifiCorp.
Description: § 205(d) Rate Filing: OATT Revised Attachment H–1—Attachment 14 to be effective 2/2/2023.
Filed Date: 12/2/22.
Accession Number: 20221202–5019.
Comment Date: 5 p.m. ET 12/23/22.

Docket Numbers: ER23–546–000.
Applicants: Meadowlark Wind I LLC.
Description: Baseline eTariff Filing: Reactive Power Compensation Baseline to be effective 1/31/2023.
Filed Date: 12/2/22.
Accession Number: 20221202–5032.
Comment Date: 5 p.m. ET 12/23/22.

Docket Numbers: ER23–547–000.
Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2022–12–02_SA 3296 ITC–DIG J1262 1st Rev GIA to be effective 11/22/2022.

Filed Date: 12/2/22.

Accession Number: 20221202–5049.

Comment Date: 5 p.m. ET 12/23/22.

Docket Numbers: ER23–548–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 1313R17 Oklahoma Gas and Electric Company NITSA and NOA to be effective 2/1/2023.

Filed Date: 12/2/22.

Accession Number: 20221202–5061.

Comment Date: 5 p.m. ET 12/23/22.

Docket Numbers: ER23–549–000.

Applicants: Consolidated Edison Company of New York, Inc., New York Independent System Operator, Inc.

Description: § 205(d) Rate Filing: Consolidated Edison Company of New York, Inc. submits tariff filing per 35.13(a)(2)(iii: NYISO-ConEd Joint 205: TPIA NYISO, ConEd, Transco SA2734—CEII to be effective 11/17/2022.

Filed Date: 12/2/22.

Accession Number: 20221202–5063.

Comment Date: 5 p.m. ET 12/23/22.

Docket Numbers: ER23–550–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA No. 3741, Queue #Y3–012 (amend) to be effective 12/23/2013.

Filed Date: 12/2/22.

Accession Number: 20221202–5085.

Comment Date: 5 p.m. ET 12/23/22.

Docket Numbers: ER23–551–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Rate Schedule No. 314—Pseudo-Tie with WAPA and AEPCO to be effective 2/1/2023.

Filed Date: 12/2/22.

Accession Number: 20221202–5089.

Comment Date: 5 p.m. ET 12/23/22.

Docket Numbers: ER23–552–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Putney Solar (Solar & Battery) LGIA Filing to be effective 11/23/2022.

Filed Date: 12/2/22.

Accession Number: 20221202–5095.

Comment Date: 5 p.m. ET 12/23/22.

Docket Numbers: ER23–553–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: BS Solar (Solar & Battery) LGIA Filing to be effective 11/23/2022.

Filed Date: 12/2/22.

Accession Number: 20221202–5097.

Comment Date: 5 p.m. ET 12/23/22.

Docket Numbers: ER23–554–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.15: Macon Parkway Solar Project LGIA Termination Filing to be effective 12/2/2022.

Filed Date: 12/2/22.

Accession Number: 20221202–5098.

Comment Date: 5 p.m. ET 12/23/22.

Docket Numbers: ER23–555–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: ISA, SA No. 6710; Queue No. AE2–027 to be effective 11/2/2022.

Filed Date: 12/2/22.

Accession Number: 20221202–5110.

Comment Date: 5 p.m. ET 12/23/22.

Docket Numbers: ER23–556–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: First Revised ISA, SA No. 3395; Queue No. AE1–134 to be effective 11/2/2022.

Filed Date: 12/2/22.

Accession Number: 20221202–5120.

Comment Date: 5 p.m. ET 12/23/22.

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: December 2, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–26685 Filed 12–7–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15280–000]

Stonecat Hydro, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On June 9, 2022, Stonecat Hydro, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility the Lower Swanton Dam Hydroelectric Project No. 15280 (project), to be located on the Missisquoi River in the Town of Swanton, Franklin County, Vermont. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) an existing dam (Swanton Dam) that includes: (a) a west abutment that includes two 8-foot-long, 8-foot-high wooden headgates; and (b) an approximately 330-foot long spillway that would be retrofitted with: (i) 2-foot-high flashboards with a crest elevation of 110.0 feet mean sea level (msl) at the top of the flashboards; and (ii) a new 60-foot-long, 100-foot-wide reinforced concrete powerhouse at the east end of the spillway that includes three 283-kilowatt (kW) turbine-generator units, with a total installed capacity of approximately 850 kW; (2) an impoundment with a surface area of approximately 180 acres at an elevation of 110 feet msl; (3) a new 60-foot-long, 100-foot-wide intake structure that includes a reinforced concrete forebay and trashrack upstream of the new powerhouse; (4) a new 150-foot-long, 60-foot wide bedrock and reinforced concrete tailrace; (5) a new 12.47-kilovolt transmission line that would connect the turbine-generators to the local distribution grid; (6) a new fish passage facility that would utilize an approximately 300-foot-long, existing canal downstream of the west abutment; (7) an existing parking lot to provide access to project facilities; and (8) appurtenant facilities. The estimated annual generation of the Lower Swanton Dam Hydroelectric Project would be 3,580 megawatt-hours.

Applicant Contact: Mr. Peter Blanchfield, Chief Executive Officer,

Stone Ridge Hydro, LLC, 16 Harrogate Road, New Hartford, New York 13413; phone: (650) 644–6003; email: *peter.blanchfield@gmail.com.*

FERC Contact: John Baummer; phone: (202) 502–6837; email: *john.baummer@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–15280–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's website at *https://www.ferc.gov/.* Enter the docket number (P–15280) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: December 2, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–26684 Filed 12–7–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP23–240–000.
Applicants: MountainWest Overthrust Pipeline, LLC.
Description: § 4(d) Rate Filing: WIC TSA 6344 Amendment No.1 to be effective 12/1/2022.
Filed Date: 12/1/22.
Accession Number: 20221201–5028.
Comment Date: 5 p.m. ET 12/13/22.

Docket Numbers: RP23–241–000.
Applicants: Sea Robin Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Rate Case filed on 12–1–22 to be effective 1/1/2023.
Filed Date: 12/1/22.
Accession Number: 20221201–5040.
Comment Date: 5 p.m. ET 12/13/22.

Docket Numbers: RP23–242–000.
Applicants: Maritimes & Northeast Pipeline, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rates—Northern to Direct Energy 2739 eff 12–1–22 to be effective 12/1/2022.
Filed Date: 12/1/22.
Accession Number: 20221201–5043.
Comment Date: 5 p.m. ET 12/13/22.

Docket Numbers: RP23–243–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Various Releases eff 12–1–22 to be effective 12/1/2022.
Filed Date: 12/1/22.
Accession Number: 20221201–5047.
Comment Date: 5 p.m. ET 12/13/22.

Docket Numbers: RP23–244–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Negotiated Rate Capacity Release Agreements—12/1/2022 to be effective 12/1/2022.
Filed Date: 12/1/22.
Accession Number: 20221201–5048.
Comment Date: 5 p.m. ET 12/13/22.

Docket Numbers: RP23–245–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negoitated Rates—Various Releases eff 12–1–22 to be effective 12/1/2022.
Filed Date: 12/1/22.
Accession Number: 20221201–5050.
Comment Date: 5 p.m. ET 12/13/22.

Docket Numbers: RP23–246–000.
Applicants: Columbia Gas Transmission, LLC.
Description: § 4(d) Rate Filing: TCO PAL Negotiated Rate Agreements to be effective 12/1/2022.
Filed Date: 12/1/22.
Accession Number: 20221201–5096.
Comment Date: 5 p.m. ET 12/13/22.

Docket Numbers: RP23–247–000.
Applicants: Golden Triangle Storage, Inc.
Description: Compliance filing: Compliance filing 2022 Dec to be effective N/A.
Filed Date: 12/1/22.
Accession Number: 20221201–5097.
Comment Date: 5 p.m. ET 12/13/22.

Docket Numbers: RP23–248–000.
Applicants: Eastern Gas Transmission and Storage, Inc.
Description: Compliance filing: EGTS—December 1, 2022 Notice of Cancellation of Service Agreements to be effective N/A.
Filed Date: 12/1/22.
Accession Number: 20221201–5112.
Comment Date: 5 p.m. ET 12/13/22.

Docket Numbers: RP23–249–000.
Applicants: MarkWest Pioneer, L.L.C.
Description: § 4(d) Rate Filing: Quarterly Fuel Adjustment and Housekeeping to be effective 1/1/2023.
Filed Date: 12/1/22.
Accession Number: 20221201–5115.
Comment Date: 5 p.m. ET 12/13/22.

Docket Numbers: RP23–250–000.
Applicants: Dauphin Island Gathering Partners.
Description: § 4(d) Rate Filing: Clean-Up Revision Filing to be effective 1/1/2023.
Filed Date: 12/1/22.
Accession Number: 20221201–5118.
Comment Date: 5 p.m. ET 12/13/22.

Docket Numbers: RP23–252–000.
Applicants: Gas Transmission Northwest LLC.
Description: Compliance filing: Annual Fuel Charge Adjustment 2022 Report to be effective N/A.
Filed Date: 12/1/22.
Accession Number: 20221201–5133.
Comment Date: 5 p.m. ET 12/13/22.

Docket Numbers: RP23–253–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: Rate Schedule S–2 Tracker Filing (ASA/PCB) eff 12/1/2022 to be effective 12/1/2022.
Filed Date: 12/1/22.
Accession Number: 20221201–5134.
Comment Date: 5 p.m. ET 12/13/22.

Docket Numbers: RP23–254–000.
Applicants: ANR Pipeline Company.
Description: § 4(d) Rate Filing: ANR–DRW Negotiated Rate Agreement No. 138379 to be effective 12/1/2022.

Filed Date: 12/1/22.
Accession Number: 20221201–5137.
Comment Date: 5 p.m. ET 12/13/22.

Docket Numbers: RP23–255–000.
Applicants: East Tennessee Natural Gas, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—EnerVest Releases to be effective 12/1/2022.
Filed Date: 12/1/22.
Accession Number: 20221201–5147.
Comment Date: 5 p.m. ET 12/13/22.

Docket Numbers: RP23–256–000.
Applicants: Tuscarora Gas Transmission Company.
Description: § 4(d) Rate Filing: TXP–SWG Agmt Amendments to be effective 12/1/2022.
Filed Date: 12/1/22.
Accession Number: 20221201–5150.
Comment Date: 5 p.m. ET 12/13/22.

Docket Numbers: RP23–257–000.
Applicants: Eastern Shore Natural Gas Company.
Description: § 4(d) Rate Filing: Capital Cost Surcharge #3 to be effective 1/1/2023.
Filed Date: 12/1/22.
Accession Number: 20221201–5151.
Comment Date: 5 p.m. ET 12/13/22.

Docket Numbers: RP23–258–000.
Applicants: Alliance Pipeline L.P.
Description: § 4(d) Rate Filing: Negotiated Rates—Various Dec 1 2022 Releases to be effective 12/1/2022.
Filed Date: 12/1/22.
Accession Number: 20221201–5154.
Comment Date: 5 p.m. ET 12/13/22.

Docket Numbers: RP23–259–000.
Applicants: NEXUS Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Various Releases eff 12–1–2022 to be effective 12/1/2022.
Filed Date: 12/1/22.
Accession Number: 20221201–5178.
Comment Date: 5 p.m. ET 12/13/22.

Docket Numbers: RP23–260–000.
Applicants: Cameron Interstate Pipeline, LLC.
Description: § 4(d) Rate Filing: Cameron Interstate Pipeline—Adjustment of Fuel Retainage to be effective 1/1/2023.
Filed Date: 12/1/22.
Accession Number: 20221201–5183.
Comment Date: 5 p.m. ET 12/13/22.

Docket Numbers: RP23–261–000.
Applicants: ANR Pipeline Company.
Description: § 4(d) Rate Filing: Tourmaline—AXP Non-Conforming Nos. 136174 and 134858 to be effective 1/1/2023.
Filed Date: 12/1/22.
Accession Number: 20221201–5190.
Comment Date: 5 p.m. ET 12/13/22.

Docket Numbers: RP23–262–000.
Applicants: Rover Pipeline LLC.
Description: § 4(d) Rate Filing: Summary of Negotiated Rate Capacity Release Agreements on 12–2–22 to be effective 12/1/2022.
Filed Date: 12/2/22.
Accession Number: 20221202–5007.
Comment Date: 5 p.m. ET 12/14/22.

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.

Filings in Existing Proceedings

Docket Numbers: RP22–1229–001.
Applicants: Honeoye Storage Corporation.
Description: Compliance filing: HSC 2022 Second Rate Compliance Filing to be effective 1/1/2023.
Filed Date: 12/1/22.
Accession Number: 20221201–5126.
Comment Date: 5 p.m. ET 12/13/22.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

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: December 2, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–26680 Filed 12–7–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–41–000]

Cameron LNG, LLC; Notice of Availability of the Environmental Assessment for the Proposed Cameron LNG Amended Expansion Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Cameron LNG Amended Expansion Project, proposed by Cameron LNG, LLC (Cameron LNG) in the above-referenced docket. Cameron LNG requests several design modifications and enhancements to the approved Cameron Expansion Project at its existing liquified natural gas (LNG) terminal located in Cameron and Calcasieu Parishes, Louisiana.

The EA assesses the potential environmental effects of the construction and operation of the Cameron LNG Amended Expansion Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project amendment, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The U.S. Department of Energy, U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration, and U.S. Coast Guard participated as cooperating agencies in the preparation of the EA. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis.

Cameron LNG proposes to amend its authorization under section 3 of the Natural Gas Act for the Cameron Expansion Project that was issued by the Commission on May 5, 2016 (Docket No. CP15–560–000). Specifically, Cameron LNG proposes to modify the approved Train 4 and perform associated design enhancements; and to no longer construct Train 5 or Tank 5. In addition, Cameron LNG proposes an additional design enhancement to allow for the capability to simultaneously load two LNG vessels at a rate of 12,000 cubic meters/hour at both the North and South Jetties. The proposed amendment is intended to increase the overall reliability and capacity of Train 4 and eliminate impacts from construction and operation of Train 5. The overall maximum production capacity of the Amended Expansion Project would be reduced from 9.97 to 6.75 million tonnes per annum.

The Commission mailed a copy of the *Notice of Availability* of the EA to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project area. The EA is only available in

electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the natural gas environmental documents page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). In addition, the EA may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://elibrary.ferc.gov/eLibrary/search*), select ''General Search'' and enter the docket number in the ''Docket Number'' field (*i.e.,* CP22–41–000). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The EA is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding. Any person wishing to comment on the EA may do so. Your comments should focus on the EA's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before 5:00 p.m. Eastern Time on January 3, 2023.

For your convenience, there are three methods you can use to file your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP22–41–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered. Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. At this point in this proceeding, the timeframe for filing timely intervention requests has expired. Any person seeking to become a party to the proceeding must file a motion to intervene out-of-time pursuant to Rule 214(b)(3) and (d) of the Commission's Rules of Practice and Procedures (18 CFR 385.214(b)(3) and (d)) and show good cause why the time limitation should be waived. Motions to intervene are more fully described at *https://www.ferc.gov/how-intervene.*

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Dated: December 2, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–26681 Filed 12–7–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21–113–000]

Alliance Pipeline, L.P.; Notice of Revised Schedule for Environmental Review of the Proposed Three Rivers Interconnection Project

This notice provides the Federal Energy Regulatory Commission staff's revised schedule for completion of the final environmental impact statement (EIS) for Alliance Pipeline L.P.'s (Alliance) Three Rivers Interconnection Project. The first notice of schedule, issued on February 10, 2022, identified September 16, 2022 as the final EIS issuance date. The Project would be located in the vicinity of a facility regulated by the Nuclear Regulatory Commission which required the completion of a safety analysis to determine if the action would impact safe operation of the facility.[1] The findings of this assessment and any subsequent actions or requirements were necessary for staff to complete the final EIS for the project. On November 16, 2022, Alliance submitted a summary of the findings of the completed safety analysis and staff has revised the schedule for issuance of the final EIS.

Schedule for Environmental Review

Issuance of the Notice of Availability of the final EIS—January 13, 2023

90-day Federal Authorization Decision Deadline[2]—April 13, 2023

If a schedule change becomes necessary, an additional notice will be provided so that the relevant agencies are kept informed of the project's progress.

Additional Information

In order to receive notification of the issuance of the EIS and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with

[1] On September 15, 2022 the Commission issued a notice suspending the environmental review schedule for the Three Rivers Interconnection Project based upon the required safety analysis having not been completed.

[2] The Commission's deadline applies to the decisions of other federal agencies, and state agencies acting under federally delegated authority, that are responsible for federal authorizations, permits, and other approvals necessary for proposed projects under the Natural Gas Act. Per 18 CFR 157.22(a), the Commission's deadline for other agency's decisions applies unless a schedule is otherwise established by federal law.

notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' (*i.e.,* CP21–113–000), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: December 2, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–26679 Filed 12–7–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–17–000]

Rio Grande LNG, LLC; Notice of Schedule for the Preparation of an Environmental Assessment for the Proposed Carbon Capture and Sequestration System Amendment

On November 17, 2021, Rio Grande LNG, LLC filed an application in Docket No. CP22–17–000 requesting a Limited Amendment to Rio Grande LNG, LLC's November 22, 2019 Authorization pursuant to Section 3 of the Natural Gas Act. The proposed project is known as the Carbon Capture and Sequestration System Amendment (Project) and would incorporate carbon capture and sequestration (CCS) systems into the site and design of the Rio Grande LNG Terminal, which was previously approved by the Commission on November 22, 2019.

On November 29, 2021, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's environmental document for the Project.

This notice identifies Commission staff's intention to prepare an environmental assessment (EA) for the Project and the planned schedule for the completion of the environmental review.[1]

Schedule for Environmental Review

Issuance of EA—May 5, 2023
90-day Federal Authorization Decision Deadline [2]—August 3, 2023

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

The Project would incorporate CCS systems into the approved site and design of the Rio Grande LNG Terminal in Cameron County, Texas. The proposed CCS facilities consist of the following: flue gas cooling and carbon dioxide absorption, dehydration, and compression equipment; amine regenerator and reboiler; and hot oil system.

Background

On September 2, 2022, the Commission issued a *Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Carbon Capture and Sequestration System Amendment and Notice of Public Scoping Sessions* (Notice of Scoping). The Notice of Scoping was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. In response to the Notice of Scoping, the Commission received comments from the U.S. Army Corps of Engineers; U.S. Environmental Protection Agency; Texas Governor Greg Abbott; Texas Parks and Wildlife Department; Cameron County; Another Gulf; Friends of the Wildlife Corridor; Save RGV; Sierra Club (including the Lower Rio Grande Valley Group); Rio Grande LNG, LLC; and numerous individuals. The primary issues raised by the commenters related to general opposition to or support for the Project; climate change, air quality, and greenhouse gas emissions; environmental justice; wetlands and water quality; vegetation and wildlife; and impacts related to the Project's non-jurisdictional facilities. All substantive comments will be addressed in the EA.

The U.S. Army Corps of Engineers is a cooperating agency in the preparation of the EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This service provides automatic notification of filings made to subscribed dockets, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.,* CP22–17), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: December 2, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–26678 Filed 12–7–22; 8:45 am]

BILLING CODE 6717–01–P

[1] 40 CFR 1501.10 (2020).

[2] The Commission's deadline applies to the decisions of other federal agencies, and state agencies acting under federally delegated authority, that are responsible for federal authorizations, permits, and other approvals necessary for proposed projects under the Natural Gas Act. Per 18 CFR 157.22(a), the Commission's deadline for other agency's decisions applies unless a schedule is otherwise established by federal law.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER23–542–000.
Applicants: San Diego Gas & Electric Company.
Description: Informational Filing [Cycle 5] of Fifth Transmission Owner Rate Formula rate mechanism of San Diego Gas & Electric Company.
Filed Date: 12/1/22.
Accession Number: 20221201–5234.
Comment Date: 5 p.m. ET 12/20/22.

Docket Numbers: ER23–543–000.

Applicants: EDF Renewables, Inc.

Description: Petition for Limited Waiver and expedited Commission action of EDF Renewables, Inc.

Filed Date: 12/1/22.

Accession Number: 20221201–5245.

Comment Date: 12 p.m. (Noon) ET 12/5/22.

Docket Numbers: ER23–544–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 6708; Queue No. AF1–075 to be effective 11/2/2022.

Filed Date: 12/2/22.

Accession Number: 20221202–5008.

Comment Date: 5 p.m. ET 12/23/22.

Take notice that the Commission received the following foreign utility company status filings:

Docket Numbers: FC23–1–000.

Applicants: I Squared Capital.

Description: I Squared Capital submits Notice of Self-Certification of Foreign Utility Company Status.

Filed Date: 11/29/22.

Accession Number: 20221129–5223.

Comment Date: 5 p.m. ET 12/20/22.

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: December 2, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–26677 Filed 12–7–22; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0250; FR ID 117239]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it can further reduce the information collection burden for small business concerns with fewer than 25 employees.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before January 9, 2023.

ADDRESSES: Comments should be sent 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. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–0250.

Title: Sections 73.1207, 74.784 and 74.1284, Rebroadcasts.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, local or tribal government.

Number of Respondents and Responses: 6,462 respondents; 11,012 responses.

Estimated Time per Response: 0.50 hours.

Frequency of Response: Recordkeeping requirement; on occasion reporting requirement; semi-annual reporting requirement; third party disclosure requirement.

Total Annual Burden: 5,506 hours.

Total Annual Costs: No cost.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 154(i) and 325(a) of the Communications Act of 1934, as amended.

Needs and Uses: The information collection requirements contained in 47 CFR 73.1207 require that licensees of broadcast stations obtain written permission from an originating station prior to retransmitting any program or any part thereof. A copy of the written consent must be kept in the station's files and made available to the FCC upon request. Section 73.1207 also specifies procedures that broadcast stations must follow when rebroadcasting time signals, weather bulletins, or other material from non-broadcast services.

The information collection requirements contained in 47 CFR 74.784(b) require that a licensee of a low power television or TV translator station shall not rebroadcast the programs of any other TV broadcast station without obtaining prior consent of the station whose signals or programs are proposed to be retransmitted. Section 74.784(b) requires licensees of low power television and TV translator stations to notify the Commission when rebroadcasting programs or signals of another station. This notification shall include the call letters of each station rebroadcast. The licensee of the low power television or TV translator station shall certify that written consent has been obtained from the licensee of the station whose programs are retransmitted.

Lastly, the information collection requirements contained in 47 CFR 74.1284 require that the licensee of a FM translator station obtain prior consent to rebroadcast programs of any broadcast station or other FM translator. The licensee of the FM translator station must notify the Commission of the call letters of each station rebroadcast and must certify that written consent has been received from the licensee of that station. Also, AM stations are allowed to use FM translator stations to rebroadcast the AM signal.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–26702 Filed 12–7–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0823; FR ID 117240]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before February 6, 2023. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0823.

Title: Part 64, Pay Telephone Reclassification.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 400 respondents; 16,820 responses.

Estimated Time per Response: 2.66 hours (average).

Frequency of Response: On occasion, quarterly and monthly reporting requirements and third party disclosure requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in *47 U.S.C. 151, 154, 201–205, 218, 226* and *276.*

Total Annual Burden: 44,700 hours.

Total Annual Cost: $768,000.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Confidentiality concerns are not relevant to these types of disclosures. The Commission is not requesting carriers or providers to submit confidential information to the Commission. If the Commission requests that carriers or providers submit information which they believe is confidential, the carriers or providers may request confidential treatment of their information under *47 CFR 0.459* of the Commission's rules.

Needs and Uses: The Commission established a plan to ensure that payphone service providers (PSPs) were compensated for certain non-coin calls originated from their payphones. As part of this plan, the Commission required that by October 7, 1997, local exchange carriers were to provide payphone-specific coding digits to PSPs, and that PSPs were to provide those digits from their payphones to interexchange carriers. The provision of payphone-specific coding digits was a prerequisite to payphone per-call compensation payments by IXCs to PSPs for subscriber 800 and access code calls. The Commission's Wireline Competition Bureau subsequently provided a waiver until March 9, 1998, for those payphones for which the necessary coding digits were not provided to identify calls. The Bureau also on that date clarified the requirements established in the Payphone Orders for the provision of payphone-specific coding digits and for tariffs that LECs must file pursuant to the Payphone Orders.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–26704 Filed 12–7–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC Advisory Committee on Economic Inclusion; Notice of Charter Renewal

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of renewal of the FDIC Advisory Committee on Economic Inclusion.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (FACA), and after consultation with the General Services Administration, the Chairman of the Federal Deposit Insurance Corporation has determined that renewal of the FDIC Advisory Committee on Economic Inclusion (the Committee) is in the public interest in connection with the performance of duties imposed upon the FDIC by law.

FOR FURTHER INFORMATION CONTACT: Ms. Debra A. Decker, Committee Management Officer of the FDIC, at (202) 898–8748.

SUPPLEMENTARY INFORMATION: The Committee has been a successful undertaking by the FDIC and has provided valuable feedback to the agency on important initiatives focused on expanding access to banking services for underserved populations. The Committee will continue to provide advice and recommendations on initiatives to expand access to banking services for underserved populations. The Committee will continue to review various issues that may include, but not be limited to, basic retail financial services such as low-cost, sustainable transaction accounts, savings accounts, small dollar lending, prepaid cards, money orders, remittances, the use of new technologies, and other services to promote access to the mainstream banking system, asset accumulation, and financial stability. The structure and responsibilities of the Committee are unchanged from when it was originally established in November 2006. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Dated: December 2, 2022.

Federal Deposit Insurance Corporation.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–26647 Filed 12–7–22; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

TIME AND DATE: Tuesday, December 13, 2022 at 10 a.m. and its continuation at the conclusion of the open meeting on December 15, 2022.

PLACE: 1050 First Street NE, Washington, DC and virtual (this meeting will be a hybrid meeting.)

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance matters pursuant to 52 U.S.C. 30109. Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer. Telephone: (202) 694–1220.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b)

Vicktoria J. Allen,

Acting Deputy Secretary of the Commission.

[FR Doc. 2022–26793 Filed 12–6–22; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2022–N–16]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: 30-Day notice of submission of information collection for approval from Office of Management and Budget.

SUMMARY: The Federal Housing Finance Agency (FHFA), as part of its continuing effort to reduce paperwork and respondent burden, invites public comments on an information collection titled the ''Affordable Housing Program,'' as required by the Paperwork Reduction Act of 1995 (PRA). FHFA intends to submit to the Office of Management and Budget (OMB) the information collection (assigned control number 2590–0007 by OMB) for review and approval of a reinstatement of the control number, which has expired.

DATES: Interested persons may submit comments on or before January 9, 2023.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for the Federal Housing Finance Agency, Washington, DC 20503, Fax: (202) 395–3047, Email: *OIRA_submission@omb.eop.gov.* Please also submit comments to FHFA, identified by ''Proposed Collection; Comment Request: 'Affordable Housing Program, (No. 2022–N–16)' '' by any of the following methods:

- *Agency Website: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal,* please also send it by *email* to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by FHFA. Include the following information in the subject line of your submission: Comments (No. 2022–N–16).
- *Mail/Hand Delivery:* Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219, ATTENTION: Proposed Collection; Comment Request: ''Affordable Housing Program, (No. 2022–N–16)''. Please note that all mail sent to FHFA via the U.S. Postal Service is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks. For any time-sensitive correspondence, please plan accordingly.

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, email address, and telephone number, on the FHFA website at *http://www.fhfa.gov.*

Copies of all comments received will be available for examination by the public through the electronic comment docket for this PRA Notice also located on the FHFA website.

FOR FURTHER INFORMATION CONTACT: Eric Howard, Principal Policy Analyst, *Eric.Howard@fhfa.gov,* (202) 649–3009; or Tiffani Moore, Supervisory Policy Analyst, *Tiffani.Moore@fhfa.gov,* (202) 649–3304; or Angela Supervielle, Counsel, *Angela.Supervielle@fhfa.gov,* (202) 649–3973 (these are not toll-free numbers); Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. For TTY/TRS users with hearing and speech disabilities, dial 711 and ask to be connected to any of the contact numbers above.

SUPPLEMENTARY INFORMATION:

A. Background

1. Paperwork Reduction Act

Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that ten or more persons submit information to a third party. FHFA's collection of information set forth in this document is titled the ''Affordable Housing Program'' (assigned control number 2590–0007 by OMB). To comply with the PRA requirement, FHFA is publishing notice of a proposed three-year extension of this collection of information and reinstatement of the control number, which has expired.

2. Affordable Housing Program

Section 10(j) of the Federal Home Loan Bank Act (Bank Act) requires FHFA to promulgate regulations under which each of the 11 Federal Home Loan Banks (Banks) must establish an Affordable Housing Program (AHP) to provide subsidy to the Bank's member institutions to finance: (1) homeownership by households with incomes at or below 80 percent of the area median income (low- or moderate-income households); and (2) the purchase, construction, or rehabilitation of rental housing in which at least 20 percent of the units will be occupied by, and affordable for, households with incomes at 50 percent or less of the area median income (very low-income households).[1] Section 10(j) also establishes standards and requirements for providing such subsidized funding to Bank members and requires each Bank to contribute 10 percent of its previous year's net earnings to its AHP annually, subject to a minimum annual combined contribution by the 11 Banks of $100 million.[2]

FHFA's AHP regulation, which implements the statutory AHP requirements, is set forth at 12 CFR part 1291. The regulation requires that each Bank establish and fund an AHP and sets forth the parameters within which the Banks' programs must operate. The regulation permits the Banks a degree of discretion in determining how their individual programs are to be implemented and requires that each Bank adopt an AHP Implementation Plan setting forth the specific requirements for that Bank's program.[3]

The AHP regulation requires each Bank to establish a General Fund, which is a competitive application program under which the Bank accepts applications for AHP subsidized advances or direct subsidies (grants) submitted by its members on behalf of non-member entities having a significant connection to the projects for which subsidy is being sought (project sponsors).[4] The AHP regulation also authorizes each Bank, in its discretion, to establish, on a phased-in basis, up to three Targeted Funds, which are competitive application programs under which funds are targeted to address specific affordable housing needs within the Bank's district that are either unmet, have proven difficult to address through the Bank's General Fund, or align with the objectives identified in the Bank's strategic plan.[5] Each Bank accepts applications for AHP subsidy under its competitive application program(s) during a specified number of funding periods each year, as determined by the Bank.[6] A Bank must determine for each application it receives whether the proposed project meets applicable AHP regulatory eligibility requirements.[7] The Bank must score each application according to AHP regulatory and Bank-specific scoring guidelines, and approve the highest scoring projects within that funding period for AHP subsidy.[8]

The regulation provides that, prior to each disbursement of AHP subsidy for a project approved under a Bank's competitive application program(s), the Bank must verify that the project continues to meet applicable AHP regulatory eligibility requirements, as well as all commitments made in the approved AHP application.[9] As part of this process, Banks typically require that the member and project sponsor provide documentation demonstrating continuing compliance. In the event of project noncompliance, a project sponsor is required to make a reasonable effort to cure the noncompliance within a reasonable period of time.[10]

If the project sponsor cannot cure the noncompliance within a reasonable period of time, the regulation permits a Bank to approve a modification to the terms of an approved application that would change the score that the application received for the funding period in which it was originally scored and approved, had the changed facts been operative at that time. Before a Bank approves a modification: (i) the project, incorporating the changes, must continue to meet the regulatory eligibility requirements; (ii) the application, as reflective of the changes, must continue to score high enough to have been approved in the funding period in which it was originally scored and approved; and (iii) there must be good cause for the modification, and the analysis and justification for the modification must be documented by the Bank in writing.[11]

The regulation requires generally that a Bank monitor owner-occupied and rental projects receiving AHP subsidy under its competitive application program(s) prior to and after project completion. During the initial monitoring period, a Bank must determine whether the project is making satisfactory progress towards completion, in compliance with the commitments made in the approved application, Bank policies, and applicable AHP regulatory requirements. Following project completion, the Bank must determine whether satisfactory progress is being made towards occupancy of the project by eligible households.[12] Within a reasonable period of time after project completion, the Bank must determine whether the project meets applicable AHP regulatory requirements and the commitments made in the approved application.[13] During the long-term 15-year monitoring period for rental projects, subject to certain exceptions in the AHP regulation, the Bank must determine whether the household incomes and rents in the project comply with the income targeting and rent commitments made in the approved application.[14] For both the initial and long-term monitoring, a Bank must review appropriate documentation maintained by the project sponsor.

Homeownership Set-Aside Programs

The AHP regulation also authorizes each Bank, in its discretion, to allocate up to the greater of $4.5 million or 35 percent of its annual required AHP contribution to establish homeownership set-aside programs for

[1] *See* 12 U.S.C. 1430(j)(1) and (2).

[2] *See* 12 U.S.C. 1430(j)(5)(C).

[3] 12 CFR 1291.13(b).

[4] 12 CFR 1291.21. Under the regulation, an AHP project sponsor may be an entity that either: (1) has an ownership interest in a rental project; (2) is integrally involved in an owner-occupied project, such as by exercising control over the planning, development, or management of the project, or by qualifying borrowers and providing or arranging financing for the owners of the units; (3) operates a loan pool; or (4) is a revolving loan fund. 12 CFR 1291.1 (definition of ''sponsor'').

[5] 12 CFR 1291.20(b).

[6] 12 CFR 1291.22(a).

[7] 12 CFR 1291.22(b)(1).

[8] 12 CFR 1291.22(c).

[9] 12 CFR 1291.30(c).

[10] 12 CFR 1291.60(b)(1).

[11] 12 CFR 1291.29(a).

[12] 12 CFR 1291.50(a)(1).

[13] 12 CFR 1291.50(a)(2).

[14] 12 CFR 1291.50(c)(1).

the purpose of promoting homeownership for low- or moderate-income households.[15] Under these homeownership set-aside programs, a Bank provides AHP direct subsidies to its members who, in turn, provide the subsidies as grants to eligible households for down payment, closing cost, counseling cost or rehabilitation assistance in connection with the household's purchase of a primary residence or rehabilitation of an owner-occupied residence.[16] Prior to the Bank's disbursement of a direct subsidy under its homeownership set-aside program(s), the member must agree that the subsidy will be provided in compliance with all applicable AHP regulatory eligibility requirements.[17]

AHP Information Submitted by Banks to FHFA

FHFA's Data Reporting Manual (DRM) requires each Bank to submit to FHFA aggregate AHP information.[18] Specifically, the DRM requires each Bank to submit to FHFA project-level information regarding its competitive application program(s) and household-level information regarding its homeownership set-aside program(s) semi-annually. The information the Banks are required to submit to FHFA under the DRM is derived from the documentation submitted by Bank members and project sponsors that is described above.

B. Need for and Use of the Information Collection

The Banks use the AHP information collected from Bank members and project sponsors to determine whether: (1) projects for which Bank members and project sponsors are seeking subsidies under the Banks' competitive application programs satisfy the applicable statutory and regulatory requirements and score highly enough in comparison with other applications submitted during the same funding period to be approved for AHP subsidies; (2) projects approved under the Banks' competitive application programs continue to meet the applicable AHP regulatory requirements and comply with the commitments made in the approved applications each time AHP subsidy is disbursed by the Banks, through their members, to the project sponsors; (3) requests for modifications of projects approved under the Banks' competitive application programs meet the AHP regulatory requirements for approval; (4) during the initial monitoring period, projects approved under the Banks' competitive application programs are making satisfactory progress towards completion, are making satisfactory progress towards occupancy of the projects by eligible households after completion, and, within a reasonable period of time after completion, are in compliance with the commitments made in the approved applications, Bank policies, and applicable AHP regulatory requirements; (5) during the long-term 15-year monitoring period, completed rental projects continue to comply with the household income targeting and rent commitments made in the approved applications; and (6) applications for direct subsidy under Banks' homeownership set-aside programs were approved, and the direct subsidies disbursed, in accordance with applicable AHP regulatory requirements.

FHFA uses the information required to be submitted by the Banks under the DRM to verify that the Banks' funding decisions, and the uses of the funds awarded, were consistent with statutory and regulatory requirements.

C. Burden Estimate

FHFA has analyzed each of the six facets of this information collection in order to estimate the hour burdens that the collection will impose upon Bank members and AHP project sponsors annually over the next three years. Based on that analysis, FHFA estimates that the total annual hour burden will be 92,599. The method FHFA used to determine the annual hour burden for each facet of the information collection is explained in detail below.

I. AHP Competitive Application Submissions

FHFA estimates that Bank members, on behalf of project sponsors, will submit to the Banks an annual average of 1,250 applications for AHP subsidies under the Banks' competitive application programs, and that the average preparation time for each application will be 24 hours. Therefore, the estimate for the total annual hour burden on members and project sponsors in connection with the preparation and submission of AHP competitive applications is 30,000 hours (1,250 applications × 24 hours).

II. Compliance Submissions for Approved Competitive Application Projects at AHP Subsidy Disbursement

FHFA estimates that Bank members, on behalf of project sponsors, will make an annual average of 345 submissions to the Banks documenting that projects approved under the Banks' competitive application programs continue to comply with applicable AHP regulatory eligibility requirements and all commitments made in the approved AHP applications at the time each AHP subsidy is disbursed to the project sponsors, and that the average preparation time for each submission will be 1 hour. Therefore, the estimate for the total annual hour burden on members and project sponsors in connection with the preparation and submission of these compliance submissions is 345 hours (345 submissions × 1 hour).

III. Modification Requests for Approved Competitive Application Projects

FHFA estimates that Bank members, on behalf of project sponsors, will submit to the Banks an annual average of 318 requests for modifications to projects that have been approved under the Banks' competitive application programs, and that the average preparation time for each request will be 2.5 hours. Therefore, the estimate for the total annual hour burden on members and project sponsors in connection with the preparation and submission of these modification requests is 795 hours (318 requests × 2.5 hours).

IV. Initial Monitoring Submissions for Approved Competitive Application Projects

FHFA estimates that project sponsors will make an annual average of 265 submissions of documentation to the Banks for purposes of the Banks' initial monitoring of in-progress and recently completed projects approved under their competitive application programs, and that the average preparation time for each submission will be 5 hours. Therefore, the estimate for the total annual hour burden on project sponsors in connection with the preparation and submission of documentation required for initial monitoring of competitive application projects is 1,325 hours (265 submissions × 5 hours).

V. Long-Term Monitoring Submissions for Completed Competitive Application Rental Projects

FHFA estimates that project sponsors will make an annual average of 3,178 submissions of documentation to the Banks for purposes of the Banks' long-term monitoring of completed rental

[15] 12 CFR 1291.12(b); 1291.40.

[16] 12 CFR 1291.42(d).

[17] 12 CFR 1291.15(a).

[18] The AHP reporting requirements are located in chapter 5 of the DRM, which is available electronically on FHFA's public website at *http://www.fhfa.gov/SupervisionRegulation/FederalHomeLoanBanks/Documents/FHFB-Resolutions/2006/2006-13-Attachment.pdf.*

projects approved under their competitive application programs, and that the average preparation time for each submission will be 3 hours. Therefore, the estimate for the total annual hour burden on project sponsors in connection with the preparation and submission of documentation required for long-term monitoring of completed competitive application rental projects is 9,534 hours (3,178 submissions × 3 hours).

VI. Homeownership Set-Aside Program Applications and Certifications

FHFA estimates that Bank members will submit to the Banks an annual average of 10,120 applications and required certifications for AHP direct subsidies under the Banks' homeownership set-aside programs, and that the average preparation time for those submissions will be 5 hours. Therefore, the estimate for the total annual hour burden on members in connection with the preparation and submission of homeownership set-aside program applications and certifications is 50,600 hours (10,120 applications/certifications × 5 hours).

D. Public Comments Request

In accordance with the requirements of 5 CFR 1320.8(d), FHFA published an initial notice and request for public comments regarding this information collection in the **Federal Register** on August 5, 2022.[19] The 60-day comment period closed on October 4, 2022. FHFA received no comments.

Shawn Bucholtz,

Chief Data Officer, Federal Housing Finance Agency.

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BILLING CODE 8070–01–P

[19] *See* 87 FR 48023 (August 5, 2022).

FEDERAL RESERVE SYSTEM

[Docket No. OP–1749]

Improvements to the Federal Reserve Policy on Payment System Risk To Increase Access to Intraday Credit, Support the FedNow Service, and Simplify the Federal Reserve Policy on Overnight Overdrafts

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting changes to part II of the Federal Reserve Policy on Payment System Risk (PSR policy) substantially as proposed. The changes expand the eligibility of depository institutions to request collateralized intraday credit from the Federal Reserve Banks (Reserve Banks) while reducing administrative steps for requesting collateralized intraday credit. In addition, the Board is adopting changes to the PSR policy that clarify the eligibility standards for accessing uncollateralized intraday credit from Reserve Banks and modify the impact of a holding company's or affiliate's supervisory rating on an institution's eligibility to request uncollateralized intraday credit capacity. The Board is also adopting changes to part II of the PSR policy to support the deployment of the FedNow℠ Service (FedNow Service). Finally, the Board is simplifying the Federal Reserve Policy on Overnight Overdrafts (Overnight Overdrafts policy) and incorporating into the PSR policy as part III.

DATES: The FedNow Service-related changes to the PSR policy and the changes related to the Overnight Overdrafts policy will become effective when Reserve Banks begin processing live transactions for FedNow Service participants (expected in 2023). The exact date will be announced on the Board's website. The remaining changes to part II of the PSR policy will become effective February 6, 2023.

FOR FURTHER INFORMATION CONTACT: Jason Hinkle, Deputy Associate Director (202–912–7805), Michelle Olivier, Lead Financial Institution Policy Analyst (202–452–2404), Brajan Kola, Senior Financial Institution Policy Analyst (202–736–5683); or Cody Gaffney, Attorney (202–452–2674), Legal Division, Board of Governors of the Federal Reserve System. For users of Telecommunications Device for the Deaf (TDD) only, please contact 202–263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

A. Current Framework for Intraday Credit in the PSR Policy

To ensure the smooth functioning of payment and settlement systems, the Reserve Banks provide intraday credit (also known as daylight overdrafts) to depository institutions (institutions) with accounts at the Reserve Banks. Part II of the PSR policy outlines the methods that Reserve Banks use to control credit risk associated with providing intraday credit.[1]

To be eligible for intraday credit, the PSR policy requires that an institution be financially healthy and be eligible for regular access to the discount window.[2] In general, the dollar amount of daylight overdrafts that an eligible institution may incur in its Federal Reserve account on an uncollateralized basis is known as its ''net debit cap.'' An institution's net debit cap is computed by multiplying the appropriate capital measure by a ''cap multiple.''[3] The cap multiple is determined by reference to the institution's ''cap category,'' which is based on (i) the supervisory ratings of the institution and any parent or affiliates, and (ii) the institution's Prompt Corrective Action (PCA) designation (for domestic institutions) or FBO PSR capital category (for U.S. branches and agencies of foreign banking organizations (FBOs)).[4] Reserve Banks generally use an ex post system to monitor whether an institution's daylight overdrafts exceed its net debit cap.[5] In addition, certain institutions may pledge collateral to their Reserve Banks under the ''max cap'' program to secure daylight overdraft capacity in excess of their net debit caps, subject to Reserve Bank approval.[6]

In 2008, the Board approved changes to part II of the PSR policy to encourage

[1] *See https://www.federalreserve.gov/paymentsystems/psr_about.htm.* To assist institutions in implementing part II of the PSR policy, the Federal Reserve has prepared two guidance documents: the Overview of the Federal Reserve's Payment System Risk Policy on Intraday Credit (Overview) and the Guide to the Federal Reserve's Payment System Risk Policy on Intraday Credit (Guide). The Guide contains detailed eligibility standards for requesting and maintaining uncollateralized capacity. Both the Overview and the Guide are available at *https://www.federalreserve.gov/paymentsystems/psr_relpolicies.htm.* Separately, part I of the PSR policy sets out the Board's views and related standards, regarding the management of risks in financial market infrastructures, including those operated by the Reserve Banks.

[2] *See* section II.D.1 of the PSR policy. The PSR policy does not expressly define the term ''financially healthy.''

[3] *Id.* An institution's capital measure is a number derived from the size of its capital base.

[4] Under section II.D.2 of the PSR policy, an institution's cap category is one of six classifications: the three self-assessed categories (''high,'' ''above average,'' and ''average''); ''de minimis;'' ''exempt-from-filing;'' and ''zero.'' Institutions whose parents or affiliates are assigned a low supervisory rating are ineligible for a net debit cap. *See* section VII.A of the Guide.

[5] *See* section II.G.1 of the PSR policy. The Reserve Banks also monitor some institutions' accounts in real time. Real-time monitoring allows a Reserve Bank to prevent an institution from transferring funds from an account that lacks sufficient funds or overdraft capacity to cover the payment. *See id.* section II.G.2 of the PSR policy.

[6] *See* section II.E of the PSR policy. An institution's net debit cap plus its collateralized capacity is referred to as its ''maximum daylight overdraft capacity'' or ''max cap.'' *Id.* Collateral eligibility and margins are the same for intraday credit purposes as for the discount window. *See http://www.frbdiscountwindow.org/* for information on the discount window and intraday credit collateral acceptance policy and collateral margins.

greater collateralization of daylight overdrafts, recognizing that collateral reduces credit risk to Reserve Banks.[7] Specifically, the Board adopted a dual-pricing framework intended to provide a financial incentive to institutions to collateralize their daylight overdrafts. Under the dual-pricing framework, Reserve Banks charge no fee for collateralized daylight overdrafts, but charge a fee of 50 basis points for uncollateralized daylight overdrafts.[8]

Although the PSR policy's dual-pricing framework encourages institutions to collateralize their daylight overdrafts, collateralized capacity under the max cap program is not currently available for all institutions with a positive net debit cap. Specifically, institutions in the ''exempt-from-filing'' or ''de minimis'' cap categories (which do not require a self-assessment) are ineligible to request collateralized capacity under the max cap program. Likewise, institutions with a voluntary zero net debit cap, and institutions that the Reserve Banks have assigned a zero net debit cap, cannot request collateralized capacity under the max cap program.[9]

Further, obtaining collateralized capacity under the max cap program requires institutions to undertake certain administrative steps and analysis. First, institutions must provide a business case outlining their need for collateralized capacity, and must submit a board of directors resolution approving the collateralized capacity, at least annually and whenever the institution modifies the amount of requested collateralized capacity.[10] Second, and as stated previously, the max cap program is limited to institutions that have already adopted a self-assessed net debit cap, which in turn requires an institution to perform a self-assessment of its creditworthiness, intraday funds management and control, customer credit policies and controls, and operating controls and contingency procedures.[11]

B. The Overnight Overdrafts Policy

Intraday overdrafts occur when an institution has a negative balance in its Federal Reserve account during the Fedwire® Funds Service business day. Overnight overdrafts occur when an institution has a negative account balance at the end of the Fedwire Funds Service business day. While the PSR policy addresses daylight overdrafts, the Overnight Overdrafts policy addresses overnight overdrafts.

To minimize Reserve Bank exposure to overnight overdrafts, the Overnight Overdrafts policy imposes a penalty fee to discourage institutions from incurring overnight overdrafts.[12] If an institution has a negative balance at the end of the business day, the Reserve Banks apply an overnight overdraft penalty for a 24-hour period. Currently, the penalty fee includes a multiday charge for overnight overdrafts on calendar days occurring over weekends and holidays. The Overnight Overdrafts policy contains a fee-escalation feature, whereby the penalty fee increases by one percentage point for each overnight overdraft after an institution's third overnight overdraft in a rolling 12-month period.

C. The FedNow Service and the PSR Policy

In 2019, the Board approved the FedNow Service, a new interbank 24x7x365 real-time gross settlement service with clearing functionality to support end-to-end instant payments in the United States.[13] The FedNow Service will settle funds transfers between institutions through debit and credit entries to balances in master accounts held at the Reserve Banks. The new service will promote ubiquitous, safe, and efficient instant payments in the United States.

Intraday credit from the Reserve Banks is currently available during the 22-hour business day that is based on the Fedwire Funds Service.[14] As described in the Board's 2020 notice on FedNow Service details, the FedNow Service will have a 24-hour business day, each day of the week, including weekends and holidays.[15] Access to intraday credit will be available on a 24x7x365 basis to FedNow Service participants under the same terms and conditions as are available for other Federal Reserve services.

The close of the FedNow Service will align on all calendar days with the close of the Fedwire Funds Service.[16] If the close of the Fedwire Funds Service is extended on any given day, the close of the FedNow Service will also be extended to maintain alignment. Given the continuous, 24-hour nature of the FedNow Service, the opening time will occur immediately after the close of the FedNow Service. Under this framework, an end-of-day balance will be calculated for each calendar day, with transactions occurring on weekends and holidays recorded and reported in the same way as transactions occurring on business days.[17] End-of-day balances will be reported on Federal Reserve accounting records for all depository institutions using payment services on each calendar day.

II. Proposed Changes and Board Response to Public Comments

On June 3, 2021, the Board published a notice in the **Federal Register** that requested comment on proposed changes that would (i) expand eligibility of institutions to request collateralized intraday credit from the Reserve Banks under the max cap program and reduce administrative steps associated with requesting collateralized capacity in the PSR policy; (ii) clarify the eligibility standards for accessing uncollateralized intraday credit from Reserve Banks; (iii) align the PSR policy with the deployment of the FedNow Service; and (iv) simplify and incorporate the Overnight Overdrafts policy as part III of the PSR policy.[18]

The proposal's comment period ended on August 2, 2021. The Board received thirteen comment letters from six trade organizations, two institutions, two payment services operators, one academic, one think tank, and one consulting firm. The remainder of this section describes in further detail each aspect of the proposal, summarizes and

[7] *See* 73 FR 79109 (Dec. 24, 2008). These changes were not fully implemented until 2011.

[8] *See* section II.C of the PSR policy.

[9] *See* section II.E.1 of the PSR policy.

[10] *See id.* Section II.E.2 of the PSR policy allows U.S. branches or agencies of FBOs to use a streamlined procedure for requesting a max cap. An FBO that uses the streamlined procedure is not required to provide a business case for a max cap, nor is it required to obtain a board of directors resolution authorizing a max cap, so long as (a) the FBO has an FBO PSR capital category of ''highly capitalized'' and (b) the requested total capacity is 100 percent or less of the FBO's worldwide capital times the self-assessed cap multiple. *See* section II.D.2 and n. 63 of the PSR policy for a discussion of FBO PSR capital categories.

[11] *See* section II.D.a of the PSR policy and *supra* note 4 which discuss cap categories. The ''high,'' ''above average,'' and ''average'' cap categories require a self-assessment.

[12] *See https://www.federalreserve.gov/paymentsystems/oo_policy.htm.* The overnight overdraft penalty rate is equal to the primary credit rate plus 4 percentage points (annual rate). There is also a minimum penalty fee of 100 dollars per occasion, regardless of the amount of the overnight overdraft.

[13] *See* 84 FR 39297 (Aug. 9, 2019). Current information on the FedNow Service can be found at *https://www.frbservices.org/financial-services/fednow.*

[14] *See* FRBservices.org, *Wholesale Services Operating Hours and FedPayments® Manager Hours of Availability—Fedwire Funds Service Schedule, https://www.frbservices.org/resources/financial-services/wires/operating-hours.html.*

[15] 85 FR 48522, 48524 (Aug. 11, 2020).

[16] *Id.* Both the Fedwire Funds and the FedNow Services will close at 7:00:59 p.m. ET. On weekends and holidays, when the Fedwire Funds Service is closed, the FedNow Service close will still align with this closing time.

[17] The Board expects that participating institutions will record FedNow Service transactions in their customer accounts according to their own business day and accounting conventions (while still providing immediate access to funds received through the FedNow Service).

[18] 86 FR 29776 (Jun. 3, 2021).

responds to public comments, and outlines the changes to the PSR policy that the Board is adopting.

For the reasons set forth below, the Board will adopt the proposed changes substantially as proposed. The FedNow Service-related changes to the PSR policy and the changes related to the Overnight Overdrafts policy will become effective when Reserve Banks begin processing live transactions for FedNow Service participants (expected in 2023). The exact date will be announced on the Board's website. The remaining changes to part II of the PSR policy will become effective February 6, 2023.

A. Access to Collateralized Capacity

1. Proposed Changes

The Board proposed to modify the PSR policy to expand access to and reduce the administrative steps associated with requesting collateralized capacity. The Board explained in the request for comment that extending intraday credit to institutions on a collateralized basis generally poses less risk to the Reserve Banks and the payment system than extending intraday credit on an uncollateralized basis. As a result, expanding access to collateralized intraday credit could improve the effectiveness of Reserve Bank intraday credit as a liquidity tool without materially increasing credit risk to the Reserve Banks.

Specifically, the Board proposed to amend the PSR policy so that institutions, subject to Reserve Bank review and discretion, would be eligible to request collateralized capacity under the max cap program even if they have not first obtained a self-assessed net debit cap. Under the proposal, institutions with a cap category of ''zero,'' ''exempt-from-filing,'' or ''de minimis'' would be eligible to request collateralized capacity from their Reserve Banks.[19] A domestic institution with such a cap category would be eligible to request collateralized capacity if the institution's PCA designation is ''undercapitalized'' or better.[20] Similarly, a U.S. branch or agency of an FBO with such a cap category would be eligible to request collateralized capacity if its FBO PSR capital category is ''undercapitalized'' or better.[21]

The Board explained that, given the important role collateral plays in reducing credit risk to Reserve Banks, the eligibility criteria for requesting collateralized capacity should be less restrictive than the criteria for accessing uncollateralized capacity. As a result, under the proposal, some institutions that are not eligible to establish a positive net debit cap would be eligible to request collateralized capacity.[22]

The Board also proposed to simplify the administrative steps associated with requesting and maintaining collateralized capacity under the max cap program. Specifically, the Board proposed to eliminate, in most circumstances, the requirement that an institution provide a written business case when requesting collateralized capacity. The Board also proposed to eliminate the requirement that an institution's board of directors submit an annual resolution approving its collateralized capacity.[23]

2. Public Comments and Board Response

Public Comments

Five commenters (two institutions, two trade organizations, and one payment services operator) supported the proposed changes related to collateralized capacity. One of these commenters, an institution, argued that the proposed changes would assist with liquidity planning and risk management. Another commenter, a trade organization, expressed support for these proposed changes and noted that expanding access to collateralized capacity would be helpful since community banks may need collateralized capacity in a 24x7x365 environment and as transaction levels increase. The commenter noted that historically, small institutions and community banks have not requested collateralized capacity.

Two commenters opposed the proposed changes related to collateralized capacity. One such commenter, a think tank, asserted that the changes would increase credit risk to Reserve Banks and would have a negative effect on the payment system. This commenter argued that an institution's supervisory ratings should remain a factor in determining the institution's eligibility to request collateralized capacity, suggesting that the proposal would lead to the most ''credit-questionable or badly run'' institutions obtaining collateralized capacity. The commenter also opposed the proposal to allow an institution to obtain collateralized capacity without obtaining a self-assessed net debit cap, submitting a business case, or providing an annual board of directors resolution. The commenter argued that these requirements provide important information to the Reserve Banks and require an institution's board and senior management to exercise oversight over the institution's participation in the payment system. The other commenter that opposed the proposed changes related to collateralized capacity, a consulting firm, expressed concern that the changes could exacerbate the already high demand for collateral accepted by Reserve Banks, particularly during periods of stress in the financial system, further increasing market volatility.

Two commenters did not oppose the proposed changes but requested clarifications or made recommendations related to collateralized capacity. One such commenter, an institution, recommended that the Board clarify the relationship between the collateral pledged to the discount window and collateral pledged to the Reserve Bank for intraday credit purposes. collateralized intraday credit capacity. Another commenter, also an institution, recommended that the Board simplify the max cap program by eliminating the existing streamlined max cap procedure used by highly capitalized FBOs.[24] The commenter noted that eliminating the streamlined max cap would help simplify the PSR policy.

Board Response

For the reasons described below, the Board is adopting the changes related to collateralized credit as proposed, with some clarifications in response to the public comments.

Collateralized intraday credit poses less risk to Reserve Banks than uncollateralized intraday credit. The Board therefore believes that the criteria for requesting collateralized capacity should be more accommodative than the criteria for requesting uncollateralized capacity, and that an institution that is at least ''undercapitalized'' and eligible for regular access to the discount window should be eligible to request collateralized capacity from its Reserve Bank. At the same time, access to intraday credit capacity, both collateralized and uncollateralized, will remain at the discretion of the Reserve

[19] Institutions with one of the self-assessed net debit caps are currently eligible to request collateralized capacity.

[20] *See* 12 U.S.C. 1831o.

[21] *See* section II.D.2 and n. 63 of the PSR policy for a discussion of FBO PSR capital categories. Generally, an FBO's PSR capital category is based on the same capital and leverage ratios that determine a domestic institution's PCA designation.

[22] As the Board noted in the request for comment, an institution would need to remain financially healthy and be eligible for regular access to the discount window to qualify for collateralized or uncollateralized capacity.

[23] The Board did not propose to amend the current streamlined max cap process available to certain FBOs. *See supra* note 10.

[24] *See supra* note 10.

Banks. Weak or poorly run institutions will not automatically obtain collateralized capacity as one commenter theorized. The Reserve Banks will continue to review, on an ongoing basis, the condition of all institutions with access to intraday credit capacity, both collateralized and uncollateralized, in order to identify potential risks to the Reserve Banks and the payment system. If a Reserve Bank assesses that an institution poses excessive risk, it can reduce or remove the institution's intraday credit capacity and implement other risk mitigants.

Similarly, the Board does not believe that simplifying the administrative steps associated with requesting and maintaining collateralized capacity will increase risks to the Reserve Banks. The Reserve Banks have the discretion to request additional information when evaluating a request for collateralized capacity. In addition, the Reserve Banks will retain access to various sources of information outside of the self-assessment process—including supervisory information—to help evaluate the risks posed by institutions requesting collateralized capacity. The institution's board of directors will still be required to approve both the initial request for collateralized capacity and subsequent requests to increase the previously approved collateralized capacity.[25]

Further, contrary to the comment from the consulting firm, the Board does not believe that expanding access to collateralized capacity is likely to lead to a shortage of collateral accepted by Reserve Banks for intraday credit or other purposes, even during periods of financial stress. The Reserve Banks accept a wide range of securities and loans as collateral for intraday credit and discount window purposes.[26] Additionally, while the changes adopted in this notice will expand access to collateralized intraday credit, the vast majority of institutions—approximately 4,700 out of 5,000 institutions currently with a master account—will continue to remain eligible for uncollateralized intraday credit and will not be required to pledge collateral in order to obtain intraday credit.

With respect to the relationship between collateralized intraday credit capacity and collateral pledged to the discount window, the Federal Reserve's collateral guidelines contain a detailed list of margins and acceptability criteria for securities and loans that can be pledged to Reserve Banks for both discount window and intraday credit purposes.[27] When an institution pledges collateral to its Reserve Bank for daylight overdraft or discount window purposes, the collateral is placed in a single Federal Reserve collateral account. Collateral securing an extension of credit from the discount window may not be simultaneously applied for daylight overdraft purposes. When an institution repays an outstanding discount window loan, the institution's collateral available for daylight overdraft purposes is increased by the value of the collateral that had been encumbered by the discount window loan.

With respect to the streamlined max cap procedure for FBOs, the Board did not propose to eliminate these streamlined procedures. FBOs with an FBO PSR capital category of ''highly capitalized'' and a self-assessed net debit cap may use the streamlined procedure to obtain a max cap. These FBOs are not required to provide documentation of the business need or a board of directors resolution for collateralized capacity as long as the FBO remains highly capitalized and the requested total capacity is 100 percent or less of worldwide capital times the self-assessed cap multiple. Prior to modifying this aspect of the PSR policy, the Board believes that additional feedback from the public would be necessary in order to evaluate the impact on FBOs of changes to the streamlined max cap process. For these reasons, the Board is not adopting changes to the streamlined max cap process.

B. Clarifying Access to Uncollateralized Capacity

1. Proposed Changes

The Board proposed to amend the PSR policy to clarify when an institution is eligible for uncollateralized intraday credit capacity.

Specifically, the Board proposed to clarify that an institution's eligibility to adopt and maintain a positive net debit cap depends on an assessment of its creditworthiness, which results from the institution's (i) PCA designation or FBO PSR capital category, as applicable, and (ii) most recent supervisory ratings. The Board proposed to incorporate into the PSR policy the following table—which is based on an existing table in the Guide to the PSR policy—to clarify when institutions can request a positive net debit cap from a Reserve Bank.

ELIGIBILITY CRITERIA FOR REQUESTING A POSITIVE NET DEBIT CAP

PCA designation[28] FBO PSR capital category	Supervisory rating			
	Strong	Satisfactory	Fair	Marginal or unsatisfactory
Well capitalized/Highly capitalized.	Eligible	Eligible	Eligible	Ineligible (Zero net debit cap).
Adequately capitalized/Sufficiently capitalized.	Eligible	Eligible	Eligible	Ineligible (Zero net debit cap).
Undercapitalized	May be eligible subject to a full assessment of creditworthiness.	May be eligible subject to a full assessment of creditworthiness.	Ineligible (Zero net debit cap).	Ineligible (Zero net debit cap).
Significantly or critically undercapitalized/Intraday credit ineligible.	Ineligible (Zero net debit cap).	Ineligible (Zero net debit cap).	Ineligible (Zero net debit cap).	Ineligible (Zero net debit cap).

[25] Consistent with section II.D of the Guide, the Board will also continue to expect institutions' boards of directors to prudently manage risks associated with their Federal Reserve accounts.

[26] Generally, collateral eligibility and margins are the same for intraday credit purposes as for the discount window. *See FRBdiscountwindow.org, Collateral Information, https://www.frbdiscountwindow.org/pages/collateral/collateral_eligibility.*

[27] *See id.*

[28] The current table in the Guide, as well as the table in the request for comment, refers to a ''Domestic capital category'' rather than ''PCA designation.'' To provide additional clarity, the Board is making a technical change to replace ''Domestic capital category'' with ''PCA designation.''

The Board also proposed to modify the PSR policy so that low supervisory ratings of a parent or affiliate would not, in certain cases, result in an institution losing its positive net debit cap. Under the proposal, if an institution's holding company or affiliate is assigned a low supervisory rating, the institution would be eligible to request the ''exempt-from-filing,'' ''de minimis,'' or ''average'' cap categories, but not the ''above average'' or ''high'' cap categories.[29] Additionally, the Board proposed that a Reserve Bank would assign an institution a ''zero'' net debit cap if supervisory information about the holding company or affiliated institutions reveals material operating or financial weaknesses that pose significant risks to the institution.

The Board explained that the proposed changes would provide greater certainty to institutions and would allow the Reserve Banks to tailor intraday credit access in response to supervisory developments.

2. Public Comments and Board Response

Public Comments

Six commenters (two institutions, a payment services operator, and three trade organizations) expressed support for the proposed changes aimed at clarifying access to uncollateralized capacity. The commenters stated that incorporating language from the Guide directly into the PSR policy would help simplify and clarify the eligibility criteria for requesting uncollateralized capacity from their Reserve Banks. The commenters also supported the proposed change that would allow an institution to maintain access to some uncollateralized capacity, up to and including the ''average'' cap category, despite the low supervisory ratings of a parent or affiliate. The commenters noted that providing a path to some uncollateralized capacity for these institutions is a welcome change that is likely to improve institutions' abilities to manage short-term liquidity shortfalls. Three of these six commenters, two trade organizations and an institution, urged the Board to ensure that the proposed changes do not increase the regulatory oversight or examination of institutions requesting uncollateralized capacity.

The Board did not receive any comments opposed to these aspects of the proposal.

Board Response

The Board is adopting the changes related to uncollateralized intraday credit substantially as proposed.[30] The Board is clarifying that Reserve Bank staff will continue to review supervisory information about institutions, parents, and affiliates for purposes of determining eligibility for uncollateralized capacity, but the changes related to uncollateralized intraday credit are not intended to increase regulatory or supervisory expectations.

C. Changes To Support the Deployment of the FedNow Service

1. Proposed Changes

The Board proposed changes to the PSR policy to align the policy with the deployment of the FedNow Service. In particular, the Board proposed to revise section II.A of the PSR policy to define the ''business day'' as the 24-hour duration beginning immediately after the previous day's regularly scheduled close of the Fedwire Funds Service and the FedNow Service, and ending with the regularly scheduled close of the Fedwire Funds Service and the FedNow Service.[31] Currently, the PSR policy is based on the 22-hour business day of the Fedwire Funds Service.

Consistent with past changes to operating hours, the Board also proposed to revise the daylight overdraft fee calculations under section II.C of the PSR policy and the penalty fee calculations under section II.F of the PSR policy to reflect the 24-hour business day. Currently, daylight overdraft fees for uncollateralized overdrafts (also referred to as the daily daylight overdraft charge) are computed by multiplying two components: (a) the institution's average daily uncollateralized daylight overdraft (which is calculated by dividing the sum of uncollateralized daylight overdrafts at the end of each minute of the scheduled operating day of the Fedwire Funds Service by the total number of minutes in the operating day); and (b) the effective daily rate (50 basis points annual rate, multiplied by the fraction of a 24-hour day during which the Fedwire Funds Service is scheduled to operate, divided by 360 days).[32] The lengthening of the business day from 22 to 24 hours would impact both components of the daily daylight overdraft charge calculation in opposite directions. In the request for comment, the Board incorrectly stated that the daily daylight overdraft charge would increase slightly (by less than 0.4 percent) as a result of the proposed changes. As explained below, the corrected calculations show that daily daylight overdraft charges would slightly decrease (by approximately 0.3 percent) under the proposal. The cause of the discrepancy is a calculation error.[33]

Certain institutions are charged a daylight-overdraft penalty fee in lieu of the daily daylight overdraft charge.[34] Currently, the daylight-overdraft penalty fee is computed by multiplying (a) the institution's average daily uncollateralized daylight overdraft (calculated as described above) by (b) the daylight-overdraft penalty rate (150 basis points multiplied by the fraction of the 24-hour day during which the Fedwire Funds Service operates, divided by 360 days).[35] The lengthening of the business day from 22 to 24 hours would impact both components of the daylight-overdraft penalty fee calculation in opposite directions. As explained below, under the proposal, the daylight-overdraft penalty fee would decrease by approximately 0.1 percent with the move from a 22-hour business day to a 24-hour business day.

[29] For this purpose, a low supervisory rating for a holding company would include a Deficient-2 rating in any of the components of the LFI rating system or an RFI rating of 4 or 5. A low supervisory rating for an affiliate institution would be defined as a CAMELS rating of 4 or 5.

[30] As noted above, the Board is making a technical change to replace ''Domestic capital category'' with ''PCA designation'' in the Eligibility Criteria for Requesting a Positive Net Debit Cap table. *See supra* note 28.

[31] The Board also proposed adding a new posting rule to account for FedNow Service transactions and modified an existing posting rule to ensure that all credits and debits to an institution's master account post at the close of the business day before the next business day begins.

[32] *See* section II.C of the PSR policy. *See also* Overview at p. 21–22. Institutions' daily daylight overdraft charges are summed across a 10-business-day reserve maintenance period and then reduced by a fee waiver of $150, which is primarily intended to minimize the burden of the PSR policy on institutions that use small amounts of intraday credit. *See id.*

[33] In the request for comment, the impact analysis for the proposed effective daily fee rate was erroneously rounded instead of truncated to the seventh decimal. Since 2004, the effective daily rates for both the regular daylight overdraft fee and the penalty fee have been truncated at seven decimal places due to requirements for Federal Reserve IT systems. *See* 69 FR 57917, 57923 (Sep. 28, 2004).

[34] These are institutions that do not have regular access to the discount window and, therefore, are expected not to incur daylight overdrafts in their Federal Reserve accounts. Penalty fee payers are Edge Act and agreement corporations, bankers' banks that have not waived their exemption from reserve requirements, limited-purpose trust companies, and government-sponsored enterprises and international organizations. *See* section II.C of the PSR policy.

[35] *See* section II.F of the PSR policy.

2. Public Comments and Board Response

Public Comments

Two commenters, one institution and one trade organization, supported the shift to the 24-hour business day. Eight commenters (one institution, one payment services operator, one payment standards organization, and five trade organizations) opposed the proposed changes aimed at aligning the PSR policy with the launch of the FedNow Service. Specifically, the commenters opposed the proposed changes to the extent the proposed changes would lead to an increase in daylight overdraft fees and penalty fees for institutions that do not opt to participate in the FedNow Service.

Board Response

The Board acknowledges commenters' concerns regarding higher daylight overdraft and penalty fees. In response to these comments, the Board conducted additional analysis, and determined that both daylight overdraft and penalty fees would slightly decrease under the proposal, rather than slightly increase (as the proposal incorrectly stated). The Board reached out to the eight commenters that opposed the proposed fee changes to clarify the impact of the proposed changes. Three of these commenters (two trade organizations and one payment services operator) accepted the Board's invitation to discuss the proposed fee changes, and all of these commenters indicated that the concerns expressed in their respective comment letters regarding the proposed fee changes have been fully addressed.

As shown in the formula below, an institution's daily daylight overdraft charge is calculated by multiplying the average daily uncollateralized daylight overdraft by the truncated effective daily rate. As result of the shift from a 22-hour to a 24-hour business day, the two components of the daily daylight overdraft charge calculation are impacted in opposite directions. For an institution that incurs the same amount of end-of-minute overdrafts, the average daily uncollateralized daylight overdraft slightly decreases, while the effective daily rate slightly increases.[36]

Calculation of the Daily Daylight Overdraft Charge

$$= \text{(average daily uncollateralized overdraft } \downarrow\text{)} \times \text{(effective daily rate truncated } \uparrow\text{)}$$
$$= \left(\frac{\text{sum of end} - \text{of} - \text{minute uncollateralized overdrafts}}{\text{number of minutes in the business day } \uparrow}\right) \times \left(\frac{\text{50 basis points annually}}{\text{360 days per year}} \times \frac{\text{hours in business day } \uparrow}{\text{24 hours in calendar day}}\right)$$

In the request for comment, the Board incorrectly stated that that the daily daylight overdraft charge would slightly increase. As shown in Example 1 below, the daily daylight overdraft charge will slightly decrease by approximately 0.3 percent before the application of fee waivers. This decrease results from the fact that the decrease in the average daily overdraft component more than offsets the increase in the effective daily rate component.

Similarly, and as shown in the formula below, an institution's daily daylight-overdraft penalty fee is calculated by multiplying the average daily collateralized and uncollateralized daylight overdraft by the truncated effective daily rate. As a result of the shift from 22-hours to a 24-hour business day, the two components of the daily daylight-overdraft penalty fee calculation are impacted in opposite directions. For an institution that incurs the same amount of end-of-minute overdrafts, the average daily collateralized and uncollateralized overdrafts slightly decrease, while the effective daily rate slightly increases.[37]

Calculation of Daily Daylight-Overdraft Penalty Fee

$$= \text{(average daily collateralized and uncollateralized overdrafts } \downarrow\text{)} \times \text{(effective daily rate truncated } \uparrow\text{)}$$
$$= \left(\frac{\text{sum of end} - \text{of} - \text{minute daylight overdrafts}}{\text{number of minutes in the business day } \uparrow}\right) \times \left(\frac{\text{150 basis points annually}}{\text{360 days per year}} \times \frac{\text{hours in business day } \uparrow}{\text{24 hours in calendar day}}\right)$$

As shown in Example 2 below, the gross daily penalty fee will decrease by approximately 0.1%. This decrease results from the fact that the decrease in the average daily collateralized and uncollateralized overdrafts component more than offsets the increase in the effective daily rate component.

EXAMPLE 1—DAILY DAYLIGHT OVERDRAFT CHARGE

[22-Hour vs. 24-hour business day]

22-Hour business day	24-Hour business day
• Annual rate charged on uncollateralized daylight overdrafts = 50 basis points. • *Example:* sum of end-of-minute uncollateralized overdrafts for one day = $4 billion.	
Parameters: • Standard Fedwire Funds Service business day = 22 hours (1,320 + 1 minute for transactions posting after the close of Fedwire Funds at 7:00:59 p.m.). *Daily daylight overdraft charge calculation:*	*Parameters:* • Business day based on the FedNow Service operating hours = 24 hours (1,440 minutes, all transactions posting at 7:00:59 p.m.). *Daily charge calculation:*

[36] As noted in Example 1 below, the effective daily rate increases from 0.000127 to 0.000138.

[37] As described in Example 2 below, the effective daily rate increases from 0.0000382 to 0.0000416. The proposal incorrectly stated that the penalty rate under the 22-hour environment is 0.0000381 instead of 0.0000382.

EXAMPLE 1—DAILY DAYLIGHT OVERDRAFT CHARGE—Continued

[22-Hour vs. 24-hour business day]

22-Hour business day	24-Hour business day
• Average uncollateralized overdraft = $4,000,000,000/1,321 minutes = $3,028,009.08. • Effective daily rate (truncated) = .0050 × (22/24 hours) × (1/360 days) = 0.0000127. • Gross daily overdraft charge (rounded) = $3,028,009.08 × 0.0000127 = $38.46.	• Average uncollateralized overdraft = $4,000,000,000/1,440 minutes = $2,777,777.78. • Effective daily rate (truncated) = .0050 × (24/24 hours) × (1/360 days) = 0.0000138. • Gross daily overdraft charge (rounded) = $2,777,777.78 × 0.0000138 = $38.33.
Percent change: ($38.33 − $38.46)/$38.46 = −0.34%.	

EXAMPLE 2—DAILY DAYLIGHT-OVERDRAFT PENALTY FEES

[22-Hour vs. 24-hour business day]

22-Hour business day	24-Hour business day
• Annual penalty rate charged on uncollateralized and collateralized daylight overdrafts = 150 basis points. • *Example:* sum of end-of-minute collateralized and uncollateralized overdrafts for one day = $4 billion.	
Parameters: • Standard Fedwire Funds Service business day = 22 hours (1,320 + 1 minute for transactions posting after the close of Fedwire Funds at 7:00:59 p.m.). *Daily daylight-overdraft penalty fee calculation:* • Average total overdraft = $4,000,000,000/1321 minutes = $3,028,009.08. • Effective daily rate (truncated) = .0150 × (22/24 hours) × (1/360 days) = 0.0000382. • Daily gross penalty fee (rounded) = $3,028,009.08 × 0.0000382 = $115.67.	*Parameters:* • Business day based on the FedNow Service operating hours = 24 hours (1,440 minutes, all transactions posting at 7:00:59 p.m.). *Daily daylight-overdraft penalty fee calculation:* • Average total overdraft = $4,000,000,000/1,440 minutes = $2,777,777.78. • Effective daily rate (truncated) = .0150 × (24/24 hours) × (1/360 days) = 0.0000416. • Daily gross penalty fee (rounded) = $2,777,777.78 × 0.0000416 = $115.56.
Percent change: ($115.56 − $115.67)/$115.67 = −0.095%.	

Ultimately, the proposal would slightly lower fees for all institutions. In addition, because the effective daily rate and the daylight-overdraft penalty rate would be based on a 24-hour business day for all institutions, whether or not they participate in the FedNow Service, the proposal would ensure equitable treatment across all institutions. All institutions will be assessed the same fee for overdrafts of the same duration and size, regardless of participation in a particular service. For these reasons, the Board is adopting the proposed changes with the corrections discussed above.

D. Proposed Changes to the Overnight Overdrafts Policy

1. Proposed Changes

The Board proposed to incorporate the Overnight Overdrafts policy as part III of the PSR policy. Under the proposal, an institution would incur an overnight overdraft on each calendar day that its account balance is negative at 7:00:59 p.m. ET, which is the newly proposed close of the business day.

In addition, the Board proposed to eliminate the automatic multiday charge for overnight overdrafts during weekends or holidays. Under the proposal, all institutions, regardless of the Reserve Bank payment services that they use, will incur an overnight overdraft penalty charge for each calendar day, including weekends and holidays, that an overnight overdraft is outstanding.

Finally, the Overnight Overdrafts policy includes a fee-escalation feature where the penalty fee for an overnight overdraft increases by one percentage point for each overnight overdraft after an institution has already experienced three overnight overdrafts in a rolling 12-month period. The Board proposed to eliminate the overnight overdraft fee-escalation feature for all institutions. The Board explained that the fee-escalation feature adds unnecessary complexity to the Overnight Overdrafts policy and does not meaningfully reduce risk to the Reserve Banks. In addition, the Board noted that the escalation feature is rarely triggered since overnight overdrafts are uncommon, and the Reserve Banks have other risk-mitigation tools for institutions that incur frequent overnight overdrafts.

2. Public Comments and Board Response

Public Comments

Three trade organizations supported the proposed changes to the Overnight Overdrafts policy. One of these commenters argued that incorporating the Overnight Overdrafts policy as part III of the PSR policy would underscore the close relationship between daylight overdrafts and overnight overdrafts in an institution's account. The remaining two commenters supported the elimination of the fee-escalation feature of the Overnight Overdrafts policy.

A payment standards organization raised concerns with the proposal, arguing that the proposed changes would disadvantage financial institutions that do not participate in the FedNow Service because institutions that do not participate in the FedNow Service would continue to incur an automatic multiday charge for overnight overdrafts occurring before a weekend or a holiday.

Board Response

The Board believes that overnight overdrafts pose a credit risk to the Reserve Banks since there is no assurance that overnight overdrafts are

collateralized. The Board discourages institutions from incurring overnight overdrafts by charging a penalty fee and expects that each institution effectively manage its master account in order to maintain a positive end-of-day balance. In order to manage credit risk posed to Reserve Banks, it is important to charge the penalty fee for each calendar day that the overnight overdraft is actually outstanding.

Institutions that opt to participate in the FedNow Service's full set of features for sending and receiving instant payment transactions involving end-user customers or institutions that will use the FedNow liquidity management feature to support the private-sector instant payment service can have activity in their master accounts during weekends and holidays. Automatically applying a multiday overnight overdraft charge may not accurately reflect the number of calendar-day overnight overdrafts incurred by these institutions. For example, a FedNow Service participant might incur an overnight overdraft on a Friday evening but not on the following Saturday or Sunday, in which case the FedNow service participant would be charged for one calendar day of overnight overdrafts. Conversely, a FedNow Service participant might not incur an overnight overdraft on Friday evening but might then incur overnight overdrafts on Saturday and Sunday, in which case the FedNow Service participant would be charged for two calendar days of overnight overdrafts. This is also true of participants in the private-sector instant payment service.

By comparison, institutions that do not elect to participate in the FedNow Service or the private-sector instant payment service will not have activity in their master accounts over the weekends and holidays. These institutions will not be eligible to use the FedNow liquidity management feature since the feature is only available to support instant payments. Accordingly, if an institution that does not participate in the FedNow Service or in the private-sector instant payment service incurs an overnight overdraft before a weekend or a holiday, the overnight overdraft will persist during each calendar day that falls on a weekend or holiday. A multiday charge will accurately reflect the number of calendar days that the overnight overdraft is outstanding.

The Board is adopting the changes related to the Overnight Overdrafts policy as proposed and believes that the changes will simplify the policy while charging an overnight overdraft penalty fee for the actual number of calendar days that the overnight overdraft is outstanding.

E. Technical Changes to Text of the PSR Policy

The Board also proposed several technical changes and corrections to the PSR policy.[38] These changes are not substantive in nature and reflect current practices that the Reserve Banks use to administer the PSR policy. The Board did not receive public comments on these proposed technical changes. The Board is adopting these changes as proposed.

F. Other Comments Received

In addition to the comments described above, nine commenters provided recommendations related to topics on which the Board did not seek comment and that were not part of the proposed changes. These commenters included two institutions, one academic, two payment services operators, and four trade organizations.

Most of these comments focused on recommendations about the FedNow Service, including (i) expanding the availability of the liquidity management transfer feature beyond supporting instant payments and adding certain controls to this feature,[39] (ii) clarifying how institutions will adapt to seven-day accounting, (iii) making access to 24x7x365 intraday credit available for institutions that use services other than the FedNow Service, (iv) expanding the hours of the National Settlement Service or Fedwire Funds Service to align with the FedNow Service, (v) expanding access to the discount window on weekends and holidays, (vi) adding a legal entity identifier feature to the FedNow Service, and (vii) providing the industry educational information about the FedNow Service. While the Board addressed many of these concerns related to the FedNow Service in its 2020 notice announcing the details of the service, the Board has shared the remaining feedback with the Reserve Banks that are implementing the service.[40]

A trade organization also recommended that the Board revisit the segmentation of net debit categories and the associated net debit cap multiples. At this time, the Board is not proposing changes regarding net debit cap categories or multiples.

III. Regulatory Analyses

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires an agency to consider whether its rules will have a significant economic impact on a substantial number of small entities. Under the RFA, in connection with a final rule, an agency is generally required to publish a final regulatory flexibility analysis, unless the head of agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and the agency publishes the factual basis supporting such certification.

Regardless of whether the RFA applies to the PSR policy per se, for the reasons discussed below, the Board certifies that the changes being adopted to the PSR policy will not have a significant economic impact on a substantial number of small entities.[41]

The Board is adopting changes primarily to section II of the PSR policy, which governs the provision of intraday credit in accounts at the Reserve Banks. Thus, the changes will apply to small entities with accounts at the Reserve Banks that request intraday credit from the Reserve Banks. Pursuant to regulations issued by the SBA, financial institutions with less than $750 million in assets are considered small entities for purposes of the RFA.[42] Based on

[38] First, the Board proposed to revise a sentence in n. 61 (n. 64 after amendments) to state that, because U.S. branches and agencies are part of a single FBO family, all the U.S. offices of FBOs (excluding U.S.-chartered bank subsidiaries and U.S.-chartered Edge subsidiaries) should be treated as a consolidated family relying on the FBO's capital. The footnote currently states that for purposes of the PSR policy, the Reserve Banks evaluate U.S. branches and agencies of an FBO as a family ''because these entities have no existence separate from the FBO.'' Second, the Board proposed to revise a sentence in n. 76 (n. 79 after amendments) of the PSR policy, which discusses the streamlined procedure that highly capitalized FBOs can use to request a max cap. The amendment would clarify that the streamlined procedure is available to ''highly capitalized'' FBOs, not ''well capitalized'' FBOs. The FBO PSR capital category of ''highly capitalized'' is for FBOs while ''well capitalized'' is the analogous PCA designation for domestic institutions.

[39] As described in the Board's 2020 notice, the liquidity management transfer feature of the FedNow Service will enable FedNow Service participants to transfer funds between one another to support liquidity needs related to instant payment activity. The feature will also support participants in a private-sector instant payment service backed by a joint account at a Reserve Bank by enabling transfers between the master accounts of participants and a joint account. *See* 85 FR 48522 (Sep. 10, 2020).

[40] Other informational materials related to the FedNow Service can be found at *https://www.frbservices.org/financial-services/fednow.*

[41] 5 U.S.C. 605(b).

[42] 13 CFR 121.201 (NAICS codes 522110–522190). A financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year. *Id.* Consistent with the General Principles of Affiliation in 13 CFR 121.103, the Board counts the assets of all domestic and foreign affiliates when determining whether to classify an institution as a small entity.

institution call reports and holding company financial reports, as of June 2022, approximately 2,400 institutions that maintain Federal Reserve master accounts are considered small entities.

Although the number of small entities to which the changes will apply is substantial, the Board does not believe that the changes will have a significant economic impact on these small entities. In particular, the changes being adopted to the PSR policy do not impose any mandatory reporting, recordkeeping, or other compliance requirements on entities of any size, including small entities. Rather, part II of the PSR policy applies where an institution voluntarily requests intraday credit from a Reserve Bank.

With respect to institutions that voluntarily request intraday credit from a Reserve Bank, the Board believes that the changes being adopted to the PSR policy regarding collateralized capacity will benefit, rather than burden, such institutions (including small entities) by expanding access to collateralized capacity and simplifying the administrative steps for requesting collateralized capacity. In addition, the Board does not expect the clarifications to the PSR policy related to uncollateralized intraday to result in additional compliance requirements. Similarly, the changes to section II of the PSR policy to support the deployment of FedNow should not result in additional compliance requirements. Rather, as noted above, fees for daylight overdrafts will be lower with the expansion of the business day from 22 hours to 24 hours. Similarly, the elimination of the fee-escalation feature of the Overnight Overdrafts policy will result in lower overnight overdraft fees.

B. Competitive Impact Analysis

When considering changes to an existing service, the Board conducts a competitive impact analysis to determine whether there will be a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services due to differing legal powers or the Federal Reserve's dominant market position deriving from such legal differences.[43]

In the proposal, the Board stated that it does not believe there would be adverse effects to other service providers resulting from the proposed changes to the PSR policy because the potential for additional collateralized intraday credit and uncollateralized intraday credit on a 24x7x365 basis afforded by the proposed changes could be used to fund payment activity in both the private-sector and Reserve Bank instant payment services. One commenter indicated that the competitive impact analysis was incomplete because in order to use intraday credit on a 24x7x365 basis, participants in the private-sector instant payment service would have to become participants in the competing service, the FedNow Service. This comment is in reference to the FedNow Service liquidity management feature, which will allow interbank transfers between the master accounts of FedNow Service participants or transfers between master accounts and a joint account at a Reserve Bank that backs activity in a private-sector instant payment service, for the purpose of supporting liquidity needs related to instant payments. In its 2020 notice announcing details of the FedNow Service, the Board indicated that participants in the private-sector instant payment service will be able to access the FedNow liquidity management feature even if they do not wish to sign up for the FedNow Service's full set of features for sending and receiving instant payment transactions involving end-user customers.[44] Such participants could choose to use the FedNow Service solely to support liquidity needs related to payment activity in the private-sector instant payment service. The Board believes that given this design of the liquidity management feature there will not be any direct and material adverse effect on the ability of other service providers to compete with the Reserve Banks.

Relatedly, the commenter noted that it may be appropriate for the Board to consider whether a FedNow Service participant's ability to extinguish an overdraft during weekends or holidays creates a unique competitive advantage for the Federal Reserve by enabling FedNow Service participants to avoid overnight overdraft fees over weekends and holidays. The FedNow Service liquidity management feature will allow participants in the private-sector instant payment service to manage balances in their master accounts during weekends or holidays. Through the liquidity management feature, a participant in the private-sector instant payment service will be able to extinguish an overnight overdraft that occurs at the close of the business day Friday or before a holiday by transferring excess funds from the joint account backing the service to its master account, or by receiving funds in its master account through a funding agent. Thus, the Board believes there is no direct and material adverse effect to the ability of other service providers to compete with the Reserve Banks.

Finally, the commenter noted that the proposal to calculate overdrafts for all institutions based on a 24-hour day penalizes institutions that are not FedNow Service participants in that their daylight overdraft fees and penalty fees would be higher. As discussed earlier in this notice, fees will be lower under a 24-hour business day for all institutions, including institutions that do not participate in the FedNow Service.

C. Paperwork Reduction Act

In accordance with section 3512 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA), the Board may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Board reviewed the PSR policy changes being adopted under the authority delegated to the Board by the OMB and concluded that the proposed changes impact the information collection under OMB control number 7100–0217 (FR 2226).

The Board received no comments on the PRA analysis in the proposal.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Information Collection

Title of Information Collection: Report of Net Debit Cap.

Collection Identifier: FR 2226.

OMB Control Number: 7100–0217.

Frequency: Annually.

Respondents: Depository institutions.

Estimated number of respondents: De Minimis Cap: Non-FBOs, 893 respondents and FBOs, 18 respondents; Self-Assessment Cap: Non-FBOs, 106 respondents and FBOs, 9 respondents; and Maximum Daylight Overdraft Capacity, 59 respondents.

Estimated average hours per response: De Minimis Cap—Non-FBOs, 1 hour and FBOs, 1.5 hour; Self-Assessment Cap—Non-FBOs, 1 hour and FBOs, 1.5 hours, and Maximum Daylight Overdraft Capacity, 1 hour.

Estimated annual burden hours: De Minimis Cap: Non-FBOs, 893 hours and

[43] *See* The Federal Reserve in the Payments System (issued 1984; revised 1990 and January 2001), available at *https://www.federalreserve.gov/paymentsystems/pfs_frpaysys.htm*. Regarding the aspects of the proposal that align the PSR policy and the Overnight Overdrafts policy with the deployment of the FedNow Service, the relevant other service provider is the existing private-sector instant payment service backed by a joint account at a Reserve Bank.

[44] 85 FR 48522 (Sep. 10, 2020).

FBOs, 27 hours; Self-Assessment Cap: Non-FBOs, 106 hours and FBOs, 14 hours; and Maximum Daylight Overdraft Capacity, 59 hours.

General description: The Report of Net Debit Cap comprises three resolutions, which are filed by an institution's board of directors depending on its needs. The first resolution is used to establish a de minimis net debit cap and the second resolution is used to establish a self-assessed net debit cap.[45] The third resolution is used to establish simultaneously a self-assessed net debit cap and maximum daylight overdraft capacity. Federal Reserve Banks collect these data annually to provide information that is essential for their administration of the Board's Payment System Risk (PSR) policy. The reporting panel includes all depository institutions with access to the discount window that are eligible to request intraday credit.

Current Actions: Currently, institutions with a self-assessed net debit cap may file the third resolution in order to obtain collateralized capacity under the max cap program. The changes being adopted to the PSR policy expand access to collateralized capacity under the max cap program to include all domestic institutions with a PCA designation of undercapitalized, adequately capitalized, or well capitalized. The changes also expand access to collateralized capacity under the max cap program to include all FBOs with an FBO PSR category of undercapitalized, sufficiently capitalized, or highly capitalized. Finally, the changes eliminate the requirements that an institution provide (i) a business case outlining its need for collateralized capacity and (ii) an annual board of directors resolution approving its collateralized capacity. In order the facilitate these changes to the PSR policy, the Board is amending the requirements associated with the third resolution so that an eligible institution can request collateralized capacity regardless of whether the institution has a positive net debit cap. The changes will not increase the estimated average hours per response to FR 2226 but will expand the estimated number of respondents requesting collateralized capacity under the max cap program.

[45] Institutions use these two resolutions to establish a capacity for daylight overdrafts above the lesser of $10 million or 20 percent of the institution's capital measure. Financially-healthy U.S. chartered institutions that rarely incur daylight overdrafts in excess of the lesser of $10 million or 20 percent of the institution's capital measure do not need to file board of directors resolutions or self-assessments with their Reserve Bank.

IV. Federal Reserve Policy on Payment System Risk

The following portion titled ''Federal Reserve Policy on Payment System Risk'' will not be published in the Code of Federal Regulations.

Federal Reserve Policy on Payment System Risk

Revisions to Section II.A of the PSR Policy

The Board will revise Section II.A of the PSR policy as follows:

A. Daylight Overdraft Definition and Measurement

A daylight overdraft occurs when an institution's Federal Reserve account is in a negative position during the business day.[33] The Reserve Banks use an ex post system to measure daylight overdrafts in institutions' Federal Reserve accounts. Under this ex post measurement system, certain transactions, including Fedwire funds transfers, FedNow funds transfers, book-entry securities transfers, and net settlement transactions, are posted as they are processed during the business day. Other transactions, including ACH and check transactions, are posted to institutions' accounts according to a defined schedule. The following table presents the schedule used by the Federal Reserve for posting transactions to institutions' accounts for purposes of measuring daylight overdrafts.

[33] For purposes of measuring daylight overdrafts, the business day is the 24-hour period that begins immediately after the regularly-scheduled close of the Fedwire Funds Service (on days when the Fedwire Funds Service is open) and the FedNow Service (on all days, including weekends and holidays).

Procedures for Measuring Daylight Overdrafts [34]

Opening Balance (Previous Business Day's Closing Balance)

Post throughout the business day:

+/− FedNow funds transfers
+/− Fedwire funds transfers [35]
+/− Fedwire book-entry securities transfers
+/− National Settlement Service entries.
+ Fedwire book-entry interest and redemption payments on securities that are not obligations of, or fully guaranteed as to principal and interest by, the United States [36]
+ Electronic payments for matured coupons and definitive securities that are not obligations of, or fully guaranteed as to principal and interest by, the United States.[37]

[34] This schedule of posting rules does not affect the overdraft restrictions and overdraft measurement provisions for nonbanks established by the Competitive Equality Banking Act of 1987 and the Board's Regulation Y (12 CFR 225.52).

[35] Funds transfers that the Reserve Banks function for certain international organizations using internal systems other than payment processing systems such as Fedwire will be posted throughout the business day for purposes of measuring daylight overdrafts.

[36] The GSEs include Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), entities of the Federal Home Loan Bank System (FHLBS), the Farm Credit System, the Federal Agricultural Mortgage Corporation (Farmer Mac), the Student Loan Marketing Association (Sallie Mae), the Financing Corporation, and the Resolution Funding Corporation. The international organizations include the World Bank, the Inter-American Development Bank, the Asian Development Bank, and the African Development Bank. The Student Loan Marketing Association Reorganization Act of 1996 requires Sallie Mae to be completely privatized by 2008; however, Sallie Mae completed privatization at the end of 2004. The Reserve Banks no longer act as fiscal agents for new issues of Sallie Mae securities, and Sallie Mae is not considered a GSE.

The term ''interest and redemption payments'' refers to payments of principal, interest, and redemption on securities maintained on the Fedwire Securities Service.

The Reserve Banks will post these transactions, as directed by the issuer, provided that the issuer's Federal Reserve account contains funds equal to or in excess of the amount of the interest and redemption payments to be made. In the normal course, if a Reserve Bank does not receive funding from an issuer for the issuer's interest and redemption payments by the established cut-off hour of 4:00 p.m. eastern time on the Fedwire Securities Service, the issuer's payments will not be processed on that day.

[37] Electronic payments for credits on these securities will post according to the posting rules for the mechanism through which they are processed, as outlined in this policy. However, the majority of these payments are made by check and will be posted according to the established check posting rules as set forth in this policy.

* * * * *

Post at the close of the Fedwire Funds Service and the FedNow Service [51]

+/− All other transactions. These transactions include the following: currency and coin shipments; noncash collection; term-deposit settlements; Federal Reserve Bank checks presented after 3:00 p.m. eastern time but before 3:00 p.m. local time; foreign check transactions; small-dollar credit corrections and adjustments; term deposit settlements; and all debit corrections and adjustments. Discount-window loans

and repayments are normally posted after the close of the Fedwire Funds Service as well; however, in unusual circumstances a discount window loan may be posted earlier in the day with repayment 24 hours later, or a loan may be repaid before it would otherwise become due.

[51] The posting of transactions that occur during extensions of the Fedwire Funds Service and the FedNow Service will be backdated to the regularly scheduled close of the Fedwire Funds Service and the FedNow Service.

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Revisions to Section II.C of the PSR Policy

The Board will revise section II.C, paragraphs 3 and 4 of the ''Federal Reserve Policy on Payment System Risk'' as follows:

C. Pricing

* * * * *

Daylight overdraft fees for uncollateralized overdrafts (or the uncollateralized portion of a partially collateralized overdraft) are calculated using an annual rate of 50 basis points, quoted on the basis of a 24-hour day and a 360-day year. The effective daily rate equals the annual rate divided by 360.[57] An institution's daily daylight overdraft charge is equal to the effective daily rate multiplied by the institution's average daily uncollateralized daylight overdraft.

An institution's average daily uncollateralized daylight overdraft is calculated by dividing the sum of its negative uncollateralized Federal Reserve account balances at the end of each minute of the regularly-scheduled business day by the total number of minutes in the 24-hour business day. A negative uncollateralized Federal Reserve account balance is calculated by subtracting the unencumbered, net lendable value of collateral pledged from the total negative Federal Reserve account balance at the end of each minute. Each positive end-of-minute balance in an institution's Federal Reserve account is set to equal zero. Fully collateralized end-of-minute negative balances are similarly set to zero.

[57] The effective daily daylight-overdraft rate is truncated to 0.0000138.

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Revisions to Section II.D of the PSR Policy

The Board will revise section II.D of the ''Federal Reserve Policy on Payment System Risk'' as follows:

D. Net Debit Caps (Uncollateralized Intraday Credit Capacity)

Each institution incurring uncollateralized daylight overdrafts in its Federal Reserve account must adopt a net debit cap, that is, a ceiling on the total uncollateralized daylight overdraft position that it can incur during any given day. An institution's cap category and capital measure determine the size of its net debit cap. Specifically, the net debit cap is calculated as an institution's cap multiple times its capital measure:

net debit cap =
cap multiple × capital measure

Cap categories and their associated cap levels, set as multiples of an institution's capital measure, are listed below:

NET DEBIT CAP MULTIPLES

Cap category	Cap multiple
High	2.25.
Above average	1.875.
Average	1.125.
De minimis	0.4.
Exempt-from-filing[60]	$10 million or 0.20.
Zero	0.

[60] The net debit cap for the exempt-from-filing category is equal to the lesser of $10 million or 0.20 multiplied by the capital measure.

Pledging collateral does not increase an institution's net debit cap, although certain institutions may be eligible to obtain additional collateralized capacity in excess of their net debit caps (see section II.E). For the treatment of overdrafts that exceed the net debit cap, see section II.G.

While capital measures differ, the net debit cap provisions of this policy apply similarly to foreign banking organizations (FBOs) and to U.S. institutions. Consistent with practices for U.S.-chartered depository institutions, the Reserve Banks will advise home-country supervisors of the daylight overdraft capacity of U.S. branches and agencies of FBOs under their jurisdiction, as well as of other pertinent information related to the FBOs' caps. The Reserve Banks will also provide information on the daylight overdrafts in the Federal Reserve accounts of FBOs' U.S. branches and agencies in response to requests from home-country supervisors.

1. Eligibility

An institution must have regular access to the discount window in order to adopt a net debit cap greater than zero. Granting a net debit cap, or any extension of intraday credit, to an institution is at the discretion of the Reserve Bank. As detailed in the following matrix, an institution's eligibility to adopt and maintain a positive net debit cap depends on the institution's creditworthiness as determined by (1) its Prompt Corrective Action (PCA) designation[61] or FBO PSR capital category,[62] and (2) the supervisory rating.

[61] An insured depository institution is (1) ''well capitalized'' if it significantly exceeds the required minimum level for each relevant capital measure, (2) ''adequately capitalized'' if it meets the required minimum level for each relevant capital measure, (3) ''undercapitalized'' if it fails to meet the required minimum level for any relevant capital measure, (4) ''significantly undercapitalized'' if it is significantly below the required minimum level for any relevant capital measure, or (5) ''critically undercapitalized'' if it fails to meet any leverage limit (the ratio of tangible equity to total assets) specified by the appropriate federal banking agency, in consultation with the FDIC, or any other relevant capital measure established by the agency to determine when an institution is critically undercapitalized (12 U.S.C. 1831o).

[62] The four FBO PSR capital categories for FBOs are ''highly capitalized,'' ''sufficiently capitalized,'' ''undercapitalized,'' and ''intraday credit ineligible.'' To determine whether it is highly capitalized or sufficiently capitalized, an FBO should compare its risk-based capital ratios with the corresponding ratios in Regulation H for well-capitalized and adequately capitalized banks. 12 CFR 208.43(b). Additionally, an FBO must have a leverage ratio of 4 percent or 3 percent (calculated under home-country standards) to qualify as, respectively, highly capitalized or sufficiently capitalized. To determine whether it is undercapitalized, an FBO would compare its risk-based capital ratios with the corresponding ratios in Regulation H. Additionally, an FBO would be deemed undercapitalized if its home-country leverage ratio is less than 3 percent. Finally, to determine whether it is intraday credit ineligible, an FBO should compare its risk-based capital ratios with the corresponding ratios in Regulation H for significantly undercapitalized banks. Additionally, an FBO would be deemed intraday credit ineligible if its home-country leverage ratio is less than 2 percent.

ELIGIBILITY CRITERIA FOR REQUESTING A POSITIVE NET DEBIT CAP

PCA designation/ FBO PSR capital category	Supervisory rating[63]			
	Strong	Satisfactory	Fair	Marginal or unsatisfactory
Well capitalized/Highly capitalized.	Eligible	Eligible	Eligible	Ineligible (Zero net debit cap).
Adequately capitalized/Sufficiently capitalized.	Eligible	Eligible	Eligible	Ineligible (Zero net debit cap).
Undercapitalized	May be eligible subject to a full assessment of creditworthiness.	May be eligible subject to a full assessment of creditworthiness.	Ineligible (Zero net debit cap)	Ineligible (Zero net debit cap).
Significantly or critically undercapitalized/Intraday credit ineligible.	Ineligible (Zero net debit cap)	Ineligible (Zero net debit cap)	Ineligible (Zero net debit cap)	Ineligible (Zero net debit cap).

[63] Supervisory ratings, such as the Uniform Financial Institution Rating System (CAMELS) and the RFI Rating System, are generally assigned on a scale from 1 to 5, with 1 being the strongest rating. Thus, a supervisory rating of 1 is considered Strong, a rating of 2 is considered Satisfactory, a rating of 3 is considered Fair, a rating of 4 is considered Marginal, and a rating of 5 is considered Unsatisfactory. An institution will not be eligible for uncollateralized capacity if a supervisory agency assigns a Marginal or Unsatisfactory supervisory rating to the institution. If an institution's holding company has been assigned a Deficient-2 rating in any of the components of the Large Financial Institution (LFI) rating system or an RFI rating of 4 or 5, the institution will not be eligible to request the ''above average'' and ''high'' self-assessed cap categories but may be eligible for a lower cap category. Similarly, if an institution's affiliates are assigned a Marginal or Unsatisfactory supervisory rating, the institution will not be eligible to request the ''above average'' and ''high'' self-assessed cap categories but may be eligible for a lower cap category. Reserve Banks will assign an institution a ''zero'' net debit cap if supervisory information about the holding company and affiliated institutions reveals material operating or financial weaknesses that pose significant risks to the institution.

As described further in section II.D.2.a, an institution seeking to establish a net debit cap category of high, above average, or average must perform a self-assessment of its own creditworthiness, intraday funds management and control, customer credit policies and controls, and operating controls and contingency procedure. An institution that performs a self-assessment will be deemed ineligible for a positive net debit cap if its self-assessment results in the lowest possible rating for any one of the four components of the self-assessment process.

2. Cap Categories

* * * * *

a. Self-Assessed

In order to establish a net debit cap category of high, above average, or average, an institution must perform a self-assessment of its own creditworthiness, intraday funds management and control, customer credit policies and controls, and operating controls and contingency procedures.[64] For domestic institutions, the assessment of creditworthiness is based on the institution's supervisory rating and PCA designation.[65] For U.S. branches and agencies of FBOs that are based in jurisdictions that have implemented capital standards substantially consistent with those established by the Basel Committee on Banking Supervision, the assessment of creditworthiness is based on the institution's supervisory rating and its FBO PSR capital category.[66] An institution may perform a full assessment of its creditworthiness in certain limited circumstances—for example, if its condition has changed significantly since its last examination or if it possesses additional substantive information regarding its financial condition. Additionally, U.S. branches and agencies of FBOs based in jurisdictions that have not implemented capital standards substantially consistent with those established by the Basel Committee on Banking Supervision are required to perform a full assessment of creditworthiness to determine their ratings for the creditworthiness component. An institution performing a self-assessment must also evaluate its intraday funds-management procedures and its procedures for evaluating the financial condition of and establishing intraday credit limits for its customers. Finally, the institution must evaluate its operating controls and contingency procedures to determine if they are sufficient to prevent losses due to fraud or system failures. The Guide includes a detailed explanation of the self-assessment process. * * *

[64] This assessment should be done on an individual-institution basis, treating as separate entities each commercial bank, each Edge corporation (and its branches), each thrift institution, and so on. An exception is made in the case of U.S. branches and agencies of FBOs. Because these entities are part of a single FBO family, all the U.S. offices of FBOs (excluding U.S.-chartered bank subsidiaries and U.S.-chartered Edge subsidiaries) should be treated as a consolidated family relying on the FBO's capital.

[65] *See* n. 61 *supra.*

[66] *See* n. 62 *supra.*

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d. Zero

Some institutions that could obtain positive net debit caps choose to have zero caps. Often these institutions have very conservative internal policies regarding the use of Federal Reserve intraday credit. If an institution that has adopted a zero cap incurs a daylight overdraft, the Reserve Bank counsels the institution and may monitor the institution's activity in real time and reject or delay certain transactions that would cause an overdraft. If the institution qualifies for a positive cap, the Reserve Bank may suggest that the institution adopt an exempt-from-filing cap or file for a higher cap if the institution believes that it will continue to incur daylight overdrafts or overdrafts in excess of its assigned cap limit.

In addition, a Reserve Bank may assign an institution a zero net debit cap. Institutions that may pose special risks to the Reserve Banks, such as those without regular access to the discount window, those incurring daylight overdrafts in violation of this policy, those that are ineligible for intraday credit based on their supervisory rating and PCA designation/FBO PSR capital category (see section II.A), or those that are otherwise in weak financial condition are generally assigned a zero cap (see section II.F). Recently chartered institutions may also be assigned a zero net debit cap.

Certain institutions with zero caps, including institutions that have been involuntarily assigned a zero cap by a Reserve Bank, may be eligible to request collateralized capacity from their Reserve Bank (see sections II.E). * * *

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Revisions to Section II.E of the PSR policy

The Board will revise section II.E of the ''Federal Reserve Policy on Payment System Risk'' as follows:

E. Collateralized Intraday Credit Capacity

Subject to the approval of its administrative Reserve Bank, an eligible institution may pledge collateral to secure collateralized daylight overdraft capacity in addition to uncollateralized capacity from its net debit cap.[74] The resulting combination of uncollateralized and collateralized capacity is known as the maximum daylight overdraft capacity (max cap) and is defined as follows:

maximum daylight overdraft capacity = net debit cap + collateralized capacity.[75]

Once approved, the Reserve Bank will monitor the institution to ensure that it does not exceed its max cap. Pledging less collateral reduces an institution's effective maximum daylight overdraft capacity level, but pledging more collateral does not increase the maximum daylight overdraft capacity above the approved max cap level.

1. Eligibility

An institution that wishes to expand its daylight overdraft capacity by pledging collateral should consult with its administrative Reserve Bank. A domestic institution is eligible to request collateralized intraday credit if its PCA designation is ''undercapitalized,'' ''adequately capitalized,'' or ''well capitalized.''[76] Similarly, an FBO is eligible to request collateralized intraday credit if its FBO PSR capital category is ''undercapitalized,'' ''sufficiently capitalized,'' or ''highly capitalized.''[77] Provided that it meets these capitalization requirements, an institution may be eligible to request collateralized capacity even if the institution is not eligible to adopt a positive net debit cap (see section II.D.1).

[74] The administrative Reserve Bank is responsible for the administration of Federal Reserve credit, reserves, and risk-management policies for a given institution. All collateral must be acceptable to the administrative Reserve Bank. The Reserve Bank may, at its discretion, accept securities in transit on the Fedwire Securities Service as collateral to support the maximum daylight overdraft capacity level. Collateral eligibility and margins are the same for PSR policy purposes as for the discount window. *See http://www.frbdiscountwindow.org/* for information.

[75] Collateralized capacity, on any given day, equals the amount of collateral pledged to the Reserve Bank, not to exceed the difference between the institution's maximum daylight overdraft capacity level and its net debit cap in the given reserve maintenance period.

[76] *See* n. 61, *supra.*

[77] *See* n. 62, *supra.*

2. General Procedure for Requesting Collateralized Capacity

If an institution is requesting collateralized capacity for the first time, it must submit a resolution from its board of directors indicating its board's approval of the requested max cap. Increases to collateralized capacity previously approved by Reserve Banks will also require a board of directors resolution. In most cases, an institution will not have to provide to a Reserve Bank a business case justifying its request for collateralized capacity. However, an institution must provide a business-case justification if:

- The institution requests a max cap in excess of its capital measure multiplied by 2.25; or
- The administrative Reserve Bank exercises discretion to require that the institution submit a business-case justification due to recent developments in the institution's condition.

Once a Reserve Bank has approved an institution's collateralized capacity, the collateralized capacity will remain in place, without the need for further action by the institution, provided that the institution maintains the eligibility standards outlined above.

3. Streamlined Procedure for Certain FBOs

An FBO that is highly capitalized[78] and has a self-assessed net debit cap may request from its Reserve Bank a streamlined procedure to obtain a maximum daylight overdraft capacity. These FBOs are not required to provide documentation of the business case or obtain a board of directors resolution for collateralized capacity in an amount that exceeds its current net debit cap (which is based on 10 percent worldwide capital times its cap multiple), as long as the requested total capacity is 100 percent or less of worldwide capital times a self-assessed cap multiple.[79] In order to ensure that intraday liquidity risk is managed appropriately and that the FBO will be able to repay daylight overdrafts, eligible FBOs under the streamlined procedure will be subject to an initial and periodic review of liquidity plans that are analogous to the liquidity reviews undergone by U.S. institutions.[80] If an eligible FBO requests capacity in excess of 100 percent of worldwide capital times the self-assessed cap multiple, it would be subject to the general procedure.

[78] *See* n. 62, *supra.*

[79] For example, an FBO that is highly capitalized is eligible for uncollateralized capacity of 10 percent of worldwide capital times the cap multiple. The streamlined collateralized capacity procedure would provide such an institution with additional collateralized capacity of 90 percent of worldwide capital times the cap multiple. As noted above, FBOs report their worldwide capital on the Annual Daylight Overdraft Capital Report for U.S. Branches and Agencies of Foreign Banks (FR 2225).

[80] The liquidity reviews will be conducted by the administrative Reserve Bank, in consultation with each FBO's home country supervisor.

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Revisions to Section II.F of the PSR policy

The Board will revise section II.F, paragraphs 3 and 4 of the ''Federal Reserve Policy on Payment System Risk'' as follows:

F. Special Situations

Certain institutions are subject to a daylight-overdraft penalty fee levied against the average daily daylight overdraft incurred by the institution. These include Edge and agreement corporations, bankers' banks that are not subject to reserve requirements, and limited-purpose trust companies. The annual rate used to determine the daylight-overdraft penalty fee is equal to the annual rate applicable to the daylight overdrafts of other institutions (50 basis points) plus 100 basis points. The effective daily overdraft penalty rate equals the annual penalty rate divided by 360.[81] The daylight-overdraft penalty rate applies to the institution's daily average daylight overdraft in its Federal Reserve account. The daylight-overdraft penalty fee for these institutions is charged in lieu of, not in addition to, the daylight overdraft fee that applies to other institutions.

[81] The effective daily daylight-overdraft penalty rate is truncated to 0.0000416.

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The Board will modify and add the Policy on Overnight Overdrafts as part III to the PSR policy as follows:

Part III. Policy on Overnight Overdrafts

An overnight overdraft is a negative balance in a Federal Reserve account at the close of the business day. The Board expects institutions to avoid overnight overdrafts.

To minimize the Reserve Banks' exposure to overnight overdrafts, which are not always collateralized, the Board authorizes Reserve Banks to discourage depository institutions from incurring overnight overdrafts by charging a penalty fee. Institutions that do not extinguish their daylight overdrafts and incur overnight overdrafts are subject to ex post counseling in addition to a penalty fee.

The Board establishes the following penalty rate structure for overnight overdrafts:

1. An overnight overdraft penalty rate of the primary credit rate plus 4 percentage points (annual rate).
2. A minimum penalty fee of 100 dollars, regardless of the amount of the overnight overdraft. The minimum fee is administered per each occasion.
3. A charge for each calendar day (including weekends and holidays) that an overnight overdraft is outstanding.

[92] *See* n. 33, which defines the term ''business day'' for this purpose.

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By order of the Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2022–26615 Filed 12–7–22; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

[Docket No. OP–1793]

Principles for Climate-Related Financial Risk Management for Large Financial Institutions

AGENCY: The Board of Governors of the Federal Reserve System (Board).

ACTION: Notice and request for comment.

SUMMARY: The Board is requesting comment on draft principles that would provide a high-level framework for the safe and sound management of exposures to climate-related financial risks for Board-supervised financial institutions with over $100 billion in assets. Although all financial institutions, regardless of size, may have material exposures to climate-related financial risks, these principles are intended for the largest financial institutions, *i.e.,* those with over $100 billion in total consolidated assets. The draft principles are intended to support efforts by large financial institutions to focus on key aspects of climate-related financial risk management.

DATES: Comments on the draft principles must be received on or before February 6, 2023.

ADDRESSES: Interested parties are encouraged to submit written comments. When submitting comments, please consider submitting your comments by email or fax because paper mail in the Washington, DC area and at the Board may be subject to delay. You may submit comments, identified by Docket No. OP–1793, by any of the following methods:

- *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Email: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

In general, all public comments will be made available on the Board's website at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, and will not be modified to remove confidential, contact or any identifiable information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St. NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. during federal business weekdays.

FOR FURTHER INFORMATION CONTACT: Anna Lee Hewko, Associate Director, (202) 530–6260; Morgan Lewis, Manager, (202) 452–2000; Matthew McQueeney, Senior Financial Institution Policy Analyst II, (202) 452–2942 Katie Budd, Senior Financial Institution Policy Analyst I, (202) 452–2365; Susan Ali, Senior Financial Institution Policy Analyst I, (202) 452–3023; Division of Banking Supervision and Regulation; or Asad Kudiya, Assistant General Counsel, (202) 475–6358; Kelley O'Mara, Senior Counsel (202) 973–7497; Matthew Suntag, Senior Counsel, (202) 452–3694; or David Imhoff, Attorney, (202) 452–2249, Legal Division. Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. For the hearing impaired and users of TTY–TRS, please call 711 from any telephone, anywhere in the United States.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Board is requesting comment on draft principles that would provide a high-level framework for the safe and sound management of exposures to climate-related financial risks for financial institutions with over $100 billion in assets. The financial impacts that result from the economic effects of climate change and the transition to a lower carbon economy pose an emerging risk to the safety and soundness of financial institutions [1] and the financial stability of the United States. Financial institutions are likely to be affected by both the physical risks and transition risks associated with climate change (collectively, ''climate-related financial risks''). Physical risks refer to the harm to people and property arising from acute, climate-related events, such as hurricanes, wildfires, floods, and heatwaves, and chronic shifts in climate, including higher average temperatures, changes in precipitation patterns, sea level rise, and ocean acidification.[2] Transition risks refer to stresses to certain institutions or sectors arising from the shifts in policy, consumer and business sentiment, or technologies associated with the changes that would be part of a transition to a lower carbon economy.[3]

Weaknesses in how financial institutions identify, measure, monitor, and control potential climate-related financial risks could adversely affect financial institutions' safety and soundness, as well as the stability of the overall financial system. The Board is therefore seeking comment on draft principles that would promote a consistent understanding of how climate-related financial risks can be effectively identified, measured, monitored, and controlled among the largest institutions, those with over $100 billion in total consolidated assets. Many financial institutions are considering these risks and would benefit from guidance as they develop strategies, deploy resources, and make necessary investments to manage climate-related financial risks.

The draft principles would provide a high-level framework for the safe and

[1] In this issuance, the term ''financial institution'' or ''institution'' includes state member banks, bank holding companies, savings and loan holding companies, foreign banking organizations with respect to their U.S. operations, and non-bank systemically important financial institutions (SIFIs) supervised by the Board.

[2] The Financial Stability Oversight Council has described the impacts of physical risks as follows: ''The intensity and frequency of extreme weather and climate-related disaster events are increasing and already imposing substantial economic costs. Such costs to the economy are expected to increase further as the cumulative impacts of past and ongoing global emissions continue to drive rising global temperatures and related climate changes, leading to increased climate-related risks to the financial system.'' *Report on Climate-Related Financial Risk,* Financial Stability Oversight Council, page 10 (Oct. 21, 2021) (''FSOC Climate Report''), available at *https://home.treasury.gov/system/files/261/FSOC-Climate-Report.pdf.*

[3] The Financial Stability Oversight Council has described the impacts of transition risks as: ''. . . [Changing] public policy, adoption of new technologies, and shifting consumer and investor preferences have the potential to impact the allocation of capital . . . . If these changes occur in a disorderly way owing to substantial delays in action or abrupt changes in policy, their impact on firms, market participants, individuals, and communities is likely to be more sudden and disruptive.'' FSOC Climate Report, page 13.

sound management of exposures to climate-related financial risks, consistent with the risk management frameworks described in the Board's existing rules and guidance. The draft principles are intended to support financial institutions' efforts to incorporate climate-related financial risks into financial institutions' risk management frameworks in a manner consistent with safe and sound practices.

The Board developed the proposed guidance in consultation with the Office of the Comptroller of the Currency (OCC) and Federal Deposit Insurance Corporation (FDIC). The OCC and FDIC requested comment on similar draft principles in December 2021 and March 2022, respectively. The agencies seek to promote consistency in their climate risk management guidance and to clearly articulate risk-based principles on climate-related financial risks for large financial institutions. Accordingly, after reviewing comments received on the proposed guidance, the Board intends to coordinate with the OCC and FDIC in issuing any final guidance.

II. Request for Comment

The Board welcomes comments on all aspects of the draft principles, including on the following questions.

Question 1: In what ways, if any, could the draft principles be revised to better address challenges a financial institution may face in managing climate-related financial risks?

Question 2: Are there areas where the draft principles should be more or less specific given the current data availability and understanding of climate-related financial risks? What other aspects of climate-related financial risk management, if any, should the Board consider?

Question 3: What challenges, if any, could financial institutions face in incorporating these draft principles into their risk management frameworks?

III. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a current valid Office of Management and Budget (OMB) control number.

These draft principles would not revise any existing, or create any new, information collections pursuant to the PRA. Consequently, no submissions will be made to the OMB for review.

IV. Proposed Principles

The financial impacts that result from the economic effects of climate change and the transition to a lower carbon economy pose an emerging risk to the safety and soundness of financial institutions [4] and the financial stability of the United States. Financial institutions are likely to be affected by both the physical risks and transition risks associated with climate change (collectively referred to as ''climate-related financial risks''). Physical risks refer to the harm to people and property arising from acute, climate-related events, such as hurricanes, wildfires, floods, and heatwaves, and chronic shifts in climate, including higher average temperatures, changes in precipitation patterns, sea level rise, and ocean acidification. Transition risks refer to stresses to institutions or sectors arising from the shifts in policy, consumer and business sentiment, or technologies associated with the changes that would be part of a transition to a lower carbon economy.

Physical and transition risks associated with climate change could affect households, communities, businesses, and governments—damaging property, impeding business activity, affecting income, and altering the value of assets and liabilities. These risks may be propagated throughout the economy and financial system. As a result, the financial sector may experience credit and market risks associated with loss of income, defaults and changes in the values of assets, liquidity risks associated with changing demand for liquidity, operational risks associated with disruptions to infrastructure or other channels, or legal risks.[5]

Weaknesses in how a financial institution identifies, measures, monitors, and controls the physical and transition risks associated with a changing climate could adversely affect a financial institution's safety and soundness. The adverse effects of climate change could also include a potentially disproportionate impact on the financially vulnerable, including low- to moderate-income (LMI) and other disadvantaged households and communities.[6]

These draft principles provide a high-level framework for the safe and sound management of exposures to climate-related financial risks, consistent with the existing risk management frameworks described in the Board's existing rules and guidance.

The principles are intended to support efforts by financial institutions to focus on key aspects of climate-related financial risk management. The principles are designed to help financial institutions' boards of directors and management make progress toward incorporating climate-related financial risks into financial institutions' risk management frameworks in a manner consistent with safe and sound practices. The principles are intended to supplement existing risk management standards and guidance on the role of boards and management.[7]

Although all financial institutions, regardless of size, may have material exposures to climate-related financial risks, these principles are intended for the largest financial institutions, those with over $100 billion in total consolidated assets.[8] Effective risk management practices should be appropriate to the size of the financial institution and the nature, scope, and risk of its activities. In keeping with the Board's risk-based approach to supervision, the Board anticipates that differences in financial institutions' complexity of operations and business models will result in different approaches to addressing climate-related financial risks. Some large financial institutions are developing the governance structures, processes, and analytical methodologies to identify, measure, monitor, and control for these risks. The Board understands that expertise in climate risk and the incorporation of climate-related financial risks into risk management frameworks remains under development in many financial institutions and will continue to evolve over time. The Board also recognizes that the incorporation of

[4] In this issuance, the term ''financial institution'' or ''institution'' includes state member banks, bank holding companies, savings and loan holding companies, intermediate holding companies, foreign banking organizations with respect to their U.S. operations, and non-bank systemically important financial institutions (SIFIs) supervised by the Board.

[5] FSOC Climate Report, page 13.

[6] For further information, see Staff Reports, Federal Reserve Bank of New York, *Understanding the Linkages between Climate Change and Inequality in the United States,* No. 991 (Nov. 2021), *available at https://www.newyorkfed.org/research/staff_reports/sr991.html.*

[7] References to the board and senior management throughout these principles should be understood in accordance with their respective roles and responsibilities, and is not intended to conflict with existing guidance from the Board regarding the roles of board and senior management or advocate for a specific board structure. See, *e.g.,* SR 21–3/CA 21–1: Supervisory Guidance on Board of Directors' Effectiveness (Feb. 26, 2021) *https://www.federalreserve.gov/supervisionreg/srletters/SR2103.htm.*

[8] The Board will consider the total consolidated assets of a branch or agency itself for branches and agencies of foreign banking organizations subject to Board supervision.

material climate-related financial risks into various planning processes will be iterative, as measurement methodologies, models, and data for analyzing these risks continue to mature.

Through this and any subsequent climate-related financial risk guidance, the Board will continue to encourage financial institutions to manage climate-related financial risks in a manner that will allow them to continue to prudently meet the financial services needs of their communities. The Board encourages financial institutions to take a risk-based approach in assessing the climate-related financial risks associated with individual customer relationships and to take into consideration the financial institution's ability to manage the risk.

General Principles

Governance. An effective risk governance framework is essential to a financial institution's safe and sound operation. A financial institution's board of directors (board) should understand the effects of climate-related financial risks on the financial institution in order to oversee management's implementation of the institution's business strategy, risk profile, and risk appetite. The board should oversee the financial institution's risk-taking activities and hold management accountable for adhering to the risk governance framework. A financial institution's board should acquire sufficient information to understand the implications of climate-related financial risks across various scenarios and planning horizons, which may include those that extend beyond the institution's typical strategic planning horizon. Sound governance by the board should include allocating appropriate resources to support climate-related financial risk management and clearly communicating to management the information the board needs to oversee the measurement and management of climate-related financial risks to the financial institution. The board should assign accountability for climate-related financial risks within existing organizational structures or establish new structures for climate-related financial risks.

The board should oversee the financial institution's risk-taking activities and hold management accountable for adhering to the risk governance framework. The board should consider whether the incorporation of climate-related financial risks into the financial institution's overall business strategy and risk management frameworks may warrant changes to its compensation policies, taking into account that compensation policies should be aligned with the business, risk strategy, objectives, values, and long-term interests of the financial institution.

Management is responsible for implementing the financial institution's policies in accordance with the board's strategic direction and for executing the financial institution's overall strategic plan and risk governance framework. This responsibility includes assuring that there is sufficient expertise to execute the strategic plan and effectively managing all risks, including climate-related financial risks. This also includes management's responsibility to oversee the development and implementation of processes to identify, measure, monitor, and control climate-related financial risks within the financial institution's existing risk management framework. Management should also hold staff accountable for controlling risks within established lines of authority and responsibility. Management is responsible for regularly reporting to the board on the level and nature of risks to the financial institution, including climate-related financial risks. Management should provide the board with sufficient information for the board to understand the impacts of climate-related financial risks to the financial institution's risk profile and make sound, well-informed decisions. Where dedicated climate risk organizational structures are established by the board, management should clearly define these units' responsibilities and interaction with existing governance structures.

Policies, Procedures, and Limits. Management should incorporate climate-related financial risks into policies, procedures, and limits to provide detailed guidance on the financial institution's approach to these risks in line with the strategy and risk appetite set by the board. Policies, procedures, and limits should be modified when necessary to reflect (i) the distinctive characteristics of climate-related financial risks, such as the potentially longer time horizon and forward-looking nature of the risks, and (ii) changes to the financial institution's operating environment or activities.

Strategic Planning. The board and management should consider material climate-related financial risk exposures when setting the financial institution's overall business strategy, risk appetite, and capital plan. As part of forward-looking strategic planning, the board and management should address the potential impact of climate-related financial risk exposures on the financial institution's financial condition, operations (including geographic locations), and business objectives over various time horizons. The board and management should also consider climate-related financial risk impacts on the financial institution's other operational and legal risks, and stakeholders, including low-to-moderate income and other disadvantaged households and communities. This consideration should also include assessing physical harm or access to the financial institution's products and services.

Any climate-related strategies and commitments should align with and support the financial institution's broader strategy, risk appetite, and risk management framework. In addition, where financial institutions engage in public communication of their climate-related strategies, boards and management should assure that any public statements about their institutions' climate-related strategies and commitments are consistent with their internal strategies and risk appetite statements.

Risk Management. Climate-related financial risks can impact financial institutions through a range of traditional risk types. Management should oversee the development and implementation of processes to identify, measure, monitor, and control climate-related financial risk exposures within the financial institution's existing risk management framework. Financial institutions with sound risk management practices employ a comprehensive process to identify emerging and material risks related to the financial institution's business activities. The risk identification process should include input from stakeholders across the organization with relevant expertise (*e.g.,* business units, independent risk management, internal audit, and legal). Risk identification includes assessment of climate-related financial risks across a range of plausible scenarios and under various time horizons.

As part of sound risk management, management should develop processes to measure and monitor material climate-related financial risks and to communicate and report the materiality of those risks to internal stakeholders. Material climate-related financial risk exposures should be clearly defined, aligned with the financial institution's risk appetite, and supported by appropriate metrics (*e.g.,* risk limits and key risk indicators) and escalation processes. Management should incorporate climate-related financial

risks into the financial institution's risk management system, including internal controls and internal audit.

Tools and approaches for measuring and monitoring exposure to climate-related financial risks include, among others, exposure analysis, heat maps, climate risk dashboards, and scenario analysis. These tools can be leveraged to assess a financial institution's exposure to both physical and transition risks in both the shorter and longer term. Outputs should inform the risk identification process and the short- and long-term financial risks to a financial institution's business model from climate change.

Data, Risk Measurement, and Reporting. Sound climate-related financial risk management depends on the availability of timely, accurate, consistent, complete, and relevant data. Management should incorporate climate-related financial risk information into the financial institution's internal reporting, monitoring, and escalation processes to facilitate timely and sound decision-making across the financial institution. Effective risk data aggregation and reporting capabilities allow management to capture and report material and emerging climate-related financial risk exposures, segmented or stratified by physical and transition risks, based upon the complexity and types of exposures. Data, risk measurement, modeling methodologies, and reporting continue to evolve at a rapid pace; management should monitor these developments and incorporate them into the institution's climate-related financial risk management as warranted.

Scenario Analysis. Climate-related scenario analysis is emerging as an important approach for identifying, measuring, and managing climate-related financial risks. For the purposes of these draft principles, climate-related scenario analysis refers to exercises used to conduct a forward-looking assessment of the potential impact on a financial institution of changes in the economy, changes in the financial system, or the distribution of physical hazards resulting from climate-related financial risks. These exercises differ from traditional stress testing exercises that typically assess the potential impacts of transitory shocks to near-term economic and financial conditions. An effective climate-related scenario analysis framework provides a comprehensive and forward-looking perspective that financial institutions can apply alongside existing risk management practices to evaluate the resiliency of a financial institution's strategy and risk management to the structural changes arising from climate-related financial risks.

Management should develop and implement climate-related scenario analysis frameworks in a manner commensurate to the financial institution's size, complexity, business activity, and risk profile. These frameworks should include clearly defined objectives that reflect the financial institution's overall climate-related financial risk management strategies. These objectives could include, for example, exploring the impacts of climate-related financial risks on the financial institution's strategy and business model, identifying and measuring vulnerability to relevant climate-related financial risk factors including physical and transition risks, and estimating climate-related exposures and potential losses across a range of scenarios, including extreme but plausible scenarios. A climate-related scenario analysis framework can also assist management in identifying data and methodological limitations and uncertainty in climate-related financial risk management and informing the adequacy of the institution's climate-related financial risk management framework.

Climate-related scenario analyses should be subject to oversight, validation, and quality control standards that would be commensurate to the financial institution's risk. Climate-related scenario analysis results should be clearly and regularly communicated to the board and all relevant individuals within the financial institution, including an appropriate level of information necessary to effectively convey the assumptions, limitations, and uncertainty of results.

Management of Risk Areas

A risk assessment process is part of a sound risk governance framework, and it allows management to identify emerging risks and to develop and implement appropriate strategies to mitigate those risks. Management should consider and incorporate climate-related financial risks when identifying and mitigating all types of risk. These risk assessment principles describe how climate-related financial risks can be addressed in various risk categories.

Credit Risk. Management should consider climate-related financial risks as part of the underwriting and ongoing monitoring of portfolios. Effective credit risk management practices could include monitoring climate-related credit risks through sectoral, geographic, and single-name concentration analyses, including credit risk concentrations stemming from physical and transition risks. As part of concentration risk analysis, management should assess potential changes in correlations across exposures or asset classes. Consistent with the financial institution's risk appetite statement, management should determine credit risk tolerances and lending limits related to these risks.

Liquidity Risk. Consistent with sound oversight and liquidity risk management, management should assess whether climate-related financial risks could affect its liquidity position and, if so, incorporate those risks into their liquidity risk management practices and liquidity buffers.

Other Financial Risk. Management should monitor interest rate risk and other model inputs for greater volatility or less predictability due to climate-related financial risks. Where appropriate, management should include corresponding measures of conservatism in their risk measurements and controls. Management should monitor how climate-related financial risks affect the financial institution's exposure to risk related to changing prices. While market participants are still researching how to measure climate-related price risk, management should use the best measurement methodologies reasonably available to them and refine them over time.

Operational Risk. Management should consider how climate-related financial risk exposures may adversely impact a financial institution's operations, control environment, and operational resilience. Sound operational risk management includes incorporating an assessment across all business lines and operations, including material third-party operations, and considering climate-related impacts on business continuity and the evolving legal and regulatory landscape.

Legal/Compliance Risk. Management should consider how climate-related financial risks and risk mitigation measures affect the legal and regulatory landscape in which the financial institution operates. This consideration includes, but is not limited to, possible changes to legal requirements for, or underwriting considerations related to, flood or disaster-related insurance, and possible fair lending concerns if the financial institution's risk mitigation measures disproportionately affect communities or households on a prohibited basis such as race or ethnicity.

Other Nonfinancial Risk. Consistent with sound oversight, the board and management should monitor how the execution of strategic decisions and the

operating environment affect the financial institution's financial condition and operational resilience as discussed in the strategic planning section. Management should also consider the extent to which the financial institution's activities may increase the risk of negative financial impact from other operational risk, liability, or litigation. Management should implement adequate measures to account for these risks where material.

By order of the Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2022–26648 Filed 12–7–22; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than December 23, 2022.

A. Federal Reserve Bank of San Francisco (Joseph Cuenco, Assistant Vice President, Formations & Transactions) 101 Market Street, San Francisco, California:

1. *Strategic Value Investors, LP; Strategic Value Bank Partners, LLC; Strategic Value Private Investors, LP; Strategic Value Private Partners, LLC, all of Cleveland, Ohio; Benjamin Mackovak, Bratenahl, Ohio, and Martin Adams, Naples, Florida, each a managing member of Strategic Value Bank Partners, LLC and Strategic Value Private Partners, LLC;* as a group acting in concert, to acquire additional voting shares of Bay Community Bancorp, and thereby indirectly acquire additional voting shares of Community Bank of the Bay, both of Oakland, California.

Board of Governors of the Federal Reserve System.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2022–26708 Filed 12–7–22; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') is seeking public comment on its proposal to extend for an additional three years the Office of Management and Budget clearance for information collection requirements of its Affiliate Marketing Rule, which applies to certain motor vehicle dealers, and its shared enforcement with the Consumer Financial Protection Bureau (''CFPB'') of the provisions (subpart C) of the CFPB's Regulation V regarding other entities (''CFPB Rule''). The current clearance expires on February 28, 2023.

DATES: Comments must be received on or before February 6, 2023.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comments part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Paperwork Reduction Act Comment: FTC File No. P072108'' on your comment, and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: David Walko, Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, (202) 326–2880.

SUPPLEMENTARY INFORMATION:

Title: Affiliate Marketing Rule (16 CFR part 680).

OMB Control Number: 3084–0131.

Type of Review: Extension of currently approved collection.

Background:

As required by section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), the FTC is providing this opportunity for public comment before requesting that the Office of Management and Budget extend the existing clearance for the information collection requirements contained in the Affiliate Marketing Rule.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') was enacted on July 21, 2010.[1] The Dodd-Frank Act transferred to the CFPB most of the FTC's rulemaking authority for the Affiliate Marketing provisions of the Fair Credit Reporting Act (''FCRA'').[2] The FTC retained rulemaking authority for its Affiliate Marketing Rule (16 CFR part 680) solely for motor vehicle dealers described in section 1029(a) of the Dodd-Frank Act as predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.[3] Additionally, the FTC shares enforcement authority with the CFPB for provisions of Regulation V subpart C (12 CFR 1022.20 through 1022.27) that apply to entities other than those specified above.[4]

As mandated by section 214 of the Fair and Accurate Credit Transactions Act (''FACT Act''), Public Law 108–159 (Dec. 6, 2003), the Affiliate Marketing

[1] Public Law 111–203, 124 Stat. 1376 (2010).

[2] 15 U.S.C. 1681 *et seq.*

[3] *See* Dodd-Frank Act, at section 1029 (a), (c).

[4] While the FTC shares enforcement authority with the Federal Reserve System, Commodity Futures Trading Commission, National Credit Union Administration, Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation, for the Consumer Financial Protection Bureau's counterpart affiliate sharing rule, Regulation V (subpart C), 12 CFR 1022.20 through 1220.27, the CFPB has assumed 95% of the burden associated with its affiliate sharing rule. *See* Consumer Financial Protection Bureau, *Agency Information Collection Activities: Submission for OMB Review; Comment Request,* 85 FR 52559 (2020); CFPB Supporting Statement, *Fair Credit Reporting Act (Regulation V) 12 CFR 1022,* OMB Control Number: 3170–0002 (2020). In addition, the CFPB has estimated that the burden associated with Regulation V's affiliate sharing provisions is *de minimis.*

Rule (''Rule'') requires covered entities to provide consumers with notice and an opportunity to opt out of the use of certain information before sending marketing solicitations. The Rule generally provides that, if a company communicates certain information about a consumer (eligibility information) to an affiliate, the affiliate may not use it to make or send solicitations to the consumer unless the consumer is given notice and a reasonable opportunity to opt out of such use of the information and does not opt out.

To minimize compliance costs and burdens for entities, particularly any small businesses that may be affected, the Rule contains model disclosures and opt-out notices that may be used to satisfy the statutory requirements. The Rule also gives covered entities flexibility to satisfy the notice and opt-out requirement. Covered entities may send the consumer a free-standing opt-out notice to satisfy the Rule's requirements or add the opt-out notice to privacy notices already provided to consumers, such as those provided in accordance with the provisions of Title V, subtitle A of the Gramm Leach Bliley Act (''GLBA'').[5] As a result, the time necessary to prepare or incorporate an opt-out notice is likely to be minimal because covered entities may either use the model disclosure verbatim or base their own disclosures upon it. Moreover, verbatim adoption of the model notice does not constitute a PRA ''collection of information.''[6] The Rule also provides that affiliated companies may send a joint disclosure to consumers, thereby eliminating the need for each affiliate to send a separate disclosure. Staff anticipates that affiliated entities will choose to send a joint notice, which will reduce the number of notices required under the Rule.

Burden Statement

Under the PRA, 44 U.S.C. 3501–3521, the FTC is requesting that OMB renew the clearance (OMB Control Number 3084–0131) for the information collection burden associated with the Rule. Staff estimates that there are approximately 46,525 franchise/new car and independent/used car dealers in the U.S.[7] Applying an estimated rate of affiliation of 16.75%, staff estimates that there are approximately 7,793 motor vehicle dealerships in affiliated families that may be subject to the Rule's affiliate sharing obligations. Staff further estimates an average of five businesses per family or affiliated relationship, and anticipates that affiliated entities will choose to send a joint notice as permitted by the Rule. Therefore, staff estimates that approximately 1,559 business families would be subject to the Rule.

Staff assumes that all or nearly all motor vehicles subject to the Rule's provisions are also subject to the Commission's Privacy of Consumer Financial Information Rule under the Gramm-Leach-Bliley Act (16 CFR part 313) (''Privacy Rule''). Entities that are subject to the Commission's GLBA Privacy Rule already provide privacy notices to their customers. Absent an exception, financial institutions must provide an initial privacy notice at the time the customer relationship is established and then annually so long as the relationship continues. 15 U.S.C. 6803. Staff's estimates assume that in all or nearly all cases covered institutions will choose to incorporate the affiliate marketing opt-out notice into the initial and annual GLBA privacy notices. In 2015, Congress, as part of the FAST Act, amended the GLBA to provide an exception under which financial institutions that meet certain conditions are not required to provide annual notices to customers.[8] Staff seeks comment on how the use of this exception by institutions that are required to provide an affiliate marketing notice will impact the burden estimates for these entities. Institutions that claim the FAST Act exemption and forego sending required annual privacy notices in some years will nonetheless be required to send a separate affiliate marketing notice to comply with their obligations under the Rule.

Staff estimates that the 1,559 covered motor vehicle business families will spend on average about 5 hours per year to comply with the Affiliate Sharing Rule beyond their separate obligations under the Privacy Rule, yielding a total annual hours of burden of 7,795 hours. Staff's estimates take into account the time necessary to determine compliance obligations; create the notice and opt-out, in either paper or electronic form; and disseminate the notice and opt-out. Staff's estimates presume that the availability of model disclosures and opt-out notices will simplify the compliance review and implementation processes, thereby significantly reducing the compliance burden.

Staff estimates the associated labor cost by adding the hourly mean private sector wages for managerial, technical, and clerical work and multiplying that sum by the estimated number of hours. The private sector hourly wages for these classifications are $59.31, $48.01, and $20.88, respectively.[9] Estimated hours spent for each category are 2, 2, and 1, respectively. Multiplying each occupation's hourly wage by the associated time estimate, yields the annual labor cost burden per respondent which is then multiplied by the estimated number of respondents to determine the cumulative annual labor cost burden: $367,176 per year.

Hourly wage and labor category	Hours per respondent	Total hourly labor cost	Number of respondents	Approx. total annual labor costs
$59.31 Management Employees	2	$118.62	1,559	$184,929
$48.01 Technical Staff	2	96.02		149,695

[5] 15 U.S.C. 6801 *et seq.*

[6] ''The public disclosure of information originally supplied by the Federal Government to the recipient for purpose of disclosure to the public is not included within [the definition of collection of information].'' 5 CFR 1320.3(c)(2).

[7] *See* Notice of Proposed Rulemaking Motor Vehicle Dealers Trade Regulation Rule, 87 FR 42012, 42031 (July 13, 2022), *available at https://www.ftc.gov/legal-library/browse/federal-register-notices/16-cfr-part-463-motor-vehicle-dealers-trade-regulation-rule-nprm.* This figure is based on estimates made by the U.S. Census Bureau. *See* U.S. Census Bureau, *All Sectors: County Business Patterns, including ZIP Code Business Patterns, by Legal Form of Organization and Employment Size Class for the U.S., States, and Selected Geographies: 2019, https://data.census.gov/cedsci/table?q=CBP2019.CB1900CBP&n=44111%3A44112&tid=CBP2019.CB1900CBP&hidePreview=true&nkd=EMPSZES~001,LFO~001* (listing 21,427 establishments for ''new car dealers,'' NAICS code 44111, and 25,098 establishments for ''used car dealers,'' NAICS code 44112).

[8] Fixing America's Surface Transportation Act (''FAST Act''), Public Law 114–94, 129 Stat. 1312, section 75001 (Dec. 4, 2015) (amending 15 U.S.C. 6803 to exempt financial institutions from the annual notice requirement if they meet certain criteria, and if they have not changed their policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed in the most recent disclosure sent to consumers).

[9] The classifications used are ''Management Occupations'' for managerial employees, ''Computer and Mathematical Science Occupations'' for technical staff, and ''Office and Administrative Support'' for clerical workers. *See* National Occupational Employment and Wage Estimates—May 2021, U.S. Bureau of Labor Statistics, released March 31, 2022: *https://www.bls.gov/oes/current/oes_nat.htm.*

Hourly wage and labor category	Hours per respondent	Total hourly labor cost	Number of respondents	Approx. total annual labor costs
$20.88 Clerical Workers	1	20.88		32,552
				367,176

Because the FACT Act and the Rule contemplate that the affiliate marketing notice can be included in the GLBA notices, the capital and non-labor cost burden on regulated entities would be greatly reduced. Covered entities typically already provide notices to their customers so there are no new capital or non-labor costs, as the Affiliate Marketing notice may be consolidated into their annual privacy notice. Thus, staff estimates that any capital or non-labor costs associated with compliance for these entities are *de minimis*.

Request for Comments

Pursuant to section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of maintaining records and providing disclosures to consumers. All comments must be received on or before February 6, 2023.

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before February 6, 2023. Write ''Paperwork Reduction Act Comment: FTC File No. P072108'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including the *https://www.regulations.gov* website.

Due to the public health emergency in response to the COVID–19 outbreak and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you prefer to file your comment on paper, write ''Paperwork Reduction Act Comment: FTC File No. P072108'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will become publicly available at *https://www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . . is privileged or confidential''—as provided by section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *www.regulations.gov,* we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before February 6, 2023. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy*.

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2022–26623 Filed 12–7–22; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2022–0070]

Availability of Final Guidelines for Examining Unusual Patterns of Cancer and Environmental Concerns

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: General notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR), located within the Department of Health and Human Services (HHS) announces the availability of the final *Guidelines for Examining Unusual Patterns of Cancer and Environmental Concerns* (2022 Guidelines). The 2022 Guidelines provide updates to the 2013 publication, *Investigating Suspected Cancer Clusters and Responding to Community Concerns: Guidelines from the CDC and the Council of State and Territorial Epidemiologists (CSTE).* The updates provide state, tribal, local, and territorial health departments guidance for a

revised and expanded approach to evaluating concerns about unusual patterns of cancer in communities, including those associated with local environmental concerns. The 2022 Guidelines finalize the draft guidelines issued on May 25, 2022.

DATES: The 2022 Guidelines are available December 8, 2022.

FOR FURTHER INFORMATION CONTACT: Amy Lavery, Centers for Disease Control and Prevention, National Center for Environmental Health, Division of Environmental Health Science and Practice, 4770 Buford Highway NE, Mailstop F–60, Atlanta, GA 30341; Telephone: 770–488–4024; Email: *CCGuidelines@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Background

CDC/ATSDR is announcing the availability of final *Guidelines for Examining Unusual Patterns of Cancer and Environmental Concerns* (2022 Guidelines). The 2022 Guidelines are an update to the 2013 guidelines, *Investigating Suspected Cancer Clusters and Responding to Community Concerns: Guidelines from CDC and the Council of State and Territorial Epidemiologists* (2013 Guidelines). CDC/ATSDR develops guidance for state, tribal, local, and territorial (STLT) health departments on how to respond to cancer cluster concerns. The 2022 Guidelines are a tool to assist STLT public health agencies in applying a systematic approach when responding to inquiries about suspected unusual patterns of cancer in residential or community settings.

In the 2022 Guidelines, CDC/ATSDR has updated and expanded the 2013 Guidelines to provide STLT public health agencies and other interested parties with access to information about current scientific tools and approaches to assess and respond to potential unusual patterns of cancer in communities.

CDC/ATSDR developed the 2022 Guidelines using input from a variety of sources, including STLT public health agencies, subject matter experts from academia and non-governmental organizations, an internal CDC/ATSDR steering committee, public comments received from an announcement in the **Federal Register** (84 FR 21786), and focus groups conducted with community members and organizations that have been involved with cancer concerns in their communities. CDC/ATSDR also gathered input from a comprehensive literature review and media scan and evaluated advances in the field of environmental epidemiology (*e.g.,* geospatial methods) and community engagement strategies.

On May 25, 2022 CDC/ATSDR published a notice in the **Federal Register** announcing the availability of the draft 2022 Guidelines (87 FR 31888). The notice gave the public an opportunity to submit comments by July 25, 2022. CDC/ATSDR received 46 sets of comments from state health departments, community members, academicians, clinicians, cancer registries, non-governmental organizations, and private consultants on behalf of trade associations (*https://www.regulations.gov/docket/CDC-2022-0070/comments*). A summary of the comments received and the modifications CDC/ATSDR made to the draft 2022 Guidelines after careful consideration are below:

- Commenters stated the terms ''cancer cluster'' and ''unusual patterns of cancer'' were used interchangeably throughout the document without clear definition of both terms.
  - *Response:* CDC/ATSDR provided a clear definition of both terms.
- Commenters noted that it was unclear whether every proactive evaluation must result in the criteria assessment. Commenters questioned how the criteria assessment differs from the response from an incoming inquiry.
  - *Response:* CDC/ATSDR added language to clarify the response to both proactive monitoring and incoming inquiries and provided examples on how to respond to unusual patterns of cancer identified in the proactive monitoring. CDC/ATSDR refined the flow chart in Figure 1, which provides a summary of the enhanced process for evaluating patterns of cancer routinely and evaluating community inquiries about unusual patterns of cancer and environmental concerns. CDC/ATSDR also clarified the discussion on proactive evaluation and routine monitoring of cancer data, including clarifying the need for collaboration with other health agency programs to determine the need for further evaluation through the criteria assessment.
- Commenters noted that the discussion of challenges and limitations was important to mention early in the guidelines document, rather than in later sections of the document.
  - *Response:* CDC/ATSDR added information on limitations and challenges related to implementation of the recommendations provided within the guidelines early in the document and then reinforced these limitations later in the document.
- Several comments were focused on clarifying phases and the intent of various criteria, as well as the need for examples to enhance clarity.
  - *Response:* CDC/ATSDR made editorial changes to improve clarity and provided examples when possible, such as including examples of specific partners within a public health agency to engage on unusual patterns of cancer.

CDC/ATSDR endeavored to improve clarity with respect to certain components of the criteria. For example, CDC/ATSDR changed step 8 of the criteria from ''Is there known biologic plausibility of the cancer(s) of concern with suspected environmental contaminants in terms of disease etiology?'' to ''Is there a plausible pathway of exposure between the suspected environmental contaminants and the cancer(s) of concern in terms of disease etiology?'' This change allowed for a clearer depiction of the intent of step 8 of the criteria.

- Some commenters raised the issue of how frequent and regular routine monitoring of cancer may place additional burdens on public health agency resources.
  - *Response:* 50% of states reported through the STLT survey that they already conduct routine monitoring of cancer incidence data. However, CDC/ATSDR acknowledged, within the 2022 Guidelines, that resource limitations may impact the frequency with which routine monitoring can be carried out. CDC's National Environmental Public Health Tracking Program (*https://www.cdc.gov/nceh/tracking/default.htm*) worked with state cancer registries and tracking partners to make three- and five-year rates more readily available, to reduce the burden on states with respect to monitoring.
- Commenters suggested that providing more references would be helpful.
  - *Response:* CDC/ATSDR added additional references throughout the 2022 Guidelines.
- Commenters noted that more guidance and instructions are needed on the use of the Cancer Inquiry intake form.
  - *Response:* CDC/ATSDR is developing an instructions document for STLT public health agencies to use as a supplement to the Cancer Inquiry intake form.
- Commenters noted that more details and resources were needed on use of the standardized incidence ration, such as specific minimum thresholds.
  - *Response:* CDC/ATSDR is developing additional education and resource tools and will post on the National Center for Environmental Health's Health Studies website once available.

For more information about the process of updating the 2022 Guidelines, please visit *https://www.cdc.gov/nceh/cancer-environment/index.html.*

Availability of the Final 2022 Guideline: The Final 2022 Guidelines can be found in the Supporting & Related Materials tab of this docket found on the Federal eRulemaking Portal: *https://www.regulations.gov,* identified by Docket No. CDC–2022–0070.

Angela K. Oliver,

Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2022–26664 Filed 12–7–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2000–D–0187 [Formerly Docket No. 2000D–1267]]

Recommendations To Reduce the Risk of Transfusion-Transmitted Malaria; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing the availability of a final guidance entitled ''Recommendations to Reduce the Risk of Transfusion-Transmitted Malaria.'' The guidance document provides blood establishments that collect blood and blood components with FDA's recommendations to reduce the risk of transfusion-transmitted malaria (TTM). The recommendations contained in the guidance apply to the collection of Whole Blood and blood components, except Source Plasma. The guidance announced in this notice supersedes the guidance entitled ''Revised Recommendations to Reduce the Risk of Transfusion-Transmitted Malaria; Guidance for Industry'' dated April 2020.

DATES: The announcement of the guidance is published in the **Federal Register** on December 8, 2022.

ADDRESSES: You may submit either electronic or written comments on 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–2000–D–0187 for ''Recommendations to Reduce the Risk of Transfusion-Transmitted Malaria; Guidance for Industry.'' 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 Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Jessica Gillum, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a final guidance entitled ''Recommendations to Reduce the Risk of Transfusion-Transmitted Malaria;

Guidance for Industry.'' The guidance document provides blood establishments that collect blood and blood components with FDA's recommendations to reduce the risk of TTM. The recommendations contained in the guidance apply to the collection of Whole Blood and blood components, except Source Plasma. Blood establishments are not required to assess Source Plasma donors for malaria risk (see 21 CFR 630.15(b)(8)).

To address the urgent and immediate need for blood and blood components during the Coronavirus Disease 2019 (COVID–19) public health emergency, in April 2020 FDA issued revised recommendations to reduce the risk of TTM during the public health emergency. The recommendations in the April 2020 guidance were based on the Agency's evaluation of the available scientific and epidemiological data on malaria risk, and data on FDA-approved pathogen reduction devices. FDA stated in the April 2020 guidance that we expected implementation of the revised recommendations would not be associated with any adverse effect on the safety of the blood supply and that early implementation of the recommendations may help to address significant blood shortages that occurred as result of the COVID–19 public health emergency. Further, the guidance explained that we expected that the recommendations set forth in the revised guidance would continue to apply outside the context of the COVID–19 public health emergency, and that FDA would replace the April 2020 guidance with an updated guidance that incorporates any appropriate changes based on public comments and our experience with implementation. Although the April 2020 guidance stated that we intended to reissue the guidance within 60 days following the termination of the public health emergency, we are not delaying this issuance because the guidance represents our current thinking on the topic.

FDA is issuing this guidance for immediate implementation in accordance with our good guidance practices regulation (10.115(g)(3)) without initially seeking prior comment because the Agency has determined that prior public participation is not feasible or appropriate (see 10.115(g)(2) and section 701(h)(1)(C)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(h)(1)(C)(i))). Specifically, we are not seeking prior comment because the recommendations present a less burdensome policy for reducing the risk of transfusion-transmitted malaria that is consistent with public health, and interested parties have had the opportunity to comment on the recommendations in the April 2020 guidance. The recommendations, which are unchanged from the April 2020 guidance, will remain in effect outside of the context of the public health emergency related to COVID–19.

In the **Federal Register** of June 17, 2020 (85 FR 36598), FDA announced the availability of the final guidance entitled ''Revised Recommendations to Reduce the Risk of Transfusion-Transmitted Malaria; Guidance for Industry'' dated April 2020. FDA received no comments on the final guidance.

The guidance represents the current thinking of FDA on ''Recommendations to Reduce the Risk of Transfusion-Transmitted Malaria.'' 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 part 601 and Form FDA 356h have been approved under OMB control number 0910–0338; 21 CFR parts 606 and 630 have been approved under OMB control number 0910–0116; and the collections of information for consignee and transfusion recipient physician notification have been approved under OMB control number 0910–0681.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: December 5, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–26711 Filed 12–7–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–3012]

Teva Branded Pharmaceutical Products R and D, Inc., et al.; Withdrawal of Approval of 35 New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is withdrawing approval of 35 new drug applications (NDAs) from multiple applicants. The applicants notified the Agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

DATES: Approval is withdrawn as of January 9, 2023.

FOR FURTHER INFORMATION CONTACT: Kimberly Lehrfeld, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6226, Silver Spring, MD 20993–0002, 301–796–3137, *Kimberly.Lehrfeld@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The applicants listed in the table have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications under the process in § 314.150(c) (21 CFR 314.150(c)). The applicants have also, by their requests, waived their opportunity for a hearing. Withdrawal of approval of an application or abbreviated application under § 314.150(c) is without prejudice to refiling.

Application No.	Drug	Applicant
NDA 006536	Urecholine (bethanechol chloride) Injection, 5 milligram (mg)/milliliter (mL) Urecholine (bethanechol chloride) Tablets, 5 mg, 10 mg, 25 mg, and 50 mg	Teva Branded Pharmaceutical Products R and D, Inc., 145 Brandywine Pkwy., West Chester, PA 19380.
NDA 011707	Opana (oxymorphone hydrochloride (HCl)) Injection, 1 mg/mL and 1.5 mg/mL	Endo Pharmaceuticals, Inc., 1400 Atwater Dr., Malvern, PA 19355.

Application No.	Drug	Applicant
NDA 012209	Fluorouracil Injection, 500 mg/10 mL and 2.5 grams (g)/50 mL	Spectrum Pharmaceuticals, Inc., 157 Technology Dr., Irvine, CA 92618.
NDA 016772	Resectisol in plastic container (mannitol) Solution for Irrigation, 5 g/100 mL	B. Braun Medical Inc., 901 Marcon Blvd., Allentown, PA 18109–9341.
NDA 017354	Loestrin Fe 1/20 (ethinyl estradiol and norethindrone acetate) Tablets, 0.02 mg/1 mg	Teva Branded Pharmaceutical Products R and D, Inc.
NDA 017355	Loestrin Fe 1.5/30 (ethinyl estradiol and norethindrone acetate) Tablets, 0.03 mg/1.5 mg)	Do.
NDA 017716	Ovcon-35 (ethinyl estradiol and norethindrone) 28-Day Tablets, 0.035 mg/0.4 mg	Warner Chilcott Co., LLC, c/o Warner Chilcott (U.S.) LLC, 100 Enterprise Dr., NJ 07866.
NDA 017875	Loestrin 1.5/30 (ethinyl estradiol and norethindrone acetate) 21-Day Tablets, 0.03 mg/1.5 mg.	Teva Branded Pharmaceutical Products R and D, Inc.
NDA 017876	Loestrin 1/20 (ethinyl estradiol and norethindrone acetate) 21-Day Tablets, 0.02 mg/1 mg	Do.
NDA 018127	Ovcon-35 (ethinyl estradiol and norethindrone) 21-Day Tablets, 0.035 mg/0.4 mg	Warner Chilcott Co., LLC, c/o Warner Chilcott (U.S.) LLC.
NDA 018238	Micro-K (potassium chloride) Extended-release Capsules, 8 milliequivalents (mEQ) Micro-K 10 (potassium chloride) Extended-release Capsules, 10 mEQ	Nesher Pharmaceuticals USA, LLC, 13910 Saint Charles Rock Rd., Bridgeton, MO 63044.
NDA 018405	Aygestin (norethindrone acetate) Tablets, 5 mg	Teva Branded Pharmaceutical Products R&D, Inc.
NDA 018603	Zovirax (acyclovir sodium) for Injection, equivalent to (EQ) 250 mg base/vial, EQ 500 mg base/vial, and EQ 1 g base/vial.	GlaxoSmithKline LLC, 2929 Walnut St., Suite 1700, Philadelphia, PA 19104.
NDA 018764	Metronidazole Tablets, 250 mg and 500 mg	Watson Laboratories, Inc., an indirect, wholly owned subsidiary of Teva Pharmaceuticals USA, Inc., 400 Interpace Pkwy., Parsippany, NJ 07054.
NDA 018796	Pilopine HS (pilocarpine HCl) Ophthalmic Gel, 4%	Alcon Laboratories, Inc., 6201 South Freeway, Fort Worth, TX 76134–2099.
NDA 019211	Theophylline in Dextrose 5% in plastic containers, Injection, 4 mg/mL, 40 mg/100 mL, 80 mg/100 mL, 160 mg/100 mL, 200 mg/100 mL, 320 mg/100 mL, and 400 mg/100 mL.	Hospira, Inc., 275 North Field Dr., Bldg. HI–3S, Lake Forest, IL 60045.
NDA 019926	Hexalen (altretamine) Capsules, 50 mg	Eisai, Inc., 155 Tice Blvd., Woodcliff Lake, NJ 07611.
NDA 020130	Estrostep Fe (ethinyl estradiol and norethindrone acetate) Tablets, (white triangle) Tablets, 0.02 mg ethinyl estradiol and 1 mg norethindrone acetate; (white square) Tablets, 0.03 mg ethinyl estradiol and 1 mg norethindrone acetate; (white round) Tablets, 0.035 mg ethinyl estradiol and 1 mg norethindrone acetate. Estrostep 21 (ethinyl estradiol and norethindrone acetate) Tablets, (white triangle) Tablets, 0.02 mg ethinyl estradiol and 1 mg norethindrone acetate; (white square) Tablets, 0.03 mg ethinyl estradiol and 1 mg norethindrone acetate; and (white round) Tablets, 0.035 mg ethinyl estradiol and 1 mg norethindrone acetate.	Allergan Pharmaceuticals International Ltd., c/o Allergan Sales, LLC, 5 Giralda Farms, Madison, NJ 07940.
NDA 020667	Mirapex (pramipexole dihydrocholoride) Tablets, 0.125 mg, 0.25 mg, 0.5 mg, 0.75 mg, 1 mg, 1.25 mg, and 1.5 mg.	Boehringer Ingelheim Pharmaceuticals, Inc., 900 Ridgebury Rd., P.O. Box 368, Ridgefield, CT 06877.
NDA 020713	Mircette (ethinyl estradiol; desogestrel and ethinyl estradiol) Tablets, (yellow) Tablets, 0.01 mg ethinyl estradiol and (white) Tablets, 0.15 mg desogestrel and 0.02 mg ethinyl estradiol.	Teva Branded Pharmaceutical Products R and D, Inc.
NDA 020903	Rebetol (ribavirin) Capsules, 200 mg Rebetol (ribavirin) Capsules, 200 mg (comarketed as Rebetron Combination Therapy with Interferon ALFA–2B, Recombinant (INTRON A)).	Merck Sharp and Dohme Corp., a subsidiary of Merck & Co., Inc., 126 East Lincoln Ave., P.O. Box 2000, Rahway, NJ 07065.
NDA 021200	Zelnorm (tegaserod maleate) Tablets, EQ 2 mg base and EQ 6 mg base	Alfasigma USA, Inc., 550 Hills Dr., Suite 110B, Bedminster, NJ 07921.
NDA 021546	Rebetol (rivavirin) Oral Solution, 40 mg/mL	Merck Sharp and Dohme Corp., a subsidiary of Merck & Co., Inc.
NDA 021858	Boniva (ibandronate sodium) Injection, EQ 3 mg base/3 mL	Hoffmann La Roche Inc., c/o Genentech, Inc., 1 DNA Way, South San Francisco, CA 94080–4900.
NDA 021871	Loestrin 24 Fe (ethinyl estradiol and norethindrone acetate tablets, 0.02 mg/1mg; and ferrous fumarate tablets, 75 mg).	Teva Branded Pharmaceutical Products R and D, Inc.
NDA 022266	Onsolis (fentanyl citrate) Buccal Film, EQ 0.2 mg base, EQ 0.4 mg base, EQ 0.6 mg base, EQ 0.8 mg base, and EQ 1.2 mg base.	Adalvo Limited c/o Biotech Research Group, 3810 Gunn Highway, Tampa, FL 33618.
NDA 022569	Lazanda (fentanyl citrate) Nasal Spray, EQ 0.1 mg base, EQ 0.3 mg base, and EQ 0.4 mg base.	BTcP Pharma LLC, c/o West Therapeutic Development, LLC, 1033 Skokie Blvd., Suite 620, Northbrook, IL 60062.
NDA 040024	Dexferrum (ferric oxyhydroxide) Injection, EQ 50 mg iron/mL	American Regent, Inc., 5 Ramsey Rd., Shirley, NY 11967.
NDA 202342	Esomeprazole Strontium Delayed-release Capsules, 24.65 mg and 49.3 mg	Belcher Pharmatech, LLC, 6911 Bryan Dairy Rd., Suite 220, Largo, FL 33777.
NDA 202788	Subsys (fentanyl) Sublingual Spray, 0.1 mg, 0.2 mg, 0.4 mg, 0.6 mg, 0.8 mg, 1.2 mg, and 1.6 mg.	BTcP Pharma LLC, c/o West Therapeutic Development, LLC.
NDA 204325	Adzenys ER (amphetamine) Extended-release Oral Suspension, EQ 1.25 mg base/mL	Neos Therapeutics Brands, Inc., 2940 N Highway 360, Suite 400, Grand Prairie, TX 75050.
NDA 205637	Bunavail (buprenorphine HCl and naloxone HCl) Buccal Film, EQ 2.1 mg base/EQ 0.3 mg base, EQ 4.2 mg base/EQ 0.7 mg base, and EQ 6.3 mg base/EQ 1 mg base.	BioDelivery Sciences International, Inc., 4131 Park Lake Ave., Raleigh, NC 27612.
NDA 210045	Consensi (amlodipine besylate and celecoxib) Tablets, EQ 2.5 mg base/200 mg, EQ 5 mg base/200 mg, and EQ 10 mg base/200 mg.	Purple Biotech LTD, 2520 Meridian Pkwy., Suite 200, Durham, NC 27713.
NDA 211281	Pizensy (lactitol) Oral Solution, 10 g	Braintree Laboratories, Inc., 60 Columbian St. West, Braintree, MA 02184.
NDA 212038	Adhansia XR (methylphenidate HCl) Extended-release Capsules, 25 mg, 35 mg, 45 mg, 55 mg, 70 mg, and 85 mg.	Purdue Pharma L.P., One Stamford Forum, 201 Tresser Blvd., Stamford, CT 06901–3431.

Therefore, approval of the applications listed in the table, and all amendments and supplements thereto, is hereby withdrawn as of January 9, 2023. Approval of each entire application is withdrawn, including any strengths and dosage forms included in the application but inadvertently missing from the table. Introduction or delivery for introduction into interstate commerce of products without approved new drug applications violates section 301(a) and (d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(a) and (d)). Drug products that are listed in the table that are in inventory on January 9, 2023 may continue to be dispensed until the inventories have been depleted or the drug products have reached their expiration dates or otherwise become violative, whichever occurs first.

Dated: December 5, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–26661 Filed 12–7–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–P–0585]

Determination That NORFLEX (Orphenadrine Citrate) Injection, 30 Milligrams/Milliliter, and NORFLEX (Orphenadrine Citrate) Extended-Release Tablet, 100 Milligrams, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) has determined that NORFLEX (orphenadrine citrate) Injection, 30 milligrams (mg)/milliliter (mL), and NORFLEX (orphenadrine citrate) Extended-Release Tablet, 100 mg, were not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to this drug product, and it will allow FDA to continue to approve ANDAs that refer to the product as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Anuj Shah, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6224, Silver Spring, MD 20993–0002, 301–796–2246, *Anuj.Shah@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Section 505(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(j)) allows the submission of an ANDA to market a generic version of a previously approved drug product. To obtain approval, the ANDA applicant must show, among other things, that the generic drug product: (1) has the same active ingredient(s), dosage form, route of administration, strength, conditions of use, and (with certain exceptions) labeling as the listed drug, which is a version of the drug that was previously approved and (2) is bioequivalent to the listed drug. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

Section 505(j)(7) of the FD&C Act requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to FDA's approval of an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

NORFLEX (orphenadrine citrate) Injection, 30 mg/mL, is the subject of NDA 013055, held by Pai Holdings LLC DBA Pharmaceutical Associates Inc., and initially approved on October 2, 1960. NORFLEX (orphenadrine citrate) Extended-Release Tablet, 100 mg, is the subject of NDA 012157, held by Bausch Health US LLC, and initially approved on November 2, 1959. Both NORFLEX drug products are indicated as an adjunct to rest, physical therapy, and other measures for the relief of discomfort associated with acute painful musculoskeletal conditions.

Both NORFLEX (orphenadrine citrate) Injection, 30 mg/mL, and NORFLEX (orphenadrine citrate) Extended-Release Tablet, 100 mg, are currently listed in the ''Discontinued Drug Product List'' section of the Orange Book.

Odin Pharmaceuticals, LLC, submitted a citizen petition dated April 11, 2022 (Docket No. FDA–2022–P–0585), under 21 CFR 10.30, requesting that the Agency determine whether NORFLEX (orphenadrine citrate) Injection, 30 mg/mL, was withdrawn from sale for reasons of safety or effectiveness. Although the citizen petition did not address the 100 mg extended-release tablet, that dosage form and strength has also been discontinued. On our own initiative, we have also determined whether that dosage form and strength was withdrawn for safety or effectiveness reasons.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that NORFLEX (orphenadrine citrate) Injection, 30 mg/mL, and NORFLEX (orphenadrine citrate) Extended-Release Tablet, 100 mg, were not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that these drug products were withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of NORFLEX (orphenadrine citrate) Injection, 30 mg/mL, and NORFLEX (orphenadrine citrate) Extended-Release Tablet, 100 mg, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that these drug products were withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list NORFLEX (orphenadrine citrate) Injection, 30 mg/mL, and NORFLEX (orphenadrine citrate) Extended-Release Tablet, 100 mg, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. FDA will not begin procedures to withdraw approval of approved ANDAs that refer to this drug product. Additional ANDAs for this drug product may also be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet

current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: December 5, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–26663 Filed 12–7–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HRSA is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by the Public Health Service (PHS) Act, as amended. While the Secretary of HHS is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact Lisa L. Reyes, Clerk of Court, United States Court of Federal Claims, 717 Madison Place NW, Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 08N146B, Rockville, Maryland 20857; (301) 443–6593, or visit our website at: *http://www.hrsa.gov/vaccinecompensation/index.html.*

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.,* provides that those seeking compensation are to file a petition with the United States Court of Federal Claims and to serve a copy of the petition to the Secretary of HHS, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at 42 CFR 100.3. This Table lists for each covered childhood vaccine the conditions that may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that ''[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.'' Set forth below is a list of petitions received by HRSA on October 1, 2022, through October 31, 2022. This list provides the name of petitioner, city and state of vaccination (if unknown then city and state of person or attorney filing claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

a. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by'' one of the vaccines referred to in the Table, or

b. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

In accordance with section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the United States Court of Federal Claims at the address listed above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Health Systems Bureau, 5600 Fishers Lane, 08N146B, Rockville, Maryland 20857. The Court's caption (Petitioner's Name v. Secretary of HHS) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Carole Johnson,

Administrator.

List of Petitions Filed

1. Thomas Mayo, Wauwatosa, Wisconsin, Court of Federal Claims No: 22–1421V
2. Marsha Pavlik Wood, Stow, Ohio, Court of Federal Claims No: 22–1422V
3. Ella Burroughs, Phoenix, Arizona, Court of Federal Claims No: 22–1423V
4. Sylvia Kline on behalf of B.H., Phoenix, Arizona, Court of Federal Claims No: 22–1424V
5. Ross Kleiman, Boston, Massachusetts, Court of Federal Claims No: 22–1426V
6. Lindsey Alvarez, Fullerton, California, Court of Federal Claims No: 22–1428V
7. Deanna A. Finch, Newport, Tennessee, Court of Federal Claims No: 22–1429V
8. Larry Pierce, Kansas City, Kansas, Court of Federal Claims No: 22–1432V
9. Joann Bauer, Duluth, Minnesota, Court of Federal Claims No: 22–1440V
10. Arthur Passarelli, Washington, District of Columbia, Court of Federal Claims No: 22–1443V
11. James Thurston and Valerie Thurston on behalf of A.T., Lakeland, Florida, Court of Federal Claims No: 22–1444V
12. Andrea Cuatt, Los Angeles, California, Court of Federal Claims No: 22–1447V
13. Judith Wertin, Fort Bragg, California, Court of Federal Claims No: 22–1449V
14. Grace Laurin, Plattsburgh, New York, Court of Federal Claims No: 22–1450V
15. Stacey R. Williams, Fort Bragg, North Carolina, Court of Federal Claims No: 22–1451V
16. Juliet Hawk, San Diego, California, Court of Federal Claims No: 22–1454V
17. Kenneth Ingalsbe, Batavia, New York, Court of Federal Claims No: 22–1457V
18. Meaghan Clifford, Boston, Massachusetts, Court of Federal Claims No: 22–1458V
19. Karessa Hinson-Sherwood, Gainesville, Florida, Court of Federal Claims No: 22–1461V
20. Tiffany Wentworth, Simsbury,

Connecticut, Court of Federal Claims No: 22–1463V
21. Cecil Terry, Mannington, West Virginia, Court of Federal Claims No: 22–1465V
22. Anthony Carter, Midfield, Alabama, Court of Federal Claims No: 22–1467V
23. Shirley Barker, Milwaukee, Wisconsin, Court of Federal Claims No: 22–1470V
24. Devon Anderson, Columbus, Ohio, Court of Federal Claims No: 22–1475V
25. Lita Lange, Stuart, Florida, Court of Federal Claims No: 22–1476V
26. Christine Stubbs, North Lauderdale, Florida, Court of Federal Claims No: 22–1478V
27. Donna L. Clark, Taylorville, Illinois, Court of Federal Claims No: 22–1479V
28. Marifer B. Cleveland, Carson, California, Court of Federal Claims No: 22–1480V
29. Tina Jackson, Charlotte, North Carolina, Court of Federal Claims No: 22–1481V
30. Walter C. Holtzhafer, Allentown, Pennsylvania, Court of Federal Claims No: 22–1482V
31. Terry Casey, Edgewood, Kentucky, Court of Federal Claims No: 22–1483V
32. Robert William Gebel, St. Louis, Missouri, Court of Federal Claims No: 22–1484V
33. Krystle Miller, Johnstown, Pennsylvania, Court of Federal Claims No: 22–1485V
34. David Hopkins, Wallingford, Pennsylvania, Court of Federal Claims No: 22–1486V
35. Courtney Brooks, Beachwood, Ohio, Court of Federal Claims No: 22–1487V
36. Michael Fenton, Waterford, Connecticut, Court of Federal Claims No: 22–1488V
37. Mariann Mattia, Mesa, Arizona, Court of Federal Claims No: 22–1491V
38. Lewis Schweighauser, Jackson, Tennessee, Court of Federal Claims No: 22–1493V
39. Shirley Alston on behalf of Estate of Charles Jeffrey Alston, Deceased, Pittsburgh, Pennsylvania, Court of Federal Claims No: 22–1494V
40. Matthew Orduno, San Gabriel, California, Court of Federal Claims No: 22–1495V
41. Pandora Lee Lay, Tulsa, Oklahoma, Court of Federal Claims No: 22–1496V
42. Michiko Miyahara, Phoenix, Arizona, Court of Federal Claims No: 22–1497V
43. Paulette Brackin on behalf of E. C., Phoenix, Arizona, Court of Federal Claims No: 22–1498V
44. Jeannie Boslough, Phoenix, Arizona, Court of Federal Claims No: 22–1499V
45. Kimberly Bundy-Fazioli, Boston, Massachusetts, Court of Federal Claims No: 22–1500V
46. Kimberly M. Corpening, Morgantown, North Carolina, Court of Federal Claims No: 22–1501V
47. Angela Marie Campos, Fontana, California, Court of Federal Claims No: 22–1502V
48. Rosa Martinez, Staten Island, New York, Court of Federal Claims No: 22–1503V
49. Sandra Beasley on behalf of M.T., Phoenix, Arizona, Court of Federal Claims No: 22–1504V
50. Adrian Williams, Metairie, Louisiana, Court of Federal Claims No: 22–1507V
51. Shamir Davis, Cleveland, Ohio, Court of Federal Claims No: 22–1508V
52. Jeremy Nagelberg, Phoenix, Arizona, Court of Federal Claims No: 22–1509V
53. Sheila Boedeker, St. Paul, Minnesota, Court of Federal Claims No: 22–1510V
54. Muhammad Alqulissi, Houston, Texas, Court of Federal Claims No: 22–1511V
55. Ken Andrew, Portland, Oregon, Court of Federal Claims No: 22–1512V
56. Kelly S. Carpino and Robbin L. Reinard on behalf of Estate of Robert E. Wonderling, Deceased, Brookville, Pennsylvania, Court of Federal Claims No: 22–1513V
57. Halyn Dutcher, Phoenix, Arizona, Court of Federal Claims No: 22–1514V
58. Billie J LaVoie, Indianapolis, Indiana, Court of Federal Claims No: 22–1516V
59. Helen Draper, Salt Lake City, Utah, Court of Federal Claims No: 22–1517V
60. Kelli Boerckel, Dresher, Pennsylvania, Court of Federal Claims No: 22–1518V
61. Christine Benfield, Wellesley, Massachusetts, Court of Federal Claims No: 22–1522V
62. Jillian Lamberg, Wellesley, Massachusetts, Court of Federal Claims No: 22–1523V
63. Lukeeber Grant on behalf of B.G., Phoenix, Arizona, Court of Federal Claims No: 22–1524V
64. Chase Clarke, Phoenix, Arizona, Court of Federal Claims No: 22–1525V
65. Thellys Ann Walden on behalf of Estate of Billy Edwin Walden, Deceased, Tulsa, Oklahoma, Court of Federal Claims No: 22–1526V
66. Ebony Henderson, Erie, Pennsylvania, Court of Federal Claims No: 22–1528V
67. Lisa Jarvis, Wallingford, Connecticut, Court of Federal Claims No: 22–1529V
68. Jennifer Paulino on behalf of M.S., Davidson, North Carolina, Court of Federal Claims No: 22–1533V
69. Robert Hintzke, Oak Creek, Wisconsin, Court of Federal Claims No: 22–1534V
70. Amanda Wade, Afton, Wyoming, Court of Federal Claims No: 22–1535V
71. Martin Pulido, Bakersfield, California, Court of Federal Claims No: 22–1536V
72. Paula P. Bentley, Richmond, Virginia, Court of Federal Claims No: 22–1537V
73. Donna Nomick, Eldersburg, Maryland, Court of Federal Claims No: 22–1538V
74. Lashawn Johnson, Clinton, Maryland, Court of Federal Claims No: 22–1539V
75. Steven Tolar, Lake May, Florida, Court of Federal Claims No: 22–1540V
76. Cletus McLaughlin, Limerick, Pennsylvania, Court of Federal Claims No: 22–1541V
77. Janessa Johnson, St. Louis, Missouri, Court of Federal Claims No: 22–1542V
78. Jill Savage, Auburn Hills, Michigan, Court of Federal Claims No: 22–1543V
79. Amy Nikrad, Boston, Massachusetts, Court of Federal Claims No: 22–1544V
80. Linda Wilson, Newton, Massachusetts, Court of Federal Claims No: 22–1545V
81. Linda Molaison, Houston, Texas, Court of Federal Claims No: 22–1546V
82. Donna Hayes, Phoenix, Arizona, Court of Federal Claims No: 22–1547V
83. Darcia A. Tisdale, St. George, Utah, Court of Federal Claims No: 22–1548V
84. Judith Huffman, Maryville, Tennessee, Court of Federal Claims No: 22–1550V
85. Regina A. Grebb, Pittsburgh, Pennsylvania, Court of Federal Claims No: 22–1552V
86. Shelly Collier, Phoenix, Arizona, Court of Federal Claims No: 22–1555V
87. Laura Paytash, Penfield, New York, Court of Federal Claims No: 22–1556V
88. Gary Tucker, Highlands, New Jersey, Court of Federal Claims No: 22–1557V
89. Beth Stitzel, Aventura, Florida, Court of Federal Claims No: 22–1558V
90. Lashawn L. Long, New Lisbon, Wisconsin, Court of Federal Claims No: 22–1559V
91. Angela Vinson on behalf of J.V., Inez, Kentucky, Court of Federal Claims No: 22–1561V
92. Denise Rojas Hernandez, Wellesley, Massachusetts, Court of Federal Claims No: 22–1563V
93. Ellen A. Mintzer, Westfield, Massachusetts, Court of Federal Claims No: 22–1565V
94. Keri A. Wisnieski, Norfolk, Nebraska, Court of Federal Claims No: 22–1566V
95. Jada Brisbois, Phoenix, Arizona, Court of Federal Claims No: 22–1570V
96. Fred Allison, Houston, Texas, Court of Federal Claims No: 22–1573V
97. Kelly Belaouni on behalf of H.B., Monroeville, Pennsylvania, Court of Federal Claims No: 22–1574V
98. Susan Leggett-Johnson, Hyattsville, Maryland, Court of Federal Claims No: 22–1575V
99. Nina Brown, Quinlan, Texas, Court of Federal Claims No: 22–1576V
100. Therese Jackson, Brandon, Florida, Court of Federal Claims No: 22–1577V
101. Sherryl Fisher, Atlanta, Georgia, Court of Federal Claims No: 22–1579V
102. Mary Barizone on behalf of A.F., Phoenix, Arizona, Court of Federal Claims No: 22–1580V
103. Dean Parker on behalf of Z.P., Phoenix, Arizona, Court of Federal Claims No: 22–1581V
104. Charles Benkiel, Elgin, Illinois, Court of Federal Claims No: 22–1585V
105. Sandra Mehl, Geneva, Illinois. Court of Federal Claims No: 22–1586V
106. Sarah Waxman, Flemington, New Jersey, Court of Federal Claims No: 22–1587V
107. Mary Busby, Salisbury, Massachusetts, Court of Federal Claims No: 22–1590V
108. Melissa Abbott on behalf of M.A., Phoenix, Arizona, Court of Federal Claims No: 22–1591V
109. John Thomas, Stockton, New Jersey, Court of Federal Claims No: 22–1594V
110. Charles Yocum on behalf of N. Y., Phoenix, Arizona, Court of Federal Claims No: 22–1595V
111. Hamdi Qasem Almudhari and Huda Nasser Kassem on behalf of H.A., Boston, Massachusetts, Court of Federal Claims No: 22–1599V
112. Katharine Gmuer, Washington, District of Columbia, Court of Federal Claims No: 22–1604V
113. Robin Babb, Owasso, Oklahoma, Court of Federal Claims No: 22–1605V
114. Patrick A. Frepan, Brownsburg, Indiana, Court of Federal Claims No: 22–1606V
115. Melissa Little, Boston, Massachusetts, Court of Federal Claims No: 22–1608V

116. Heather Harbison, Phoenix, Arizona, Court of Federal Claims No: 22–1609V
117. Stacy Connor, New Bern, North Carolina, Court of Federal Claims No: 22–1610V
118. Trina Remy on behalf of J.R., Mamaroneck, New York, Court of Federal Claims No: 22–1611V
119. Michael Nadeau, Boston, Massachusetts, Court of Federal Claims No: 22–1613V
120. Alpha Patrick, Knoxville, Tennessee, Court of Federal Claims No: 22–1615V
121. Brianna Wagner, Ridgewood, New Jersey, Court of Federal Claims No: 22–1616V
122. Randy Tomplait on behalf of the Estate of Pamela Tomplait, Deceased, Celina, Texas, Court of Federal Claims No: 22–1618V
123. Serina Johnson, Elkridge, Maryland, Court of Federal Claims No: 22–1619V
124. Steven Wilson, Smithville, Missouri, Court of Federal Claims No: 22–1620V
125. Veronica Baker, New Bern, North Carolina, Court of Federal Claims No: 22–1621V
126. Jennifer Kjeldgaard, Normal, Illinois, Court of Federal Claims No: 22–1622V
127. Penny J. Stanek, West Seneca, New York, Court of Federal Claims No: 22–1623V
128. Faith Nthiga, Kirkland, Washington, Court of Federal Claims No: 22–1624V

[FR Doc. 2022–26695 Filed 12–7–22; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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: Center for Scientific Review Special Emphasis Panel; Small Business: Radiation Therapy.

Date: December 16, 2022.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jennifer Ann Sanders, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 496–3553, *jennifer.sanders@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. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: December 5, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–26717 Filed 12–7–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2022–0050; OMB No. 1660–0005]

Agency Information Collection Activities: Proposed Collection; Comment Request; FEMA Inspection and Claims Forms

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 60-Day notice of revision and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on an extension, with change, of a previously approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the collection of information related to the flood insurance claims process and the housing inspection damage assessment process.

DATES: Comments must be submitted on or before February 6, 2023.

ADDRESSES: To avoid duplicate submissions to the docket, please submit comments at *www.regulations.gov* under Docket ID FEMA–2022–0050. Follow the instructions for submitting comments.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security Notice that is available via a link on the homepage of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Pertaining to claims forms, contact: Daniel Claire, Insurance Examiner, FEMA Resilience, (202) 552–9891 or *Daniel.Claire@fema.dhs.gov.* Pertaining to housing inspection instruments, contact: Todd Milliron, Supervisory Program Specialist, FEMA Office of Response and Recovery, (540) 686–3844 or *Todd.Milliron@fema.dhs.gov.* You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: Pertaining to National Flood Insurance Program (NFIP) Direct claim forms, Congress created the NFIP through the National Flood Insurance Act of 1968 (NFIA) (Title XIII of Public Law 90–448, 82 Stat. 476), codified at 42 U.S.C. 4001 *et seq.* The NFIP enables property owners in participating communities to purchase flood insurance. Communities participate in the NFIP based on an agreement between the community and Federal Emergency Management Agency (FEMA). If a community adopts and enforces a floodplain management ordinance to reduce future flood risk to new construction in floodplains, FEMA make flood insurance available within the community as a financial protection against flood losses. Accordingly, the NFIP is comprised of three key activities: flood insurance, floodplain management, and flood hazard mapping.

A prospective policyholder may purchase an NFIP flood insurance policy, known as a Standard Flood Insurance Policy (SFIP), either: (1) directly from the Federal Government through a direct servicing agent (referred to as ''NFIP Direct''), or (2) from a participating private insurance company through the Write Your Own (WYO) Program. *See* 44 CFR 62.23–24. The SFIP is a single-peril (flood) policy that pays for direct physical damage to insured property. There are three policy forms (*i.e.,* insurance contracts) of the SFIP: (1) Dwelling Form, (2) General Property Form, and (3) Residential Condominium Building Association Policy (RCBAP) Form, which are published in FEMA's regulations. *See* 44 CFR 61.13; *see also* 44 CFR part 61,

Appendices A(1), A(2), and A(3). The SFIP sets out the terms and conditions of insurance. FEMA establishes terms, rate structures, and premium costs of the SFIP. The terms, coverage limits, and flood insurance premiums are the same whether purchased from the NFIP Direct or the WYO Program. *See* 44 CFR 62.23(c), (h).

All flood loss claims presented under the NFIP are paid directly with U.S. Treasury funds, regardless of whether the policy is issued by the NFIP Direct or by a WYO company. The information in the NFIP Direct collection includes all the data necessary to adjudicate claims for damages and provide SFIP benefits resulting from flood losses.

In addition to the requirements of the NFIA, section 205 of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 (42 U.S.C. 4011 note) required FEMA to establish a claims appeals process. *See* 44 CFR 62.20.

Pertaining to housing inspections, also part of this collection, the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), Public Law 93–288, as amended, is the legal basis for FEMA to provide financial assistance and services to individuals applying for disaster assistance benefits in the event of a Federally declared disaster. Regulations in 44 CFR 206.110—Federal Assistance to Individuals and Households implement the policy and procedures set forth in Section 408 of the Stafford Act, 42 U.S.C. 5174, as amended.

This program provides financial assistance and, if necessary, direct assistance to eligible individuals and households who, as a direct result of a major disaster or emergency, have uninsured or under-insured expenses, and serious needs, and are unable to meet such expenses or needs through other means.

Individuals and households applying for assistance must provide information detailing their losses and needs through the disaster assistance registration process covered under collection 1660–0002, Disaster Assistance Registration. If FEMA determines the applicant had home or personal property damage, has no insurance, or that the applicant's insurance coverage may not meet their needs, an inspection is needed to verify disaster caused damage.

All pertinent information for a specific applicant is stored under a unique registration identification (ID) within the National Emergency Management Information System (NEMIS). An inspection request occurs due to NEMIS-driven business rules (automatically), applicant request, or a FEMA caseworker request. The scope of an inspection for owners includes noting real and personal property (furnishing and appliances) damages to the interior and exterior of the dwelling, addressing special needs, transportation, unmet needs, and miscellaneous purchases. Inspectors do not note real property specifications for renters.

Once the inspector validates the information provided by the applicant during registration intake, the inspector begins an assessment of real and/or personal property damages utilizing Automated Construction Estimator (ACE) software. The same ACE software screens are used regardless of how the inspection occurs (*i.e.,* via onsite, via voice over the phone, or via video). The inspector then uploads this information back to FEMA via the NEMIS through use of a secure connection. The inspector only records observed disaster caused damages and does not determine eligibility or damage award levels. FEMA's policies and business rules determine eligibility and award levels based upon the damage assessment, and other available information.

For this submission, FEMA identified two NFIP Direct claim forms in which necessary data could be combined or collected in other forms or systems, thereby eliminating the need for those forms, and reducing duplicative information collection. Accordingly, FEMA proposes to remove the following two forms from this collection: (1) FEMA Form FF–206–FY–21–113, Advance Payment Request—Building & Contents, and (2) FEMA Form FF–206–FY–21–114, Advance Payment Request—Increased Cost of Compliance (ICC).

Collection of Information

Title: FEMA Inspection and NFIP Direct Claims Forms.

Type of Information Collection: Extension, with change, of a currently approved information collection.

OMB Number: 1660–0005.

FEMA Forms: FEMA Form FF–206–FY–21–106, Personal Property (Contents) Worksheet; FEMA Form FF–206–FY–21–107, Building Property Worksheet; FEMA Form FF–206–FY–21–108, Proof of Loss—Building & Contents (Policyholder-Prepared); FEMA Form FF–206–FY–21–109, Proof of Loss—Increased Cost of Compliance (ICC); FEMA Form FF–206–FY–21–110, First Notice of Loss; FEMA Form FF–206–FY–21–111, Manufactured (Mobile) Home/Travel Trailer Worksheet; FEMA Form FF–206–FY–21–112, Proof of Loss—Building & Contents (Adjuster-Prepared); FEMA Form FF–206–FY–21–115, Claim Appeal; FEMA Form FF–104–FY–22–220, Onsite Housing Inspections; FEMA Form FF–104–FY–22–221, Remote Voice Telephony Housing Inspections; and FEMA Form FF–104–FY–22–222, Remote Video Telephony Housing Inspections.

Abstract: After a flood loss, claims forms are used by NFIP Direct policyholders to provide information needed to investigate, document, evaluate, and adjudicate claims against FEMA policies for flood damage to insured property or determine eligibility and settlement for benefits under Coverage D, Increased Cost of Compliance coverage. After a federally-declared disaster, FEMA inspectors use household inspection instruments to verify applicant information and document damage to determine award eligibility.

Affected Public: Individuals or households, businesses or other for-profit, not-for-profit institutions, and state, local or tribal governments.

Estimated Number of Respondents: 302,360.

Estimated Number of Responses: 302,360.

Estimated Total Annual Burden Hours: 309,621.

Estimated Total Annual Respondent Cost: $12,573,707.

Estimated Respondents' Operation and Maintenance Costs: $0.00.

Estimated Respondents' Capital and Start-Up Costs: $0.00.

Estimated Total Annual Cost to the Federal Government: $103,103,676.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submission of responses.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2022–26614 Filed 12–7–22; 8:45 am]

BILLING CODE 9111–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO260000.L10600000PC0000. 23X.LXSIADVSBD00.241A]

Second Call for Nominations for the National Wild Horse and Burro Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of call for nominations.

SUMMARY: The purpose of this notice is to solicit public nominations for the Bureau of Land Management's (BLM) Wild Horse and Burro Advisory Board (Board) to fill two positions that became vacant on October 9, 2022. The Board provides advice concerning the management, protection, and control of wild free-roaming horses and burros on public lands administered by the Department of the Interior, through the Bureau of Land Management (BLM), and the Department of Agriculture, through the U.S. Forest Service.

DATES: All nominations must be post marked or submitted to the following addresses no later than January 23, 2023.

ADDRESSES: All nominations and completed packages sent via the U.S. Postal Service should be addressed as follows: Wild Horses and Burros Division, U.S. Department of the Interior, Bureau of Land Management, Attn: Dorothea Boothe, HQ–260, 9828 31st Avenue; Phoenix, AZ 85051.

All nominations and completed packages that are sent via FedEx or UPS should be addressed as follows: U.S. Department of the Interior, Bureau of Land Management, Wild Horses and Burros Division, Attn: Dorothea Boothe, 9828 31st Avenue, Phoenix, AZ 85051. Please consider emailing PDF documents to Ms. Boothe at *dboothe@blm.gov*.

FOR FURTHER INFORMATION CONTACT: Dorothea Boothe, Wild Horse and Burro Program Coordinator, telephone: (602) 906–5543, email: *dboothe@blm.gov*. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: Members of the Board serve without compensation; however, while away from their homes or regular places of business, Board and subcommittee members engaged in Board or subcommittee business, approved by the Designated Federal Officer (DFO), may be allowed travel expenses, including per diem in lieu of subsistence under 5 U.S.C. 5703, in the same manner as persons employed intermittently in government service. Nominations for a term of 3 years are needed to represent the following categories of interest:

- Livestock Management; and
- Wildlife Management.

The Board will meet one to four times annually. The DFO may call additional meetings in connection with special needs for advice. Individuals may nominate themselves or others. Any individual or organization may nominate one or more persons to serve on the Board.

Nominations should include a resume providing adequate description of the nominee's qualifications, including information that would enable the Departments of the Interior and Agriculture to contact a potential member and make an informed decision regarding meeting the membership requirements of the Board. Nominations are to be sent to the address listed in the **ADDRESSES** section. If you have already submitted your nomination, you do not need to reapply.

As appropriate, certain Board members may be appointed as special Government employees (SGEs). Please be aware that applicants selected to serve as SGEs will be required, prior to appointment, to file a Confidential Financial Disclosure Report in order to avoid involvement in real or apparent conflicts of interest. You may find a copy of the Confidential Financial Disclosure Report at the following website: *https://www.doi.gov/ethics/financial-disclosure*. Additionally, after appointment, members appointed as SGEs will be required to meet applicable financial disclosure and ethics training requirements. Please contact (202) 202–208–7960 or *DOI_Ethics@sol.doi.gov* with any questions about the ethics requirements for members appointed as SGEs.

Membership Selection: Individuals shall qualify to serve on the Board because of their education, training, or experience that enables them to give informed and objective advice regarding the interest they represent. They should demonstrate experience or knowledge of the area of their expertise and a commitment to collaborate in seeking solutions to resource management issues. The Board is structured to provide fair membership and balance, both geographic and interest specific, in terms of the functions to be performed and points of view to be represented. Members are selected with the objective of providing representative counsel and advice about public land and resource planning. Pursuant to Section 7 of the Wild Free-Roaming Horses and Burros Act, members of the Board cannot be employed by the Federal Government or a State Government.

(Authority: 43 CFR 1784.4–1)

David B. Jenkins,

Assistant Director, Resources and Planning.

[FR Doc. 2022–26625 Filed 12–7–22; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZP02000.L51010000. FX0000.LVRWA21A3530; AZA38172; LLAZ920000.L13400000. FX0000; AZA38371]

Notice of Segregation of Public Land for the Pinyon Solar Project, Maricopa County, AZ and the Elisabeth Solar Project, Yuma County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of segregation.

SUMMARY: Through this notice the Bureau of Land Management (BLM) is segregating public lands included in the right-of-way applications for the Pinyon Solar Project and the Elisabeth Solar Project from appropriation under the public land laws, including the Mining Law, but not the Mineral Leasing or Material Sales Acts, for a period of 2 years from the date of publication of this notice, subject to valid existing rights. This segregation is to allow for the orderly administration of the public lands to facilitate consideration of development of renewable energy resources. The public lands segregated by this notice total 4,439.92 acres.

DATES: This segregation for the lands identified in this notice takes effect on December 8, 2022.

FOR FURTHER INFORMATION CONTACT: Derek Eysenbach, Project Manager, telephone: 601–417–9505, email:

deysenbach@blm.gov, address: Bureau of Land Management, Arizona State Office, 1 North Central Ave., Suite 800, Phoenix, Arizona 85004. 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: Regulations found at 43 CFR 2091.3–1(e) and 2804.25(f) allow the BLM to temporarily segregate public lands within a right-of-way application area for solar energy development from the operation of the public land laws, including the Mining Law, by publication of a **Federal Register** notice. The BLM uses this temporary segregation authority to preserve its ability to approve, approve with modifications, or deny proposed rights-of-way, and to facilitate the orderly administration of the public lands. This temporary segregation is subject to valid existing rights, including existing mining claims located before this segregation notice. Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature which would not impact lands identified in this notice may be allowed with the approval of an authorized officer of the BLM during the segregation period. The lands segregated under this notice are legally described as follows:

Pinyon Solar Project—AZA38172

Gila and Salt River Meridian, Arizona

T. 4 S., R. 1 E.,
Sec. 34, SW¼SE¼.
T. 5 S., R. 1 E.,
Sec. 2, SW¼NW¼, SW¼, and SW¼SE¼;
Sec. 3, lots 1 thru 4, S½NE¼, S½NW¼, and S½;
Sec. 10;
Sec. 11, W½.

The areas described as the Pinyon Solar Project contain 1,879.92 acres, according to the official plats of the surveys of the said lands on file with the BLM.

Elisabeth Solar Project—AZA38371

Gila and Salt River Meridian

T. 5 S., R. 12 W.,
Sec. 15, S½NE¼NE¼, S½NW¼NE¼, S½NE¼, S½NE¼NW¼, S½NW¼NW¼, SE¼;
Sec. 17, SE¼NE¼, SE¼;
Sec. 20, NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 22, E½NE¼, E½SE¼;
Sec. 23, W½;
Sec. 26, N½NE¼NW¼, NW¼NW¼;
Sec. 28, W½NE¼, W½, W½SE¼;
Sec. 29, NE¼, E½NW¼, E½SW¼, SE¼;
Sec. 33, NW¼NW¼NE¼, N½NW¼, NW¼SW¼NW¼.

The areas described as the Elisabeth Solar Project aggregate 2,560 acres, more or less, according to the official plats of the surveys of the said lands on file with the BLM.

As provided in the regulations, the segregation of lands in this notice will not exceed 2 years from the date of publication unless extended for an additional 2 years through publication of a new notice in the **Federal Register**. The segregation period will terminate and the land will automatically reopen to appropriation under the public land laws, including the mining laws, at the earliest of the following dates: upon issuance of a decision by the authorized officer granting, granting with modifications, or denying the application for a right-of-way; without further administrative action at the end of the segregation provided for in the **Federal Register** notice initiating the segregation; or upon publication of a **Federal Register** notice terminating the segregation.

Upon termination of the segregation of these lands, all lands subject to this segregation will automatically reopen to appropriation under the public land laws, including the mining laws.

(Authority: 43 CFR 2091.3–1(e) and 43 CFR 2804.25(f))

Raymond Suazo,

State Director—Arizona State Office.

[FR Doc. 2022–26660 Filed 12–7–22; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLHQ330000.L1340000. PQ0000.234]

Notice of Intent To Prepare a Programmatic Environmental Impact Statement To Evaluate Utility-Scale Solar Energy Planning and Amend Resource Management Plans for Renewable Energy Development

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) intends to prepare resource management plan (RMP) amendments with an associated programmatic environmental impact statement (EIS) for the BLM's utility-scale solar energy planning and by this notice is announcing the beginning of the scoping period to solicit public comments and identify issues and is providing the planning criteria for public review.

DATES: The BLM requests that the public submit comments concerning the scope of the analysis, potential alternatives, and identification of relevant information, and studies by February 6, 2023. To afford the BLM the opportunity to consider comments in the Draft programmatic EIS/RMP amendments, please ensure your comments are received prior to the close of the 60-day scoping period or 15 days after the last public meeting, whichever is later.

ADDRESSES: You may submit comments on issues and planning criteria related to the programmatic EIS for renewable energy development in Western States RMP amendments by the following methods:

- *Website: https://eplanning.blm.gov/eplanning-ui/admin/project/2022371/510.* This is the preferred method of commenting.
- *Email: solar@blm.gov.*
- *Mail:* Solar Energy PEIS Scoping, 1849 C Street NW, Washington, DC 20006.

The BLM will hold two virtual and 12 in-person public scoping meetings at the following locations:

- Phoenix, Arizona;
- Sacramento, California;
- Grand Junction, Colorado;
- Washington, DC;
- Boise, Idaho;
- Billings, Montana;
- Albuquerque, New Mexico;
- Reno, Nevada;
- Bend, Oregon;
- Salt Lake City, Utah;
- Spokane, Washington; and
- Cheyenne, Wyoming;

The specific dates and locations of these scoping meetings will be announced through the local media and the project website listed above.

FOR FURTHER INFORMATION CONTACT: Jeremy Bluma, Acting Division Chief, National Renewable Energy Coordination Office (NRECO), BLM Headquarters, *jbluma@blm.gov* or (208) 789–6014. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Mr. Bluma. 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: Through this notice, the BLM announces its intention to initiate a programmatic EIS for renewable energy development in Western States and associated RMP amendments, as appropriate. The programmatic EIS will predominately evaluate the environmental effects of potential modifications to improve and expand the BLM's utility-scale solar energy planning and may involve land use allocation modifications related to other renewable energy development types, such as wind energy. The BLM is issuing this Notice of Intent to inform the public about the proposed actions; announce plans to conduct 14 public scoping meetings; invite public participation in the scoping process; solicit public comments for consideration in establishing the scope and content of the programmatic EIS and alternatives; and identify potential environmental issues. The BLM will consult with Indian Tribal Nations on a government-to-government basis as described in the Additional Information section of this notice.

Background Information

In October of 2012, the BLM signed the Western Solar Plan Record of Decision (Western Solar Plan) implementing solar energy policies, procedures, and land use plan amendments related to permitting of solar energy developments on public lands in six Southwestern States (Arizona, California, Colorado, Nevada, New Mexico, and Utah). The Western Solar Plan played a large part in establishing a more comprehensive solar energy program within the bureau through authorization policies, procedures, and design features applicable to all utility-scale solar energy development on BLM-administered lands across the six-state area. It identified categories of lands to be excluded from utility-scale solar energy development and specific locations well suited for utility-scale production of solar energy where the BLM prioritizes development (*i.e.,* solar energy zones or SEZs). The Western Solar Plan also allowed for consideration of utility-scale solar development proposals on lands outside of SEZs in accordance with procedures in the variance process established by the plan and decisions. It also established certain programmatic design features for utility-scale solar energy development on BLM-administered lands. The Western Solar Plan amended the land use plans in the six-state study area to reflect the identification of excluded lands and variance lands and the designation of SEZs. The designation of SEZs was based on consideration of a variety of solar generation technologies, including concentrated solar technology, which generally requires substantially flat areas with high levels of direct sunlight.

Purpose and Need for the Proposed Action

Updating the BLM's solar energy planning would advance the goals of recent Executive Order 14008 and the Energy Act of 2020. In Executive Order 14008, Tackling the Climate Crisis at Home and Abroad, the President ordered the Secretary of the Interior (Secretary) to ''review siting and permitting processes on public lands'' with a goal of increasing ''renewable energy production on those lands . . . while ensuring robust protection for our lands, waters, and biodiversity and creating good jobs.'' The Energy Act of 2020 directs the Secretary to ''seek to issue permits that, in total, authorize production of not less than 25 gigawatts of electricity from wind, solar, and geothermal energy projects by not later than 2025, through management of public lands and administration of Federal laws.'' 43 U.S.C. 3004(b).

In the 10 years since the Western Solar Plan was issued, the BLM has recognized that updating and expanding the Solar Energy Program would be appropriate to advance current and future renewable energy goals and to support conservation and climate priorities. The 2012 Western Solar Plan facilitated solar development applications for locations within the public lands where the landscape was generally flat, direct sunlight was ample, and high-value resources would not be significantly impacted. Due to technological advancements and reduced costs in photovoltaic systems, the BLM has received continued interest from photovoltaic solar developers in locations that were allocated as exclusion areas, under the Western Solar Plan, based on exclusion criteria for slope or solar insolation values. The purpose of this programmatic EIS and associated RMP amendments is to focus the BLM's utility-scale solar energy planning on resource management on BLM-administered lands rather than specifying technology-based criteria for solar development on public lands; expand the Program to additional states; increase opportunities for responsible renewable energy development in priority and variance areas; and develop appropriate criteria to exclude high-value resource areas from renewable energy development. The programmatic EIS will also consider and adjust policy or procedural elements of how the bureau planning for utility-scale solar energy development on BLM-administered lands where appropriate.

Preliminary Alternatives

The draft programmatic EIS will analyze a suite of potential modifications and updates to the Western Solar Plan to be fully developed after considering input received during the scoping period.

The BLM will develop and analyze alternatives that will include a range of proposed modifications and updates to some or all of the aspects of the BLM's solar energy planning summarized below. The BLM has not yet selected a preferred alternative for any aspect of the programmatic EIS.

Study Area: The Western Solar Plan was limited to six Western States (Arizona, California, Colorado, New Mexico, Nevada, and Utah) based on initial resource assessments showing those states encompassed the most prospective solar energy resources suitable for utility-scale development over the next 20 years as of 2012. Advancements in technology, updated resource information, and shifts in energy market economics have resulted in the need for an updated assessment for renewable energy planning. Additional Western States appear to have available solar energy resources on public lands that would be suitable for development in the coming decades. The BLM intends that at least one proposed alternative in the programmatic EIS would include the 11 Western States (Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming), or portions thereof. The BLM is interested in feedback on the appropriate scope of the study area and may reduce the number of states included prior to developing the draft programmatic EIS.

The BLM will consider the extent to which lands covered by the Desert Renewable Energy Conservation Plan, an interagency landscape-scale planning effort covering 22.5 million acres in seven southern California counties, should be included in the study area. The BLM will also consider the extent to which lands in Arizona, covered by the Restoration Design Energy Project, should be included in the study area for the programmatic EIS.

Exclusion Criteria: The Western Solar Plan required that all future utility-scale solar energy development projects be in conformance with the Plan's exclusions (Table A–2) and the associated land use

plan amendments (43 CFR 1601.0–5(b)). Due to the size and scale of utility-scale solar energy development (generally involving a single use of public lands), the BLM excluded a broader set of categories than would be identified in a land use plan for other types of rights-of way (ROWs). In all, 32 exclusion categories apply to some or all of the area covered by the Western Solar Plan.

It may be appropriate to modify or eliminate some of these exclusion categories, based on new information and advances in technology. For example, exclusion criteria 1 (excluding development in locations with slopes greater than 5 percent) and 2 (excluding development where insolation values are below 6.5 kWh/m²/day) were based on technological constraints present at the time the 2012 programmatic EIS was prepared which might no longer apply. The BLM intends that at least one proposed alternative would remove criteria 1 and 2 from the exclusions to the Solar Energy Program.

The remaining 30 exclusion criteria are resource-based. The BLM will consider changes to those exclusions, particularly with respect to resources in the States added to the study area. The BLM is interested in public comment on whether, in addition to modifying exclusion criteria for solar energy development, the Bureau should establish similar exclusion criteria for wind energy development.

Land Use Allocations: The Western Solar Plan and associated land use plan amendments: (1) excluded lands from utility-scale solar energy development based on a variety of criteria (about 79 million acres or 319,702 km²); (2) identified specific locations well suited for utility-scale production of solar energy (*i.e.,* SEZs) where the BLM prioritizes development (about 285,000 acres or 1,553 km²), and (3) allowed for responsible utility-scale solar energy development in variance areas outside of SEZs and exclusion areas in accordance with the variance process described in the 2012 programmatic EIS (about 19 million acres or 82,964 km²). The Western Solar Plan emphasized and incentivized development within SEZs and included a collaborative process to identify additional SEZs. The BLM's goal in prioritizing and incentivizing development in SEZs was to speed development of solar energy projects on BLM lands with high potential for solar energy generation and low potential for resource conflicts. The BLM intends that at least one proposed alternative would consider adjustments to the land use allocations of SEZs, variance areas, and exclusion areas as well as potential updates to the process and procedures that apply in each area. The BLM will consider identifying new priority areas for solar energy development, variance areas, and exclusion areas, including in any additional States (*e.g.,* Idaho, Montana, Oregon, Washington, or Wyoming) that were not evaluated in the 2012 programmatic EIS. The BLM is interested in receiving public feedback on these and other provisions that could be addressed under this programmatic EIS.

Variance Process: The Western Solar Plan provides for utility-scale energy development in variance areas outside of SEZs and exclusion areas. Applications for solar energy developments within a variance area are preliminarily assessed for anticipated conflicts with sensitive and high-value resources to identify potential issues with the siting of the proposed project. Prospective applicants in variance areas must schedule and participate in two preliminary meetings with the BLM before filing a ROW application. Following completion of these preliminary meetings, an applicant is then required to submit a ROW application to the BLM along with a Plan of Development with sufficient detail to allow the BLM to evaluate the suitability of the site for utility-scale solar energy development. Applicants for ROWs in variance areas are required to adhere to the data collection and survey protocols prescribed by resource agencies. The BLM considers a variety of factors when evaluating ROW applications and associated data in variance areas (*see* 2012 Western Solar Plan, Appendix B, Section B.5). The variance process has been in place for over a decade and was intended to support preliminary screening of applications as a means to validate the technical and financial feasibility of proposed solar projects, gauge the potential for conflicts with key resources and other existing uses using available information, and help ensure that certain up-front coordination has commenced with appropriate State and local governments before committing significant agency resources for a project-specific NEPA analysis. The BLM will consider modifications to the variance process to focus the review and improve efficiency. Further, the BLM will consider whether the process should be included in the programmatic EIS or whether the variance procedures would more appropriately be effectuated by other means, such as through regulation or policy. The BLM anticipates at least one proposed alternative will include changes to the variance process.

Additionally, since implementation of the Western Solar Plan, the majority of authorized solar developments on public land have occurred in variance areas, not SEZs. As such, the BLM will consider whether the purpose of the variance process (*i.e.,* pre-screening potential projects) is being met through other mechanisms—the BLM prioritization of applications for solar development in areas outside of SEZ and exclusion areas; exercise of the BLM's existing authority to deny ROW applications; and site-specific NEPA evaluations—such that the variance process need not be continued.

Definition of Utility-Scale: The Western Solar Plan was limited to utility-scale solar energy development, defined as any project capable of generating 20 or more megawatts (MW) of electricity that is delivered into the electricity transmission grid. Thus, decisions on projects generating less than 20 MW have not been made under the Western Solar Plan and continue to be made based on existing land use plan requirements, applicable policy, and individual site-specific NEPA analyses. The BLM intends to consider modifying the definition of utility-scale development.

Incentivizing Development in SEZ, i.e., Priority Areas: In the Western Solar Plan, the BLM stated that it intended to implement various policies and procedures for projects in SEZs and certain other initiatives to incentivize future utility-scale solar energy development in SEZs (*see* Western Solar Plan, Appendix B, Section B.4.3). The BLM completed some of these efforts but believes additional incentives should be considered. The BLM is interested in receiving public comment on what additional incentives would facilitate faster and easier permitting in SEZs, improve and facilitate appropriate mitigation, and encourage solar energy development on suitable lands adjacent to SEZs. The BLM also seeks comment on the extent to which the current uncertainty and disruptions in global supply chains might delay deployment of solar and wind energy development projects on public lands and how the BLM could address this concern by incentivizing the use of American made solar system components and union labor.

In addition to a range of alternatives that will include proposed modifications and updates to the Program elements noted above, the BLM will consider a No Action Alternative. Under the No Action Alternative, no changes will be made to the Solar Energy Program. Under the No Action Alternative, no changes would be made

to solar energy planning in the additional five Western States (Idaho, Montana, Oregon, Washington, and Wyoming) not covered by the Western Solar Plan.

The BLM welcomes comments on potential modifications and updates to the Program elements described above as well as suggestions for additional alternatives.

BLM Planning Criteria

The planning criteria guide the planning effort and lay the groundwork for effects analysis by identifying the preliminary issues and their analytical frameworks. Preliminary issues for the planning area have been identified by BLM personnel and from early engagement conducted for this planning effort with Federal, State, and local agencies; Tribes; and other stakeholders. The BLM has identified several preliminary issues within the planning criteria for this planning effort's analysis. The planning criteria are available for public review and comment at the ePlanning website *https://eplanning.blm.gov/eplanning-ui/admin/project/2022371/510.*

Summary of Expected Impacts

BLM personnel have identified the following potential effects to be examined during the planning process: effects to natural and cultural resources, other resource uses, and social and economic conditions from providing opportunities on public lands for renewable energy development. The BLM will also examine the potential for improved conservation outcomes in high-resource value areas allocated as exclusion areas where renewable energy development is prohibited or whether other comprehensive practices could be implemented for utility-scale solar development on BLM-administered public lands to support improved conservation outcomes. The BLM is accepting public input on these issues during the scoping period, consistent with 43 CFR 1610.4–1. The programmatic EIS will describe the environment of the planning area that could be affected by the alternatives under consideration and will evaluate reasonably foreseeable impacts.

The public is invited to comment on information about the relationships among solar energy developments on public lands and the balance between the nation's energy needs and other public land resources and uses, as well as relevant social and economic factors. This information will inform the scope of BLM's alternatives and impact analysis in the programmatic EIS.

Public Scoping Process

This notice of intent initiates the scoping period and public review of the planning criteria, which guide the development and analysis in the programmatic EIS and associated land use plan amendments. The BLM will be holding two virtual and 12 in-person scoping meetings. The specific dates and locations of these scoping meetings will be announced at least 15 days in advance through ePlanning project page and on the BLM website (see **ADDRESSES** section)

Interdisciplinary Team

The BLM will use an interdisciplinary approach to develop the programmatic EIS and land use plan amendments in order to consider the variety of resource issues and concerns identified. Bureau experts involved in this effort will include, without limitation, the following disciplines: rangeland management, minerals and geology, forestry, outdoor recreation, archaeology, paleontology, wildlife and fisheries, lands and realty, hydrology, soils, sociology and economics.

Additional Information

The BLM will identify, analyze, and consider potential mitigation to address the reasonably foreseeable impacts to resources from the proposed plan amendments and all analyzed reasonable alternatives and, in accordance with 40 CFR 1502.14(e), include appropriate mitigation measures not already included in the proposed plan amendments or alternatives. Mitigation may include avoidance, minimization, rectification, reduction or elimination over time, and compensation, and may be considered at multiple scales, including the landscape scale.

The BLM will utilize and coordinate the NEPA and land use planning processes for this planning effort to help support compliance with applicable procedural requirements under the Endangered Species Act (16 U.S.C. 1536) and Section 106 of the National Historic Preservation Act (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3), including public involvement requirements of Section 106. The information about historic and cultural resources and threatened and endangered species within the area potentially affected by the proposed plan will assist the BLM in identifying and evaluating impacts to such resources.

The BLM will consult with Indian Tribal Nations on a government-to-government basis in accordance with Executive Order 13175, BLM MS 1780, and other Departmental policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, State, and local agencies, along with Indian Tribal Nations and other stakeholders that may be interested in or affected by the proposed changes to the BLM's solar energy planning and RMP amendments that the BLM is evaluating, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the environmental analysis as a cooperating agency. The BLM will engage in government-to-government consultation meetings. The BLM will provide written invitations to potentially affected Tribal Nations prior to the meetings. The BLM will provide additional opportunities for government-to-government consultation throughout the NEPA process.

Interested parties not submitting comments at this time but who would like to receive a copy of the draft programmatic EIS and other project materials should indicate their preference through the project website (*https://eplanning.blm.gov/eplanning-ui/admin/project/2022371/510*).

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1501.9 and 43 CFR 1610.2.

Tracy Stone-Manning,

Director, Bureau of Land Management, Department of the Interior.

[FR Doc. 2022–26659 Filed 12–7–22; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–34925; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the

significance of properties nominated before November 19, 2022, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by December 23, 2022.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email, you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, *sherry_frear@nps.gov,* 202–913–3763.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before November 19, 2022. Pursuant to Section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers:

Key: State, County, Property Name, Multiple Name (if applicable), Address/Boundary, City, Vicinity, Reference Number.

CALIFORNIA

San Francisco County

Bethlehem Shipbuilding Corporation Hospital, 331 Pennsylvania Ave., San Francisco, SG100008498

Compton's Cafeteria, 101–102 Taylor St., San Francisco, SG100008499

DISTRICT OF COLUMBIA

District of Columbia

Schlitz Brewing Company Washington Branch and National Geographic Society Warehouse, 326 R St. NE, Washington, SG100008512

IOWA

Cerro Gordo County

Clear Lake Lake Wall, 10 North Lake View Dr., Clear Lake, SG100008506

MAINE

Cumberland County

St. Joseph's Academy and Convent-Catherine McAuley School (Boundary Increase), 605 and 631 Stevens Ave., Portland, BC100008511

Knox County

Miller's Garage, 25 Rankin St., Rockland, SG100008495

MICHIGAN

Allegan County

Saugatuck Gap Filler Annex, 753 Park St., Saugatuck, SG100008508

TEXAS

Bexar County

Billy Mitchell Village, 201–245 Croyden Ave., 201–435 Cropsey Ave., 101–160 Camelot Ct., 102–132 General Ent Ct., San Antonio, SG100008496

VERMONT

Bennington County

Bennington College Historic District, 1 College Dr., Bennington, SG100008509

VIRGINIA

Martinsville Independent City

Martinsville Historic District (Boundary Decrease), Roughly bounded by VA 457, Danville RR tracks, Clay St., and Market St., Martinsville, BC100008501

Martinsville Historic District (Boundary Increase), Fayette, Church, Market, Moss, Bridge, Broad, and Ellsworth Sts., Cleveland Ave., Martinsville, BC100008502

WYOMING

Campbell County

Gillette Downtown Historic District, Downtown Gillette south of the Burlington Northern-Santa Fe Railroad tracks and on both sides of South Gillette Ave. from 1st St. to 7th St., Gillette, SG100008517

Converse County

South Douglas Residential Historic District, Bounded by Elm, Erwin, west side of South 4th, and east side of South 6th Sts., Douglas, SG100008516

Sheridan County

George, Stephen, Homestead (Ranches, Farms, and Homesteads in Wyoming, 1860–1960 MPS), 86 Peno Rd., Sheridan, MP100008514

First Congregational Church, 101 West Works St., Sheridan, SG100008515

Teton County

Weston, Henry and Estella, House, 165 East Broadway, Jackson, SG100008513

In the interest of preservation, a SHORTENED comment period has been requested for the following resource:

MARYLAND

Anne Arundel County

Etowah, 4056 Solomon's Island Rd., Harwood vicinity, SG100008494, Comment period: 3 days

Additional documentation has been received for the following resources:

MAINE

Cumberland County

St. Joseph's Academy and Convent-Catherine McAuley School (Additional Documentation), 605 and 631 Stevens Ave., Portland, AD100000806

VIRGINIA

Martinsville Independent City

Martinsville Historic District (Additional Documentation), Roughly bounded by VA 457, Danville RR tracks, Clay St., and Market St., Martinsville, AD98001317

Nominations submitted by Federal Preservation Officers:

The State Historic Preservation Officer reviewed the following nominations and responded to the Federal Preservation Officer within 45 days of receipt of the nominations and supports listing the properties in the National Register of Historic Places.

DISTRICT OF COLUMBIA

District of Columbia

Frederick Douglass National Historic Site (Boundary Increase), 1411 W St. SE, Washington, BC100008504

Frederick Douglass National Historic Site (Additional Documentation), 1411 W St. SE, Washington, AD66000033

NEW JERSEY

Hudson County

Ellis Island (Additional Documentation), Ellis Island, New York Harbor, Jersey City vicinity, AD66000058

NEW YORK

New York County

Ellis Island (Additional Documentation), Ellis Island, New York Harbor, New York vicinity, AD66000058

Authority: Section 60.13 of 36 CFR part 60.

Dated: November 23, 2022.

Sherry A. Frear,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2022–26657 Filed 12–7–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On December 1, 2022, the Department of Justice lodged a proposed consent

decree with the United States District Court for the Northern District of Ohio in the lawsuit entitled *United States* v. *Republic Steel,* Civil Action No 5:22–cv–02163.

The United States filed this lawsuit under the Clean Air Act. The United States' complaint names Republic Steel as the defendant. The complaint seeks injunctive relief and civil penalties for violations of the regulations that govern the emission limits, performance testing, and parametric monitoring and recording as required under the defendant's 2004 Permit to Install for its steel manufacturing facility in Canton, Ohio. The consent decree requires the defendant to perform injunctive relief, including addition of air pollutant emission controls, and pay a $990,000 million civil penalty.

The publication of this notice opens a period for public comment on the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Republic Steel,* D.J. Ref. No. 90–5–2–1–12589. All comments must be submitted by no later than January 13, 2023. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $11.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Patricia McKenna,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2022–26655 Filed 12–7–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Notice of Comment Period Extension on Proposed Settlement Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act Regarding Claims in Connection With the Findett/Hayford Bridge Road Groundwater Superfund Site

On September 28, 2022, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Eastern District of Missouri in the lawsuit entitled *United States and the State of Missouri* v. *Union Electric Company d/b/a Ameren Missouri.,* Civil Action No.22–cv–1038. On October 4, 2022, notice of the proposed settlement agreement and the start of the comment period was published in the **Federal Register**. On November 2, 2022, notice was published by the United States for an extension of the comment period for this Proposed Consent Decree by thirty (30) days, to December 5, 2022. In response to further requests for an extension, the United States is extending the comment period for this Proposed Consent Decree by an additional ninety (90 days), to March 6, 2023.

The proposed Consent Decree would resolve claims the United States and State of Missouri have brought pursuant to Sections 106, 107(a), and 113(g) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9606, 9607(a), and 9613(g), as amended by the Superfund Amendments and Reauthorization Act of 1986 (''CERCLA''), and Section 260.530 of the Missouri Hazardous Waste Management Law, Mo. Rev. Stat. 260.530, regarding the Findett/Hayford Bridge Road Groundwater Superfund Site Operable Unit 4 (''OU4'').

Under the Settlement Agreement, Union Electric Company d/b/a Ameren (''Ameren'') will perform response actions at the Site pursuant to the June 30, 2021 Record of Decision, and pay U.S. Environmental Protection Agency and Missouri Department of Natural Resources oversight costs. In exchange, the United States and the State will provide covenants not to sue or to take administrative action against Ameren pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), and Mo. Rev. Stat. 260.510 and 260.530, with regard to the Work performed.

Any comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and the State of Missouri* v. *Union Electric Company d/b/a Ameren Missouri,* 22–cv–1038, D.J. Ref. No. 90–11–2–417/6. All comments must be submitted no later than March 6, 2023. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Settlement Agreement may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* Alternatively, a paper copy of the Settlement Agreement will be provided upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $34.75 for the Consent Decree and appendices, and $8 for only the Consent Decree without appendices (25 cents per page reproduction cost) payable to the United States Treasury.

Susan Akers,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2022–26626 Filed 12–7–22; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[OMB Number 1125–0005]

Agency Information Collection Activities; Proposed Collection; Comments Requested; Request To Be Included on the List of Pro Bono Legal Service Providers for Individuals in Immigration Proceedings (Form EOIR–56)

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

ACTION: 60-Day notice.

SUMMARY: The Executive Office for Immigration Review, Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until January 9, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2500, Falls Church, VA 22041, telephone: (703) 305–0289.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and/or
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Renewal of a currently approved collection.
2. *The Title of the Form/Collection:* Request to be Included on the List of Pro Bono Legal Service Providers for Individuals in Immigration Proceedings.
3. *The agency form number and component sponsoring the collection:* EOIR–56 (OMB #1125–0015).

Component sponsor: Executive Office for Immigration Review, Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Legal service providers seeking to be included on the List of Pro Bono Legal Service Providers (''List''), a list of persons who have indicated their availability to represent aliens on a pro bono basis. Abstract: EOIR seeks approval to renew its implementation of an electronic system to apply for and renew participation in the List, in addition to maintaining the paper version of the Form EOIR–56. Use of the electronic system is strongly encouraged and preferred. Form EOIR–56 is intended to elicit, in a uniform manner, all of the required information for EOIR to determine whether an applicant meets the eligibility requirements for inclusion on the List.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 25 respondents will complete each form within approximately 30 minutes.

6. *An estimate of the total public burden (in hours) associated with the collection:* 12.50 annual burden hours.

If additional information is required contact: Robert Houser, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 3E.206, Washington, DC 20530.

Dated: December 5, 2022.

Robert Houser,

Department Clearance Officer for PRA, Policy and Planning Staff, Office of the Chief Information Officer, U.S. Department of Justice.

[FR Doc. 2022–26722 Filed 12–7–22; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Digital Literacy and Resilience, Request for Information (RFI)

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Request for information: request for comments.

SUMMARY: The U.S. Department of Labor (DOL) is requesting information on successful approaches related to digital skills attainment and competency development in education and training efforts, the strategies our education and workforce development systems are employing to assess and ensure individuals are digitally resilient, and any challenges the education and public workforce systems are facing. DOL is also requesting information on strategies to advance digital equity and inclusion in the workforce. DOL developed this RFI with substantial input from the U.S. Department of Commerce (Commerce), U.S. Department of Education (ED), and the Institute of Museum and Library Sciences (IMLS), as part of its long-standing coordination and partnership with these agencies.

DATES: To be ensured consideration, comments are due by February 6, 2023.

ADDRESSES: You may submit comments in response to the RFI described in this notice by one of the following methods:

Electronic submission: Submit comments by email to: *DigLiteracyRFI@dol.gov.*

Postal mail and hand delivery/courier: Written comment submissions may be mailed or delivered to Attn: Yufanyi Nshom, Office of Workforce Investment, U.S. Department of Labor, 200 Constitution Avenue NW, Suite C–4510, Washington, DC 20210.

Instructions: The Department of Labor invites all interested parties to submit responses to the questions posed in the below 'Request for Information' section. Label all submissions with ''Digital Literacy/Digital Resilience RFI.'' Please submit your comments by only one method.

FOR FURTHER INFORMATION CONTACT: *DOL:* Yufanyi Nshom, Office of Workforce Investment (OWI), U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW, Room C–4510, Washington, DC 20210, Telephone: (202) 693–3915 (this is not a toll-free number), Email: *DigLiteracyRFI@dol.gov.*

SUPPLEMENTARY INFORMATION:

Background: The federal government has supported digital literacy and digital equity across a variety of sectors and through a range of programs. Attaining and maintaining digital literacy is critical to surviving and thriving in modern society. Digital resilience signifies having the awareness, skills, agility, and confidence to empower users of new technologies and adapt to changing digital skill demands. Digital resilience improves capacity to problem-solve and upskill in employment, navigate digital transformations, and be active participants in society and the economy.[1] Under the Bipartisan Infrastructure Law of 2021 (BIL, Pub. L. 117–58), digital equity is defined as the ''condition in which individuals and communities have the information technology capacity that is needed for full participation in the society and economy of the United States.'' Under BIL, digital inclusion refers to having reliable and affordable access to technology, broadband infrastructure,

[1] Building a Digitally Resilient Workforce: Creating On-Ramps to Opportunity. (2020). Digital US Coalition. *https://digitalus.org/wp-content/uploads/2020/06/DigitalUS-Report-pages-20200602.pdf.*

and training. The Workforce Innovation and Opportunity Act of 2014 (WIOA, Pub. L. 113–39) and Digital Equity Act of 2021 (DEA),[2] applying the Museum and Library Services Act definition, both define digital literacy as ''the skills associated with using technology to enable users to find, evaluate, organize, create, and communicate information.'' [3] WIOA includes digital literacy as a workforce preparation activity, thereby allowing states to use their WIOA funding allotments to increase digital literacy for successful transition into and completion of postsecondary education and training or employment. Workforce preparation activities were included in WIOA to further its overall goal of improving coordination between the public workforce system [4] and industry partners. Workers, jobseekers and employers meet their workforce needs through the core title I programs that support eligible adults, youth, and dislocated workers, administered by DOL; and through title II (Adult Education and Family Literacy Act) and title IV (Vocational Rehabilitation) programs, administered by ED.

Going forward, digital literacy will become increasingly important to securing a quality job and the advancement of the American workforce; therefore, it is imperative for federal agencies to better understand current trends in digital literacy and digital skills attainment. DOL, in collaboration with Commerce, ED, and IMLS, will use the information collected through this RFI to inform competitive grant opportunities, further develop technical assistance, inform public policy on the expansion of digital skill-building training programs that facilitate upskilling the workforce, and address demands related to digital literacy and access.

DOL's Employment and Training Administration (ETA) contributes to the more efficient functioning of the U.S. labor market by providing high-quality job training, employment, labor market information, and income maintenance services, primarily through state and local workforce development systems. This includes responsibility for implementing an integrated national workforce investment system that supports economic growth and provides workers with the information, advice, job search assistance, supportive services, and training for in-demand industries and occupations needed to get and keep quality jobs. Workforce services also help connect employers with skilled workers seeking employment. Available training services include both classroom and work-based learning opportunities provided through the American Job Center network. ETA's workforce development programs are designed to assist communities, educators, businesses, and jobseekers (*e.g.,* adults, dislocated and transitioning workers, disadvantaged youth, veterans, older workers, individuals with disabilities, migrant and seasonal farmworkers, Indians and Native Americans, and others) compete in a changing global economy.

Commerce's National Telecommunications and Information Administration (NTIA) is leading the Biden-Harris Administration's internet For All initiative, which includes multiple new broadband deployment and digital equity and inclusion programs funded by the BIL. The BIL includes the Broadband Equity Access and Deployment (BEAD) program, providing $42.5 billion for funding broadband deployment and digital inclusion initiatives; the Digital Equity Act of 2021 [5], which provides $2.75 billion in formula and competitive grant funding for digital equity and inclusion planning and projects; and an additional $2 billion in funding for the existing Tribal Broadband Connectivity Program (TBCP). These collective programs will support states and other entities to advance digital equity, digital inclusion, digital literacy and workforce development initiatives in their respective territories.

NTIA is also currently implementing additional broadband programs created by the Consolidated Appropriations Act of 2021 (CAA) [6]. The CAA established the Office of Minority Broadband Initiatives within NTIA, to focus on collaboration for internet access and promotion of digital skills and digital inclusion at Historically Black Colleges and Universities (HBCUs), Tribal Colleges and Universities (TCUs), Minority-Serving Institutions (MSIs), and their surrounding communities. The CAA also established the Connecting Minority Communities Pilot Program, which provides grants to HBCUs, TCUs, MSIs, and minority business enterprises and nonprofits to be used for devices and internet service, as well as digital literacy programming and the hiring and training of technology personnel.

ED's Office of Career, Technical and Adult Education (OCTAE) supports the teaching and learning of digital skills for youth and adults. Preparing secondary, postsecondary and adult learners for career opportunities in STEM industry sectors, such as advanced manufacturing and healthcare, is essential to promoting innovation and economic growth. In recent Perkins V discretionary grant competitions, OCTAE issued a Notice Inviting Applications that promoted projects designed to improve student achievement or educational outcomes, including computer science, as a competitive preference priority. Annually, OCTAE administers the Presidential Cyber Security Educator award to recognize two educators—one at the elementary level, and one at the secondary level—who demonstrate superior achievement in instilling skills, knowledge, and passion with respect to cybersecurity and cybersecurity-related subjects.

OCTAE also funds projects to support adult education learners to engage with digital technologies and help practitioners improve their ability to deliver effective digital skills training and support. The projects include Digital Resilience in the American Workforce (DRAW), Enhancing Access for Refugees and New Americans, and the Adult EdTech Challenge. Over the next three years, ED will invest in funding these programs to support improving the quality of foundational digital literacy skills and training in adult education/literacy programs. If passed, the Digital Citizenship and Media Literacy Act of 2020 (DCML) would direct ED to award approximately $20 million bi-annually in grant funding to state/local education agencies to promote media literacy and

[2] Text—H.R.3684—117th Congress (2021–2022): Infrastructure Investment and Jobs Act | *Congress.gov* | Library of Congress.

[3] Section 101(d)(7)(A) of WIOA, as defined in section 202 of the Museum and Library Services Act (20 U.S.C. 9101).

[4] The term ''workforce development system'' as defined in WIOA, means a system ''that makes available the core program, the other one-stop partner programs, and any other programs providing employment and training services as identified by a State local board or local board.'' STATUTE–128-Pg1425.pdf (*congress.gov*). Section 203(17) of WIOA defines workforce preparation activities as ''activities, programs, or services designed to help an individual acquire a combination of basic academic skills, critical thinking skills, digital literacy skills, and self-management skills, including competencies in utilizing resources, using information, working with others, understanding systems, and obtaining skills necessary for successful transition into and completion of postsecondary education or training, or employment.'' (Pub. L. 113–129).

[5] Digital Equity Act Program Overview: *https://www.internetforall.gov/sites/default/files/2022-05/digital-equity-act-info-sheet.pdf.*

[6] Consolidated Appropriations Act of 2021: *http://www.congress.gov/bill/116th-congress/house-bill/133/text.*

digital citizenship.[7] The DCML Act highlights the provision of information and technology literacy as an important strategy for preparing students for further education, training, and employment.

The federal Institute of Museum and Library Services (IMLS) also addresses digital literacy skills by statute (20 U.S.C. 9101 *et seq.*) and funds a range of training programs in libraries and museums. Library staff are often on the frontlines of helping individuals develop the digital skills they need for success in education, employment, and civic engagement. Among other projects, IMLS funding has supported the Public Library Association's *DigitalLearn.org*, an online hub for digital literacy support and training, as well as Salt Lake City Public Library's Digital Navigators Program, which identified massive digital inclusion needs exposed by the COVID–19 pandemic.

In accordance with President Biden's Executive Order on advancing racial equity and support for underserved communities through the federal government,[8] federal agencies are tasked with developing a comprehensive approach to advance equity for historically underserved and marginalized communities adversely affected by persistent poverty and inequality. This approach requires agencies to assess whether, and to what extent, its programs and policies perpetuate systemic barriers to opportunities and benefits for underserved groups.[9] As part of this effort, it is critically important to improve digital resilience and address issues of access around training, technology, and infrastructure to advance digital equity.[10] An individual's access to technology and opportunities to develop digital skills is a key equity issue that affects their ability to participate in society. This issue disproportionately impacts Black, Indigenous, and other People of Color, as well as people in rural communities.[11]

Access to training programs, devices (*i.e.,* computers) and reliable, high-speed internet varies across the country. Rural Americans consistently have lower adoption rates of broadband compared to urban or suburban Americans, and are less likely to own a smartphone, tablet, or computer.[12] Digitally redlined urban communities also face issues of access and adoption. One-third of Americans have limited to no digital skills, and People of Color are disproportionately affected by these digital skills mismatch.[13] Additionally, individuals with disabilities are adopting technologies at lower rates compared to their non-disabled peers, regardless of their age.[14] ED's Office of Education and Training (OET), through its Digital Equity Education Roundtables (DEER) Initiative, convened stakeholders to identify existing barriers to digital equity/inclusion adoption, defined under BIL as ''daily access to the internet with the digital skills that are necessary for the individual to participate online.'' The DEER Initiative found that one of the most significant challenges that impede adoption faced by learners, families/caregivers, and communities is the lack of digital skills necessary to fully take advantage of technology and access opportunities. It is vital to understand the need for digital resilience, the digital skills mismatch that exist amongst workers and learners, and how digital skills instruction alongside other basic skills can be contextualized and integrated into various education and training programs.

As more jobs require digital resilience and access to reliable infrastructure, jobseekers, workers, and learners who lack digital literacy skills or other foundational career-readiness skills are at a disadvantage in both securing and retaining employment opportunities. Further, as noted in a 2020 report from the National Skills Coalition, ''*digital* skill levels are strongly correlated with *general* literacy and numeracy skills,'' such that ''those who struggle with technology may also struggle with the academic skills needed to gain entry to a degree or other educational program.'' [15] Occupations that have not traditionally required workers to be digitally resilient are increasingly demanding that workers have digital literacy skills. Current research suggests that while the demand for jobs requiring digital skills will increase, many workers and jobseekers continue to lack foundational digital skills. The National Skills Coalition's analysis of the Organization for Economic Cooperation and Development (OECD) Survey of Adult Skills (PIAAC) [16] found that 73 percent of workers in entry-level service work lacked digital problem-solving skills, and 67 percent struggled to use computers on the job.[17] The lack of workers' digital skills bring considerable costs to workers and employers, and threaten economic recovery efforts by imposing a drag on economic productivity. A lack of digital resilience creates an opportunity cost on workers by limiting their career advancement opportunities and job prospects. A 2017 report titled ''The Digital Edge: Middle-Skill Workers and Careers'' [18] explains ''the high price of low skills,'' and how job seekers might have to turn down jobs or will be considered unqualified for jobs due to a lack of digital skills. Middle-skill jobs, defined in the report as those that typically require less than a bachelor's degree while paying a living wage, make up 46 percent of overall labor demand—and digital skills are widely required across the middle-skill labor market. 82 percent of ''middle skill jobs'' require digital skills, and 78 percent of these jobs require spreadsheets and word processing as the baseline for digital skills. In addition, the report concluded that digitally

[7] S.2240—116th Congress (2019–2020): Digital Citizenship and Media Literacy Act | *Congress.gov* | Library of Congress.

[8] President Biden's Executive Order 13985, 'Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,' defines the term ''equity'' and directs every agency to assess whether underserved communities and their members face systemic barriers in accessing benefits and opportunities available under certain of its programs.

[9] *https://www.federalregister.gov/documents/2021/01/25/2021-01753/advancing-racial-equityand-support-for-underserved-communities-through-the-federal-government.* As recent PIACC Survey of Adult Skills data shows, in the United States, 19 percent of adults are profoundly in need of literacy skills development. These adults are overrepresented in communities of color.

[10] Under the DEA, the term ''digital equity'' means the condition in which individuals and communities have the information technology capacity that is needed for full participation in the society and economy of the United States. The term ''digital inclusion'' means the activities that are necessary to ensure that all individuals in the United States have access to, and the use of, affordable information and communication technologies, such as reliable fixed and wireless broadband internet service; and includes obtaining access to digital literacy training.

[11] Bergson-Shilcock, A. (2020). Applying a Racial Equity Lens to Digital Literacy. National Skills Coalition. *https://www.nationalskillscoalition.org/wp-content/uploads/2020/12/Digital-Skills-Racial-Equity-Final.pdf.*

[12] *https://www.pewresearch.org/fact-tank/2021/08/19/some-digital-divides-persist-between-rural-urban-and-suburban-america/.*

[13] *https://www.nationalskillscoalition.org/wp-content/uploads/2020/12/Digital-Skills-Racial-Equity-Final.pdf.*

[14] *https://www.pewresearch.org/fact-tank/2021/09/10/americans-with-disabilities-less-likely-than-those-without-to-own-some-digital-devices/.*

[15] Bergson-Shilcock, 2020. *The New Landscape of Digital Literacy.* Washington, DC: National Skills Coalition. *https://nationalskillscoalition.org/resource/publications/the-new-landscape-of-digital-literacy/.*

[16] *https://nces.ed.gov/surveys/piaac/current_results.asp.*

[17] Bergson-Shilcock, 2017. Foundational skills in the service sector. Washington, DC: National Skills Coalition. *https://www.nationalskillscoalition.org/resources/publications/file/NSC-foundational-skills-FINAL.pdf,* p. 9–16.

[18] The Digital Edge: Middle-Skill Workers and Careers. (2017). Burning Glass Technologies. *https://www.burningglass.com/wp-content/uploads/Digital_Edge_report_2017_final.pdf.*

intensive middle-skill jobs pay 17 percent more than non-digital roles.

Technology is built into nearly every aspect of our daily lives, including how Americans learn, work and communicate with each other. Digital literacy and resilience enable jobseekers, workers, and learners to participate in the global economy, and digital skills are necessary to access many of the public workforce programs that help job seekers successfully complete job-readiness and/or occupational training. The COVID–19 pandemic increased the need for the American workforce to utilize digital skills, and in today's labor market, the job search, recruitment, and application processes are becoming increasingly digitized. Despite the shift toward increased uses of digital tools and technology, an estimated 32 million Americans struggle to use a computer, and half of all Americans say they are not confident in using technology to learn.[19] The pandemic also accelerated a shift to the online service delivery model, which exposed more nuanced features of the digital divide and illustrated the importance of being able to navigate digital transformations, such as managing the shift to online education, increased use of telehealth services, and the ability to secure goods and services necessary for every-day life. The shift created additional barriers for job seekers who lack the digital skills needed to access virtual services from the public workforce system, and further highlighted the impacts of systemic racism and inequity on disadvantaged communities. As digital literacy skills increasingly intertwine with basic job functions, the public workforce system will need to gather new data on digital skill demands to develop plans that address the technology gaps in priority industries across different geographies and demographics. This will ensure all individuals have the digital resilience needed to participate in education/training programs and society.

Request for Information: The U.S. Department of Labor, with input from the above-referenced Agencies, is interested in learning about successful approaches to improving digital literacy from workforce development providers, business and labor leaders, employers, educators, policymakers, advocates, including community-anchor institutions and other nonprofit organizations, researchers, and other interested individuals and entities. Through this RFI, the Agencies seek public input to gather information about digital literacy and competencies both prior to and during the COVID–19 pandemic, as applicable. The Agencies request that commenters address the key questions and themes, as noted below, in the context of the preceding discussion in this document. Commenters do not need to address every question and should focus on those that relate to their expertise or perspective. To the extent possible, please clearly indicate the question(s) addressed in your response.

Key Themes and Questions:

1. *Current Trends in Digital Literacy:* Please share how actors in the workforce development system, including education entities, libraries, community organizations, businesses or industry associations, and union or worker organizations, are currently engaged in digital literacy in the following areas:

(a) Assessing digital resilience for adult and youth learners?

(b) Addressing digital literacy skill demands or skills mismatches for adult and youth workers seeking employment or training services?

(c) Upskilling employees in the workforce, including incorporating digital skills instruction and integrating digital technologies into occupational skills training?

(d) Identifying in-demand digital literacy skills and/or skills most relevant for the local labor market? Are industry or occupation-specific skills being identified?

(e) Creating and utilizing incentives to engage workers and job seekers in digital learning?

(f) Developing/piloting innovative strategies and promising practices or projects to support digital resilience amongst learners?

(g) What are some examples of promising practices in the field of digital skills training?

(h) What are successful processes used by employers to share information on in-demand digital skills needed for their respective industry? How do employers share information with the public workforce system, including other employers, jobseekers and training providers?

(i) What are successful processes by which employers upgrade specific digital skills amongst their own workforces?

(j) Which library systems and museums do you consider to be exemplars in teaching digital skills? What promising practices do these institutions utilize to serve the public?

2. *Challenges and Barriers to Digital Literacy:* Please share identified mismatches, needs, and/or systemic barriers for stakeholders involved in digital literacy training:

(a) What barriers are individuals (adult and youth workers/learners) experiencing in accessing digital tools and/or training?

(b) What challenges are instructors and/or training providers facing when seeking to deliver digital literacy instruction and training to learners and/or workers?

(c) What are common mismatches in digital literacy that employers are facing for newly hired workers as well as incumbent workers?

(d) What resources are most needed by educators and training providers to address the challenges in providing digital skills training to individuals?

(e) What challenges are training program participants (adult and youth) facing, and where are there still mismatches in the digital literacy ecosystem (*i.e.,* public school systems, libraries, employment service centers, etc.)?

(f) What challenges or barriers are local entities facing when attempting to use new or existing funding to support digital literacy training for learners?

3. *Digital Equity and Inclusion:* Please share what steps need to be taken by digital literacy stakeholders to ensure the following equity milestones are achieved:

(a) What additional resources are needed for workers of all backgrounds to access and succeed in digital literacy upskilling/training opportunities?

(b) How can programs ensure underserved and/or marginalized populations are adequately targeted for digital literacy training opportunities?

(c) How can digital skills/literacy efforts be integrated into ongoing worker preparation programs?

(d) What interventions/supports can be utilized to support digital inclusion for all program participants? For example, are there issues centered around digital literacy resources being made available in Spanish and other widely-used languages, in addition to English?

(e) How should the Institute of Museum and Library Sciences better encourage digital skills development in libraries and museums?

4. *Strategic Partnerships and Collaboration:* Please explain how state, local, nonprofit, and business partners are collaborating to implement successful digital literacy initiatives:

(a) How are the most successful partnerships structured? Are there required partners?

[19] Mamedova, S., Pawlowski, E., & Hudson, L. (2018). A Description of U.S. Adults Who Are Not Digitally Literate (No. NCES2018–161; Statistics in Brief). US Department of Education. *https://nces.ed.gov/pubs2018/2018161.pdf.*

(b) Are there barriers preventing successful partnerships with business and industry partners at the state and/or local levels? If so, what are the barriers and what support is needed to overcome them?

(c) What is the role of employers in preparing new or incumbent workers for industry-specific digital skills, or how should workforce providers partner with employers? How might employer-specific digital skills be taught by the employer to build on skills taught by workforce grantees or training providers?

(d) Are there any specific digital skills that workforce and education training providers should be responsible for teaching learners, such as how to type or navigate digital devices?

5. *Federal Investments in Digital Literacy:* Please share what support from the federal government is needed to advance national digital literacy attainment efforts:

(a) Which existing federal programs/federal funding sources are being utilized to support digital resilience?

(b) Is additional federal funding needed for states/local governments to facilitate better services to the public?

(c) What types of technical assistance and resources would be most valuable to build digital resilience capacity?

(d) How are WIOA grantees/sub-grantees leveraging funding outside of WIOA, such as the Affordable Connectivity Program and/or digital equity funding under the Bipartisan Infrastructure Law, to address digital inclusion and equity challenges with federal funding?

(e) How can federally-funded workforce and education training programs work together to ensure that participants (adult and youth) receive needed training in foundational and occupation-specific digital literacy skills?

6. *Digital Literacy & K–12 Public Education System:* Please share successful strategies, key challenges, and lessons learned in addressing digital literacy for K–12 youth:

(a) What are the digital skills necessary to be considered digitally literate today? In the future?

(b) Which K–12 and community college/postsecondary education systems do you consider to be exemplars in teaching digital skills to adult learners, youth learners, and/or families/caregivers? Why?

(c) How should the Department of Education better encourage digital skills education in the K–12, community colleges, and adult education settings?

(d) What are some recommended strategies to ensure digital skills education evolves alongside society's technological advances?

Brent Parton,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2022–26461 Filed 12–7–22; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 22–098]

Name of Information Collection: Notice of Information Collection: NASA Safety Reporting System (NSRS)

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection—Extension of a currently approved collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

DATES: Comments are due by January 9, 2023.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 60 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Bill Edwards-Bodmer, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546, 757–864–3292 or email *b.edwards-bodmer@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection provides a means by which NASA contractors can voluntarily and anonymously report any safety concerns or hazards pertaining to NASA programs, projects, or operations.

II. Methods of Collection

The current, paper-based reporting system ensures the protection of a submitter's anonymity and secure submission of the report by way of the U.S. Postal Service.

III. Data

Title: NASA Safety Reporting System.

OMB Number: 2700–0063.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Annual Number of Activities: 75.

Estimated Number of Respondents per Activity: 1.

Annual Responses: 75.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 19.

Estimated Total Annual Cost: $890.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Cheryl Parker,

Federal Register Liaison Officer.

[FR Doc. 2022–26651 Filed 12–7–22; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2023–010]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is proposing to request that the Office of Management and Budget (OMB) renew approval of an information collection used by researchers who wish to do biomedical statistical research in archival records containing highly personal information. We invite you to comment on this proposed information collection.

DATES: We must receive written comments on or before February 6, 2023.

ADDRESSES: Send comments to Paperwork Reduction Act Comments (MP), Room 4100; National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001, or email them to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Tamee Fechhelm by telephone at 301–837–1694 with requests for additional information or copies of the proposed information collection and supporting statement.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we invite the public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) whether we need the proposed information collection to properly perform our agency functions; (b) our estimate of the burden of the proposed information collection and its accuracy; (c) ways we could enhance the quality, utility, and clarity of the information we collect; (d) ways we could minimize the burden on respondents of collecting the information, including through information technology; and (e) whether this collection affects small businesses. We will summarize any comments you submit and include the summary in our request for OMB approval. All comments will become a matter of public record.

In this notice, we solicit comments concerning the following information collection:

Title: Statistical Research in Archival Records Containing Personal Information.

OMB number: 3095–0002.

Agency form number: None.

Type of review: Regular.

Affected public: Individuals.

Estimated number of respondents: 2.

Estimated time per response: 7 hours.

Frequency of response: On occasion.

Estimated total annual burden hours: 14 hours.

Abstract: The information collection is prescribed by 36 CFR 1256.28 and 36 CFR 1256.56. Respondents are researchers who wish to do biomedical statistical research in archival records containing highly personal information. NARA needs the information to evaluate requests for access to ensure that the requester meets the criteria in 36 CFR 1256.28 and that the proper safeguards will be made to protect the information.

Sheena Burrell,

Executive for Information Services/CIO.

[FR Doc. 2022–26694 Filed 12–7–22; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0018]

Standard Review Plan for Applications for 10 CFR Part 70 Licenses for Possession and Use of Special Nuclear Materials of Critical Mass but Not Subject to the Requirements in 10 CFR part 70, Subpart H

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft NUREG; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft NUREG, NUREG–2212, ''Standard Review Plan for Applications for 10 CFR part 70 Licenses for Possession and Use of Special Nuclear Materials of Critical Mass but not Subject to the Requirements in 10 CFR part 70, subpart H.'' This NUREG contains information intended to provide staff guidance to assist applicants and licensees in preparing license applications for possession and use of special nuclear materials (SNM) exceeding specific threshold quantities. It describes methods or approaches acceptable to the NRC staff for implementing NRC requirements in the *Code of Federal Regulations.*

DATES: Submit comments by February 6, 2023. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0018. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Osiris Siurano-Perez, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–7827, email: *Osiris.Siurano-Perez@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0018 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0018.
- *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.* Draft NUREG–2212, ''Guidance for Applications for Title 10 of the *Code of Federal Regulations* Part 70 Licenses for Possession and Use of Special Nuclear Materials of Critical Mass but not Subject to the Part 70 Subpart H Requirements,'' and its associated Regulatory Analysis, are available in ADAMS under Accession Nos. ML22335A087 and ML20233A221, respectively.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2020–0018 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Discussion

The information in this draft report, NUREG–2212, ''Standard Review Plan for Applications for 10 CFR part 70 Licenses for Possession and Use of Special Nuclear Materials of Critical Mass but not Subject to the Requirements in 10 CFR part 70, subpart H,'' is intended to provide staff guidance to assist applicants and licensees in preparing applications for licenses for critical mass quantities of SNM exceeding specific threshold quantities. In particular, it describes the types of information required under section 70.22 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Contents of applications,'' for an application for a new, renewal of, and/or amendment to an SNM license, for facilities licensed under 10 CFR part 70, ''Domestic Licensing of Special Nuclear Material,'' but that are not subject to the 10 CFR part 70, subpart H, ''Additional Requirements for Certain Licensees Authorized To Possess a Critical Mass of Special Nuclear Material'' (commonly known as greater than critical mass (GTCM) applicants, licensees, and/or facilities). The NUREG provides NRC staff reviewers with guidance that describes methods or approaches that the staff has found acceptable for meeting applicable NRC requirements in 10 CFR part 70. Implementation of the criteria and guidelines in NUREG–2212 by staff members in their review of applications provides assurance that a given design ensures adequate protection of the public health and safety and the environment. This draft NUREG follows the format and style of NUREG–1556, Volume 17, Revision 1 ''Consolidated Guidance about Materials Licenses: Program-Specific Guidance About Special Nuclear Material of Less than Critical Mass Licenses,'' (ADAMS Accession No. ML18190A207), however, additional detailed information on the safety programs applicable to part 70 GTCM facilities is included. Draft NUREG–2212 also follows the format and style of NUREG–1520, Revision 2 ''Standard Review Plan for Fuel Cycle Facilities License Applications,'' (ADAMS Accession No. ML15176A258), which focuses on those activities unique to facilities that are subject to part 70, subpart H requirements.

Dated: December 2, 2022.

For the Nuclear Regulatory Commission.

Shana R. Helton,

Director, Division of Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2022–26667 Filed 12–7–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0040]

Information Collection: Equal Employment Opportunity Electronic Complaint System

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a proposed collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''Equal Employment Opportunity Electronic Complaint System.''

DATES: Submit comments by January 9, 2023. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David C. Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0040 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2022–0040.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession ML22087A488. The supporting statement is available in ADAMS under Accession Nos. ML22087A078.
- *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. (ET), Monday through Friday, except Federal holidays.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a proposed collection of information to OMB for review entitled ''Equal Employment Opportunity Electronic Complaint System.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on May 19, 2022, 87 FR 30518.

1. *The title of the information collection:* Equal Employment Opportunity Electronic Complaint System.

2. *OMB approval number:* An OMB control Number has not yet been assigned to this proposed information collection.

3. *Type of submission:* New.

4. *The form number, if applicable:* Not applicable.

5. *How often the collection is required or requested:* Once.

6. *Who will be required or asked to respond:* Former NRC employees, applicants for employment, contractors.

7. *The estimated number of annual responses:* 20.

8. *The estimated number of annual respondents:* 10.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 5.33.

10. *Abstract:* As set forth under 29 CFR 1614, the Equal Employment Opportunity (EEO) complaint process prescribes that when an aggrieved individual believes that they have been discriminated against on the basis of their race, color, religion, sex (including sexual orientation, gender identity and expressions, and pregnancy), national origin, age, disability, genetic information (including family medical history), marital status, parental status, political affiliation, military service, and reprisal, the aggrieved individual must consult a Counselor prior to filing a complaint in order to try to informally resolve the matter. NRC employees (current and former) and job applicants can use the NRC's EEO eFile portal to initiate a request for EEO counseling, submit information about their informal EEO complaint, and view the status of their EEO case(s). The information collected includes the aggrieved persons Personal Identifiable Information, claims of alleged discriminatory behavior, and documentation to support claims.

Dated: December 2, 2022.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2022–26624 Filed 12–7–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–608; NRC–2022–0180]

In the Matter of SHINE Medical Technologies, LLC; SHINE Medical Isotope Production Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Order; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has approved the SHINE Medical Technologies, LLC (SHINE) request to amend Construction Permit No. CPMIF–001 for the SHINE Medical Isotope Production Facility (SHINE facility) in Rock County, Wisconsin. The approved amendments extend the latest date for completion of the construction of the SHINE facility from December 31, 2022, to December 31, 2025, and administratively change the name of the construction permit holder from SHINE Medical Technologies, LLC to SHINE Technologies, LLC.

DATES: The Order was issued on November 30, 2022.

ADDRESSES: Please refer to Docket ID NRC–2022–0180 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–2022–0180. 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 SHINE request to amend Construction Permit No. CPMIF–001 is available in ADAMS under Accession No. ML22091A093.

- *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, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Holly Cruz, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1053; email: *Holly.Cruz@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated: December 5, 2022.

For the Nuclear Regulatory Commission.

Joshua M. Borromeo,

Chief, Non-Power Production and Utilization Facilities Licensing Branch, Division of Advanced Reactors and Non-Power Production and Utilization Facilities, Office of Nuclear Reactor Regulation.

United States of America

Nuclear Regulatory Commission

In the Matter of: SHINE Medical Technologies, LLC (SHINE Medical Isotope Production Facility)

Docket No. 50–608
Construction Permit No. CPMIF–001

Order

I.

SHINE Medical Technologies, LLC (SHINE, licensee, permit holder) is the holder of Construction Permit (CP) No. CPMIF–001, which the U.S. Nuclear Regulatory Commission (NRC, the Commission) issued on February 29, 2016 (Agencywide Documents Access and Management System (ADAMS) Package Accession No. ML16041A473), for the construction of the SHINE Medical Isotope Production Facility (SHINE facility) in Rock County, Wisconsin. CP No. CPMIF–001 includes December 31, 2022 as the latest date for completion of the construction of the SHINE facility and expires on the latest date of completion. The SHINE facility is currently under construction.

By letter dated April 1, 2022 (ML22091A093), SHINE submitted to the NRC a license amendment request in accordance with section 50.90, ''Application for amendment of license, construction permit, or early site permit,'' of title 10 of the *Code of Federal Regulations* (10 CFR) and 10 CFR 50.55(b). The license amendment request seeks to extend the latest date for completion of the construction of the SHINE facility from December 31, 2022, to December 31, 2025, and to change the name of the CP holder from SHINE Medical Technologies, LLC to SHINE Technologies, LLC. SHINE stated that the proposed name change is administrative because it does not involve any transfer of control of the CP or a change to ownership, organization, rights, or liabilities of SHINE.

II.

Upon review of the license amendment request, the NRC staff determined that SHINE had shown good cause for extending the latest date for completion of the construction of the SHINE facility from December 31, 2022, to December 31, 2025 and that the name change of the CP holder from SHINE Medical Technologies, LLC to SHINE Technologies, LLC is administrative in nature. The staff also determined that the license amendment request involves no significant hazards consideration. The staff prepared an environmental assessment and finding of no significant impact for the requested extension of the latest date for completion of construction and published it in the **Federal Register** on November 10, 2022 (87 FR 67965). On the basis of the environmental assessment, the staff concluded that the requested extension will not have a significant effect on the quality of the human environment. The findings set forth above are supported by an NRC staff safety evaluation dated November 30, 2022, which is available at ML22292A319.

III.

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. The scope of this order extending the latest date for completion of construction and administratively changing the name of the CP holder and any proceeding hereunder is limited to direct challenges to the CP holder's asserted reasons that show good cause for the extension and to the name change. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doccollections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room P1 B35, 11555 Rockville Pike, Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d), the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) the name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the section of this document discussing electronic submissions (E-Filing).

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the section of this document discussing electronic submissions (E-Filing), and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be

permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

IV.

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). 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. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *https://www.nrc.gov/site-help/esubmittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

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 hearing in this 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.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF 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. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice 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 so that they can 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 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a 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 by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, 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. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. 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 are requested not to include copyrighted materials in their submission.

The attorney for the CP holder is Nathan Schleifer, General Counsel, SHINE Technologies, LLC, 3400 Innovation Court, Janesville, WI 53546.

V.

Accordingly, pursuant to Sections 161b and 161i of the Atomic Energy Act of 1954, as amended; 42 U.S.C. Sections 2201(b) and 2201(i); and 10 CFR 50.90 and 10 CFR 50.55(b), *it is hereby ordered* that CP No. CPMIF–001 is amended to extend the latest date for completion of the construction of the SHINE facility from December 31, 2022, to December 31, 2025, and to change the name of the CP holder from SHINE Medical Technologies, LLC to SHINE Technologies, LLC.

This order is effective upon issuance.

Dated: November 30, 2022.

For the Nuclear Regulatory Commission.

/RA/

Caroline Carusone,

Deputy Director, Division of Advanced Reactors and Non-Power Production and Utilization Facilities, Office of Nuclear Reactor Regulation.

[FR Doc. 2022–26666 Filed 12–7–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–607; NRC–2022–0114]

Regents of the University of California, University of California-Davis McClellan Nuclear Research Center, Training, Research, Isotopes, General Atomics Reactor

AGENCY: Nuclear Regulatory Commission.

ACTION: License renewal; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued a renewal for Facility Operating License No. R–130, held by the Regents of the University of California (the licensee), for the continued operation of the University of California-Davis McClellan Nuclear Research Center (UCD, MNRC) Training, Research, Isotopes, General Atomics (TRIGA) reactor (the reactor, facility), for an

additional 20 years from the date of issuance. The facility is located in the city of North Highlands, Sacramento County, California. In connection with the renewed license, the licensee is authorized to operate the reactor at a maximum licensed power level of 1.0 megawatt-thermal (MWt).

DATES: Renewed Facility Operating License No. R–130 was issued on November 21, 2022, and is effective as of the date of issuance.

ADDRESSES: Please refer to Docket ID NRC–2022–0114 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–2022–0114. 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.* For the convenience of the reader, the ADAMS accession numbers are provided in a table in the ''Availability of Documents'' section of this notice.
- *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: Geoffrey Wertz, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0893; email: *Geoffrey.Wertz@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC has issued a renewal for Facility Operating License No. R–130, held by Regents of the University of California, which authorizes operation of the UCD MNRC TRIGA reactor. The UCD MNRC is a hexagonal-grid, natural-convection-cooled TRIGA-type reactor with a graphite reflector. The renewed license authorizes the licensee to operate the UCD MNRC at a steady-state power level up to a maximum of 1.0 MWt. Renewed Facility Operating License No. R–130 will expire 20 years from its date of issuance.

The renewed facility operating license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in chapter I of title 10 of the *Code of Federal Regulations.* The Commission has made appropriate findings as required by the Act and the Commission's regulations, and sets forth those findings in the renewed facility operating license. The agency afforded an opportunity for hearing in the Notice of Opportunity to Request a Hearing published in the **Federal Register** on March 9, 2022 (87 FR 13334). The NRC received no requests for a hearing following the notice.

The NRC staff prepared the Safety Evaluation Report—Renewal of the Facility Operating License for the University of California-Davis McClellan Nuclear Research Center TRIGA Research Reactor, License No. R–130, Docket No. 50–607 which concluded that the licensee can continue to operate the facility without endangering the health and safety of the public. The NRC staff also prepared an environmental assessment and finding of no significant impact regarding the renewal of the facility operating license, published in the **Federal Register** on October 20, 2022 (87 FR 63820), and concluded that renewal of the facility operating license will not have a significant impact on the quality of the human environment.

II. Availability of Documents

Documents related to this action, including the license renewal application and other supporting documentation, and the safety evaluation report prepared by the NRC staff for the license renewal, are available to interested persons as indicated.

Document description	ADAMS accession No.
NRC Safety Evaluation Report—Renewal of the Facility Operating License for the University of California-Davis McClellan Nuclear Research Center TRIGA Research Reactor, dated November 21, 2022.	ML22214B831.
University of California, Davis McClellan Nuclear Research Center—Renewal of Facility Operating License No. R–130, Regents of the University of California, McClellan Nuclear Research Center Training, Research, Isotope, General Atomics, dated June 11, 2018.	ML18179A501.
University of California, Davis McClellan Nuclear Research Center—Requested Changes to Facility License Renewal Application, dated May 10, 2019.	ML19132A147.
University of California, Davis McClellan Nuclear Research Center—Expected Submission Date of 1.0 MW Steady-State Power Level Final Safety Analysis Report, dated June 14, 2019.	ML19197A260.
University of California, Davis McClellan Nuclear Research Center—Updated UCD/MNRC [McClellan Nuclear Research Center] License (R–130) Renewal Application Package Docket Number 50–607, dated July 6, 2020.	ML20188A368.
University of California, Davis McClellan Nuclear Research Center—University of California at Davis License Renewal Application Updated Safety Analysis Report (redacted), dated July 6, 2020.	ML20238B984.
University of California, Davis McClellan Nuclear Research Center—University of California Davis McClellan Nuclear Research Center Financial Qualification Report, dated June 10, 2020.	ML20188A370.
University of California, Davis McClellan Nuclear Research Center—University of California at Davis License Renewal Application Environmental Report (redacted), dated July 6, 2020.	ML20238B993.
University of California Davis, McClellan Nuclear Research Center—UCD/MNRC–0004–DOC–14, Technical Specifications for the University of California—Davis McClellan Nuclear Radiation Center (UCD/MNRC), dated June 10, 2020.	ML20188A371.
University of California, Davis McClellan Nuclear Research Center—UCD/MNRC–0009–DOC–04, University of California—Davis/Mcclellan Nuclear Radiation Center Selection and Training Plan for Reactor Personnel, dated January 12, 2000.	ML20188A374.
University of California, Davis McClellan Nuclear Research Center—University of California at Davis Emergency Plan, dated June 21, 2018 (redacted)..	ML20238B990.

Document description	ADAMS accession No.
Department of the Air Force, Memorandum for U.S. Nuclear Regulatory Commission, RE: USAF request to convey the McClellan Nuclear Research Center to the Regents of the University of California at Davis, dated April 13, 1999.	ML20205Q191.
University of California, Davis McClellan Nuclear Research Center—University of California at Davis License Renewal Application, Supplemental Information from the NRC staff audit, dated September 22, 2021.	ML21265A540 (Package).
University of California, Davis McClellan Nuclear Research Center—UC Davis MNRC Submission of Technical Specifications in Support of License Renewal Applications, dated June 3, 2022.	ML22154A543.
University of California, Davis McClellan Nuclear Research Center—UC Davis UCD/MNRC Response to NRC Staff Request for Additional Information Regarding Licensing Renewal Application Letter Issued November 30, 2021, dated December 17, 2021.	ML21351A317.
University of California, Davis McClellan Nuclear Research Center—50.54P Submittal of the UCD/MNRC Physical Security Plan for University of California, Davis McClellan Nuclear Research Center (UCD/MNRC), Docket No. 50–607, Facility Operating License No. R–130, dated January 11, 2022.	ML22014A127.
University of California, Davis McClellan Nuclear Research Center—University of California-Davis, McClellan Nuclear Research Center Reactor, Selection and Training Plan for Reactor Personnel, Document No. UCD/MNRC–0009–DOC–05, September 2021, dated September 22, 2021.	ML21269A001.
University of California, Davis McClellan Nuclear Research Center—UC Davis MNRC Response to NRC Staff Request for Additional Information Regarding Licensing Renewal Application Letter Issued February 8, 2022, dated March 30, 2022.	ML22089A158.
University of California, Davis McClellan Nuclear Research Center—Supplemental Information, UC Davis MNRC Submission of Technical Specification in Support of License Renewal Application, dated June 21, 2022.	ML22172A197 (Package).
University of California, Davis McClellan Nuclear Research Center—Response to NRC Request for Additional Information Letter Dated June 3 2022 Regarding Licensing Renewal Application for the University of California-Davis/McClellan Nuclear Research Center, dated June 22, 2022.	ML22173A201 (Package).
University of California, Davis McClellan Nuclear Research Center—Response to NRC Request for Additional Information Letter Dated June 24, 2022, Regarding Licensing Renewal Application for the University of California-Davis/McClellan Nuclear Research Center, dated June 30, 2022.	ML22181B082.

Dated: December 5, 2022.

For the Nuclear Regulatory Commission.

Joshua M. Borromeo,

Chief, Non-Power Production and Utilization Facility Licensing Branch, Division of Advanced Reactors and Non-Power Production and Utilization Facilities, Office of Nuclear Reactor Regulation.

[FR Doc. 2022–26665 Filed 12–7–22; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2023–69 and CP2023–69; MC2023–70 and CP2023–70; MC2023–71 and CP2023–71; MC2023–72 and CP2023–72; MC2023–73 and CP2023–73]

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:* December 12, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *https://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
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2023–69 and CP2023–69; *Filing Title:* USPS Request to Add Priority Mail Contract 771 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 2, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:*

[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).

Jennaca D. Upperman; *Comments Due:* December 12, 2022.

2. *Docket No(s).:* MC2023–70 and CP2023–70; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 95 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 2, 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:* December 12, 2022.

3. *Docket No(s).:* MC2023–71 and CP2023–71; *Filing Title:* USPS Request to Add Parcel Select Contract 54 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 2, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* December 12, 2022.

4. *Docket No(s).:* MC2023–72 and CP2023–72; *Filing Title:* USPS Request to Add Priority Mail Express Contract 99 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 2, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* December 12, 2022.

5. *Docket No(s).:* MC2023–73 and CP2023–73; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 229 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 2, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* December 12, 2022.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2022–26720 Filed 12–7–22; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail Express Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 8, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 2, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express Contract 99 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–72, CP2023–72.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–26645 Filed 12–7–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 8, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 2, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 229 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–73, CP2023–73.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–26639 Filed 12–7–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 8, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 30, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 94 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–68, CP2023–68.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–26634 Filed 12–7–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 8, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 29, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel*

Select Service Contract 93 to Competitive Product List. Documents are available at *www.prc.gov,* Docket Nos. MC2023–66, CP2023–66.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–26633 Filed 12–7–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 8, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 29, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 91 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–64, CP2023–64.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–26631 Filed 12–7–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 8, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 22, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 227 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–56, CP2023–55.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–26638 Filed 12–7–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 8, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 29, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 90 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–63, CP2023–63.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–26630 Filed 12–7–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 8, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 29, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 92 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–65, CP2023–65.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–26632 Filed 12–7–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 8, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 21, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 767 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–55, CP2023–53.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–26635 Filed 12–7–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Parcel Select Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 8, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 2, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Parcel Select Contract 54 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–71, CP2023–71.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–26644 Filed 12–7–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 8, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 28, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 769 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–60, CP2023–59.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–26637 Filed 12–7–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 8, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 2, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 771 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–69, CP2023–69.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–26642 Filed 12–7–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 8, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 29, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 228 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–62, CP2023–62.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–26640 Filed 12–7–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 8, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 22, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 89 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–58, CP2023–57.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–26629 Filed 12–7–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 8, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 2, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 95 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–70, CP2023–70.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–26628 Filed 12–7–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 8, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 22, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 88 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–57, CP2023–56.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–26627 Filed 12–7–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 8, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 28, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 770 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–61, CP2023–60.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–26641 Filed 12–7–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 8, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 22, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 768 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–59, CP2023–58.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–26636 Filed 12–7–22; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96443; File No. SR–NASDAQ–2022–027]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, To Modify Certain Pricing Limitations for Companies Listing in Connection With a Direct Listing With a Capital Raise

December 2, 2022.

I. Introduction

On March 21, 2022, The Nasdaq Stock Market LLC (''Nasdaq'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify certain pricing limitations for companies listing in connection with a direct listing in which the company will sell shares itself in the opening auction on the first day of trading on the Exchange. The proposed rule change was published for comment in the **Federal Register** on April 8, 2022.[3] On May 19, 2022, pursuant to Section 19(b)(2) of the Exchange Act,[4] the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5]

On May 23, 2022, the Exchange filed Amendment No. 1 to the proposed rule change, which superseded the proposed rule change as originally filed. Amendment No. 1 was published for comment in the **Federal Register** on June 2, 2022.[6] On July 7, 2022, the Commission instituted proceedings under Section 19(b)(2)(B) of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 94592 (Apr. 4, 2022), 87 FR 20905 (Apr. 8, 2022). Comments received on the proposal are available on the Commission's website at: *https://www.sec.gov/comments/sr-nasdaq-2022-027/srnasdaq2022027.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 94947 (May 19, 2022), 87 FR 31915 (May 25, 2022). The Commission designated July 7, 2022, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] *See* Securities Exchange Act Release No. 94989 (May 26, 2022), 87 FR 33558 (June 2, 2022).

Exchange Act[7] to determine whether to approve or disapprove the proposed rule change.[8] On September 16, 2022, the Exchange filed Amendment No. 2 to the proposed rule change, which superseded the original filing, as modified by Amendment No. 1, in its entirety.[9] On September 27, 2022, the Commission extended the time period for approving or disapproving the proposal to December 4, 2022.[10] On November 18, 2022, the Exchange filed Amendment No. 3 to the proposed rule change, which superseded the original filing, as modified by Amendment Nos. 1 and 2, in its entirety.[11] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 3, from interested persons and is approving the proposed rule change, as modified by Amendment No. 3, on an accelerated basis.

II. Description of the Proposal, as Modified by Amendment No. 3

Nasdaq Listing Rule IM–5315–2 sets forth listing requirements for a company that has not previously had its common equity securities registered under the Exchange Act to list its common equity securities on Nasdaq's Global Select Market at the time of effectiveness of a registration statement,[12] pursuant to which the company will sell shares itself in the opening auction on the first day of trading on the Exchange (a ''Direct Listing with a Capital Raise'').[13] Securities qualified for listing under Nasdaq Listing Rule IM–5315–2 must begin trading on the Exchange following the initial pricing through the mechanism outlined in Nasdaq Rule 4120(c)(9) and Nasdaq Rule 4753 for the opening auction, otherwise known as the Nasdaq Halt Cross.[14] Currently, in the case of a Direct Listing with a Capital Raise, the Exchange will release the security for trading on the first day of listing if, among other things, the actual price calculated by the Nasdaq Halt Cross is at or above the lowest price and at or below the highest price of the price range established by the issuer in its effective registration statement[15] (the ''Pricing Range Limitation''). As discussed further below, the Exchange will postpone and reschedule the offering if the actual price calculated by the Nasdaq Halt Cross does not satisfy the Pricing Range Limitation.

The Exchange proposes to modify the Pricing Range Limitation to provide that the Exchange would release the security for trading if: (a) the actual price calculated by the Nasdaq Halt Cross is at or above the price that is 20% below the lowest price of the disclosed price range; or (b) the actual price calculated by the Nasdaq Halt Cross is at or below the price that is 80% above the highest price of the disclosed price range (the ''80% Upside Limit''). For the Nasdaq Halt Cross to execute at a price outside of the disclosed price range, the company would be required to publicly disclose and certify to the Exchange that the company does not expect that such price would materially change the company's previous disclosure in its effective registration statement and that its effective registration statement contains a sensitivity analysis explaining how the company's plans would change if the actual proceeds from the offering are less than or exceed those from prices in the disclosed price range.[16] The Exchange would calculate the 20% threshold below the disclosed price range and the 80% Upside Limit based on the high end of the price range in the registration statement at the time of effectiveness.[17] The Exchange also proposes to make related changes to conform its rules concerning the Nasdaq Halt Cross and listing requirements for Direct Listings with a Capital Raise to these modified requirements and to clarify the mechanics of the Nasdaq Halt Cross in the context of the opening cross for Direct Listings with a Capital Raise.

Currently, Nasdaq Rule 4120(c)(9)(B) states that, notwithstanding the provisions of Nasdaq Rule 4120(c)(8)(A) and (c)(9)(A), in the case of a Direct Listing with a Capital Raise, for purposes of releasing securities for trading on the first day of listing, the Exchange, in consultation with the financial advisor to the issuer, will make the determination of whether the security is ready to trade. The Exchange will release the security for trading if: (i) all market orders (including the CDL Order[18]) will be executed in the Nasdaq Halt Cross; and (ii) the actual price calculated by the Nasdaq Halt Cross complies with the Pricing Range Limitation. The Exchange will postpone and reschedule the offering only if either or both of such conditions are not

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 95220 (July 7, 2022), 87 FR 41780 (July 13, 2022) (''OIP'').

[9] *See* Securities Exchange Act Release No. 95811 (Sept. 16, 2022), 87 FR 57951 (Sept. 22, 2022) (''Notice'').

[10] *See* Securities Exchange Act Release No. 95933 (Sept. 27, 2022), 87 FR 59844 (Oct. 3, 2022).

[11] Amendment No. 3 to the proposed rule change revised the proposal to: (i) provide that the 20% threshold below and the 80% threshold above the Price Range, as described below, will be calculated based on the high end of the price range in the registration statement at the time of effectiveness; (ii) clarify that Nasdaq will make the determination that the security is ready to trade, in consultation with the identified underwriter (rather than the financial advisor to the issuer); (iii) clarify certain conditions in proposed Rule 4120(c)(9)(B)(vii)(d); and (iv) make minor technical changes to improve the clarity and readability of the proposal. Amendment No. 3 to the proposed rule change is available on the Commission's website at *www.sec.gov/comments/sr-nasdaq-2022-027/srnasdaq2022027-20151099-319977.pdf* (''Amendment No. 3'').

[12] The reference to a registration statement refers to a registration statement effective under the Securities Act of 1933 (''Securities Act'').

[13] A Direct Listing with a Capital Raise includes listings where either: (i) only the company itself is selling shares in the opening auction on the first day of trading; or (ii) the company is selling shares and selling shareholders may also sell shares in such opening auction. *See* Nasdaq Listing Rule IM–5315–2. *See also* Securities Exchange Act Release No. 91947 (May 19, 2021), 86 FR 28169 (May 25, 2021) (order approving rules to permit a Direct Listing with a Capital Raise and adopting related rules concerning how the opening transaction for such listing will be effected) (''2021 Order''). The Exchange's rules provide for a company listing pursuant to a Direct Listing with a Capital Raise to list only on the Nasdaq Global Select Market.

[14] *See* Nasdaq Listing Rule IM–5315–2. ''Nasdaq Halt Cross'' means the process for determining the price at which Eligible Interest shall be executed at the open of trading for a halted security and for executing that Eligible Interest. *See* Nasdaq Rule 4753(a)(4). ''Eligible Interest'' means any quotation or any order that has been entered into the system and designated with a time-in-force that would allow the order to be in force at the time of the Nasdaq Halt Cross. *See* Nasdaq Rule 4753(a)(5). Pursuant to Nasdaq Rule 4120, the Exchange will halt trading in a security that is the subject of an initial public offering (or direct listing), and terminate that halt when the Exchange releases the security for trading upon certain conditions being met, as discussed further below. *See* Nasdaq Rule 4120(a)(7) and (c)(8). For purposes of this order, the opening auction on the first day of trading for a Direct Listing with a Capital Raise is referred to as the ''Nasdaq Halt Cross'' or the ''opening cross.''

[15] The Exchange states that references in the proposal to the price range established by the issuer in its effective registration statement refer to the price range disclosed in the prospectus in such effective registration statement. *See* Notice, *supra* note 9, 87 FR 57952 n.16. Throughout this order, we refer to this price range established by the issuer in its effective registration statement as the ''disclosed price range.''

[16] *See* proposed Nasdaq Rule 4120(c)(9)(B)(vii)d.2. The Exchange proposes additional conditions, as discussed in more detail below, before the Nasdaq Halt Cross could proceed, including a Post-Pricing Period and a requirement that the Price Volatility Constraint has been satisfied. *See infra* notes 73–75 and accompanying text and note 49 and accompany text for a description of the ''Price Volatility Constraint'' and the ''Post-Pricing Period,'' respectively.

[17] *See* proposed Nasdaq Rule 4120(c)(9)(B). If the company provides an upper limit in its certification, that price would serve as the upper limit of the price range within which the Nasdaq Halt Cross could proceed. *See* proposed Nasdaq Rule 4120(c)(9)(B)(vii)d.2.

[18] A ''Company Direct Listing Order'' or ''CDL Order'' is a market order that may be entered only on behalf of the issuer and may be executed only in the Nasdaq Halt Cross for a Direct Listing with a Capital Raise. The CDL Order is entered without a price (with a price later set in accordance with the requirements of Nasdaq Rule 4120(c)(9)(B)), must be for the quantity of shares offered by the issuer as disclosed in its effective registration statement, must be executed in full in the Nasdaq Halt Cross, and may not be cancelled or modified. *See* Nasdaq Rule 4702(b)(16).

met.[19] The Exchange states that if there is insufficient buy interest to satisfy the CDL Order and all other market orders or if the Pricing Range Limitation is not satisfied, the Nasdaq Halt Cross would not proceed and such security would not begin trading.[20]

According to the Exchange, based on conversations it has had with companies and their advisors, the Exchange believes that some companies may be reluctant to use the existing rules for a Direct Listing with a Capital Raise because of concerns about the Pricing Range Limitation.[21] The Exchange states it believes ''that the Pricing Range Limitation imposed on a Direct Listing with a Capital Raise (but not on a traditional IPO) increases the probability of a failed offering because the offering cannot proceed without some delay not only for the lack of investor interest, but also if investor interest is greater than the company, its underwriter, and other advisors anticipated.'' [22] According to the Exchange, it believes that the price range in a company's effective registration statement for a Direct Listing with a Capital Raise would similarly be determined by the company, its underwriter, and other advisors and, therefore, there may be instances of offerings where the price determined by the Exchange's opening auction will exceed the highest price of the price range disclosed in the company's effective registration statement.[23] The Exchange states that, under the existing rule, a security subject to a Direct Listing with a Capital Raise cannot be released for trading by the Exchange if the actual price calculated by the Nasdaq Halt Cross is above the highest price of the disclosed price range.[24] The Exchange further states that, in this case, the Exchange would have to cancel or postpone the offering until the company amends its effective registration statement, and that, at a minimum, such a delay exposes the company to market risk of changing investor sentiment in the event of an adverse market event.[25] In addition, the Exchange states that the determination of the public offering price of a traditional IPO is not subject to limitations similar to the Pricing Range Limitation for a Direct Listing with a Capital Raise, which, in the Exchange's view, could make companies reluctant to use this alternative method of going public despite its expected potential benefits.[26]

The Exchange proposes to modify the Pricing Range Limitation such that even if the actual price calculated by the Nasdaq Halt Cross is outside the disclosed price range, the Exchange would release a security for trading if the actual price at which the Nasdaq Halt Cross would occur is as much as 20% below the lowest price of the disclosed price range, or up to a price at or below the 80% Upside Limit. For the Nasdaq Halt Cross to execute at a price outside of the disclosed price range, all other necessary conditions must be satisfied, and the company would be required to specify the quantity of shares registered, as permitted by Securities Act Rule 457.[27] In such circumstances, the company's registration statement would be required to contain a sensitivity analysis explaining how the company's plans would change if the actual proceeds from the offering are less than or exceed the amount assumed in the disclosed price range, and, as stated above, the company would be required to certify to the Exchange that it has met this requirement.[28] In addition, the company would be required to publicly disclose and certify to the Exchange prior to the beginning of the Display Only Period [29] that the company does not expect that such offering price would materially change the company's previous disclosure in its effective registration statement.[30] If the company's certification submitted to Nasdaq in that regard includes an upper price limit that is below the 80% Upside Limit, Nasdaq will not execute the Nasdaq Halt Cross if it results in an offering price above such certified limit.[31] The Exchange states that the goal of these requirements is to have disclosure that allows investors to see how changes in share price ripple through critical elements of the disclosure.[32]

The Exchange states that it believes that its proposed approach can be analogized to Securities Act Rule 430A and staff guidance,[33] which, according to the Exchange, generally allow a company to price a public offering 20% outside of the disclosed price range without regard to the materiality of the changes to the disclosure contained in the company's registration statement.[34] According to the Exchange, it believes such guidance also allows deviation above the price range beyond the 20% threshold if such change or deviation does not materially change the previous disclosure.[35] The Exchange states that, accordingly, it believes that a company listing in connection with a Direct Listing with a Capital Raise can specify the quantity of shares registered, as permitted by Securities Act Rule 457,

[19] *See* Nasdaq Rule 4120(c)(9)(B).

[20] *See* Notice, *supra* note 9, 87 FR 57953. The Exchange represents that in such event, because the Nasdaq Halt Cross cannot be conducted, the Exchange would postpone and reschedule the offering and notify participants via a Trader Update that the Direct Listing with a Capital Raise scheduled for that date has been cancelled and any orders for that security that have been entered on the Exchange would be cancelled back to the entering firms. *See id.*

[21] *See id.* The Exchange states that it believes a Direct Listing with a Capital Raise could maximize the chances of more efficient price discovery of the initial public sale of securities for issuers and investors, because, unlike in a traditional firm commitment underwritten initial public offering (''IPO''), the initial sale price is determined based on market interest and the matching of buy and sell orders in an auction open to all market participants. *See id.*

[22] *Id.* The Exchange states that if an offering cannot be completed due to lack of investor interest, there is likely to be a substantial amount of negative publicity for the company and the offering may be delayed or cancelled. *See id.*

[23] *See id.*

[24] *See id.*

[25] *See id.*

[26] *See id.*

[27] *See id. See also infra* notes 34 and 36 and accompanying text.

[28] *See* Notice, *supra* note 9, 87 FR 57952.

[29] *See* Nasdaq Rule 4120(c)(7)(A) and proposed Nasdaq Rule 4120(c)(9)(B)(iii)–(v) for a description of the ''Display Only Period.''

[30] *See* Notice, *supra* note 9, 87 FR 57953.

[31] *See id.* The Exchange proposes to define the ''Price Range'' as the price range established by the issuer in its preliminary prospectus included in the effective registration statement (*i.e.,* the disclosed price range). *See* proposed Nasdaq Rule 4120(c)(9)(B). In addition, the Exchange proposes to define the ''DLCR Price Range'' as the price range starting from the price that is at or above 20% below the lowest price of the Price Range and continuing to a price that is at or below the 80% Upside Limit, or a lower upside limit if one is provided by the company in its certification. *See* proposed Nasdaq Rule 4120(c)(9)(B)(vii)d.2.

[32] *See* Notice, *supra* note 9, 87 FR 57954. The Exchange states that in a prior proposal that the Commission disapproved, the Exchange proposed different requirements based on whether the Nasdaq Halt Cross would occur at a price that was within 20% of the disclosed price range, but that the Exchange is eliminating this proposed distinction and instead is proposing to treat uniformly all instances when the actual price of Nasdaq Halt Cross can occur outside of the disclosed price range under its proposal. *See id.* at 57953 n.22 (citing Securities Exchange Act Release No. 94311 (Feb. 24, 2022), 87 FR 11780 (Mar. 2, 2022) (''2022 Order'')).

[33] *See* Amendment No. 3, *supra* note 11, at 12.

[34] *See* Notice, *supra* note 9, 87 FR 57954. The Exchange states that Securities Act Rule 457 permits issuers to register securities either by specifying the quantity of shares registered, pursuant to Rule 457(a), or the proposed maximum aggregate offering amount, and the Exchange proposes to require that companies selling shares through a Direct Listing with a Capital Raise will register securities by specifying the quantity of shares registered and not a maximum offering amount. *See id.* at 57953 n.23. The Exchange also states that it believes that the proposed modification of the Pricing Range Limitation is consistent with the protection of investors, because, according to the Exchange, this approach is similar to the pricing of an IPO where an issuer is permitted to price outside of the disclosed price range in accordance with the SEC Staff's guidance. *See id.* at 57958.

[35] *See id.* at 57954.

and, when an auction prices outside of the disclosed price range, use a Securities Act Rule 424(b) prospectus, rather than a post-effective amendment, when either: (i) the 20% threshold noted in the Instruction to Securities Act Rule 430A is not exceeded, regardless of the materiality or non-materiality of resulting changes to the registration statement disclosure that would be contained in the Securities Act Rule 424(b) prospectus, or (ii) there is a deviation above the price range beyond the 20% threshold noted in the Instruction to Securities Act Rule 430A if such deviation would not materially change the previous disclosure, in each case assuming the number of shares issued is not increased from the number of shares disclosed in the prospectus.[36] The Exchange states that, for purposes of this rule, the 20% threshold and the 80% Upside Limit would be calculated based on the high end of the price range in the registration statement at the time of effectiveness.[37]

The Exchange states that the burden of complying with the disclosures required under federal securities laws, including providing any disclosure necessary to avoid any material misstatements or omissions, remains with the issuer.[38] The Exchange further states that, in that regard, the Post-Pricing Period (as defined below), which is applicable in circumstances where the actual price calculated by the Nasdaq Halt Cross is outside of the disclosed price range, provides the company an opportunity, prior to the completion of the offering, to provide any additional disclosures that are dependent on the price of the offering, if any, or to determine and confirm to the Exchange that no additional disclosures are required under federal securities laws based on the actual price calculated by the Nasdaq Halt Cross.[39]

The Exchange states that an underwriter plays an important role in a traditional IPO and, therefore, proposes to require that a company listing securities on Nasdaq in connection with a Direct Listing with a Capital Raise must retain an underwriter with respect to the primary sales of shares by the company and identify the underwriter in its effective registration statement.[40] According to the Exchange, the role and responsibilities of an underwriter provide significant investor protections that are necessary in a Direct Listing with a Capital Raise if an offering can price outside the disclosed price range, subject to the proposed limitations, because they allow investors to make reasonable pricing decisions with clarity that the company's underwriter would face statutory liability.[41] The Exchange further states that the requirement to retain a named underwriter may mitigate traceability concerns that may arise in a Direct Listing with a Capital Raise.[42] The Exchange states that, as in a traditional firm commitment underwritten IPO, in which lock-up arrangements are often imposed, an underwriter retained in connection with a Direct Listing with a Capital Raise will be able to impose lock-up arrangements for the same reasons that make lock up agreements common in an IPO.[43]

The Exchange also states that an underwriter retained in connection with a Direct Listing with a Capital Raise will perform substantially similar functions, including those related to establishing and adjusting the price range, to those performed by an underwriter in a ''typical'' IPO because the underwriter will be subject to similar liability and reputational risk.[44] The Exchange states that, to further mitigate concerns regarding the usefulness of price range disclosure provided to investors, the Exchange proposes to require that the securities of a company listing in connection with a Direct Listing with a Capital Raise cannot price above the 80% Upside Limit in order to incentivize the company and its underwriter to set the disclosed price range to avoid the consequences of a failed offering.[45] The Exchange states that the 80% Upside Limit would also help assure that an issuer would adjust the price range disclosed in its registration statement prior to effectiveness in light of pricing feedback received from market analysts and potential investors.[46]

The Exchange also proposes to adopt a new ''Price Volatility Constraint'' (which has the meaning described below) and disseminate information about whether the Price Volatility Constraint has been satisfied, which will indicate whether the security may be ready to trade.[47] The Exchange states that prior to releasing a security for trading, the Exchange allows a ''Pre-Launch Period'' of indeterminate length, during which price discovery takes place.[48] The ''Price Volatility Constraint'' would require that the Current Reference Price has not deviated by 10% or more from any Current Reference Price during the Pre-Launch Period within the previous 10 minutes.[49] The Pre-Launch Period would continue until at least five minutes after the Price Volatility Constraint has been satisfied.[50] The Exchange states that this change would provide investors with notice that the Nasdaq Halt Cross nears execution and allow a period of at least five minutes for investors to modify their orders, if needed, based on the Near Execution Price, prior to the execution of the Nasdaq Halt Cross and the pricing of the offering.[51] The Exchange also states that to assure that the Near Execution Price is a meaningful benchmark for investors and that the offering price does not deviate substantially from the Near Execution Price, the Exchange proposes to require that the Nasdaq Halt Cross may execute only if the actual price calculated by the Nasdaq Halt Cross is no more than 10% below or above the Near Execution Price (the ''10% Price Collar''), in addition to the other existing conditions stated in proposed Nasdaq Rule 4120(c)(9)(B)(vii).[52]

[36] *See id.*

[37] *See* Amendment No. 3, *supra* note 11, at 12–13.

[38] *See* Notice, *supra* note 9, 87 FR 57954. According to the Exchange, the Commission previously stated that while Securities Act Rule 430A permits companies to omit specified price-related information from the prospectus included in the registration statement at the time of effectiveness, and later file the omitted information with the Commission as specified in the rule, it neither prohibits a company from conducting a registered offering at prices beyond those that would permit a company to provide pricing information through a Securities Act Rule 424(b) prospectus supplement nor absolves any company relying on the rule from any liability for potentially misleading disclosure under the federal securities laws. *See id.* (citing Securities Exchange Act Release No. 93119 (Sept. 24, 2021), 86 FR 54262 (Sept. 30, 2021)).

[39] *See* Notice, *supra* note 9, 87 FR 57954.

[40] *See id.*

[41] *See id.* at 57955.

[42] *See id.*

[43] *See id.*

[44] *See id.*

[45] *See id.*

[46] *See id.* To determine an appropriate upside limit, the Exchange states that it analyzed operating companies IPOs on the Nasdaq Global Select Market and the NYSE for the past five years where an IPO opened on an exchange at a price that is above the highest price of the disclosed price range. This analysis indicated that: some IPOs opened on an exchange at a price that was more than 100% above the highest price of the price range; more than half of these IPOs opened at a price that was 30% or more above the highest price of the price range; and about 90% of these IPOs opened at a price that was no more than the 80% Upside Limit. *See id.*

[47] *See id.*

[48] *See id.*

[49] *See id. See* Nasdaq Rule 4753(a)(3) for a description of the ''Current Reference Price.''

[50] *See* Notice, *supra* note 9, 87 FR 57955.

[51] *See id.* The Exchange proposes to define ''Near Execution Price'' as the Current Reference Price at the time the Price Volatility Constraint has been satisfied, and to define the ''Near Execution Time'' as such time. *See id.*

[52] *See id.*

The Exchange states that an imbalance between buy and sell orders could sometimes cause the Current Reference Price to fall outside of the 10% Price Collar after the Price Volatility Constraint has been satisfied.[53] According to the Exchange, such price fluctuations could be temporary and the Current Reference Price may return to and remain within the 10% Price Collar, or the price fluctuation could be lasting such that the Current Reference Price remains outside of the 10% Price Collar.[54] The Exchange proposes to assess the Current Reference Price as compared to the 10% Price Collar 30 minutes after the Near Execution Time if the cross has not yet been executed at that time.[55] If at that time the Current Reference Price is outside of the 10% Price Collar, all requirements of the Pre-Launch Period would reset and would need to be satisfied again.[56] Alternatively, if at that time the Current Reference Price is within the 10% Price Collar, price formation would continue without limitations until the Exchange, in consultation with the named underwriter to the issuer, makes the determination that the security is ready to trade and the conditions in proposed Nasdaq Rule 4120(c)(9)(B)(vii) and (viii) are met, at which time the Pre-Launch Period would end.[57]

According to the Exchange, given that there may be a Direct Listing with a Capital Raise that could price outside of the disclosed price range, subject to the 80% Upside Limit above which the Nasdaq Halt Cross could not proceed, the Exchange proposes to enhance transparency by providing readily available, real time pricing information to investors.[58] To that end, the Exchange states that it would disseminate, free of charge, the Current Reference Price on a public website, such as Nasdaq.com, during the Pre-Launch Period and indicate whether the Current Reference Price is within the disclosed price range.[59] Once the Price Volatility Constraint has been satisfied, the Exchange would also disseminate the Near Execution Price, the Near Execution Time, and the 30-minute countdown from such time.[60] The Exchange states that, in this way, investors interested in participating in the opening auction would be informed when volatility has settled to a range that would allow the opening auction to take place, would be informed of the price range at which the auction would take place, and, if the price remains outside of that range for 30 minutes, would have at least five minutes to reevaluate their investment decision.[61]

The Exchange also proposes to prohibit market orders (other than by the company through its CDL Order) from the opening of a Direct Listing with a Capital Raise.[62] The Exchange states that this would protect investors by assuring that investors only purchase shares at a price at or better than the price they affirmatively set, after having the opportunity to review the company's effective registration statement, including the sensitivity analysis describing how the company would use any additional proceeds raised.[63] The Exchange states that, accordingly, an investor participating in a Direct Listing with a Capital Raise would make their initial investment decision prior to the launch of the offering by setting a price in their limit order above which they will not buy shares in the offering, but would also have the opportunity to reevaluate their initial investment decision during the price formation process of the Pre-Launch Period based on the Near Execution Price, and would have at least five minutes once the Near Execution Price has been set and before the offering may be priced by the Exchange to modify their order, if needed.[64]

In addition, the Exchange states that to protect investors and assure that they are informed about the attributes of a Direct Listing with a Capital Raise, the Exchange proposes to impose specific requirements on Nasdaq members with respect to a Direct Listing with a Capital Raise.[65] These rules would require members to provide to a customer, before that customer places an order to be executed in the Nasdaq Halt Cross, a notice describing the mechanics of pricing a security subject to a Direct Listing with a Capital Raise in the Nasdaq Halt Cross, including information regarding the location of the public website where the Exchange would disseminate the Current Reference Price.[66]

The Exchange states that to assure that members have the necessary information to be provided to their customers, the Exchange proposes to distribute, at least one business day prior to the commencement of trading of a security listing in connection with a Direct Listing with a Capital Raise, an information circular to its members.[67] This information circular would describe any special characteristics of the offering and the Exchange's rules that apply to the initial pricing through the mechanism outlined in Nasdaq Rule 4120(c)(9)(B) and Nasdaq Rule 4753 for the opening auction, including information about the notice that members must provide to their customers.[68] This information circular would also describe other requirements that: (a) members use reasonable diligence in regard to the opening and maintenance of every account, to know (and retain) the essential facts concerning every customer, and concerning the authority of each person acting on behalf of such customer; (b) members in recommending transactions for a security subject to a Direct Listing with a Capital Raise have a reasonable basis to believe that (i) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such members, and (ii) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in such security; and (c) members cannot accept market orders to

[53] *See id.*

[54] *See id.* at 57955–56.

[55] *See id.* at 57956.

[56] *See* Amendment No. 3, *supra* note 11, at 21. The Exchange states that once the Price Volatility Constraint has been satisfied anew, the Current Reference Price at such time would become the updated Near Execution Price and such time would become the Near Execution Time. *See* Notice, *supra* note 9, 87 FR 57956. The Exchange further states that this process would continue iteratively if new resets are triggered, until the Nasdaq Halt Cross is executed or the offering is postponed. *See id.*

[57] *See* Amendment No. 3, *supra* note 11, at 21; proposed Nasdaq Rule 4120(c)(9)(B)(vii). The Exchange states that if at any time more than 30 minutes after the Near Execution Time the Current Reference Price falls outside of the 10% Price Collar, all requirements of the Pre-Launch Period would reset and would need to be satisfied again. *See* Notice, *supra* note 9, 87 FR 57956.

[58] *See* Notice, *supra* note 9, 87 FR 57956. The Exchange states that if the company's certification submitted to the Exchange includes a price limit that is lower than the 80% Upside Limit and the actual price calculated by the Nasdaq Halt Cross exceeds such lower limit, the Exchange would postpone and reschedule the offering. *See id.* at 57956 n.33.

[59] *See id.* at 57956.

[60] *See id.* The Exchange represents that the disclosure would indicate that the Near Execution Price and the Near Execution Time may be reset if the security is not released for trading within 30 minutes of the Near Execution Time and the Current Reference Price at such time (or any time thereafter) is more than 10% below or more than 10% above the Near Execution Price. *See id.*

[61] *See id.*

[62] *See id.*

[63] *See id.*

[64] *See id.*

[65] *See id.*

[66] *See id.*

[67] *See id.* The Exchange states that an information circular is an industry-wide, free service provided by the Exchange. *See id.* at 57957 n.35.

[68] *See id.* at 57956.

be executed in the Nasdaq Halt Cross.[69] The Exchange states that these member requirements are intended to remind members of their obligations to ''know their customers,'' increase transparency of the pricing mechanisms of a Direct Listing with a Capital Raise, and help assure that investors have sufficient price discovery information.[70]

The Exchange represents that in each instance of a Direct Listing with a Capital Raise, the Exchange's information circular would inform market participants that the auction could price up to 20% below the lowest price of the disclosed price range and would specify that price. The Exchange also represents that it would indicate in such circular a statement that the Nasdaq Halt Cross cannot proceed at a price in excess of the 80% Upside Limit and whether or not there is a lower price limit above which the Nasdaq Halt Cross could not proceed, based on the company's certification.[71]

The Exchange states that to assure that the issuer has the ability, prior to the completion of the offering, to provide any necessary additional disclosures that are dependent on the price of the offering, the Exchange proposes to introduce to the operation of the Nasdaq Halt Cross a brief Post-Pricing Period, in circumstances where the actual price calculated by the Nasdaq Halt Cross is outside of the disclosed price range.[72] Specifically, in such circumstances, the Exchange would initiate a ''Post-Pricing Period'' following the calculation of the actual price.[73] During the Post-Pricing Period, the issuer must confirm to the Exchange that no additional disclosures are required under the federal securities laws based on the actual price calculated by the Nasdaq Halt Cross. Further, during this period no additional orders for the security could be entered in the Nasdaq Halt Cross, and no existing orders could be modified.[74] The Exchange states that the security would be released for trading immediately following the Post-Pricing Period.[75] However, if the company cannot provide the required confirmation, then the Exchange would postpone and reschedule the offering.[76]

The Exchange also proposes to clarify several provisions of existing rules by restating the provisions of Nasdaq Rule 4120(c)(8)(A) and (c)(9)(A) in a clear and direct manner in proposed Nasdaq Rule 4120(c)(9)(B) without substantively changing the requirements.[77] Specifically, the Exchange proposes to clarify the mechanics of the Nasdaq Halt Cross by specifying that the Exchange will initiate a 10-minute Display Only Period only after the CDL Order has been entered and that the Exchange shall select price bands for purposes of applying the price validation test in the Nasdaq Halt Cross in connection with a Direct Listing with a Capital Raise.[78] The Exchange proposes to clarify that the ''actual price,'' as the term is used in the rule to refer to the price calculated by the opening cross, is the Current Reference Price at the time the system applies the price validation test.[79]

Nasdaq Listing Rule IM–5315–2 provides that in determining whether a company listing in connection with a Direct Listing with a Capital Raise satisfies the Market Value of Unrestricted Publicly Held Shares [80] for initial listing on the Nasdaq Global Select Market, the Exchange will deem such company to have met the applicable requirement [81] if the amount of the company's Unrestricted Publicly Held Shares before the offering, along with the market value of the shares to be sold by the company in the Exchange's opening auction in the Direct Listing with a Capital Raise, is at least $110 million (or $100 million, if the company has stockholders' equity of at least $110 million). For this purpose, under current rules, the Market Value of Unrestricted Publicly Held Shares will be calculated using a price per share equal to the lowest price of the disclosed price range.[82] The Exchange states that because the Exchange proposes to allow the opening auction to price up to 20% below the lowest price of the disclosed price range, the Exchange proposes to make a conforming change to Nasdaq Listing Rule IM–5315–2 to provide that the price used to determine such company's compliance with the required Market Value of Unrestricted Publicly Held Shares would be the price per share equal to the price that is 20% below the lowest price of the disclosed price range.[83] The Exchange further states that this is the minimum price at which the company could sell its shares in the opening transaction for a Direct Listing with a Capital Raise and thus assures that the company will satisfy the listing requirements at any price at which the opening auction successfully executes.[84]

The Exchange states that any company listing in connection with a Direct Listing with a Capital Raise would continue to be subject to, and required to meet, all other applicable initial listing requirements, including the requirements to have the applicable number of shareholders and at least 1,250,000 Unrestricted Publicly Held Shares outstanding at the time of initial listing, and the requirement to have a price per share of at least $4.00 at the time of initial listing.[85] The Exchange also proposes to amend Nasdaq Listing Rule IM–5315–2 to specify that a company offering securities for sale in connection with a Direct Listing with a Capital Raise must register securities by specifying the quantity of shares registered, as permitted by Securities Act Rule 457(a), and that securities qualified for listing under Nasdaq Listing Rule IM–5315–2 must satisfy the additional requirements of Nasdaq Rule 4120(c)(9)(B).[86]

Finally, the Exchange proposes to amend Nasdaq Rules 4753(a)(3)(A) and 4753(b)(2) to conform the requirements for disseminating information and establishing the opening price through the Nasdaq Halt Cross in a Direct Listing with a Capital Raise to the proposed amendment to allow the opening auction to price as much as 20% below the lowest price of the disclosed price range.[87] Specifically, the Exchange

[69] *See id.* at 57956–57; proposed Nasdaq Rule 4120(c)(9)(B)(i).

[70] *See* Notice, *supra* note 9, 87 FR 57957.

[71] *See id.* The Exchange states that it believes that investors have become familiar with the approach of pricing an IPO outside of the price range stated in an effective registration statement. *See id.* at 57960.

[72] *See id.* at 57957.

[73] *See id.*

[74] *See id.*

[75] *See id.*

[76] *See id.*

[77] *See id.* at 57958.

[78] *See id.* The Exchange would select an upper price band and a lower price band with the default for an upper and lower price band set at zero. The Exchange represents that if a security does not pass the price validation test, the Exchange may select different price bands before recommencing the process to release the security for trading. *See id.*

[79] *See id.*

[80] *See* Nasdaq Listing Rule 5005(a)(23) and (45) for the definitions of ''Market Value'' and ''Unrestricted Publicly Held Shares,'' respectively.

[81] *See* Nasdaq Listing Rule 5315(f)(2).

[82] *See* Nasdaq Listing Rule IM–5315–2. The Exchange will determine that the company has met the applicable bid price and market capitalization requirements based on the same per share price. *See id.*

[83] *See* Notice, *supra* note 9, 87 FR 57957.

[84] *See id.* The Exchange also proposes to clarify in Nasdaq Listing Rule IM–5315–2 that the 20% threshold below the disclosed price range will be calculated based on the high end of the price range in the registration statement at the time of effectiveness. *See* Amendment No. 3, *supra* note 11, at 27.

[85] *See* Notice, *supra* note 9, 87 FR 57957 (citing Nasdaq Listing Rules 5315(e)(1) and (2) and 5315(f)(1)).

[86] *See* proposed Nasdaq Listing Rule IM–5315–2.

[87] *See* proposed Nasdaq Rules 4753(a)(3)(A)(iv)c. and 4753(b)(2)(D)(iii).

proposes changes to Nasdaq Rules 4753(a)(3)(A) and 4753(b)(2) to make adjustments to the calculation of the Current Reference Price, which is disseminated in the Nasdaq Order Imbalance Indicator,[88] and to the calculation of the price at which the Nasdaq Halt Cross will execute, for a Direct Listing with a Capital Raise. Under these rules currently, where there are multiple prices that would satisfy the conditions for determining the price, the fourth tie-breaker for a Direct Listing with a Capital Raise is the price that is closest to the lowest price of the disclosed price range. The Exchange states that, to conform these rules to the proposed modification of the price range within which the opening auction would proceed, the Exchange proposes to modify the fourth tie-breaker for a Direct Listing with a Capital Raise to use the price closest to the price that is 20% below the lowest price of the disclosed price range.[89]

III. Discussion and Commission Findings

The Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[90] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with Section 6(b)(5) of the Exchange Act,[91] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission has consistently recognized the importance and significance of national securities exchange listing standards. Among other things, such listing standards help ensure that exchange-listed companies will have sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets.[92]

The Exchange's listing standards currently provide the Exchange with discretion to list a company on Nasdaq's Global Select Market in connection with a Direct Listing with a Capital Raise, which provides companies with the option, without a firm commitment underwritten offering, of selling shares to raise capital alone or in conjunction with shares by selling shareholders.[93] The Exchange proposes to modify its rules concerning pricing limitations for the opening auction on the first day of trading for a Direct Listing with a Capital Raise. Instead of the current Pricing Range Limitation, which limits the price of the opening transaction to the price range disclosed in the issuer's effective registration statement,[94] the proposal would allow the opening auction to proceed at a price up to either 20% below or 80% above the disclosed price range if certain additional conditions are met. The Exchange also proposes changes to the opening procedures for a Direct Listing with a Capital Raise to accommodate the proposed changes to the Pricing Range Limitation.

As explained further below, the following aspects of the proposal, as modified by Amendment No. 3, demonstrate that the Exchange's proposal is consistent with the protection of investors and the public interest under Section 6(b)(5) of the Exchange Act as well as the maintenance of fair and orderly markets: (i) by modifying the Pricing Range Limitation such that, provided other requirements are satisfied, a Direct Listing with a Capital Raise can be executed in the opening cross at a price that is above the highest price of the disclosed price range only if the execution price is at or below the 80% Upside Limit; (ii) by adding conditions that must be satisfied before the opening cross could proceed at a price outside of the disclosed price range that provide some assurance that issuers are complying with the disclosure requirements under federal securities laws, including conditions that require an issuer to provide a certification to Nasdaq and include a sensitivity analysis in its registration statement, and the addition of a Post-Pricing Period; (iii) by adding procedures that help to inform investors that the security may be ready to trade and ensure that the opening price cannot deviate by more than 10% from the Near Execution Price after investors are informed the opening cross nears execution and of the Near Execution Price; (iv) by requiring that a company offering securities for sale in connection with a Direct Listing with a Capital Raise must retain an underwriter with respect to the primary sales of shares by the company and identify the underwriter in its effective registration statement; and (v) by making clarifying changes regarding calculation of the 20% threshold below the disclosed price range.

The Commission discusses below the Exchange's proposed modifications to Direct Listings with a Capital Raise. First, the Commission addresses the modifications to the Pricing Range Limitation, and the certification process and other conditions, that would allow a Direct Listing with a Capital Raise to execute in the Nasdaq Halt Cross at a price that is outside the disclosed price range (*i.e.,* up to 20% below the lowest price in the disclosed price range or no higher than the 80% Upside Limit). Second, the Commission addresses the inclusion of the Price Volatility Constraint and the 10% Price Collar.

[88] *See* Nasdaq Rule 4753(a)(3) for a description of the ''Order Imbalance Indicator.''

[89] *See* Notice, *supra* note 9, 87 FR 57957.

[90] 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[91] 15 U.S.C. 78f(b)(5).

[92] The Commission has stated in approving national securities exchange listing requirements that the development and enforcement of adequate standards governing the listing of securities on an exchange is an activity of critical importance to the financial markets and the investing public. In addition, once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained. *See, e.g.,* 2021 Order, *supra* note 13, 86 FR 28169; Securities Exchange Act Release Nos. 90768 (Dec. 22, 2020), 85 FR 85807, 85811 n.55 (Dec. 29, 2020) (SR–NYSE–2019–67) (''NYSE 2020 Order''); 82627 (Feb. 2, 2018), 83 FR 5650, 5653 n.53 (Feb. 8, 2018) (SR–NYSE–2017–30) (''NYSE 2018 Order''); 81856 (Oct. 11, 2017), 82 FR 48296, 48298 (Oct. 17, 2017) (SR–NYSE–2017–31); 81079 (July 5, 2017), 82 FR 32022, 32023 (July 11, 2017) (SR–NYSE–2017–11). The Commission has stated that adequate listing standards, by promoting fair and orderly markets, are consistent with Section 6(b)(5) of the Exchange Act, in that they are, among other things, designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest. *See, e.g.,* NYSE 2020 Order, 85 FR 85811 n.55; NYSE 2018 Order, 83 FR 5653 n.53; Securities Exchange Act Release Nos. 87648 (Dec. 3, 2019), 84 FR 67308, 67314 n.42 (Dec. 9, 2019) (SR–NASDAQ–2019–059); 88716 (Apr. 21, 2020), 85 FR 23393, 23395 n.22 (Apr. 27, 2020) (SR–NASDAQ–2020–001).

[93] *See* Nasdaq Listing Rule IM–5315–2. *See also* 2021 Order, *supra* note 13. The Exchange's listing standards also allow for direct listings in connection with the sale of shares by selling shareholders only. *See* Nasdaq Listing Rules IM–5315–1, IM–5405–1, and IM–5505–1.

[94] The Commission previously approved Nasdaq's proposal to allow Direct Listing with a Capital Raise on Nasdaq's Global Select Market as long as the opening transaction occurred within the Pricing Range Limitation. *See* 2021 Order, *supra* note 13, 86 FR 28169 (order approving rules to permit a Direct Listing with a Capital Raise and adopting related rules concerning how the opening transaction for such listing will be effected).

Third, the Commission addresses the Exchange's proposed requirement that a company offering securities for sale in connection with a Direct Listing with a Capital Raise must retain an underwriter with respect to the primary sales of shares by the company and identify the underwriter in its effective registration statement and addresses concerns about Section 11 liability and how requiring an underwriter may mitigate such concerns. Finally, the Commission discusses additional clarifications to the proposal. As discussed throughout this order, the Commission concludes that the Exchange has met its burden to demonstrate that its proposal is consistent with the Exchange Act, and therefore finds the proposed rule change is consistent with the requirements of the Exchange Act.

A. Modification of Pricing Range Limitation and Required Certification

The Exchange proposes to modify its rules concerning pricing restrictions for the opening auction on the first day of trading for a Direct Listing with a Capital Raise. Provided that other requirements are satisfied, a Direct Listing with a Capital Raise will be able to be executed in the Nasdaq Halt Cross at a price that is at or above the price that is as low as 20% below the lowest price in the disclosed price range, or at a price that is as high as 80% above the highest price of the disclosed price range (*i.e.,* at or below the 80% Upside Limit).

In all such cases where the execution price would be outside of the disclosed price range, the company will be required to specify the quantity of shares registered in its registration statement, as permitted by Securities Act Rule 457, and that registration statement will be required to contain a sensitivity analysis explaining how the company's plans would change if the actual proceeds from the offering are less than or exceed the amount assumed in the disclosed price range. The company must certify to Nasdaq that the registration statement contains the required sensitivity analysis.[95] The company will also be required to publicly disclose and certify to Nasdaq prior to the beginning of the Display Only Period that the company does not expect that such offering price would materially change the company's previous disclosure in its effective registration statement. If the company's certification submitted to Nasdaq in that regard includes a price limit that is below the 80% Upside Limit, Nasdaq will not execute the Nasdaq Halt Cross if it results in an offering price above such limit.

The Exchange also proposes to require that the securities of a company listing in connection with a Direct Listing with a Capital Raise cannot price above the 80% Upside Limit (*i.e.,* at a price that is more than 80% above the highest price of the disclosed price range). The Exchange believes this will incentivize the company and its named underwriter to take steps to help ensure the accuracy of the disclosed price range so as to avoid the consequences of a failed offering. In the OIP, the Commission asked questions about the potential usefulness and reliability of the price range disclosure in the registration statement if issuers could price up to 20% below and anywhere above the disclosed price range.[96] The changes that the Exchange made subsequent to the OIP, including the imposition of the 80% Upside Limit and the named underwriter requirement, is a reasonable response to address these concerns, and eliminates the open-ended nature of the original proposal that would have allowed the opening to occur at any price above the high end of the disclosed price range, with no limitations.

The Exchange's current rules for a Direct Listing with a Capital Raise require it to postpone and reschedule the offering if the opening auction price does not fall at or within the disclosed price range, so that issuers are able to update any disclosures if necessary before proceeding with an offering outside of the disclosed price range. Likewise, the Exchange's proposal to expand the Pricing Range Limitation for Direct Listings with a Capital Raise would not allow the Nasdaq Halt Cross to proceed if the company is unable to provide Nasdaq with the required certifications about the adequacy of the disclosure to allow the opening cross to execute at a price that is up to 20% below the low end of the disclosed price range or is up to the 80% Upside Limit. If the issuer could not provide the required certifications, the Exchange would postpone and reschedule the offering.

Additionally, any time the opening price calculated by the Nasdaq Halt Cross is outside the disclosed price range (*i.e.,* either up to 20% below the low end of the disclosed price range or above the high end of the disclosed price range up to the 80% Upside Limit) the issuer would have to confirm during the Post-Pricing Period that no additional disclosures are required under the federal securities laws. Because no orders may be entered or modified during the Post-Pricing Period, the opening price cannot change during the issuer's confirmation process on the disclosure. We believe these provisions, taken together, will provide an opportunity for an issuer to meet its disclosure obligations under the federal securities laws prior to the Nasdaq Halt Cross proceeding if the opening cross executes at a price that is up to 20% below the low end of the disclosed price range or is up to the 80% Upside Limit. Issuers also must comply with separate disclosure obligations under the federal securities laws, and compliance with the specific requirements of Nasdaq's proposed listing standards may not be sufficient to comply with the federal securities laws. In particular, an issuer using Rule 430A to omit pricing-related information would need to consider whether a post-effective amendment to a registration statement containing a price range would be required if a change in price materially alters the disclosure in the registration statement at effectiveness. In addition, for purposes of Securities Act Sections 12(a)(2) and 17(a)(2), information delivered to purchasers after the time of sale is not taken into account in determining whether there were material misstatements or omissions.[97] The Commission has interpreted Section 12(a)(2) and Section 17(a)(2) as reflecting a core concept of the Securities Act—that materially accurate and complete information regarding an issuer and the securities being sold should be available to investors at the time of the contract of sale, when they make their investment decisions.[98] Based on the above, the Commission believes that this aspect of the proposal is consistent with the investor protection and public interest provisions under Section 6(b)(5) of the Exchange Act.[99]

[95] As the Exchange states, the sensitivity analysis would allow investors to see how changes in the share price ripple through critical elements of a company's disclosure.

[96] *See* OIP, *supra* note 8. One commenter raised similar concerns. *See* Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors (Aug. 8, 2022) (''CII Letter I'').

[97] *See* Securities Act Rule 159. *See also* Securities Exchange Act Release No. 93119 (Sept. 23, 2021), 86 FR 54262, 54266 n.47 (Sept. 30, 2021).

[98] *See* Securities Offering Reform Proposing Release, Securities Act Release No. 8501 (Nov. 3, 2004) (proposing current Rule 159 as an interpretation of Section 12(a)(2) and Section 17(a)(2)) *and* Securities Offering Reform Adopting Release, Securities Act Release No. 8591 (Aug. 3, 2005) (adopting Rule 159 as proposed).

[99] *See* OIP, *supra* note 8.

B. Price Volatility Constraint and 10% Price Collar

The Exchange also proposes to establish a Price Volatility Constraint, which would require that the Current Reference Price not deviate by 10% or more from any Current Reference Price in the previous 10 minutes, as a condition to the opening auction in a Direct Listing with a Capital Raise. Specifically, the Exchange's proposal provides that ''[t]he Pre-Launch Period shall continue until at least 5 minutes after the Price Volatility Constraint has been satisfied.'' [100] The Exchange also proposes to introduce the Near Execution Price, which is the Current Reference Price at the time the Price Volatility Constraint has been satisfied, and to set the Near Execution Time as such time. The Exchange states that this will provide investors with notice that the Nasdaq Halt Cross nears execution and will allow a period of at least five minutes for investors to modify orders prior to the execution of the opening cross and the pricing of the offering. Finally, the Exchange proposes to require that, in addition to other conditions (as stated in proposed Nasdaq Rule 4120(c)(9)(B)(vii)), the opening cross may execute only if the actual price calculated by the Nasdaq Halt Cross is no more than 10% above or below the Near Execution Price.

The requirement that the Pre-Launch Period will continue for at least five minutes after the Price Volatility Constraint has been satisfied will allow for a period during which investors can modify their orders, if needed, based on the Near Execution Price, prior to the execution of the opening cross. After the Near Execution Price is set, the Current Reference Price may change because buy and sell orders can continue to come in, or be cancelled. If the security is not released for trading within 30 minutes and the Current Reference Price is outside the 10% Price Collar at the end of the 30-minute countdown or at any time thereafter, the Price Volatility Constraint will reset and all requirements of the Pre-Launch Period must be satisfied. If however, the Current Reference Price at the end of the 30-minute countdown is within the 10% Price Collar, price formation may continue until such time that Nasdaq, in consultation with the named underwriter, makes the determination that the security is ready to trade.[101]

Nasdaq also proposes to enhance price discovery by providing readily available, real-time pricing information to investors by disseminating, free of charge, the Current Reference Price on a public website, such as *Nasdaq.com*, during the Pre-Launch Period and indicating whether the Current Reference Price is within the price range established by the issuer in its effective registration statement. Nasdaq will also disseminate the Near Execution Price, the Near Execution Time, and the 30-minute countdown from such time. Nasdaq also proposes to distribute, at least one day prior to the commencement of trading of the security, an information circular to its members describing any special characteristics of the offering and Nasdaq's rules that apply to the initial pricing through the mechanism outlined in Nasdaq Rule 4120(c)(9)(B) and Nasdaq Rule 4753 for the opening auction.

As described above, the opening process for Direct Listings with a Capital Raise would include the dissemination of the Near Execution Price, establishment of the Near Execution Time, and the protections provided by the 10% Price Collar that ensures the opening price cannot deviate by more than 10% from the disseminated Near Execution Price. These proposed provisions should address any potential concerns that, when the Exchange disseminates information that the Price Volatility Constraint has been satisfied, investors could be misled about the opening auction price and that the opening cross nears execution at a time when buy and sell orders are still coming in because such orders could change the opening price and could cause the auction to not occur for a considerable time.[102]

Further, the Commission believes that the information Nasdaq proposes to make publicly available prior to the opening could help to provide investors with useful information relating to the pricing of the security and help to inform investors in making decisions about entering, modifying, or cancelling orders to participate in the opening cross. The requirement that investors cannot enter market orders and therefore will have to enter a limit price to their order will also provide a cap to an investor's financial obligation should its buy order be executed in the Nasdaq Halt Cross and prevent the buy order from executing at a price higher than the investor anticipated. Based on the above, the Commission finds these procedures are consistent with the protection of investors, the public interest, and the other requirements of Section 6(b)(5) of the Exchange Act.

C. Addition of Named Underwriter Requirement in a Direct Listing With a Capital Raise and Securities Act Section 11 Standing

Given the broad definition of ''underwriter'' in the Securities Act,[103] parties, such as the issuers' financial advisor, may, depending on the facts and circumstances including the nature and extent of that party's activities, be deemed a statutory underwriter with respect to a direct listing, with attendant underwriter liabilities. In the OIP, the Commission asked several questions about potential issues related to the lack of a named underwriter (as opposed to a statutory underwriter) in a Direct Listing with a Capital Raise where an offering can price outside of the range established by the issuer in its effective registration statement.[104] The Commission questioned whether a party who may meet the statutory underwriter definition but is not named as an underwriter would review and adequately conduct due diligence on the information contained in the registration statement for a Direct Listing with a Capital Raise where the opening price is executed outside of the disclosed price range. The Commission also stated that permitting Direct Listings with a Capital Raise could potentially result in increased regulatory arbitrage if and to the extent that issuers and intermediaries, including financial advisors, are not subject to equivalent liability standards in the direct listings context as they

[100] Proposed Nasdaq Rule 4120(c)(9)(B)(vii).

[101] Proposed Nasdaq Rule 4120(c)(9)(B)(vii) states the security shall be released for trading when Nasdaq, in consultation with the named underwriter, makes the determination that the security is ready to trade and the conditions in proposed Nasdaq Rule 4120(c)(9)(B)(vii)(a), (b), (c), and (d) are met. Among the conditions is that the actual price calculated by the Nasdaq Halt Cross is within the 10% Price Collar. *See supra* notes 45–59 and accompanying discussion.

[102] *See, e.g.,* 2022 Order, *supra* note 32, 87 FR 11780 (Mar. 2, 2022) (order disapproving proposed rule change, in part, due to potential for opening process to mislead investors about opening time and price). *See also supra* note 31.

[103] Section 2(a)(11) of the Securities Act defines ''underwriter'' to mean ''any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking.''

[104] *See* OIP, *supra* note 8. One commenter stated it was concerned, consistent with the statements in the OIP, about the lack of a named underwriter in a Direct Listing with a Capital Raise where the offering could price outside of the range established by the issuer in its effective registration statement and stated it also had concerns about challenges to bringing claims under Section 11 of Securities Act due to potential tracing issues. *See* CII Letter I, at 4.

would be in traditional firm commitment underwritten IPOs.[105]

In the proposed rule change as modified by Amendment No. 3, the Exchange proposes to require that a company offering securities for sale in connection with a Direct Listing with a Capital Raise retain an underwriter with respect to the primary sales of shares by the company and identify the underwriter in its effective registration statement.[106] The Exchange states that it believes that underwriters provide significant investor protections that are necessary in a Direct Listing with a Capital Raise where an offering can price outside of the range established by the issuer in its effective registration statement.[107] For example, the Exchange states that underwriters are exposed to potential Securities Act liability, which provides a strong incentive for them to take steps to help ensure the accuracy of disclosure in a registration statement.[108] The Exchange states that it ''believes that these significant investor protections provisions are necessary in a Direct Listing with a Capital Raise if an offering can price outside the price range established in the issuer's effective registration statement, subject to proposed limitations, because such provisions allow investors to make reasonable pricing decisions with clarity that the company's underwriter would face statutory liability.'' [109] Earlier in the amended proposal, the Exchange notes the Commission's recent explanation that ''[t]he civil liability provisions of the Securities Act reflect the unique position underwriters occupy in the chain of distribution of securities and provide strong incentives for underwriters to take steps to help ensure the accuracy of disclosure in a registration statement.'' [110] Accordingly, the Exchange proposes to require named underwriters for listings of securities on the Exchange in connection with a Direct Listing with a Capital Raise.

The Commission believes that the Exchange's proposed requirement that a company conducting a Direct Listing with a Capital Raise must retain and name an underwriter will help address the investor protection concerns discussed in the OIP that can arise in a Direct Listing with a Capital Raise that prices outside of the disclosed price range. With respect to disclosure, for example, for an offering to proceed at a price outside of the disclosed price range, the Exchange's proposal would require the company to initially provide certifications to the Exchange and publicly disclose that the company does not expect that such a price would materially change its effective registration statement disclosure. The company's registration statement also would need to contain a sensitivity analysis explaining how the company's plans would change if the actual proceeds from the offering are less than or exceed the amount assumed in the disclosed price range. In addition, the company would be required to certify to the Exchange that no additional disclosures are required under the federal securities laws based on the actual price. The required presence of named underwriters who are subject to Securities Act liability should help ensure the accuracy of these disclosures that potential investors receive in a Direct Listing with a Capital Raise. This disclosure includes information, such as the use of proceeds and the required sensitivity analysis, that becomes even more important when an offering prices outside of the range established by the company in its registration statement. Investors should also benefit from the knowledge that underwriters with Securities Act liability are required as companies consider the certifications they must provide the Exchange with respect to the impact of price changes on their registration statement disclosure and on their obligation to provide additional disclosures under the federal securities laws.

The Commission also asked questions in the OIP about shareholders' ability to pursue claims under Section 11 of the Securities Act due to potential traceability issues.[111] The Exchange states that it believes that the requirement to retain a named underwriter in a Direct Listing with a Capital Raise may mitigate traceability concerns because the underwriter ''will be able to impose lock-up arrangements for the same reasons that make lock up agreements common in an IPO.'' The Commission agrees that the requirement to retain a named underwriter may help mitigate traceability concerns. However, the actual impact of the named underwriter requirement is far from certain, particularly because tracing is a judicially-developed doctrine and there is limited judicial precedent addressing tracing requirements in the context of direct listings. In addition, because of the many factors that go into an underwriter's decision to request or require lock-up arrangements in public offerings, whether, and if so to what extent, underwriters in Direct Listings with a Capital Raise would impose lock-up arrangements on all company shareholders is unclear. Although the Commission's findings in this order are based on the specific proposed rule change filed with the Commission, including how the proposed rule operates under the circumstances discussed in this order, the Commission recognizes that, over time, those circumstances may change. Some of the circumstances that may change involve tracing and may include developments in case law involving tracing in the direct listing context.

In view of the totality of the Exchange's proposal, including the requirement that a company seeking to conduct a Direct Listing with a Capital Raise retain and name an underwriter, the Commission does not expect any such tracing challenges in this context to be of such magnitude as to render the proposal inconsistent with the Exchange Act.[112] The Commission therefore concludes that the proposed rule change, as modified by Amendment No. 3, is consistent with the protection of investors and the public interest under Section 6(b)(5) of the Exchange Act.

D. Additional Clarifications

In the OIP, the Commission asked questions about how the Exchange would calculate the 20% threshold below the disclosed price range and whether the minimum price at which the opening auction could occur would be the same as the per share price for purposes of evaluating whether the issuer satisfies the applicable Market

[105] *See* OIP, *supra* note 8.

[106] *See* Amendment No. 3, *supra* note 11, at 54.

[107] *See id.* at 16.

[108] *See id.* at 15.

[109] *Id.* at 16.

[110] *Id.* at 15 (quoting Special Purpose Acquisition Companies, Shell Companies, and Projections, Securities Exchange Act Release No. 94546 (Mar. 30, 2022), 87 FR 29458 (May 13, 2022)).

[111] *See* OIP, *supra* note 8. One commenter raised similar concerns. *See* CII Letter I and Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors (Oct. 19, 2022) (''CII Letter II''). This commenter also stated that the Exchange does not address how its proposal ''might alleviate the poor corporate governance practices that appear endemic to companies that become public through a direct listing.'' CII Letter II. As the Commission stated previously, the Commission does not believe that investors will be precluded from raising concerns about governance structures in the context of direct listings; to the extent a company's corporate governance practices are of sufficient concern to investors, they may be able to influence companies' governance practices through signaling their unwillingness to purchase a company's shares through a direct listing. In this way, investors may be able to persuade companies to adopt preferred governance provisions, whether the company becomes listed through a direct listing or a firm commitment IPO. *See* 2021 Order, *supra* note 13, 86 FR 28177.

[112] *See* Securities Exchange Act Release No. 90768 (Dec. 22, 2020), 85 FR 85807, 85816 (Dec. 29, 2020) (SR–NYSE–2019–67) (order setting aside action by delegated authority and approving a proposed rule change to modify the provisions relating to direct listings). *See also* 2021 Order, *supra* note 13, 86 FR 28176.

Value of Publicly Held Shares requirement and other applicable bid price and market capitalization requirements.[113] Subsequently, the Exchange revised its proposal to provide that the 20% threshold below the disclosed price range, along with the 80% threshold used to determine the 80% Upper Limit, would be calculated based on the high end of the price range in the registration statement at the time of effectiveness.[114] In addition, the Exchange made clarifying changes to specify how the 20% threshold will be calculated for purposes of the listing standards and opening cross procedures.[115] The Commission finds that these changes will help ensure that the calculations are consistent throughout Nasdaq's rules and set forth a clear process for how the Exchange will calculate the 20% and 80% thresholds, thereby specifying for investors and market participants the lowest and highest price outside of the disclosed price range at which the opening cross can occur, consistent with the protection of investors and the public interest under Section 6(b)(5) of the Exchange Act.

IV. Solicitation of Comments on Amendment No. 3 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 3 to the proposed rule change is consistent with the Exchange 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–2022–027 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–2022–027. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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–2022–027, and should be submitted on or before December 29, 2022.

V. Accelerated Approval of the Proposal, as Modified by Amendment No. 3

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 3, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 3 in the **Federal Register**. The Commission notes that the original proposal, Amendment No. 1, and Amendment No. 2 were published for comment in the **Federal Register**.[116] By amending the proposal to provide that the 20% threshold below and the 80% threshold above the disclosed price range will be calculated based on the high end of the price range in the registration statement at the time of effectiveness, the Exchange removed reference to the maximum offering price set forth in the registration fee table. This change will provide a straightforward and clear way for investors and market participants to calculate the 20% and 80% thresholds that set forth the lowest and highest price (outside the disclosed price range) at which the opening auction can occur. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,[117] to approve the proposed rule change, as modified by Amendment No. 3, on an accelerated basis.

VI. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[118] that the proposed rule change (SR–NASDAQ–2022–027), as modified by Amendment No. 3 thereto, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[119]

Sherry R. Haywood,

Assistant Secretary.

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[113] *See* OIP, *supra* note 8.

[114] *See* proposed Nasdaq Rule 4120(c)(9)(B). *See also* Amendment No. 3, *supra* note 11, at 43. Under the Exchange's original proposal, the 20% threshold would have been calculated based on the maximum offering price set forth in the registration fee table, consistent with the Instruction to paragraph (a) of the Securities Act.

[115] *See* proposed Nasdaq Rule 4753(a)(3)(A)(iv)c. and (b)(2)(D)(iii), and proposed Nasdaq Listing Rule IM–5315–2.

[116] *See supra* notes 3, 6, and 9.

[117] 15 U.S.C. 78s(b)(2).

[118] *Id.*

[119] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 11933]

Notice of Determinations; Culturally Significant Object Being Imported for Exhibition—Determinations: "Georgia O'Keeffe: To See Takes Time" Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that a certain object being imported from abroad pursuant to an agreement with its foreign owner or custodian for temporary display in the exhibition ''Georgia O'Keeffe: To See Takes Time'' at The Museum of Modern Art, New York, New York, and at possible additional exhibitions or venues yet to be determined, is of cultural significance, and, further, that its temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elliot Chiu, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing

address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Stacy E. White,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2022–26683 Filed 12–7–22; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 11934]

Request for Information for the 2023 Trafficking in Persons Report

SUMMARY: The Department of State (''the Department'') requests written information to assist in reporting on the degree to which the United States and foreign governments meet the minimum standards for the elimination of trafficking in persons (''minimum standards'') that are prescribed by the Trafficking Victims Protection Act of 2000, as amended (''TVPA''). This information will assist in the preparation of the Trafficking in Persons Report (''TIP Report'') that the Department submits annually to the U.S. Congress on governments' concrete actions to meet the minimum standards. Foreign governments that do not meet the minimum standards and are not making significant efforts to do so may be subject to restrictions on nonhumanitarian, nontrade-related foreign assistance from the United States, as defined by the TVPA. Submissions must be made in writing to the Office to Monitor and Combat Trafficking in Persons at the Department of State by February 1, 2023. Please refer to the *Addresses, Scope of Interest,* and *Information Sought* sections of this Notice for additional instructions on submission requirements.

DATES: Submissions must be received by 5 p.m. on February 1, 2023.

ADDRESSES: Written submissions and supporting documentation may be submitted by the following method:

- *Email: tipreport@state.gov* for submissions related to foreign governments and *tipreportUS@state.gov* for submissions related to the United States.

Scope of Interest: The Department requests information relevant to assessing the United States' and foreign governments' concrete actions to meet the minimum standards for the elimination of trafficking in persons during the reporting period (April 1, 2022–March 31, 2023). The minimum standards are listed in the *Background* section. Submissions must include information relevant to efforts to meet the minimum standards and should include, but need not be limited to, answering the questions in the *Information Sought* section. Submissions need not include answers to all the questions; only those questions for which the submitter has direct professional experience should be answered, and that experience should be noted. For any critique or deficiency described, please provide a recommendation to remedy it. Note the country or countries that are the focus of the submission.

Submissions may include written narratives that answer the questions presented in this Notice, research, studies, statistics, fieldwork, training materials, evaluations, assessments, and other relevant evidence of local, state/provincial, and federal/central government efforts. To the extent possible, precise dates and numbers of officials or citizens affected should be included. Questions below seek to gather information and updates from the details provided and assessment on government efforts made in the 2022 TIP Report.

Furthermore, we request information on the government's treatment of ''underserved communities,'' including how the government may have systemically denied opportunities to a community to participate in aspects of economic, social, and civic life that has led to heighted risk to human trafficking or how the government's anti-trafficking response may have treated certain groups differently.

Written narratives providing factual information should provide citations of sources, and copies of and links to the source material should be provided. Please send electronic copies of the entire submission, including source material. If primary sources are used, such as research studies, interviews, direct observations, or other sources of quantitative or qualitative data, provide details on the research or data-gathering methodology and any supporting documentation. The Department only includes in the TIP Report information related to trafficking in persons as defined by the TVPA; it does not include, and is therefore not seeking, information on prostitution, migrant smuggling, visa fraud, or child abuse, unless such crimes also involve the elements of sex trafficking or forced labor.

Confidentiality: Please provide the name, phone number, and email address of a single point of contact for any submission. It is Department practice not to identify in the TIP Report information concerning sources to safeguard those sources. Please note, however, that any information submitted to the Department may be releasable pursuant to the provisions of the Freedom of Information Act or other applicable law. Submissions related to the United States will be shared with U.S. government agencies, as will submissions relevant to efforts by other U.S. government agencies.

Response: This is a request for information only; there will be no response to submissions. Remuneration for responses will not be provided. In order to expend appropriated funds, there must be specific authority to do so. The Department of State has no authority to expend funds for this purpose.

SUPPLEMENTARY INFORMATION:

I. Background

Definitions: The TVPA defines ''severe forms of trafficking in persons'' as:

- The recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act that is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age.
  - Persons under age 18 in commercial sex are trafficking in persons victims regardless of whether force, fraud, or coercion were involved.
- The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion, for the purposes of involuntary servitude, peonage, debt bondage, or slavery.
  - Forced labor may take the form of domestic servitude, forced begging, forced criminal activity (*e.g.,* drug smuggling), and prison labor that is not the product of a conviction in a court of law.
- Children recruited or used as soldiers or for labor or services can be a severe form of human trafficking when the activity involves force, fraud, or

coercion. Children may be victims regardless of gender.

The TIP Report: The TIP Report is the most comprehensive worldwide report assessing governments' efforts to combat trafficking in persons. It represents an annually updated global assessment of the nature and scope of trafficking in persons and the broad range of government actions to confront and eliminate it. The U.S. government uses the TIP Report to inform diplomacy, to encourage partnership in creating and implementing laws and policies to combat trafficking, and to target resources on prevention, protection, and prosecution programs. Worldwide, international organizations, foreign governments, and nongovernmental organizations (NGOs) use the TIP Report as a tool to examine where resources are most needed. Prosecuting traffickers, protecting victims, and preventing trafficking are the ultimate goals of the TIP Report and of the U.S government's anti-trafficking policy.

The Department prepares the TIP Report with information from across the U.S. government, foreign government officials, nongovernmental and international organizations, survivors of trafficking in persons, published reports, and research related to every region. The TIP Report focuses on concrete actions that governments take to fight trafficking in persons, including prosecutions, convictions, and sentences for traffickers, as well as victim identification and protection measures and prevention efforts. Each TIP Report narrative also includes prioritized recommendations for each country. These recommendations are used to assist the Department in measuring governments' progress from one year to the next and determining whether governments meet the minimum standards for the elimination of trafficking in persons or are making significant efforts to do so.

The TVPA creates a four-tier ranking system. Tier placement is based principally on the extent of concrete government action to combat trafficking. The Department first evaluates whether the government fully meets the TVPA's minimum standards for the elimination of trafficking. Governments that do so are placed on Tier 1. For other governments, the Department considers the extent of such efforts. Governments that are making significant efforts to meet the minimum standards are placed on Tier 2. Governments that do not fully meet the minimum standards and are not making significant efforts to do so are placed on Tier 3. Finally, the Department considers Special Watch List criteria and, when applicable, places countries on Tier 2 Watch List. For more information, the 2022 TIP Report can be found at *www.state.gov/reports/2022-trafficking-in-persons-report.*

Since the inception of the TIP Report in 2001, the number of countries included and ranked has more than doubled; the 2022 TIP Report included 188 countries and territories. Around the world, the TIP Report and the promising practices reflected therein have inspired legislation, national action plans, policy implementation, program funding, protection mechanisms that complement prosecution efforts, and a stronger global understanding of this crime.

Since 2003, the primary reporting on the United States' anti-trafficking activities has been through the annual Attorney General's Report to Congress and Assessment of U.S. Government Activities to Combat Human Trafficking (''AG Report'') mandated by section 105 of the TVPA (22 U.S.C. 7103(d)(7)). Since 2010, the TIP Report, through a collaborative interagency process, has included an assessment of U.S. government anti-trafficking efforts in light of the minimum standards to eliminate trafficking in persons set forth by the TVPA.

II. Minimum Standards for the Elimination of Trafficking in Persons

The TVPA sets forth the minimum standards for the elimination of trafficking in persons as follows:

(1) The government of the country should prohibit severe forms of trafficking in persons and punish acts of such trafficking.

(2) For the knowing commission of any act of sex trafficking involving force, fraud, coercion, or in which the victim of sex trafficking is a child incapable of giving meaningful consent, or of trafficking which includes rape or kidnapping or which causes a death, the government of the country should prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault.

(3) For the knowing commission of any act of a severe form of trafficking in persons, the government of the country should prescribe punishment that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offense.

(4) The government of the country should make serious and sustained efforts to eliminate severe forms of trafficking in persons.

For purposes of (4) above, the following factors should be considered as indicia of serious and sustained efforts to eliminate severe forms of trafficking in persons:

(1) Whether the government of the country vigorously investigates and prosecutes acts of severe forms of trafficking in persons, and convicts and sentences persons responsible for such acts, that take place wholly or partly within the territory of the country, including, as appropriate, requiring incarceration of individuals convicted of such acts. For purposes of the preceding sentence, suspended or significantly reduced sentences for convictions of principal actors in cases of severe forms of trafficking in persons shall be considered, on a case-by-case basis, whether to be considered an indicator of serious and sustained efforts to eliminate severe forms of trafficking in persons. After reasonable requests from the Department of State for data regarding investigations, prosecutions, convictions, and sentences, a government which does not provide such data, consistent with a demonstrably increasing capacity of such government to obtain such data, shall be presumed not to have vigorously investigated, prosecuted, convicted or sentenced such acts.

(2) Whether the government of the country protects victims of severe forms of trafficking in persons and encourages their assistance in the investigation and prosecution of such trafficking, including provisions for legal alternatives to their removal to countries in which they would face retribution or hardship, and ensures that victims are not inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts as a direct result of being trafficked, including by providing training to law enforcement and immigration officials regarding the identification and treatment of trafficking victims using approaches that focus on the needs of the victims.

(3) Whether the government of the country has adopted measures to prevent severe forms of trafficking in persons, such as measures to inform and educate the public, including potential victims, about the causes and consequences of severe forms of trafficking in persons, measures to establish the identity of local populations, including birth registration, citizenship, and nationality, measures to ensure that its nationals who are deployed abroad as part of a diplomatic, peacekeeping, or other similar mission do not engage in or facilitate severe forms of trafficking in persons or exploit victims of such trafficking, a transparent system for remediating or punishing such public officials as a deterrent, measures to

prevent the use of forced labor or child labor in violation of international standards, effective bilateral, multilateral, or regional information sharing and cooperation arrangements with other countries, and effective policies or laws regulating foreign labor recruiters and holding them civilly and criminally liable for fraudulent recruiting.

(4) Whether the government of the country cooperates with other governments in the investigation and prosecution of severe forms of trafficking in persons and has entered into bilateral, multilateral, or regional law enforcement cooperation and coordination arrangements with other countries.

(5) Whether the government of the country extradites persons charged with acts of severe forms of trafficking in persons on substantially the same terms and to substantially the same extent as persons charged with other serious crimes (or, to the extent such extradition would be inconsistent with the laws of such country or with international agreements to which the country is a party, whether the government is taking all appropriate measures to modify or replace such laws and treaties so as to permit such extradition).

(6) Whether the government of the country monitors immigration and emigration patterns for evidence of severe forms of trafficking in persons and whether law enforcement agencies of the country respond to any such evidence in a manner that is consistent with the vigorous investigation and prosecution of acts of such trafficking, as well as with the protection of human rights of victims and the internationally recognized human right to leave any country, including one's own, and to return to one's own country.

(7) Whether the government of the country vigorously investigates, prosecutes, convicts, and sentences public officials, including diplomats and soldiers, who participate in or facilitate severe forms of trafficking in persons, including nationals of the country who are deployed abroad as part of a diplomatic, peacekeeping, or other similar mission who engage in or facilitate severe forms of trafficking in persons or exploit victims of such trafficking, and takes all appropriate measures against officials who condone or enable such trafficking. A government's failure to appropriately address public allegations against such public officials, especially once such officials have returned to their home countries, shall be considered inaction under these criteria. After reasonable requests from the Department of State for data regarding such investigations, prosecutions, convictions, and sentences, a government which does not provide such data, consistent with a demonstrably increasing capacity of such government to obtain such data, shall be presumed not to have vigorously investigated, prosecuted, convicted, or sentenced such acts.

(8) Whether the percentage of victims of severe forms of trafficking in the country that are non-citizens of such countries is insignificant.

(9) Whether the government has entered into effective, transparent partnerships, cooperative arrangements, or agreements that have resulted in concrete and measurable outcomes with—

(A) domestic civil society organizations, private sector entities, or international nongovernmental organizations, or into multilateral or regional arrangements or agreements, to assist the government's efforts to prevent trafficking, protect victims, and punish traffickers; or

(B) the United States toward agreed goals and objectives in the collective fight against trafficking.

(10) Whether the government of the country, consistent with the capacity of such government, systematically monitors its efforts to satisfy the criteria described in paragraphs (1) through (8) and makes available publicly a periodic assessment of such efforts.

(11) Whether the government of the country achieves appreciable progress in eliminating severe forms of trafficking when compared to the assessment in the previous year.

(12) Whether the government of the country has made serious and sustained efforts to reduce the demand for—

(A) commercial sex acts; and

(B) participation in international sex tourism by nationals of the country.

III. Information Sought Relevant to the Minimum Standards

Submissions should include, but need not be limited to, answers to relevant questions below for which the submitter has direct professional experience. Citations to source material should also be provided. Note the country or countries that are the focus of the submission. Please see the *Scope of Interest* section above for detailed information regarding submission requirements.

Overview

1. What were the government's major accomplishments in addressing human trafficking since April 1, 2022? In what significant ways have the government's efforts to combat trafficking in persons changed in the past year? How have new laws, regulations, policies, or implementation strategies (*e.g.,* substantive criminal laws and procedures, mechanisms for civil remedies, and victim-witness programs, generally and in relation to court proceedings) affected its anti-trafficking response?

2. Over the past year, what were the greatest deficiencies in the government's anti-trafficking efforts? What were the limitations on the government's ability to address human trafficking problems in practice?

3. Did the COVID–19 pandemic affect the government's efforts to coordinate, execute, and monitor its anti-trafficking response across its prosecution, protection, and prevention efforts? How have anti-trafficking officials, units, and coordinating bodies continued to operate and adapt?

4. Please provide additional information and/or recommendations to improve the government's anti-trafficking efforts overall.

5. Please highlight effective strategies and practices that other governments could consider adopting.

Prosecution

6. Please provide observations regarding the implementation of existing laws, policies, and procedures. Are there gaps in anti-trafficking legislation that could be amended to improve the government's response? Are there any government policies that have undermined or otherwise negatively affected anti-trafficking efforts within that country?

7. Do government officials understand the nature of all forms of trafficking? If not, please provide examples of misconceptions or misunderstandings. Did the government effectively provide or support anti-trafficking trainings for officials? If not, how could they be improved?

8. Please provide observations on overall anti-trafficking law enforcement efforts and the efforts of police and prosecutors to pursue trafficking cases. Is the government equally vigorous in pursuing forced labor and sex trafficking, internal and transnational trafficking, and crimes that involve its own nationals or foreign citizens? Were anti-trafficking laws equitably enforced, or were certain communities disproportionately affected?

9. Please note any efforts to investigate and prosecute suspects for knowingly soliciting or patronizing a sex trafficking victim to perform a commercial sex act.

10. Does law enforcement pursue trafficking cases that would hold

accountable private employers or corporations for forced labor in supply chains?

11. Do judges appear appropriately knowledgeable and sensitized to trafficking cases? Do they implement and encourage trauma-informed practices in their courts?

12. Were there allegations of official complicity in trafficking crimes, via contacts, media, or other sources, including of state-sponsored forced labor? If so, what measures did the government take to end such practices? What proactive measures did the government take to prevent official complicity in trafficking in persons crimes? How did the government respond to reports of complicity that arose during the reporting period, including investigations, prosecutions, convictions, and sentencing of complicit officials? Were these efforts sufficient?

13. Is there evidence that nationals of the country deployed abroad as part of a diplomatic, peacekeeping, or other similar mission have engaged in or facilitated trafficking, including in domestic servitude? Has the government vigorously investigated, prosecuted, convicted, and sentenced nationals engaged in these activities?

Protection

14. Did the government make a coordinated, proactive effort to identify victims of all forms of trafficking? Were there any new (or changes to preexisting) formal/standard procedures for screening for trafficking, including of individuals in immigration detention or removal proceedings, and for victim referral to protection services? If so, are those procedures sufficient, and did the government implement them? Did officials effectively coordinate among one another and with relevant NGOs to conduct screenings and refer victims to care? If commercial sex is legalized or decriminalized in the country, how did health officials, labor inspectors, or police identify trafficking victims among persons involved in commercial sex? If commercial sex is illegal, did the government proactively identify trafficking victims during law enforcement operations or other encounters with commercial sex establishments?

15. Does the government operate or fund any trafficking-specific hotlines (including those run by NGOs)? Did calls on government- or NGO-operated hotlines lead to victim identification, victim referral to care, and/or criminal investigations?

16. Were there any new (or changes to preexisting) services available for victims and survivors (legal, medical, food, shelter, interpretation, mental health care, employment, training, etc.)? If NGOs provide the services, does the government adequately support their work either financially or otherwise? Did all victims and survivors of both labor and sex trafficking—regardless of citizenship, gender identity, racial/ethnic identity, sexual orientation, religious affiliation, and physical ability—receive the same quality and level of access to services?

17. What was the overall quality of victim care? How could victim services be improved? Are services victim-centered and trauma-informed? Were benefits linked to whether a victim assisted law enforcement or participated in a trial, or whether a trafficker was convicted? Could victims choose independently whether to enter a shelter, and could they leave at will if residing in a shelter? Could victims seek employment and work while receiving assistance?

18. What is the level of cooperation, communication, and trust between service providers and law enforcement?

19. Were there means by which victims could obtain restitution from defendants in criminal cases or file civil suits against traffickers for damages, and did this happen in practice? Did prosecutors request and/or courts order restitution in all cases where it was required, and if not, why?

20. Please provide observations on trafficking victims and survivors' ability to access justice, as they define it, and the treatment of survivors throughout the criminal legal process. How did the government encourage victims to assist in the investigation and prosecution of trafficking, and did it do so in a trauma-informed way? How did the government protect victims during the trial process and ensure victims were not re-traumatized during participation in the process? If a victim was a witness in a court case, was the victim permitted to obtain employment, move freely about the country, or leave the country pending trial proceedings? In what ways could the government increase support for victims in prosecutions against the traffickers?

21. Did the government provide, through a formal policy or otherwise, temporary or permanent residency status, or other relief from deportation, for foreign national victims of human trafficking who may face retribution or hardship in the countries to which they would be deported? Were foreign national victims given the opportunity to seek legal employment while in this temporary or permanent residency? Were such benefits linked to whether a victim assisted law enforcement, whether a victim participated in a trial, or whether there was a successful prosecution? Does the government repatriate victims who wish to return home or assist with third country resettlement? Are victims awaiting repatriation or third country resettlement offered services? Are victims indeed repatriated, or are they deported?

22. Does the government effectively assist its nationals exploited abroad? Does the government work to ensure victims receive adequate assistance and support for their repatriation while in destination countries? Does the government provide adequate assistance to repatriated victims after their return to their countries of origin, and if so, what forms of assistance?

23. Does the government arrest, detain, imprison, or otherwise punish trafficking victims (whether or not identified as such by authorities) for unlawful acts traffickers compelled them to commit (forgery of documents, illegal immigration, unauthorized employment, prostitution, theft, or drug production or transport, etc.)? If so, do these victims disproportionately represent a certain gender, race, ethnicity, or other group or particular type of trafficking?

Prevention

24. What efforts has the government made to prevent human trafficking? Did the government enforce any policies that further marginalized communities already overrepresented among trafficking victims, increasing their risk to human trafficking? If so, did it take efforts to address those policies?

25. If the government had a national action plan to address trafficking, how was it implemented in practice? Were NGOs and other relevant civil society stakeholders consulted in the development and implementation of the plan?

26. Please describe any government-funded anti-trafficking information or education campaigns or training, whether aimed at the public or at specific sectors or stakeholders/actors. What strategies did the campaigns employ to ensure messaging and images did not legitimize and/or perpetuate harmful or racialized narratives and/or stereotypes about what victims, survivors, and perpetrators look like? Were campaign materials readily available, cost-free, and accessible in various languages, including braille? Does the government provide financial support to NGOs working to promote public awareness?

27. Did the government seek and include the input of survivors in

crafting its anti-trafficking laws, regulations, policies, programs, or in their implementation? If so, did the government take steps to ensure input was received and incorporated from a diverse group of survivors?

28. How did the government regulate, oversee, and screen for trafficking indicators in the labor recruitment process, including for both licensed and unlicensed recruitment and placement agencies, individual recruiters, sub-brokerages, and microfinance lending operations? Did the government prohibit (in any context) charging workers recruitment fees and prohibit the recruitment of workers through knowingly fraudulent job offers (including misrepresenting wages, working conditions, location, or nature of the job), contract switching, and confiscating or otherwise denying workers access to their identity documents? If there are laws or regulations on recruitment, did the government effectively enforce them? Did the government allow migrant workers to change employers in a timely manner without obtaining special permissions?

29. Did the government coordinate with other governments (*e.g.,* via bilateral agreements with migrant labor sending or receiving countries) on safe and responsible recruitment that included prevention measures to target known trafficking indicators? To what extent were these implemented? Are workers (both nationals of the country and foreign nationals) in all industries (*e.g.,* domestic work, agriculture, etc.) equally and sufficiently protected under existing labor laws?

30. Did government policies, regulations, or agreements relating to migration, labor, trade, and investment facilitate vulnerabilities to, or incidence of, forced labor or sex trafficking? If so, what actions did the government take to ensure that its policies, regulations, and agreements relating to migration, labor, trade, border security measures, and investment did not facilitate trafficking?

31. Did the government take tangible action to prevent forced labor in domestic or global supply chains? Did the government make any efforts to prohibit and prevent trafficking in the supply chains of its own public procurement?

32. If the government has entered into bilateral, multilateral, or regional anti-trafficking information-sharing and cooperation arrangements, are they effective and have they resulted in concrete and measurable outcomes? If not, why?

33. Did the government provide assistance to other governments in combating trafficking in persons through trainings or other assistance programs?

34. What measures has the government taken to reduce the participation by nationals of the country in international and domestic child sex tourism?

Territories and Semi-Autonomous Regions

35. Please provide any information about trafficking trends and government anti-trafficking efforts in non-sovereign territories and semi-autonomous regions to prosecute traffickers, identify and provide services to victims, and prevent trafficking.

Trafficking Profile

36. Were there any changes to the country's trafficking situation, including the forms of trafficking that occur, industries and sectors in which traffickers exploit victims, countries/regions in which traffickers recruit victims, locations and regions in which trafficking occurs, and recruitment methods? Are citizens of the country identified as victims of human trafficking abroad? As COVID–19-related restrictions begin to lift in many parts of the world, were there additional changes in trafficking trends?

37. What groups, including underserved communities, are at particular risk of human trafficking? Underserved communities are populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life. This term may include, but is not limited to, women and girls, persons with disabilities, indigenous peoples, people of African descent, racial and ethnic minorities, refugees and internally displaced people, religious minorities, LGBTQI+ persons, rural residents, migrants, as well as those who are otherwise adversely affected by persistent poverty or inequality.

38. Chinese/Cuban/North Korean workers: Are any of these populations subjected to or at high risk of forced labor in the country as part of government-to-government agreements and/or in foreign government-affiliated projects?

39. Please provide any information about trafficking trends or risk factors stemming from slow-onset, climate-related change and sudden-onset climate-related disasters, as well as any efforts to mitigate these vulnerabilities.

Child Soldiering

40. Using the definition of ''child soldier'' as defined by the Child Soldiers Prevention Act of 2008 (CSPA), describe instances, cases, and reports, including anecdotal reports, of:

a. Use of any person under the age of 18 in direct hostilities as a member of governmental armed forces, police, or other security forces;

b. Conscription or forced recruitment of persons under the age of 18 into governmental armed forces, police, or other security forces;

c. Voluntary recruitment of any person under 15 years of age into governmental armed forces, police, or other security forces;

d. Recruitment (forced or voluntary) or use in hostilities of persons under the age of 18 by armed groups distinct from the armed forces of a state.

e. Abuse of male and female children recruited by governmental armed forces, police, or other security forces, and government-supported armed groups (*e.g.,* sexual abuse or use for forced labor). Describe the manner and age of conscription, noting differences in treatment or conscription patterns based on gender.

41. Did the government provide support to an armed group that recruits and/or uses child soldiers? What was the extent of the support (*e.g.,* in-kind, financial, training, etc.)? Where did the provision of support occur (within the country or outside of the country)? In cases where the government was included on the CSPA list in 2021 based on its support to non-state armed groups that recruit and/or use child soldiers, describe whether the government took steps to pressure the group to cease its recruitment or use of child soldiers, publicly disavow the group's recruitment or use of child soldiers, or cease its support to that group.

42. Describe any government efforts to prevent or end child soldier recruitment or use, including efforts to disarm, demobilize, and reintegrate former child soldiers. (*i.e.,* enacting any laws or regulations, implementing a United Nations Action Plan or Roadmap, specialized training for officials, procedures for age verification, etc.)

Matthew Hickey,

Deputy Director, Office to Monitor and Combat Trafficking in Persons, Department of State.

[FR Doc. 2022–26668 Filed 12–7–22; 8:45 am]

BILLING CODE 4710–11–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 575 (Sub-No. 2X)]

Montana Rail Link, Inc.—Discontinuance of Service Exemption—in Yellowstone, Stillwater, Sweet Grass, Park, Gallatin, Broadwater, Jefferson, Lewis and Clark, Powell, Deer Lodge, Granite, Missoula, Lake, Mineral, and Sanders Counties, Mont.; Bonner and Kootenai Counties, Idaho; and Spokane County, Wash.

On November 18, 2022, Montana Rail Link, Inc. (MRL), a Class II rail carrier, filed a petition under 49 U.S.C. 10502 for exemption from the prior approval requirements of 49 U.S.C. 10903 to discontinue service over approximately 656.47 miles of non-contiguous rail line, which are leased from BNSF Railway Company (BNSF), and to discontinue MRL's bridge-only trackage rights over approximately 96.04 miles of rail line owned by BNSF (collectively, the Lines). The 656.47 miles of rail line over which MRL seeks discontinuance authority are comprised of the following segments (collectively, Leased Premises): a segment from milepost 209.91 at Huntley, Mont., to milepost 17.8 at Spurling, Mont. (1st Subdivision); a segment from milepost 17.8 at Spurling to milepost 238.4 at Helena, Mont. (2nd Subdivision); a segment from milepost 0.0 at Helena to milepost 119.31 at Missoula, Mont. (3rd Subdivision); a segment from milepost 119.31 at Missoula to milepost 118.7 at Sandpoint Junction, Idaho (4th Subdivision); a segment from milepost 0.0 at De Smet, Mont., to milepost 64.27 at Paradise, Mont. (10th Subdivision); a segment from milepost 15.15 at Laurel, Mont., to milepost 514.47 south of Laurel; a segment from milepost 0.0 at Moss Main, Mont., to milepost 0.50 at a point north of Moss Main. The 96.04 miles of rail line over which MRL seeks to discontinue bridge-only trackage rights include the following segments (collectively, Trackage Rights Lines): a segment from milepost 2.79 at Sand Point, Idaho, to milepost 68.17 at Spokane, Wash.; a segment from milepost 68.17 to milepost 69.0 near Spokane, Wash.; a segment from milepost 0.74 to milepost 1.0 near Moss Main; and a segment from milepost 51.07 near Garrison, Mont., to milepost 21.5 south of Warm Springs, Mont.[1] The Lines are located in Yellowstone, Stillwater, Sweet Grass, Park, Gallatin, Broadwater, Jefferson, Lewis and Clark, Powell, Deer Lodge, Granite, Missoula, Lake, Mineral, and Sanders Counties, Mont.; Bonner and Kootenai Counties, Idaho; and Spokane County, Wash. The Leased Premises traverse United States Postal Service (USPS) Zip Codes: 59037, 59101, 59102, 59105, 59106, 59044, 59063, 59019, 59069, 59033, 59011, 59047, 59082, 59715, 59718, 59714, 59741, 59752, 59643, 59644, 59647, 59635, 59601, 59602, 59728, 59713, 59731, 59733, 59832, 59936, 59825, 59851, 59802, 59808, 59834, 59846, 59820, 59821, 59863, 59831, 59872, 59866, 59859, 59873, 59874, 59853, 59844, 83811, 83836, 83840, 83852 and 83864. The Trackage Rights Lines traverse the following USPS Zip Codes: 59044, 59711, 59731, 59722, 59756, 83813, 83864, 83860, 83801, 83858, 83854, 99025, 99027, 99212, 99216, 99206, 99202, and 99201.

The Lines include the following stations on the 1st Subdivision: Jones Jct. at milepost 209.9, Huntley at milepost 213.1, East Billings at milepost 223.4, Billings at milepost 225.8 and milepost 0.0, Shilo at milepost 11.5, Moss Main at milepost 12.1, Laurel Yard at milepost 13.7, and West Laurel at milepost 15.5. The Lines include the following stations on the 2nd Subdivision: West Laurel at milepost 15.5, Spurling at milepost 17.7, Brodsky at milepost 19.8, Park City at milepost 24.3, Rapids at milepost 32.3, Columbus at milepost 40.3, Craver at milepost 47.6, Reed Point at milepost 56.9, Quebec at milepost 62.0, Greycliff at milepost 70.2, Big Timber at milepost 80.9, Carney at milepost 90.9, Elton at milepost 102.3, Livingston East Long Lead at milepost 111.9, Livingston at milepost 115.4, Livingston West Long Lead at milepost 116.0, Muir at milepost 127.1, West End at milepost 128.6, Bozeman at milepost 140.4, Belgrade at milepost 149.9, Manhattan at milepost 159.3, Logan at milepost 164.6, Missouri at milepost 172.4, Clarkston at milepost 178.8, Lombard at milepost 184.9, Toston at milepost 194.2, Townsend at milepost 205.3, Winston at milepost 218.3, Louisville at milepost 227.4, Helena East at milepost 235.1, Carter St. at milepost 236.9, and Helena at milepost 238.43 and milepost 0.0. The Lines include the following stations on the 3rd Subdivision: Helena at milepost 0.0, Helena Jct. at milepost 3.0, Tobin at milepost 5.1, Austin at milepost 12.9, Skyline at milepost 18.6, Blossburg at milepost 20.5, Elliston at milepost 28.9, CP Avon at milepost 34.9, Bradley at milepost 39.6, Garrison at milepost 50.9, Phosphate at milepost 54.8, Jens at milepost 61.4, Drummond at milepost 70.7, Bearmouth at milepost 80.1, Nimrod at milepost 88.7, Clinton at milepost 102.6, Bonner at milepost 113.2, and Missoula at milepost 119.3. The Lines include the following stations on the 4th Subdivision: Missoula at milepost 119.3, De Smet at milepost 125.9, Frenchtown at milepost 136.6, Lothrop at milepost 150.8, Rivulet at milepost 167.6, Westfall at milepost 176.2, Superior at milepost 183.6, CP St. Regis at milepost 196.2, Toole at milepost 201.9, Paradise at milepost 219.2 and milepost 0.0, Plains at milepost 6.0, Eddy at MP 20.6, Thompson Falls at milepost 31.5, Childs at milepost 46.4, Tuscor at milepost 61.6, Noxon at milepost 72.5, Heron at milepost 80.1, Colby at milepost 91.1, Hope at milepost 103.5, Kootenai at milepost 116.9, and Sandpoint Jct. at milepost 118.7. The Lines include the following stations on the 10th Subdivision: De Smet at milepost 0.0, Evaro at milepost 10.6, Arlee at milepost 21.1, Ravalli at milepost 30.8, Dixon at milepost 37.8, Perma at milepost 51.5, and Paradise at milepost 64.2.

According to MRL, it and BNSF, the owner of the Leased Premises and the Trackage Rights Lines, have mutually agreed that MRL will terminate its lease and trackage rights operations and BNSF will resume providing service to shippers on the Leased Premises. BNSF currently provides services on the Trackage Rights Lines and will continue to do so after the discontinuance. MRL states that the proposed discontinuance will therefore leave no customer on the Leased Premises or the Trackage Rights Lines without access to railroad common carrier service, as any such customers would have service via BNSF.

MRL states that the Lines may contain federally granted rights-of-way. MRL also states that it will make any documentation that it may have concerning federally-granted rights-of-way available promptly to those requesting it.

As a condition to this exemption, any employee adversely affected by the discontinuance of service 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).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final

[1] MRL notes that in 2006, the Board authorized MRL to terminate its operations over the segment from milepost 51.07 near Garrison to milepost 21.5 south of Warm Springs. *See Mont. Rail Link, Inc.—Trackage Rights Exemption—BNSF Ry.,* FD 34911 (Sub-No. 1) (STB served Nov. 28, 2006). MRL states that it does not believe that any additional Board authority is required to discontinue trackage rights over the segment, but MRL is requesting termination authority if the Board disagrees with MRL's interpretation.

decision will be issued by March 8, 2023.

Because this is a discontinuance proceeding and not an abandonment, interim trail use/rail banking and public use conditions are not appropriate. Because there will be environmental review during any subsequent abandonment, this discontinuance does not require an environmental review. *See* 49 CFR 1105.6(c)(5), 1105.8(b).

Any offer of financial assistance (OFA) for subsidy under 49 CFR 1152.27(b)(2) will be due no later than 120 days after the filing of the petition for exemption, or 10 days after service of a decision granting the petition for exemption, whichever occurs sooner.[2] Persons interested in submitting an OFA must first file a formal expression of intent to file an offer by December 19, 2022, indicating the intent to file an OFA for subsidy and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(1)(i).

All filings in response to this notice must refer to Docket No. AB 575 (Sub-No. 2X) and 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 MRL's representative, Rose-Michele Nardi, Baker & Miller PLLC, 2401 Pennsylvania Ave. NW, Suite 300, Washington, DC 20037. Replies to the petition are due on or before December 28, 2022.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment and discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis at (202) 245–0294. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

Board decisions and notices are available at *www.stb.gov.*

Decided: December 5, 2022.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Stefan Rice,

Clearance Clerk.

[FR Doc. 2022–26706 Filed 12–7–22; 8:45 am]

BILLING CODE 4915–01–P

[2] The filing fee for OFAs can be found at 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0249]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: WHENSDAY (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 9, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0249 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0249 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2022–0249, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel WHENSDAY is:

—*Intended Commercial Use of Vessel:* ''Day charters on the ICW, overnight trips to Bahamas or Florida Keys.''
—*Geographic Region Including Base of Operations:* ''Florida.'' (Base of Operations: Stuart, FL)
—*Vessel Length and Type:* 47′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2022–0249 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0249 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that

you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–26700 Filed 12–7–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0251]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: SHIRLEY MAE (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 9, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0251 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0251 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2022–0251, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel SHIRLEY MAE is:

—*Intended Commercial Use of Vessel:* ''Pleasure charter.''

—*Geographic Region Including Base of Operations:* ''Texas, Louisiana, Mississippi, Alabama, Florida.'' (Base of Operations: Kemah, TX)

—*Vessel Length and Type:* 41.8′ Sail

The complete application is available for review identified in the DOT docket as MARAD 2022–0251 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0251 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

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(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–26698 Filed 12–7–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0252]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: SWEET CHARIOT (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 9, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0252 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0252 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2022–0252, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel SWEET CHARIOT is:

—*Intended Commercial Use of Vessel:* ''Sailing day charters.''
—*Geographic Region Including Base of Operations:* ''Florida.'' (Base of Operations: Ft. Myers, FL)
—*Vessel Length and Type:* 45.2′ Sail

The complete application is available for review identified in the DOT docket as MARAD 2022–0252 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0252 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible,

please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

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(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–26699 Filed 12–7–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0250]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: THE PURPUS (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 9, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0250 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0250 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2022–0250, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel THE PURPUS is:

—*Intended Commercial Use of Vessel:* ''Carrying passengers for hire.''
—*Geographic Region Including Base of Operations:* ''Florida.'' (Base of Operations: Key West, FL)
—*Vessel Length and Type:* 39.7′ Sail

The complete application is available for review identified in the DOT docket as MARAD 2022–0250 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0250 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

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(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–26697 Filed 12–7–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0248]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: THE ISLANDERS (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 9, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0248 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0248 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2022–0248, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email James.Mead@*dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel THE ISLANDERS is:

—*Intended Commercial Use of Vessel:* ''The intended commercial use of the vessel is to carry passengers. The vessel will not carry more than 12 passengers for hire, nor will the vessel be engaged in any other commercial purpose aside from commercial passenger transportation.''

—*Geographic Region Including Base of Operations:* ''Florida.'' (Base of Operations: Sarasota, FL)

—*Vessel Length and Type:* 47.6′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2022–0248 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0248 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

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behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–26696 Filed 12–7–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2022–0109]

Soft Lights Foundation, Denial of Petition for Decision of Non-Compliance Order

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petition for a non-compliance order.

SUMMARY: Soft Lights Foundation (Petitioner) has petitioned NHTSA requesting NHTSA to issue an order of non-compliance for certain model year (MY) 2021 Tesla Model 3, 2021 Ford Bronco, and 2021 Rivian R1T motor vehicles based on its assertions that these motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment.* Soft Lights Foundation petitioned NHTSA on August 5, 2022, for the 2021 Tesla Model 3, on August 11, 2022, for the 2021 Ford Bronco, and on September 9, 2022, for the 2021 Rivian R1T. This notice announces the denial of Soft Lights Foundation's petitions.

FOR FURTHER INFORMATION CONTACT: Leroy Angeles, Office of Vehicle Safety NHTSA, (202) 366–5304.

SUPPLEMENTARY INFORMATION:

I. Overview

Under 49 U.S.C. 30162(a)(2) and 49 CFR part 552.1, interested persons can petition NHTSA to begin a proceeding to make a determination that a motor vehicle or an item of replacement equipment does not comply with an applicable FMVSS. Upon receipt of a properly filed petition, the Agency conducts a technical review of the petition, material submitted with the petition and any additional information. 49 U.S.C. 30162(a)(2); 49 CFR 552.6. After conducting the technical review and considering appropriate factors, the Agency will grant or deny the petition. *See* 49 U.S.C. 30162(a)(2); 49 CFR 552.8.

Soft Lights Foundation has alleged that certain MY 2021 Tesla Model 3, MY 2021 Ford Bronco, and MY 2021 Rivian R1T motor vehicles, herein also known as ''subject vehicles,'' do not fully comply with the requirements of paragraphs S4, S5, S10.1.1, S14.1.1, and Table XIX of FMVSS No. 108, *Lamps, Reflective Devices, and Associated Equipment* (49 CFR 571.108) and has requested that NHTSA issue a noncompliance order.

II. Vehicles Involved

MY 2021 Tesla Model 3, MY 2021 Ford Bronco, and MY 2021 Rivian R1T motor vehicles are potentially involved. These vehicles are likely equipped with integral beam headlamps that utilize Light Emitting Diode (''LED'') technology.

III. Rule Requirements

Paragraphs S4, S5, S10.1.1, S14.1.1, and Table XIX of FMVSS No. 108 include the requirements relevant to this petition as cited by Soft Lights Foundation.

Paragraph S4 defines a filament as that part of the light source or light emitting element(s), such as a resistive element, the excited portion of a specific mixture of gases under pressure, or any part of other energy conversion sources, that generates radiant energy which can be seen.

Paragraph S5 addresses references to SAE publications where each required lamp, reflective device, and item of associated equipment must be designed to conform to the requirements of applicable SAE publications as referenced and subreferenced in this standard. The words ''it is recommended that,'' ''recommendations,'' or ''should be'' appearing in any SAE publication referenced or subreferenced in this standard must be read as setting forth mandatory requirements. S10.1.1 specifies headlighting system requirements for vehicle headlighting systems. Wherein this section states that each passenger car, multipurpose passenger vehicle, truck and bus must be equipped with a headlighting system conforming to the requirements of Table II and this standard.

S14.1.1 specifies physical and photometry test procedures and performance requirements. Wherein this sections states that each lamp, reflective device, item of conspicuity treatment, and item of associated equipment required or permitted by this standard must be designed to conform to all applicable physical test performance requirements specified for it.

Table XIX specifies the minimum and maximum photometric intensities at specific test points for the lower beam headlamp.

IV. Summary of Soft Lights Foundation's Petition

The views and arguments presented in this section are the views and arguments provided by Soft Lights Foundation. They do not reflect the views of the Agency. Soft Lights Foundation described an alleged noncompliance for the subject vehicles and stated their belief that the subject vehicles do not comply with FMVSS No. 108. The subject vehicles are equipped with LED headlamps. The subject Rivian R1T vehicles are also equipped with Daytime Running Lights (DRLs).

According to Soft Lights Foundation, the subject vehicles do not meet federal safety regulation as specified in FMVSS No. 108 for the following reasons:

1. Congress has determined that visible light from an electronic device is different than light from a burning filament or gas discharge and that this visible electromagnetic radiation from an electronic product requires special federal regulations. Congress has determined that ''visible electromagnetic radiation from an electronic product requires special federal regulations.''

2. The Food and Drug Administration (FDA) has not yet developed safety regulations for LED products, and thus LED headlamps are an unregulated product which have not been deemed safe.

3. FMVSS No. 108 is only applicable to spherical/point light sources and specifies intensity minimums and maximums using luminous intensity measured in candela. Only vehicles using spherical/point light sources can be compliant with FMVSS No. 108.

4. LED lights are flat-surface sources, which results in spatially non-uniform energy, and which creates a Lambertian mathematical shape. Brightness is measured with luminance in nits (candela per square meter). NHTSA has not yet developed the health and safety regulations for surface source LED headlamps and has not specified the necessary restrictions that might make LED headlamps safe. The characteristics specific to LED headlamps that should be regulated include restrictions on spatial non-uniformity, peak luminance, spectral power distribution, and square wave flicker.

5. Tesla, Ford, and Rivian failed to petition NHTSA for amendment of

existing regulations to allow use of LED technology for headlamps and has not received authorization from NHTSA.

6. FMVSS No. 108 contains no tables for specifying the minimum or maximum peak luminance of an LED headlight system and does not specify or refer to measurement requirements that involve a laboratory setting and precision measurement devices. Thus, a vehicle with an LED headlight system is non-compliant with FMVSS No. 108 because an LED headlight system cannot meet the requirements of Table XIX and there are no tables in FMVSS No. 108 that are applicable to an LED light source.

7. LED headlights and Daytime Running Lights are dangerous due to the excessive glare, non-uniform luminance, excessive peak luminance, and square wave flicker, putting public comfort, health, and safety at risk.

Soft Lights Foundation is requesting NHTSA to issue an Order of Non-Compliance to Tesla, Ford, and Rivian as well as for NHTSA to notify the public that LED headlamps do not comply with FMVSS No. 108.

VI. NHTSA's Analysis

NHTSA has reviewed the information Soft Lights Foundation provided and additional material in response to Soft Lights Foundation's statements that Congress stated LED products require special federal regulations, that the FDA has not developed regulations specific to LED products, and therefore they are unregulated products that have not been deemed safe.

First, the FDA has authority to regulate certain aspects of LED products as radiation-emitting devices.[1] 21 U.S.C. 360kk states that the Secretary of Health and Human Services shall by regulation prescribe performance standards for electronic products to control the emission of electronic product radiation from such products if the Secretary determines that such standards are necessary for the protection of the public health and safety. Pursuant to its authority, FDA issued title 21, part I, subchapter J, part 1040 of the Code of Federal Regulations, ''Performance Standards for Light-Emitting Products.'' [2] Currently, there is no FDA performance standard for LED products in Part 1040.

The issue that the petition presents to NHTSA, however, is whether NHTSA should determine (or open an investigation to determine) that the headlamps in the subject vehicles comply with FMVSS No. 108. In addressing this, NHTSA is guided by the National Traffic and Motor Vehicle Safety Act, as amended and recodified, 49 U.S.C. chapter 301, and the requirements set out in FMVSS No. 108. The Petitioner asserts that ''[o]nly vehicles using spherical/point light sources can be compliant with FMVSS No. 108.'' NHTSA understands ''spherical/point light sources'' to refer to filament (*e.g.,* tungsten/halogen) or High-Intensity Discharge Arc (HID) light sources. NHTSA therefore understands the Petitioner to be asserting that headlamps that utilize LED technology are *de facto* noncompliant with FMVSS No. 108. NHTSA disagrees. FMVSS No. 108 is not limited to ''spherical/point light sources.'' Specifically, regardless of the light sources used in headlamps, headlamps all have an area from which they emit light and they all emit different intensities of light in different directions. A key to understanding this topic is that the integral beam photometry requirements are for the lamp, not the light source. In addition, a NHTSA interpretation has stated that a design that combines an ''integral beam lower beam headlamp'' that uses LEDs (wired in series), with a ''replaceable bulb upper beam headlamp'' would be permissible, provided that it meets the applicable photometric requirements of the standard.[3]

While the Agency acknowledges that LED light sources have different physical properties when compared to halogen, incandescent, or a high-intensity discharge light source, the light emitted by integral beam headlamps utilizing any of these light sources is measurable by current laboratory test equipment and can be evaluated based on the performance requirements in FMVSS No. 108. In a laboratory setting, a photometer is used to measure, in candela, the amount of light emitted by a lighting device in a particular direction over multiple test points. This measurement can determine whether a vehicle's integral beam headlamp pattern meets the photometry requirements of FMVSS No. 108. Further, the Office of Vehicle Safety Compliance's annual test program has found evidence that LED headlamp assemblies can meet the current requirements of FMVSS No. 108,[4] [5] and therefore, using LED technology in an integral beam headlamp does not *de facto* make the headlamp noncompliant.

Accordingly, regarding Soft Lights Foundation's argument that, Tesla, Ford, and Rivian ''failed to petition NHTSA for amendment of existing regulations to allow use of LED technology for headlamps and has not received authorization from NHTSA,'' neither a petition, nor authorization, is necessarily required for a manufacturer to manufacture a vehicle that is equipped with FMVSS No. 108-compliant integral beam headlamps using LED technology. NHTSA does not ''authorize'' or ''approve'' motor vehicles or motor vehicle equipment. Under NHTSA's self-certification system, the manufacturer is legally bound to ensure their vehicles meet all applicable FMVSSs, including FMVSS No. 108.

With respect to the Soft Lights Foundation's statement that ''LED headlights and Daytime Running Lights are dangerous due to the excessive glare, non-uniform luminance, excessive peak luminance, and square wave flicker, putting public comfort, health and safety at risk,'' NHTSA believes the current research supports that FMVSS No. 108 contains the appropriate requirements to address these areas. NHTSA agrees that glare can have a negative safety impact and believes FMVSS No. 108 addresses that issue. As NHTSA has stated, the requirements of FMVSS No. 108 apply to LED headlamps. Photometric requirements stated in FMVSS No. 108 Table XIX specify candela maximums over several test points to prevent excess light which can result in glare and other issues. While LED integral beam headlamps can be made to have a smaller footprint compared to lamps that use halogen or high-intensity discharge (HID) light sources, which can be perceived to be more uncomfortable at closer distances, an agency report to Congress, ''Nighttime Glare and Driving Performance,'' stated that when viewed from more than approximately 100 feet, the size of a headlamp has little impact on discomfort and that no research has identified any impact of oncoming headlamp size on the visibility of the person experiencing glare.[6] With respect to flicker, FMVSS No. 108 requires that ''modulating light from the lamp [must

[1] *See,* the Federal Food, Drug, & Cosmetic Act § 531 *et seq.*

[2] *See https://www.fda.gov/radiation-emitting-products/home-business-and-entertainment-products/laser-products-and-instruments.*

[3] Koito Manufacturing Co., Ltd.—Takayuki Amma, December 21, 2005: *https://isearch.nhtsa.gov/files/LEDlamp.1.html.*

[4] See 2018 Toyota Camry—Compliance Test Report—108–CAN–22–001: *https://static.nhtsa.gov/odi/ctr/9999/TRTR-647670-2022-001.pdf.*

[5] See 2012 Nissan Leaf—Compliance Test Report—108–CAN–18–013: *https://static.nhtsa.gov/odi/ctr/9999/TRTR-645804-2018-001.pdf.*

[6] Nighttime Glare and Driving Performance (2007)—*https://www.nhtsa.gov/sites/nhtsa.gov/files/glare_congressional_report.pdf.*

be] perceived to be steady burning.'' [7] LED integral beam headlamp systems can meet this requirement.

NHTSA also wants to express appreciation to the Petitioner for bringing to its attention health concerns that the Petitioner associates with LED headlamps. NHTSA takes these concerns seriously. NHTSA, as an agency focused on automotive safety, also recognizes the expertise of its sister agencies that are health-focused, such as the FDA.

NHTSA wants to be clear that its decision in connection with these petitions is intended to address integral beam headlamps that use LED lighting technology and does not address other headlamp types like replaceable bulb headlamps or sealed beam headlamps. FMVSS No. 108 specifies performance requirements for headlamp systems. The most common types of headlamp systems are integral beam (S10.14) and replaceable bulb (S10.15, S11) systems. The standard does not mandate a light source type for integral beam headlamps, so, as we explained above, LED light sources are permitted in an integral beam headlamp,[8] provided that the headlamp complies with the performance requirements set out in FMVSS No. 108. LED light sources are not, however, permitted in a replaceable bulb headlamp. For replaceable bulb headlamps, S11 of the standard requires that ''[e]ach replaceable light source must be designed to conform to the dimensions and electrical specifications furnished with respect to it pursuant to part 564 of this chapter[.]'' [9] Part 564 requires that replaceable bulb manufacturers submit to NHTSA various design specifications of the bulb. This design information is then placed in a publicly-available docket to facilitate the manufacture and use of those light sources. The design information that must be submitted is set out in part 564 and includes information regarding the filament or discharge arc and the filament capsule. Because an LED light source lacks these components, an LED light source may not be submitted for inclusion in the Part 564 docket; and, because it cannot be submitted to the part 564 docket, a replaceable bulb headlamp may not use an LED replaceable light source.

VII. NHTSA's Decision

In consideration of the foregoing, NHTSA does not believe that a formal investigation is warranted, and NHTSA has decided to deny Soft Lights Foundation's petitions for non-compliance orders on the subject vehicles. After full consideration of appropriate factors, Soft Lights Foundation's petitions are denied.

(Authority: 49 U.S.C. 30162(d); delegation of authority at 49 CFR 1.95 and 49 CFR 501.8)

Anne L. Collins,

Associate Administrator for Enforcement.

[FR Doc. 2022–26658 Filed 12–7–22; 8:45 am]

BILLING CODE 4910–59–P

[7] Koito Manufacturing Co., Ltd.—Kiminori Hyodo, November 5, 2005: *https://www.nhtsa.gov/interpretations/koito2followup.*

[8] FMVSS No. 108, S4 defines integral beam headlamps as ''a headlamp (other than a standardized sealed beam headlamp designed to conform to paragraph S10.13 or a replaceable bulb headlamp designed to conform to paragraph S10.15) comprising an integral and indivisible optical assembly including lens, reflector, and light source, except that a headlamp conforming to paragraph S10.18.8 or paragraph S10.18.9 may have a lens designed to be replaceable.''

[9] *See also* Letter from John Womack, Acting Chief Counsel, NHTSA, to Nancy Tavarez, Beitrix Industries (Aug. 30, 1995), available at *https://www.nhtsa.gov/interpretations/11118* (clarifying application of part 564 to replaceable headlamp bulbs).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Interest Charge on DISC-Related Deferred Tax Liability

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning interest charges on domestic international sales corporation related deferred tax liabilities.

DATES: Written comments should be received on or before February 6, 2023 to be assured of consideration

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov*. Include OMB control number 1545–0939 or Interest Charge on DISC-Related Deferred Tax Liability.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Kerry Dennis at (202) 317–5751, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington DC 20224, or through the internet, at *Kerry.L.Dennis@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Interest Charge on DISC-Related Deferred Tax Liability.

OMB Number: 1545–0939.

Form Number: 8404.

Abstract: Shareholders of Interest Charge Domestic International Sales Corporations (IC–DISCs) use Form 8404 to figure and report an interest charge on their DISC-related deferred tax liability. The interest charge is required by Internal Revenue Code section 995(f). IRS uses Form 8404 to determine whether the shareholder has correctly figured and paid the interest charge on a timely basis.

Current Actions: There is no change to the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Respondents: 2,000.

Estimated Time per Respondent: 7 hours, 47 minutes.

Estimated Total Annual Burden Hours: 15,580 hours.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology;

and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 5, 2022.

Kerry L. Dennis,

Tax Analyst.

[FR Doc. 2022–26715 Filed 12–7–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Request for Nominations; Electronic Tax Administration Advisory Committee

AGENCY: Internal Revenue Service, Department of the Treasury.

ACTION: Request for nominations.

SUMMARY: The Internal Revenue Service (IRS) is requesting applications from individuals with experience in such areas as state tax administration, cybersecurity and information security, tax software development, tax preparation, payroll and tax financial product processing, systems management and improvement, implementation of customer service initiatives, public administration, and consumer advocacy to be considered for selection as members of the Electronic Tax Administration Advisory Committee (ETAAC).

DATES: Written nominations must be received on or before January 31, 2023.

ADDRESSES: Applications may be submitted via fax to 855–811–8020 or via email to *PublicLiaison@irs.gov*. Application packages are available on the IRS website at *https://www.irs.gov/etaac*. Application packages may also be requested by telephone from National Public Liaison, 202–317–4299 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Alec Johnston at (202) 317–4299, or send an email to *publicliaison@irs.gov*.

SUPPLEMENTARY INFORMATION: The IRS strongly encourages representatives from consumer groups with an interest in tax issues to apply.

Nominations should describe and document the proposed member's qualifications for ETAAC membership, including the applicant's knowledge of regulations and the applicant's past or current affiliations and involvement with the particular tax segment or segments of the community that the applicant wishes to represent on the committee. Applications will be accepted for current vacancies from qualified individuals and from professional and public interest groups that wish to have representation on ETAAC. Submissions must include an application and resume.

ETAAC provides continuing input into the development and implementation of the IRS organizational strategy for electronic tax administration. The ETAAC provides an organized public forum for discussion of electronic tax administration issues—such as prevention of identity theft-related refund fraud—in support of the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC members work closely with the Security Summit, a joint effort of the IRS, state tax administrators and the nation's tax industry, to fight identity theft and refund fraud. ETAAC members convey the public's perceptions of IRS electronic tax administration activities, offer constructive observations about current or proposed policies, programs and procedures, and suggest improvements.

This is a volunteer position. Members will serve three-year terms on the ETAAC to allow for a rotation in membership and ensure different perspectives are represented. Travel expenses within government guidelines will be reimbursed. In accordance with Department of Treasury Directive 21–03, a clearance process including fingerprints, annual tax checks, a Federal Bureau of Investigation criminal check and a practitioner check with the Office of Professional Responsibility will be conducted.

The establishment and operation of the Electronic Tax Administration Advisory Committee (ETAAC) is required by the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 (RRA 98), Title II, Section 2001(b)(2). ETAAC follows a charter in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C., app. 2. The ETAAC provides continued input into the development and implementation of the IRS's strategy for electronic tax administration. The ETAAC will research, analyze, consider, and make recommendations on a wide range of electronic tax administration issues and will provide input into the development of the strategic plan for electronic tax administration. Members will provide an annual report to Congress by June 30.

Applicants must complete the application form, which includes describing and documenting the applicant's qualifications for ETAAC membership. Applicants must submit a short one or two-page statement including recent examples of specific skills and qualifications as they relate to: cybersecurity and information security, tax software development, tax preparation, payroll and tax financial product processing, systems management and improvement, implementation of customer service initiatives, consumer advocacy and public administration. Examples of critical thinking, strategic planning and oral and written communication are desirable.

An acknowledgement of receipt will be sent to all applicants.

Equal opportunity practices will be followed in all appointments to the ETAAC in accordance with Department of Treasury and IRS policies. The IRS has a special interest in assuring that women and men, members of all races and national origins, and individuals with disabilities have an opportunity to serve on advisory committees. Therefore, IRS extends particular encouragement to nominations from such appropriately qualified individuals.

Dated: December 5, 2022.

John A. Lipold,

Designated Federal Official.

[FR Doc. 2022–26714 Filed 12–7–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Loan Guaranty: Assistance to Eligible Individuals in Acquiring Specially Adapted Housing; Cost-of-Construction Index

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) announces that the aggregate amounts of assistance available under the Specially Adapted Housing (SAH) grant program will increase by 8.09% for fiscal year (FY) 2023.

DATES: The increases in the aggregate amounts outlined in this notice are effective as of October 1, 2022.

FOR FURTHER INFORMATION CONTACT: Terry Rouch, Assistant Director for Loan Policy and Valuation, Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, 202–632–8862. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In accordance with 38 U.S.C. 2102(e), 38 U.S.C. 2102A(b)(2), 38 U.S.C. 2102B(b)(2) and 38 CFR 36.4411, the

Secretary of Veterans Affairs announces for FY 2023 the aggregate amounts of assistance available to Veterans and Service members eligible for SAH program grants.

Section 2102(e)(2) authorizes the Secretary to increase the aggregate amounts of SAH assistance annually based on a residential home cost-of construction index. The Secretary uses the Turner Building Cost Index for this purpose. See 38 CFR 36.4411(a). Such increase will be equal to the percentage by which the Turner Building Cost Index for the most recent calendar year exceeds that of the next preceding calendar year. If, however, the Turner Building Cost Index for the most recent full calendar year is equal to or less than the next preceding calendar year, the percentage increase will be zero. See 38 CFR 36.4411(b).

In the most recent quarter for which the Turner Building Cost Index is available, second quarter of 2022, the index showed an increase of 8.09% over the index value listed for second quarter of 2021. Turner Construction Company, *https://www.turnerconstruction.com/cost-index* (last visited August 22, 2022). Pursuant to 38 CFR 36.4411(a), therefore, the aggregate amounts of assistance for SAH grants made under 38 U.S.C. 2101(a) and 2101(b) have increased by 8.09% for FY 2023.

Sections 2102A(b)(2) and 2102B(b)(2) require the Secretary to apply the same percentage calculated pursuant to section 2102(e) to grants authorized pursuant to sections 2102A and 2102B. As such, the maximum amount of assistance available under these grants has also increased by 8.09% for FY 2023.

The increases are effective as of October 1, 2022. 38 U.S.C. 2102(e), 38 U.S.C. 2102A(b)(2) and 38 U.S.C. 2102B(b)(2) and 38 CFR 36.4411.

SAH: Aggregate Amounts of Assistance Available During FY 2023

Section 2101(a) Grants and Temporary Residence Adaptation (TRA) Grants

Effective October 1, 2022, the aggregate amount of assistance available for SAH grants made pursuant to 38 U.S.C. 2101(a) is $109,986 during FY 2023.

The maximum TRA grant made to an individual who satisfies the eligibility criteria under 38 U.S.C. 2101(a) and 2102A is $44,299 during FY 2023.

Section 2101(b) Grants and TRA Grants

Effective as of October 1, 2022, the aggregate amount of assistance available for SAH grants made pursuant to 38 U.S.C. 2101(b) is $22,036 during FY 2023.

The maximum TRA grant made to an individual who satisfies the eligibility criteria under 38 U.S.C. 2101(b) and 2102A is $7,910 during FY 2023.

Section 2102B Grants

Effective as of October 1, 2022, the amount of assistance available for grants made pursuant to 38 U.S.C. 2102B is $100,909 during FY 2023; however, the Secretary may waive this limitation for a Veteran if the Secretary determines a waiver is necessary for the rehabilitation program of the Veteran.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on November 29, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2022–26656 Filed 12–7–22; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 87 Thursday,

No. 235 December 8, 2022

Part II

Environmental Protection Agency

40 CFR Part 49

Federal Implementation Plan for Managing Emissions From Oil and Natural Gas Sources on Indian Country Lands Within the Uintah and Ouray Indian Reservation in Utah; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[EPA–R08–OAR–2015–0709; FRL–5872.1–01–R8]

RIN 2008–AA03

Federal Implementation Plan for Managing Emissions From Oil and Natural Gas Sources on Indian Country Lands Within the Uintah and Ouray Indian Reservation in Utah

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is promulgating a Federal Implementation Plan (FIP) under the Clean Air Act (CAA) and the EPA's implementing regulations that consists of emissions control requirements for existing, new, and modified oil and natural gas sources on Indian country lands within the Uintah and Ouray Indian Reservation (also referred to as the U&O Reservation) to address air quality in and around the Uinta Basin Ozone Nonattainment Area in northeast Utah. This U&O FIP establishes volatile organic compound (VOC) emissions control requirements for oil and natural gas production and processing on Indian country lands within the U&O Reservation. These requirements are consistent with those in place in areas within the Basin where the EPA has approved Utah to implement the CAA, and will help ensure that new development of oil and natural gas sources in the Basin will not interfere with attainment of the ozone National Ambient Air Quality Standard (NAAQS). VOC emissions control requirements for existing oil and natural gas sources have already been established in areas within the Basin where the EPA has approved Utah to implement the CAA, but did not exist for most sources on Indian country lands within the U&O Reservation. Additionally, this U&O FIP helps demonstrate that new development on Indian country lands within the U&O Reservation will not necessarily cause or contribute to an ozone NAAQS violation.

DATES: This final rule is effective on February 6, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2015–0709. All documents in the docket are listed on the *www.regulations.gov* website. In some instances, we reference documents from the dockets for other rulemakings. For this final rule, we have included by reference Docket ID No. EPA–HQ–OAR–2010–0505, Docket ID No. EPA–R08–OAR–2012–0479, Docket ID No. EPA–HQ–OAR–2003–0076, and Docket ID No. EPA–HQ–OAR–2014–0606 into Docket ID No. EPA–R08–OAR–2015–0709. Although listed in the index, some information is not publicly available, *e.g.,* CBI 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 through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Smith, U.S. EPA, Region 8, Air and Radiation Division, Mail Code 8ARD–IO, 1595 Wynkoop Street, Denver, Colorado 80202–1129, telephone number: (303) 312–6520, email address: *smith.claudia@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

Act or *CAA:* Clean Air Act, unless the context indicates otherwise.
AVO: Audio, Visual and Olfactory.
BTU: British Thermal Unit.
CBI: Confidential Business Information.
CEDRI: Compliance Emissions Data Reporting Interface.
CO: carbon monoxide.
EPA, we, us or *our:* The United States Environmental Protection Agency.
FBIR: Fort Berthold Indian Reservation.
FIP: Federal Implementation Plan.
GOR: gas-to-oil ratio.
HAP: hazardous air pollutants.
NAAQS: National Ambient Air Quality Standards.
NAICS: North American Industry Classification System.
NESHAP: National Emission Standards for Hazardous Air Pollutants.
NOx: nitrogen oxides.
NO_2: nitrogen dioxide.
NSPS: New Source Performance Standards.
NSR: New Source Review.
PM: particulate matter.
PSD: Prevention of Significant Deterioration.
PTE: potential to emit.
RIA: Regulatory Impact Analysis.
SCADA: Supervisory Control and Data Acquisition.
SIP: State Implementation Plan.
SO_2: sulfur dioxide.
TAR: Tribal Authority Rule.
TAS: treatment in a similar manner as a state.
TIP: Tribal Implementation Plan.
tpy: ton(s) per year
UDEQ: Utah Department of Environmental Quality.
U&O Reservation or the Reservation: The Uintah & Ouray Indian Reservation.
VOC: volatile organic compound(s).
VRU: vapor recovery unit.

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H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act (NTTAA)
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act (CRA)

I. Executive Summary

A. Purpose of, and Agency Authority for, the Regulatory Action

We are finalizing this action using our authority under sections 301(a) and 301(d)(4) of the CAA and 40 CFR 49.11 to promulgate FIP provisions that are necessary and appropriate to protect air quality on the Indian country lands within the U&O Reservation and in nearby communities. The purpose of this U&O FIP is threefold.

First, and primarily, this U&O FIP will improve air quality on the U&O Reservation by addressing emissions from oil and natural gas production and natural gas processing activities on Indian country lands that contribute to the winter ozone problem in the physiographic region known as the Uinta Basin,[1] within which the U&O Reservation is located, and where ambient ozone levels have exceeded both the 2008 and the 2015 ozone NAAQS.[2] In 2018, the EPA designated portions of the Uinta Basin, including large portions of the Indian country lands within the U&O Reservation, as a Marginal nonattainment area for the 2015 ozone NAAQS.[3]

Air quality ozone monitoring data from the Uinta Basin in the years 2018, 2019 and 2020 indicates that the three-year average of the fourth maximum ambient air concentration measurements is 76 ppb, which violates the 2015 ozone NAAQS of 70 ppb. On April 13, 2022, the EPA proposed to grant a 1-year attainment date extension for the Uinta Basin Ozone Nonattainment area.[4] The proposal explains that preliminary 2021 ozone monitoring data indicate that the area may not attain the 2015 ozone NAAQS by the proposed extended attainment date of August 3, 2022, but that the area could meet the air quality criteria for a second 1-year extension. The Uinta Basin area's preliminary 2019–2021 design value was 78 ppb and the preliminary 2021 fourth highest daily maximum 8-hour concentration value was 72 ppb. To qualify for a second 1-year extension, an area's fourth highest daily maximum 8-hour value, averaged over both the original attainment year and the first extension year, must be 70 ppb or less. If the preliminary 2021 ozone data are certified, then the fourth highest daily maximum 8-hour value, averaged over 2020 and 2021, would be 69 ppb.[5]

The winter-time ozone formation in the Uinta Basin is caused by emissions of VOC and NO_X reacting in the presence of sunlight and widespread snow cover during temperature inversion conditions to form ground-level ozone at levels that exceed the ozone NAAQS and are therefore detrimental to public health. The main sources in the Basin responsible for VOC and NO_X emissions are existing oil and natural gas facilities. As explained in section III.D. (Air Quality and Attainment Status), most available information indicates that winter ozone formation in the Basin is driven by local emissions and is sensitive to changes in VOC emissions. There is greater uncertainty as to the sensitivity to changes in NO_X emissions. As explained in section III.E. (Emissions Information), available information indicates that 97 percent of anthropogenic VOC emissions in the Basin are from existing oil and natural gas activity, and that about 89 percent of those emissions are from existing sources on the Indian country lands within the U&O Reservation and in the nonattainment area. Before this rulemaking, VOC emissions control requirements for existing oil and natural gas sources existed in areas of the Basin where the EPA has approved the UDEQ to implement the CAA but did not exist in Indian country lands within the U&O Reservation. As explained in this final rulemaking and in the supporting information in the record, VOC control requirements are necessary to protect air quality on Indian country lands within the U&O Reservation.

The CAA does not require an attainment plan for Marginal ozone nonattainment areas.[6] Accordingly, this U&O FIP is not intended to bring the Uinta Basin back into attainment with the ozone standard. However, we do anticipate that this U&O FIP will make a meaningful improvement in air quality through the reduction of VOC, an ozone precursor, while also allowing continued construction authorization of new development in the Basin and the positive economic impact that this development brings to the Tribe.

This final action is driven by the EPA's authority and responsibility to protect air quality in Indian country under sections 301(a) and 301(d)(4) of the CAA and 40 CFR 49.11. Regarding preconstruction review of proposed new or modified sources[7] of air pollution in nonattainment areas in Indian country, the reviewing authority must demonstrate that the minor source or modification would not cause or contribute to a NAAQS violation in the nonattainment area (*see* 40 CFR 49.155(a)(7)(ii))[8] and that preconstruction review of new major stationary sources and major

[1] For this rulemaking, the EPA defines the geographic scope of the Uinta Basin to be consistent with the Uinta Basin 2014 Air Agencies Oil and Gas Emissions Inventory (herein after referred to as the 2014 Uinta Basin Emissions Inventory), which encompasses Duchesne and Uintah counties. The 2014 Uinta Basin Emissions Inventory is available at: *https://deq.utah.gov/air-quality/2014-air-agencies-oil-and-gas-emissions-inventory-uinta-basin,* accessed Mar. 11, 2022.

[2] The 2015 ozone NAAQS is 70 parts per billion (ppb) (40 CFR 50.19). The 2008 ozone NAAQS is 75 ppb. Historical ozone NAAQS information is available at: *https://www.epa.gov/ozone-pollution/table-historical-ozone-national-ambient-air-quality-standards-naaqs,* accessed Mar. 11, 2022.

[3] On April 30, 2018, the EPA designated all of the Uinta Basin below a contiguous external perimeter of 6,250 ft. in elevation as a Marginal nonattainment area under the 2015 ozone NAAQS (83 FR 25776). This includes areas of the Basin where the EPA has approved the UDEQ to implement the CAA and Indian country lands within the U&O Reservation (where the EPA is promulgating this FIP). For more information, see *https://www.epa.gov/ozone-designations/additional-designations-2015-ozone-standards,* accessed Mar. 11, 2022.

[4] *See* 87 FR 21842 (Apr. 13, 2022), available at *https://www.govinfo.gov/content/pkg/FR-2022-04-13/pdf/2022-07513.pdf,* accessed Apr. 29, 2022.

[5] Additional details on the proposed extension of the attainment date are discussed in Section III.D. of this preamble.

[6] On March 9, 2018 (83 FR 10376), the EPA published the Classifications Rule, which established how the statutory classifications apply for the 2015 ozone NAAQS, including the air quality thresholds for each classification category. Based on this rule, each area with a 3-year design value of 71 ppb to 81 ppb, based on monitoring data from 2014–2016, was to be classified as a Marginal nonattainment area. The requirements for Marginal ozone nonattainment areas are specified in CAA Title I, Part D, subpart 2 (see 42 U.S.C. 7511a(a)) and include: (1) Comprehensive, accurate, current inventory of actual ozone precursor emissions from all sources; (2) Corrections, if necessary, to existing implementation plans to meet specific requirements, including for nonattainment major source permitting; (3) Triennial emissions inventory updates; and (4) General offset requirements for new and modified major sources.

[7] 40 CFR 49.152 defines ''minor modification at a major source,'' ''minor source,'' ''modification,'' ''synthetic minor source,'' and ''true minor source,'' all of which are subject to the permitting requirements of the Federal Minor New Source Review Program in Indian Country, at 40 CFR 49.151–49.165.

[8] 40 CFR 49.155 applies to your permit if you are subject to this program under 40 CFR 49.153(a) for construction of a new minor source, synthetic minor source or a modification at an existing source.

modifications to existing major stationary sources located in an area designated as nonattainment for any NAAQS would provide a net air quality benefit in the nonattainment area (*see* 40 CFR 49.169(b)(4)). While the CAA Indian country nonattainment permit program for *major* sources specifies offset requirements as the method to make such a demonstration (*see* 40 CFR 49.169(b)(3)), the CAA Indian country nonattainment permit program for *minor* sources is not prescriptive as to how to make such a demonstration. The requirements of this U&O FIP will result in VOC emission reductions from existing sources,[9] thereby improving air quality, and will also allow the EPA to rely on those reductions to meet the NAAQS protection requirements for continued construction authorization of new or modified minor sources in the nonattainment area.

This U&O FIP focuses on VOC emission reductions because improvements in winter ozone levels in the Basin are most likely to come from VOC emissions reductions from existing oil and natural gas sources.[10] Further, after a careful analysis of initial emissions data provided by industry and later updated using information obtained from two studies in the 2017 Uinta Basin Oil and Gas Emissions Inventory Update (referred to herein as the UBEI2017-Update),[11] we determined that most of the existing oil and natural gas sources on the Indian country lands within the U&O Reservation are largely uncontrolled for VOC and other emissions. Therefore, in developing this rule, we concentrated on determining the most effective control requirements to reduce VOC emissions from oil and natural gas sources to address the winter ozone exceedances. This is not to say that reductions in NO_X would not be beneficial in winter months. The EPA may decide to focus on NO_X reductions in future rulemakings if additional action is required to address air quality impacts from ozone pollution in the Basin.

Second, the control requirements being finalized are intended to be the same as or consistent with the requirements applicable to similar sources in areas of the Basin where the EPA has approved the UDEQ to implement the CAA, to promote a more consistent regulatory environment across the Basin. Where we are regulating existing equipment or activities that are also covered by EPA standards for the oil and natural gas source category, but do not meet the applicability criteria of those standards, we also strove for consistency with those EPA standards.

Finally, given the number of oil and natural gas projects in the Basin that are already approved or are in the federal review and approval process through evaluations conducted under the National Environmental Policy Act (NEPA) by other federal agencies,[12] in the coming years the EPA could receive a large number of applications for authorization to construct new and modified synthetic minor oil and natural gas sources on Indian country lands within the U&O Reservation, as well as registrations of new and modified true minor oil and natural gas sources on Indian country lands within the U&O Reservation under the Federal Implementation Plan for True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector (codified at 40 CFR part 49, subpart C, 40 CFR 49.101–49.105)[13] (National O&NG FIP). In addition to providing a streamlined construction authorization mechanism to new and modified true minor oil and natural gas sources,[14] the National O&NG FIP requires compliance with a suite of eight federal oil and natural gas source category emissions standards[15] for new and modified sources, as applicable. In 2019, the EPA extended the National O&NG FIP's streamlined construction authorization mechanism for true minor oil and natural gas sources in Indian country to the portions of the U&O Reservation within the Uinta Basin ozone nonattainment area.[16] We are relying on the existing source VOC emissions reductions that will be achieved under this U&O FIP to ensure that the limited extension of the National O&NG FIP to the Indian country portion of the Uinta Basin Ozone Nonattainment Area will not harm the area's ability to attain the NAAQS. This is described in greater detail in Sections V.C. and VI.B.

In the preamble to the final National O&NG FIP published on June 3, 2016, the EPA stated that the most appropriate means for addressing air quality concerns on specific reservations due to impacts from oil and natural gas activity is through area- or reservation-specific FIPs, not through the National O&NG FIP. Further, we stated that such FIPs may need to include requirements for existing, new, and modified sources

[9] Existing sources are sources that commence construction before the effective date of this FIP, per 40 CFR 49.4169(c).

[10] *See* Uinta Basin Ozone Studies (field studies conducted in the Basin from 2011 to 2014), available at *https://deq.utah.gov/air-quality/uinta-basin-ozone-studies-ubos,* accessed Mar. 11, 2022. The RIA for this rule contains detailed discussion of the studies and can be viewed in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709).

[11] *2017 Uinta Basin Oil and Natural Gas Emissions Inventory Update* (UBEI2017-Update). The inventory and supporting analysis can be viewed in the docket for this rule, Microsoft Excel spreadsheet titled, ''UO FIP cost and emissions analysis.xlsx'' (Docket ID No. EPA–R08–OAR–2015–0709). The inventory covers sources in Uintah and Duchesne Counties. The UDEQ submitted an earlier version of the 2017 inventory to the 2017 NEI and plans to submit the updated emissions at a future date. The UDEQ, the EPA, and the Ute Indian Tribe updated storage vessel, pneumatic controller, pneumatic pump, fugitive, gas well liquid unloading, blowdowns and pigging and oilfield wastewater emissions using updated emissions factors obtained from the Uinta Basin Composition Study and the acquisition of about 200 of oilfield wastewater (produced water) samples. The studies that updated the emissions factors are described in two White Papers available in the docket, ''UINTA BASIN VOC COMPOSITION STUDY IMPACTS ON THE 2017 OIL AND GAS EMISSIONS INVENTORY November 2020—Revised March 2021—White Paper'' (''DAQ–2021–004302.pdf''), and ''PRODUCED WATER DISPOSAL FACILITY EMISSION FACTORS & THEIR IMPACT ON THE 2017 OIL AND GAS EMISSIONS INVENTORY November 2020—Revised April 2021—White Paper'' (''DAQ–2020–016022.pdf'').

[12] Spreadsheet titled, ''Uinta Basin OG NEPA Evaluations 9.11.19.pdf,'' available in the Docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709), lists oil and natural gas production projects in the Uinta Basin that have been subject to evaluation under NEPA.

[13] Final Rule: Federal Implementation Plan for True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector; Amendments to the Federal Minor New Source Review Program in Indian Country to Address Requirements for True Minor Sources in the Oil and Natural Gas Sector, 81 FR 35944 (June 3, 2016); docket No. EPA–HQ–OAR–2014–0606, available at *https://www.regulations.gov,* accessed Mar. 11, 2022.

[14] As defined in the Federal Minor New Source Review Program in Indian Country at 40 CFR 49.152, a true minor source is a source that emits or has the potential to emit regulated NSR pollutants in amounts that are less than the major source thresholds in 40 CFR 49.167 (federal preconstruction permit program for major sources in nonattainment areas in Indian country) or 40 CFR 52.21 (federal preconstruction permit program for major sources in attainment/unclassifiable areas), as applicable, but equal to or greater than the minor NSR thresholds in 40 CFR 49.153 (federal preconstruction permit program for minor sources in Indian country), without the need to take an enforceable restriction to reduce its potential to emit to such levels.

[15] *See* 40 CFR 49.105. The National O&NG FIP specifies that sources must comply with, as applicable, the following standards: NESHAP 40 CFR part 63, subpart DDDDD; NESHAP 40 CFR part 63, subpart ZZZZ; NSPS IIII 40 CFR part 60, subpart IIII; NSPS 40 CFR part 60, subpart JJJJ; NSPS 40 CFR part 60, subpart Kb; NSPS 40 CFR part 60, subpart OOOOa; NESHAP 40 CFR part 63, subpart HH; and NSPS 40 CFR part 60, subpart KKKK.

[16] Final Rule: Amendments to Federal Implementation Plan for Managing Air Emissions from True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector, 84 FR 21240 (May 14, 2019); Docket No. EPA–HQ–OAR–2014–0606, available at *https://www.regulations.gov,* accessed Mar. 11, 2022.

beyond those in the National O&NG FIP.[17] Consistent with that approach, new and modified true minor oil and natural gas sources on Indian country lands within the U&O Reservation that would use the National O&NG FIP for construction authorization may have to comply with additional requirements for certain equipment or activities not covered by the eight federal standards.[18]

In summary, this U&O FIP is intended to: (1) improve air quality on Indian country lands within the U&O Reservation; (2) promote a more consistent regulatory environment across the Basin; and (3) ensure that emissions reductions will be achieved that will ensure that new development, under both source-specific minor source permitting and the National O&NG FIP's streamlined construction authorization mechanism for new or modified true minor oil and natural gas sources, will not interfere with attainment of the NAAQS.

B. Summary of the Major Provisions of This Final Rule

The following is a summary of each key requirement in the final action. As explained earlier, the final FIP was developed to maximize air quality improvement, in a manner that promotes a more consistent regulatory environment across all areas in the Uinta Basin, such that covered sources within Indian country on the U&O Reservation will be regulated in a manner similar to how they would be regulated if located in areas in the Basin where EPA has approved the UDEQ to implement the CAA. We attempted to achieve this goal by providing as much consistency as possible in the FIP with current federal standards for the oil and natural gas industry, including NSPS 40 CFR part 60, subparts OOOO and OOOOa (NSPS OOOO and OOOOa); NESHAP 40 CFR part 63, subpart HH (NESHAP HH); and the Control Techniques Guidelines for reducing smog-forming VOC emissions from existing oil and natural gas equipment and processes in certain states and areas with smog problems (Oil and Gas CTG).[19] The provisions in the final U&O FIP are informed by EPA's evaluation of these several applicable federal authorities as well as an evaluation of current UDEQ requirements that apply in the Uinta Basin outside of the Indian country lands within the U&O Reservation (areas of the Basin where the EPA has approved the UDEQ to implement the CAA). Where the EPA identified differences in these authorities, we considered the facts specific to the U&O Reservation in conjunction with the goals of the FIP to decide what to include in the final FIP. Our analysis was somewhat complicated by a recent joint resolution under the Congressional Review Act (CRA),[20] which disapproved policy revisions made in 2020 to NSPS OOOO and OOOOa [21] and thereby reinstated standards from the 2012 NSPS OOOO and 2016 NSPS OOOOa.[22] The resolution did not, however, disapprove technical revisions made in a separate rulemaking in 2020 to NSPS OOOOa,[23] which remain in place today. These two events resulted in regulatory inconsistencies between the NSPS OOOOa methane and VOC standards.[24] Further, the Oil and Gas CTG in some respects includes recommendations that do not match exactly with the requirements in the 2016 NSPS OOOOa methane standards.[25] In addition, the EPA recently proposed a rule to regulate methane and VOC emissions from existing, new, and modified sources in the oil and natural gas industry that would revise existing standards under NSPS OOOOa, establish new VOC and methane standards for emissions sources not previously covered by NSPS OOOOa, and establish methane emissions guidelines for existing sources (Oil and Natural Gas Sector Climate Review Proposed Rule).[26] As part of that proposed rule, the EPA addressed the inconsistencies between the methane and VOC standards in NSPS OOOOa by proposing to repeal certain NSPS OOOOa amendments that were made in the 2020 Technical Rule.[27] Despite these complications, EPA has focused its analysis for this U&O FIP on the currently applicable state and federal requirements and guidance.

That said, we acknowledge that the Agency's thinking on these issues has evolved since we issued NSPS OOOOa and the CTG in 2016. Among other developments, new information and analysis have been presented in the Oil and Natural Gas Sector Climate Review Proposed Rule that will likely be relevant for reducing emissions on the U&O Reservation. When the EPA proposed this FIP, however, the Agency had not yet proposed that other rule, and the Climate Review Rule is still being developed. In the interest of moving quickly to achieve emissions reductions, the EPA finds that it is necessary and appropriate to finalize this FIP now. Our assessment of new, potentially relevant information will continue in the context of the Oil and Natural Gas Sector Climate Review Rule. If we finalize that proposed national rule in the future, its

[17] *See* 81 FR 35964, 35968.

[18] As described in detail later, this action exempts certain equipment and activities that are subject to the emissions control requirements of a subset of the eight federal standards in the National O&NG FIP from having to comply with the emissions control requirements in this action for the same equipment and activities. Other types of equipment, such as small and remote glycol dehydrators and storage vessels with potential emissions ≤ 6 tpy VOC, are not regulated by those federal standards but are regulated in this action.

[19] Available at *https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-industry/2016-control-techniques-guidelines-oil-and,* accessed Mar. 11, 2022. CTGs are not regulations and do not impose legal requirements directly on pollution sources; rather, they provide recommendations for state and local air agencies to consider as they determine what emissions limits to apply to covered sources in their jurisdictions in order to meet RACT requirements.

[20] 5 U.S.C. 801–808.

[21] 85 FR 57018 (Sept. 14, 2020) (''2020 Policy Rule''; as of June 30, 2021, no longer in effect due to CRA disapproval).

[22] Public Law 17–23 (June 30, 2021) (resolving that Congress ''disapproves the [2020 Policy Rule] . . . and such rule shall have no force or effect'').

[23] 85 FR 57398 (Sept. 15, 2020) (''2020 Technical Rule'').

[24] For requirements that currently apply, see *Congressional Review Act Resolution to Disapprove EPA's 2020 Oil and Gas Policy Rule. Questions and Answers.* U.S. Environmental Protections Agency. Office of Air Quality Planning and Standards. June 30, 2021, available at *https://www.epa.gov/system/files/documents/2021-07/qa_cra_for_2020_oil_and_gas_policy_rule.6.30.2021.pdf,* accessed Mar. 11, 2022.

[25] For example, while the CTG recommends exempting low-production well sites from monitoring fugitive VOC emissions, the current OOOOa methane standards do not have such exemption.

[26] *Proposed Rule. Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review. See* 86 FR 63110, November 15, 2021, available at *https://www.regulations.gov* (Document ID No. EPA–HQ–OAR–2021–0317–0001), accessed Mar. 14, 2022. On the same day that this action is being signed, the Administrator has also signed a supplemental notice which proposes to update and expand on the 2021 Climate Review proposal. See *Supplemental notice of proposed rulemaking. Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review.* Signed by the EPA Administrator on November 8, 2022, available at *https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-industry/epa-issues-supplemental-proposal-reduce.* Today's action discusses certain aspects of the 2021 Climate Review proposal, but does not attempt to describe the 2022 supplemental proposal, in light of the concurrent signature of the latter action.

[27] For example, the EPA is proposing to repeal the 2020 Technical Rule amendments that exempted low-production well sites from monitoring fugitive VOC emissions, and those that changed fugitive VOC emissions monitoring requirements at gathering and boosting compressor stations from quarterly to semi-annually. The proposed rule would also establish an LDAR applicability threshold for existing, new, and modified oil and natural gas well sites of 3 tpy site-wide methane fugitive emissions (and co-proposed an alternative threshold of 8 tpy site-wide methane fugitive emissions).

requirements will apply directly to covered sources. As to sources not covered by a final national rule, the EPA may find it necessary or appropriate to revisit this final action in the future and revise this FIP based on information evaluated in issuance of a final Climate Review Rule, providing public notice of the opportunity for review and comment on any such revisions as part of the required rulemaking process. Also, if the Uinta Basin Ozone Nonattainment Area's Marginal classification is reclassified (''bumped up'') to a Moderate nonattainment classification, or if air quality concerns otherwise warrant, we may conclude that further rulemaking is necessary or appropriate.

General applicability: The final rule applies to owners or operators of oil and natural gas sources that produce oil and natural gas or process natural gas, that are located on Indian country lands within the U&O Reservation, and that meet the applicability criteria specified for each set of requirements. The final rule is effective 60 days after the date of publication in the **Federal Register**. For new and modified sources that construct on or after the effective date of this final rule, compliance is required upon startup. Compliance for existing sources that commence construction before the effective date of the final rule is required no later than 12 months after the effective date of the final rule. The final rule allows owners or operators to request approval, on a case-specific basis and prior to the compliance deadline, of an extension of the compliance deadline for existing sources.

Delegation of authority of administration to the Tribe: The final rule contains provisions for the Ute Indian Tribe to request delegation to assist the EPA with administration of the federal rule and the process by which the EPA may delegate such authority.

Emissions inventory: The final rule requires that each owner and operator of affected oil and natural gas sources with the potential to emit one or more NSR-regulated pollutants at levels greater than or equal to 1 tpy must submit an inventory of actual emissions for each emissions unit to the EPA every three years that covers emissions from the previous calendar year (OMB Control No. 2008—New (2539.02)). The emissions inventory serves the purpose of the triennial collection of comprehensive Uinta Basin oil and natural gas emissions by the EPA, the Ute Indian Tribe, and UDEQ, and corresponds with the years that emissions inventory information is collected for the EPA National Emissions Inventory (NEI).[28]

Storage vessels, glycol dehydrators and pneumatic pumps: The final rule contains federally enforceable requirements for owners and operators of each existing, new, and modified oil and natural gas source that has the potential to emit 4 tons per year of VOC or more from the collection of all storage vessels, glycol dehydrators and pneumatic pumps. The rule requires that each affected oil and natural gas source collect and route all VOC emissions from each storage vessels, glycol dehydrator and pneumatic pump through a closed-vent system to an operating system designed to recover 100 percent of the emissions and recycle them for use in a process unit or incorporate them into a product, or route them to a flare or other control device designed and operated to achieve at least 95.0 percent continuous VOC emissions control efficiency.

Covers and closed-vent systems: The final rule requires owners and operators of affected existing, new, and modified oil and natural gas sources that are required to control VOC emissions from the collection of all storage vessels, glycol dehydrators and pneumatic pumps, to: use covers on any affected storage vessels that ensure flashing, working, standing, and breathing losses are efficiently captured; and to capture and route emissions from any affected storage vessel, glycol dehydrator and pneumatic pump through closed-vent systems with equipment that ensures all VOC emissions make it to the respective process or VOC emissions control device. The rule contains construction and operational requirements that are intended to provide legal and practicable enforceability to ensure that all captured emissions are routed to their intended destination with no detectable emissions.

Control devices: The final rule contains legally and practicably enforceable construction, work practice, and operational requirements for each required flare or enclosed combustor. Each flare must be designed and operated according to the requirements of 40 CFR 60.18(b). Each enclosed combustor must be designed and operated to reduce the mass content of the VOC in the natural gas routed to it by at least 95.0 percent on a continuous basis, and must be tested by the manufacturer, owner, or operator in accordance with the requirements of 40 CFR part 60 subparts OOOO or OOOOa. Flares and enclosed combustors must be operated within specific parameters to ensure the effective control of VOC emissions (including requirements to be equipped and operated with a liquid knockout system, a continuously burning pilot flame or electronically controlled automatic ignition device, and a monitoring system for continuous monitoring and recording of operational parameters; maintained in a leak-free condition; and operated with no visible smoke emissions).

Fugitive emissions: The final rule requires implementation of a semi-annual leak detection and repair (LDAR) program for the collection of fugitive emissions components at each oil and natural gas source with facility-wide potential emissions from the collection of all storage vessels, glycol dehydrators and pneumatic pumps equal to or greater than 4 tpy VOC, plus any additional well sites with production of more than 15 barrels of oil equivalent (boe) per day.[29] The final rule also contains provisions allowing for the use of alternative methods of leak detection, provided the method is approved by the EPA.

VOC emissions control requirements for all sources: The final rule contains VOC control requirements for all existing, new, and modified oil and natural gas sources, regardless of source-wide or emission unit specific

[28] Information available at *https://www.epa.gov/air-emissions-inventories/national-emissions-inventory-nei,* accessed Mar. 11, 2022.

[29] As explained earlier, this FIP has been developed to maximize air quality improvements in a manner that promotes a more consistent regulatory environment across jurisdictional boundaries. We evaluated several authorities to further these goals with respect to fugitive emissions monitoring. The Oil and Gas CTG does not recommend that well sites with production of less than 15 boe per day (''low-production'' well sites) monitor fugitive emissions. Using a different measure, the UDEQ applies LDAR requirements only at well sites where the total actual uncontrolled VOC emissions from the collection of storage vessels and glycol dehydrators is greater than or equal to 4 tpy VOC (unless the well site is subject to the LDAR requirements of NSPS OOOOa, in which case the operator would comply with NSPS OOOOa).And as explained above, the NSPS OOOOa requirements may be changed by the Oil and Natural Gas Sector Climate Review Proposed Rule, which proposes to repeal some of the amendments that were made to NSPS OOOOa as part of the 2020 Technical Rule. Among the provisions proposed for repeal are those that exempted low-production well sites from fugitive emissions monitoring and those that changed fugitive VOC monitoring requirements at gathering and boosting compressor stations from quarterly to semi-annually. Those fugitive VOC standards are still in place today, and are in contrast to the 2016 fugitive methane standards that were reinstated by the CRA disapproval of the 2020 Policy Rule. The proposed rule also would require quarterly monitoring at oil and natural gas well sites of 3 tpy site-wide methane fugitive emissions (and co-proposes semi-annual monitoring for those with site-wide methane fugitive emissions between 3 and 8 tpy, with quarterly monitoring for those with site-wide methane fugitive emissions above 8 tpy).

applicability criteria. These requirements include: (1) tank trucks transporting crude oil, condensate, intermediate hydrocarbon liquids or produced water must be loaded using bottom filling or submerged fill pipes; (2) all existing pneumatic controllers must meet the pneumatic controller standards in NSPS OOOO; and (3) all existing enclosed combustors and flares present and operating at sources on a voluntary basis must be equipped with an electronically controlled automatic ignition device.

Monitoring, recordkeeping, notification and reporting: This U&O FIP requires owners or operators to conduct source monitoring sufficient to demonstrate compliance with the FIP's VOC emission reduction and control requirements, including: (1) monthly inspections of each cover and closed-vent system to ensure proper condition and functioning and to identify defects that can result in air emissions, correcting or repairing any defects identified within 30 days of identification; and (2) monthly inspections of each VOC emissions control device to ensure proper functioning whenever an operator is on site, at least once per calendar month, and responding to any indication of malfunction (*e.g.,* pilot flame failure, visible emissions) as soon as practicably and safely possible after discovery.

C. Costs and Benefits

The EPA has projected the compliance costs, emissions reductions, and benefits that may result from the U&O FIP. The discussion of projected costs and benefits is presented in detail in the Regulatory Impacts Analysis (RIA) accompanying this final rule.[30] The RIA focuses on the elements of the final rule—the provisions related to VOC emissions control requirements—that are likely to result in quantifiable costs, emissions changes, and benefits compared to a baseline that includes operator-reported emissions from oil and natural gas sources in the Uinta Basin for calendar year 2017, specifically on the Indian country lands within the U&O Reservation. We estimated the effects of the final rule for all sources that are conservatively projected[31] to be subject to compliance activities under this action for the analysis years 2023 through 2032. The RIA also presents the present value (PV) and equivalent annualized value (EAV) of costs, benefits and net benefits of this action in 2016 dollars.

A summary of the key results of this final rule is presented in Table 1. Table 1 presents the PV and EAV, estimated using discount rates of 7 and 3 percent, of the benefits, costs and net benefits, as well as the change in emissions under the final rule. The monetized net benefits are the benefits (emissions reductions) minus the costs (annualized compliance costs). These results present an incomplete overview of the effects of the final FIP, because categories of benefits—including benefits from reducing other types of air pollutants—were not monetized and are therefore not reflected in Table 1.

TABLE 1—BENEFITS, COSTS, NET BENEFITS AND EMISSIONS REDUCTIONS OF THE FINAL RULE 2023 THROUGH 2032

[Dollar estimates in millions of 2016 dollars][a]

	Present value	Equivalent annual value	Present value	Equivalent annual value
3 Percent Discount Rate				
Benefits[b]	$1,000	$120	$1,000	$120
	3 Percent Discount Rate		7 Percent Discount Rate	
Net Compliance Costs	610	72	560	81
Compliance Costs	630	74	580	83
Product Recovery	20	2	20	2
Net Benefits	390	48	440	39
Non-Monetized Benefits[c]	Ozone health and climate benefits from reducing 23,000 tons of VOC/year and ozone health benefits from 59,000 tons of methane/year from 2023 to 2032.			
	Ozone health and $PM_{2.5}$ benefits from reducing 23,000 tons of VOC/year from 2023 to 2032.			
	HAP benefits from reducing 3,100 tons of HAP/year from 2023 to 2032 (including 570 tons of benzene, 970 tons of toluene, 130 tons of ethylbenzene, 620 tons of xylenes and 770 tons of n-hexane per year).			
	Visibility benefits.			
	Reduced vegetation effects from exposure to ozone.			

[a] Values rounded to two significant figures. Totals may not appear to add correctly due to rounding.

[30] Available in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709).

[31] As explained throughout this preamble, and in the RIA, this quantitative projection does not account for those sources that may be exempt from certain requirements of the rule because they are subject to equivalent requirements in NSPS OOOO or OOOOa, or in NESHAP HH. Therefore, it is likely that costs for those sources will be less for certain activities than for sources subject to requirements of the FIP.

[b] Monetized benefits of the final rule include climate benefits associated with reductions in methane emissions and are calculated using four different estimates of the social cost of methane (SC–CH_4) (model average at 2.5 percent, 3 percent, and 5 percent discount rates: 95th percentile at 3 percent discount rate). For the presentational purposes of this table, we show the benefits associated with the average SC–CH_4 at a 3 percent discount rate, but the Agency does not have a single central SC–CH_4 point estimate. We emphasize the importance and value of considering the benefits calculated using all four SC–CH_4 estimates; the present value (and equivalent annual value) of the additional benefit estimates (millions of 2016$) ranges from $480 to $2,700 ($62 to $310) over 2023 to 2032 for the final rule. Please see Table 6–6 of the RIA for the full range of SC–CH_4 estimates. As discussed in Section 6.5 of the RIA, a consideration of climate benefits calculated using discount rates below 3 percent, including 2 percent and lower, are also warranted when discounting intergenerational impacts. All net benefits are calculated using climate benefits discounted at 3 percent.

[c] There are important unquantified health and welfare benefits associated with reductions in other air pollutants, which are discussed in Chapter 6 of the RIA.

This final rule is expected to result in net benefits (emissions reductions) for human health and the environment in the Uinta Basin. The estimated benefits include the monetized climate effects of the projected reduction in methane emissions under the final rule resulting from the targeted reduction of VOC emissions. The PV of these climate-related benefits (emissions reductions), discounted at a 3-percent rate, is estimated to be about $1 billion, with an EAV of about $120 million (Table 1).

In addition to directly controlling VOC emissions, which are expected to lower ozone concentrations in the Uinta Basin, this action is expected to lower HAP emissions and the formation of secondary particulate matter with a diameter of 2.5 micrometers or less ($PM_{2.5}$) even though those pollutants are not directly regulated under this action. While the EPA expects that the VOC emissions reductions will improve air quality and have beneficial health and welfare effects associated with reduced exposure to ozone, $PM_{2.5}$, and HAP, we did not quantify those effects. We note that the absence of those monetized benefits from the analysis of benefits does not imply that these benefits do not exist, but also has no bearing on the legal or technical basis for the final action itself. We qualitatively discuss these unquantified benefits in Chapter 6 of the RIA. If the EPA were to quantify the ozone and $PM_{2.5}$ impacts, the Agency would estimate the number and value of avoided premature deaths and illnesses using an approach detailed in the Particulate Matter NAAQS and Ozone NAAQS RIA.[32] Such an analysis would account for the distribution of air pollution-attributable risks among populations most vulnerable and susceptible to $PM_{2.5}$ and ozone exposure. As explained in the RIA for this final rule, due to methodology and data limitations for areas experiencing elevated winter ozone, we were unable to estimate the benefits associated with ozone, $PM_{2.5}$, and HAP emission changes that would occur as a result of this rule, but the EPA continues to develop better methods for analyzing the benefits of such reductions.

The estimated capital and annualized compliance costs include the monetized costs for affected owners or operators to comply with the final rule. The net PV of these compliance costs (accounting for product recovery), discounted at a 7-percent rate, is estimated to be about $560 million, with an EAV of about $81 million (Table 1). Under a 3-percent discount rate, the PV of the compliance costs is about $610 million, with an EAV of about $72 million (Table 1).

The PV of the net benefits of this rule, discounted at a 7-percent rate, is estimated to be about $440 million, with an EAV of about $39 million (Table 1). Under a 3-percent discount rate, the PV of net benefits is about $390 million, with an EAV of about $48 million (Table 1).

II. General Information

A. Does this action apply to me?

Entities potentially affected by this rule include the Ute Indian Tribe,[33] as well as existing, new, and modified sources[34] that are in the oil and natural gas production and natural gas processing segments of the oil and natural gas industry (see Table 2.) and are on Indian country[35] lands within the U&O Reservation. All of the Ute Indian Tribe Indian country lands of which the EPA is aware are located within the exterior boundaries of the Reservation, and this U&O FIP applies to all such lands. To the extent that there are Ute Indian Tribe Dependent Indian Communities under 18 U.S.C. 1151(b) or allotted lands under 18 U.S.C. 1151(c) that are located outside the exterior boundaries of the Reservation, those lands are not covered by this U&O FIP.[36] In addition, this rule does not apply to any sources on non-Indian-country lands, including any non-Indian country lands within the exterior boundaries of the Reservation.[37]

[32] U.S. EPA. Integrated Science Assessment (ISA) for Particulate Matter (Final Report). EPA Office of Research and Development (ORD), National Center for Environmental Assessment, EPA/600/R–19/188 (Dec. 2019); available at: *https://www.epa.gov/naaqs/particulate-matter-pm-standards-integrated-science-assessments-current-review,* accessed Mar. 11, 2022, and U.S. EPA. Integrated Science Assessment for Ozone and Related Photochemical Oxidants. EPA ORD, EPA/600/R–20/012 (Apr. 2020); available at: *https://www.epa.gov/isa/integrated-science-assessment-isa-ozone-and-related-photochemical-oxidants.* Accessed Mar. 11, 2022.

[33] The Ute Indian Tribe is a federally recognized tribe organized under the Indian Reorganization Act of 1934, with a Constitution and By-Laws adopted by the Tribe on December 19, 1936 and approved by the Secretary of the Interior on January 19, 1937. *See* Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, *See* 82 FR 4915 (Jan. 17, 2017); 48 Stat. 984, 25 U.S.C.5123 (IRA); Constitution and By-Laws of the Ute Indian Tribe of the Uintah and Ouray Reservation.

[34] As specified at 40 CFR 49.4169(c).

[35] Indian country is defined at 18 U.S.C. 1151 as: (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

[36] Under the CAA, lands held in trust for the use of an Indian tribe are reservation lands within the definition at 18 U.S.C.1151(a), regardless of whether the land is formally designated as a reservation. *See* Indian Tribes: Air Quality Planning and Management, *See* 63 FR 7254, 7258 (Feb. 12, 1998) (''Tribal Authority Rule''); *Arizona Pub. Serv. Co.* v. *EPA,* 211 F.3d 1280, 1285–86 (D.C. Cir. 2000). The EPA's references in this U&O FIP to Indian country lands within the exterior boundaries of the U&O Reservation include any such Tribal trust lands that may be acquired by the Ute Indian Tribe.

In 2014, the U.S. Court of Appeals for the D.C. Circuit addressed the EPA's authority to promulgate a FIP establishing certain CAA permitting programs in Indian country. *Oklahoma Dept. of Environmental Quality* v. *EPA,* 740 F. 3d 185 (D.C. Cir. 2014). In that case, the court recognized the EPA's authority to promulgate a FIP to directly administer CAA programs on Indian reservations but invalidated the FIP at issue as applied to non-reservation areas of Indian country in the absence of a demonstration of an Indian tribe's jurisdiction over such non-reservation area. Because the final rule would apply only on Indian country lands that are within the exterior boundaries of the U&O Reservation, *i.e.,* on Reservation lands, it is unaffected by the *Oklahoma* court decision.

[37] As a result of a series of federal court decisions, there are some non-Indian country lands within the exterior boundaries of the Uintah and Ouray Indian Reservation. *See* footnote 40.

TABLE 2—SOURCE CATEGORIES AFFECTED BY THIS ACTION

Industry category	NAICS code	Examples of regulated entities/description of industry category
Oil and Gas Production/Operations	21111	Exploration for crude petroleum and natural gas; drilling, completing, and equipping wells; operation of separators, emulsion breakers, desilting equipment, and field gathering lines for crude petroleum and natural gas; and all other activities in the preparation of oil and gas up to the point of shipment from the producing property.
		Production of crude petroleum, the mining and extraction of oil from oil shale and oil sands, the production of natural gas, sulfur recovery from natural gas, and the recovery of hydrocarbon liquids from oil and gas field gases.
Crude Petroleum and Natural Gas Extraction.	211111	Exploration, development and/or the production of petroleum or natural gas from wells in which the hydrocarbons will initially flow or can be produced using normal pumping techniques or production of crude petroleum from surface shales or tar sands or from reservoirs in which the hydrocarbons are semisolids
Natural Gas Liquid Extraction	211112	Recovery of liquid hydrocarbons from oil and gas field gases; and sulfur recovery from natural gas.
Drilling Oil and Gas Wells	213111	Drilling oil and gas wells for others on a contract or fee basis, including spudding in, drilling in, redrilling, and directional drilling.
Support Activities for Oil and Gas Operations.	213112	Performing support activities on a contract or fee basis for oil and gas operations (except site preparation and related construction activities) such as exploration (except geophysical surveying and mapping); excavating slush pits and cellars, well surveying; running, cutting, and pulling casings, tubes, and rods; cementing wells, shooting wells; perforating well casings; acidizing and chemically treating wells; and cleaning out, bailing, and swabbing wells.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria found in 40 CFR 49.4169 through 49.4184. If you have any questions regarding the applicability of this action to a particular entity, contact the appropriate person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this final action will also be posted at: *https://www.epa.gov/air-quality-implementation-plans/approved-air-quality-implementation-plans-region-8* (Approved Air Quality Implementation Plans in Region 8 page).

C. Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 6, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. Under section 307(b)(2) of the Act, the requirements of this final action with respect to which review could have been obtained under section 307(b)(1) of the Act may not be judicially reviewed later in civil or criminal proceedings brought by us to enforce these requirements.

III. Background

A. Uintah and Ouray Indian Reservation

The Uintah and Ouray Indian Reservation is composed of lands that were part of the original Uintah Valley and Uncompahgre Reservations, which were established by executive order in 1861 and 1882, respectively.[38] In 1948 Congress extended the exterior boundary of the Reservation with the Hill Creek Extension.[39] The U&O Reservation's boundaries have been addressed and explained in a series of federal court decisions. Consistent with those decisions, the EPA considers all lands within the U&O Reservation's boundaries to be ''Indian country'' as defined in 18 U.S.C. 1151, subject to federal court decisions holding that specified Congressional acts removed certain lands from Indian country status.[40]

B. Tribal Authority Rule

Section 301(d) of the CAA authorizes the EPA to treat Indian tribes in the same manner as states for purposes of implementing the CAA over their entire reservations and over any other areas within their jurisdiction, and directs the EPA to promulgate regulations specifying those provisions of the CAA for which such treatment is appropriate.[41] It also authorizes the EPA, when the EPA determines that the treatment of Indian tribes as identical to states is inappropriate or administratively infeasible, to provide by regulation other means by which the EPA will directly administer the CAA.[42] Acting principally under that authority, on February 12, 1998, the EPA promulgated the Tribal Authority Rule (TAR).[43] In the TAR, we determined that it was appropriate to treat eligible tribes in the same manner as states for

[38] *See* Exec. Order of Oct. 3, 1861, reprinted in 1 Charles J. Kappler, Indian Affairs: Laws and Treaties 900 (1904); confirmed by Congress in the Act of May 5, 1864, ch. 77, 13 Stat. 63; Exec. Order of Jan. 5, 1882, reprinted in Indian Affairs: Laws and Treaties at 901; U.S. Office of Indian Affairs, Dept. of the Interior, Annual Report of the Commissioner of Indian Affairs, at 226 (1886).

[39] 62 Stat. 72 (1948).

[40] *See Ute Indian Tribe* v. *Utah,* 521 F. Supp. 1072 (D. Utah 1981); *Ute Indian Tribe* v. *Utah,* 716 F.2d 1298 (10th Cir. 1983); *Ute Indian Tribe* v. *Utah,* 773 F.2d 1087 (10th Cir. 1985) (en banc), *cert. denied,* 479 U.S. 994 (1986); *Hagen* v. *Utah,* 510 U.S. 399 (1994); *Ute Indian Tribe* v. *Utah,* 935 F. Supp. 1473 (D. Utah 1996); *Ute Indian Tribe* v. *Utah,* 114 F.3d 1513 (10th Cir. 1997), *cert. denied,* 522 U.S. 1107 (1998); *Ute Indian Tribe* v. *Utah,* 790 F.3d 1000 (10th Cir. 2015), *cert. denied,* 136 S. Ct. 1451 (2016); and *Ute Indian Tribe* v. *Myton,* 835 F.3d 1255 (10th Cir. 2016), *cert. dismissed,* 137 S. Ct. 2328 (2017); *Hackford* v. *Utah,* 845 F.3d 1325, 1327 (10th Cir.), cert. denied, 138 S. Ct. 206 (2017).

[41] 42 U.S.C. 7601(d)(1) and (2); *See* 63 FR 7254–57 (Feb. 12, 1998) (explaining that CAA section 301(d) includes a delegation of authority from Congress to eligible Indian tribes to implement CAA programs over all air resources within the exterior boundaries of their Reservations).

[42] 42 U.S.C. 7601(d)(4).

[43] ''Indian Tribes: Air Quality Planning and Management.'' *see* 63 FR 7254 (Feb. 12, 1998); 40 CFR 49.1–49.11.

all CAA statutory and regulatory purposes, except a list of specified CAA provisions and implementing regulations thereunder.[44] That list of excluded provisions includes specific plan submittal and implementation deadlines for NAAQS-related requirements, among them the CAA section 110(a)(2)(C) requirement to submit a program (including a permit program as required in parts C and D of the CAA) to regulate the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. Other provisions for which we determined that we would not treat tribes in the same manner as states include CAA section 110(a)(1) (SIP submittal) and CAA section 110(c)(1) (directing the EPA to promulgate a FIP ''within 2 years'' after we find that a state has failed to submit a required plan or has submitted an incomplete plan, or within 2 years after we disapprove all or a portion of a plan).

The TAR preamble clarified that by including CAA section 110(c)(1) on the list at 40 CFR 49.4, the ''EPA is not relieved of its general obligation under the CAA to ensure the protection of air quality throughout the nation, including throughout Indian country.'' [45] The preamble confirmed that the ''EPA will continue to be subject to the basic requirement to issue a FIP for affected tribal areas within some reasonable time.'' [46] Consistent with those statements, the TAR includes a provision requiring the EPA to ''promulgate without unreasonable delay such Federal implementation plan provisions as are necessary or appropriate to protect air quality,'' unless a complete TIP is submitted or approved.[47]

The Ute Indian Tribe has not applied for treatment in a similar manner as a state (TAS) for the purpose of administering a TIP under the CAA; nor has it submitted a TIP for review and approval. Thus, with respect to Indian country lands within the U&O Reservation, there is currently no submitted or EPA-approved TIP that would address the air quality purposes described earlier. This FIP provides such a plan and applies to all Indian country lands within the exterior boundaries of the U&O Reservation.

C. Federal Indian Country Minor NSR Rule

1. What is the Federal Indian Country Minor NSR rule?

In 2006, acting under the authority provided in CAA section 301(d) and in the TAR, we proposed the FIP regulation: ''Review of New Sources and Modifications in Indian Country'' (Indian Country NSR rule).[48] As a part of this regulation, the EPA made a finding that it was necessary or appropriate to protect air quality by developing a FIP to establish a program to regulate the modification and construction of minor stationary sources consistent with the requirements of section 110(a)(2)(c) of the CAA, where there was no EPA-approved tribal minor NSR permit program in Indian country to regulate construction of new and modified minor sources and minor modifications of major sources. We call this part of the Indian Country NSR rule the Federal Indian Country Minor NSR rule. In developing that FIP, we sought to ''establish a flexible preconstruction permitting program for minor sources in Indian country that is comparable to similar programs in neighboring states in order to create a more consistent regulatory environment for owners/operators within and outside of Indian country.'' [49] The Federal Indian Country Minor NSR rule provides a mechanism for issuing preconstruction permits for the construction of new minor sources and certain modifications of major and minor sources in areas covered by the rule. In developing the rule, the EPA conducted extensive outreach and consultation, along with a 7-month public comment period that ended on March 20, 2007. The comments provided detailed information specific to Indian country, and the final Federal Indian Country Minor NSR rule incorporated many of the suggestions we received. We promulgated a final rule on July 1, 2011, and the FIP became effective on August 30, 2011. [50]

The Federal Indian Country Minor NSR rule applies to existing, new, and modified minor stationary sources and to minor modifications at existing major stationary sources in Indian country where there is no EPA-approved program in place. [51] Tribes can elect to develop and implement their own EPA-approved program under the TAR but are not required to do so.[52] In the absence of an EPA-authorized program, the EPA implements the program. Tribes can request administrative delegation of the federal program from the EPA and may be authorized by the EPA to implement agreed-upon rules or provisions on behalf of the Agency.

Any existing, new, or modified stationary oil and natural gas source that emits or has the potential to emit (PTE) a regulated NSR pollutant in amounts equal to or greater than the minor NSR thresholds in the Federal Indian Country Minor NSR rule, but less than the amount that would qualify the source as a major source or a major modification for purposes of the PSD or nonattainment major NSR programs, must submit a registration form to the EPA containing information on, among other things, source-wide actual emissions of NSR regulated pollutants, information on the methods used to calculate the emissions, and descriptions of the various emitting activities and equipment operated at the source. Existing, new, and modified oil and natural gas sources that commenced construction before October 3, 2016, complied with the Federal Indian Country Minor NSR Permit Program by registering under the Existing Source Registration Program at 40 CFR 49.160. Beginning October 3, 2016, the owner/operator of any new true minor oil and natural gas source must comply with the National O&NG FIP or apply for and obtain a site-specific true minor NSR permit before beginning construction. Likewise, the owner/operator of any existing stationary source (minor or major) must comply with the National O&NG FIP or apply for and obtain a minor NSR permit before beginning construction of a physical or operational

[44] 40 CFR 49.3–.4. To be eligible for treatment in a similar manner as a state (TAS) under the Tribal Authority Rule, a tribe must meet four requirements: (1) be a federally recognized tribe; (2) have a governing body carrying out substantial governmental duties and functions; (3) propose to carry out functions pertaining to the management and protection of air resources of the tribe's reservation or other areas within the tribe's jurisdiction; and (4) be reasonably expected to be capable of carrying out the functions. 40 CFR 49.6. A tribe interested in administering a particular CAA program or function may apply to the appropriate regional administrator for a determination of whether it meets these TAS eligibility criteria with respect to that program or function. 40 CFR 49.7.

[45] *See* 63 FR at 7265 (Feb. 12, 1998).

[46] Id.

[47] 40 CFR 49.11(a).

[48] ''Review of New Sources and Modifications in Indian Country,'' Proposed Rule, 71 FR 48696 (Aug. 21, 2006).

[49] ''Review of New Sources and Modifications in Indian Country,'' Final Rule, 76 FR 38748, 38754 (July 1, 2011).

[50] *See* 76 FR 38748.

[51] 40 CFR 49.153. Existing sources are only subject to the registration requirements unless they undergo modification.

[52] To be eligible to develop and implement an EPA-approved program, under the Tribal Authority Rule a tribe must meet four requirements: (1) be a federally-recognized tribe; (2) have a functioning government carrying out substantial duties and powers; (3) propose to carry out functions pertaining to air resources of the reservation or other areas within the tribe's jurisdiction; and (4) be reasonably expected to be capable of carrying out the program. *See* 40 CFR 40 CFR 49.1–49.11. Tribes can also establish permit fees under a tribal permitting program pursuant to tribal law, as do most states.

change that will increase the allowable emissions of the stationary source in amounts equal to or above the specified threshold amounts, if the change does not otherwise trigger PSD or nonattainment major or minor NSR permitting requirements.[53]

2. What are the minor NSR thresholds?

The ''minor NSR thresholds'' establish cutoff levels for each regulated NSR pollutant. If a source has a PTE in amounts lower than the minor NSR thresholds,[54] then it is exempt from the Federal Indian Country Minor NSR rule for that pollutant. New or modified sources that have a PTE in amounts that are: (1) equal to or greater than the minor NSR thresholds; and (2) less than the major NSR thresholds (generally 100 or 250 tons per year (tpy)) are ''minor sources'' of emissions and subject to the Federal Indian Country Minor NSR rule requirements at 40 CFR 49.151 through 49.161. Modifications at existing major sources that have PTE equal to or greater than the minor NSR thresholds, but less than the major NSR significant emission rates (range 10–100 tpy, depending on the pollutant) are also ''minor sources'' of emissions and subject to the Federal Indian Country Minor NSR rule requirements.

The minor NSR thresholds for VOC emissions for sources in Indian country are 2 tpy in nonattainment areas and 5 tpy in attainment and unclassifiable areas. Portions of the U&O Reservation are currently designated unclassifiable for the 2008 ozone NAAQS and the minor NSR thresholds for VOC are 5 tpy in those Indian country portions of the Reservation. As discussed previously and further in Section D (Air Quality and Attainment Status), other portions of the U&O Reservation are included in the Uinta Basin Ozone Nonattainment Area, and, therefore, the minor NSR thresholds for VOC are 2 tpy in those Indian country portions of the Reservation.

D. Air Quality and Attainment Status

With respect to air quality, ozone levels in the Uinta Basin, in which the U&O Reservation is located, have reached unhealthy levels that warrant action. The 2015 8-hour ozone NAAQS is 70 parts per billion (ppb).[55] Compliance with the NAAQS is determined by comparison to a ''design value'' based on a three-year average of the fourth highest daily maximum 8-hour average ozone levels measured in a year at each monitoring site. The state of Utah, the National Park Service (NPS), and the Ute Indian Tribe operate ozone, $PM_{2.5}$, and NO_2 monitors in and around the Uinta Basin. The ambient air concentrations measured at some of these stations show that ozone levels in the Uinta Basin have repeatedly violated both the 2008 and 2015 ozone NAAQS. Based on 2012–2020 regulatory air quality monitoring data, ozone design values exceed the 2015 ozone NAAQS at five monitoring sites in the Uinta Basin. The highest valid ozone design value in the Uinta Basin for the three-year period from 2017 to 2019 was from the Ouray monitor at 89 ppb.[56] The current (three-year period from 2018 to 2020) highest valid ozone design value in the Uinta Basin is also from the Ouray monitor at 76 ppb. Additionally, higher single 8-hour average ozone concentrations were observed at some monitoring sites, before the sites were designated as regulatory monitors.[57] For example, 8-hour average ozone concentrations reached values as high as 141 ppb at the Ouray monitor in March 2013. This concentration corresponds to an Air Quality Index value of 211, which is characterized as ''Very Unhealthy.'' [58]

As discussed previously, the EPA designated areas in the Uinta Basin below 6,250 feet, including portions of the Indian country lands within the U&O Reservation, as marginal nonattainment for the 2015 ozone standard. The fourth maximum ambient air concentration measurement for 2020, the attainment year, is 66 ppb, which is lower than the 2015 ozone NAAQS. Accordingly, Utah and the Ute Indian Tribe requested to extend the August 3, 2021, attainment date for the Uinta Basin Ozone Nonattainment Area by 1-year. On April 13, 2022, the EPA proposed to grant a 1-year attainment date extension for the Uintah Basin Ozone Nonattainment area.[59] The proposal explains that preliminary 2021 ozone monitoring data indicate that the area may not attain the 2015 ozone NAAQS by the proposed extended attainment date of August 3, 2022, but that the area could meet the air quality criteria for a second 1-year extension. As of February 9, 2022, the Uinta Basin area's preliminary 2019–2021 design value was 78 ppb and the preliminary 2021 fourth highest daily maximum 8-hour concentration value was 72 ppb. To qualify for a second 1-year extension, an area's fourth highest daily maximum 8-hour value, averaged over both the original attainment year and the first extension year, must be 70 ppb or less (40 CFR 51.1307(a)(2)). If the preliminary 2021 ozone data are certified, then the fourth highest daily maximum 8-hour value, averaged over 2020 and 2021, would be 69 ppb. [60] The EPA is issuing this notice of final rulemaking (NFRM) because we have concluded that it is necessary and appropriate to take action to protect air quality on the Indian country lands within the U&O Reservation to address these elevated ozone levels.

Ambient ozone is a secondary pollutant formed when the two primary ozone precursors, VOC and NO_X, react in the presence of sunlight. Air quality data and studies in the Uinta Basin show that winter ozone levels above the NAAQS are due to a combination of abundant local ground-level emissions of VOC and NO_X with the unique meteorological and topographic features in the Uinta Basin: strong and persistent temperature inversions forming over snow-covered ground, and elevated terrain completely surrounding a low basin. The stable atmosphere allows the emissions to accumulate and react with sunlight but prevents the emissions from escaping the temperature inversion layer and dispersing. Therefore, ozone continues to form while the unique meteorological conditions persist.[61] The

[53] A source may, however, be subject to certain monitoring, recordkeeping, and reporting (MRR) requirements under the major NSR program, if the change has a reasonable possibility of resulting in a major modification. A source may be subject to both the Federal Indian Country Minor NSR rule and the MRR requirements of the major NSR program.

[54] *See* 40 CFR 49.153, Table 1.

[55] *See* 80 FR 65292 (Oct. 26, 2015).

[56] Valid design values are the regulatory statistic to determine compliance with a NAAQS. They are calculated in accordance with the appropriate NAAQS-specific appendix to 40 CFR part 50. For the 2008 Ozone NAAQS (75 ppb), the appropriate appendix is 40 CFR part 50, appendix P, and for the 2015 Ozone NAAQS (70 ppb) it is 40 CFR part 50, appendix U. Regulatory ozone data is available at *https://www.epa.gov/air-trends/ozone-trends,* accessed Mar. 14, 2022.

[57] A ''regulatory'' monitor is a monitor that meets the EPA's air quality monitoring requirements, including requirements for siting, equipment selection, data sampling protocols, and quality assurance, under the EPA's monitoring regulations at 40 CFR part 58.

[58] The Air Quality Index (AQI) is a normalized system to allow the public to compare health risks of different air pollutants on a common scale. The AQI is divided into six levels of health concern: Good, Moderate, Unhealthy for Sensitive Groups, Unhealthy, Very Unhealthy, and Hazardous.

[59] *See* 87 FR 21842 (Apr. 13, 2022), available at *https://www.govinfo.gov/content/pkg/FR-2022-04-13/pdf/2022-07513.pdf,* accessed Apr. 29, 2022. The criteria to qualify for requesting a 1-year extension of the attainment date are: (1) the state has complied with all requirements and commitments pertaining to the area in the applicable implementation plan; and (2) for a first attainment date extension, an area's fourth highest daily maximum 8-hour value for the attainment year must not exceed the level of the standard.

[60] Preliminary air quality data is available at *https://www.epa.gov/outdoor-air-quality-data/download-daily-data,* accessed Apr. 29, 2022.

[61] The RIA for this final rule contains a more detailed discussion of winter ozone and can be

Continued

state of Utah conducted field studies in the Uinta Basin from 2011 to 2014 to understand the emissions sources and the unique photochemical processes that contribute to winter ozone concentrations within the Uinta Basin. Reports for winter ozone field studies for each year are available on the UDEQ website.[62] These studies found that the oil and natural gas production industry is the most significant anthropogenic contributor of VOC and NO_X emissions in the Basin and primarily responsible for winter ozone formation. The studies also concluded that winter ozone production in the Basin is sensitive to changes in VOC emissions, and that there is greater uncertainty about its sensitivity to changes in NO_X emissions.

The EPA has determined that this final action will result in large reductions of VOC emissions, and that this result is expected to reduce ambient ozone and reduce the severity of exceedances of the 2008 and 2015 ozone NAAQS.[63] As discussed in more detail later, the final action includes a requirement for owners/operators to submit emissions inventories on a triennial basis. This information will enable the successful partnership to continue among the EPA, the UDEQ, the Tribe and industry in maintaining an accurate oil and natural gas emissions inventory for the Uinta Basin to be used, in part, as a tool for managing the Basin's air quality.

We had previously informed the public of our intent to undertake action specific to the Indian country lands within the U&O Reservation; as noted earlier, in the preamble to the National O&NG FIP, we stated: ''For the Uintah and Ouray Reservation, we have sufficient concerns about the air quality impacts from existing sources that we plan to propose a separate U&O FIP.'' [64] After further review, and considering the emissions information presented below, the EPA concludes that those concerns are still warranted, and that this action is necessary and appropriate to address poor air quality on the Indian country lands within the U&O Reservation.

E. Emissions Information

In 2020, the EPA, in cooperation with the UDEQ and the Ute Indian Tribe, developed the UBEI2017-Update, an emission inventory of oil and natural gas activity in the Uinta Basin that was populated with data provided by oil and natural gas operators in the Basin.[65] We are also aware of several other available sources of information on air emissions from oil and natural gas activity in the Uinta Basin, including: (1) the 2017 National Emissions Inventory (2017 NEI); [66] (2) a study by the Western Regional Air Partnership (WRAP); [67] (3) existing true minor source registration data and new and modified true minor source registration submitted to the EPA under the Federal Indian Country Minor NSR Program; [68] and (4) EPA Greenhouse Gas Reporting Program, subpart W Petroleum and Natural Gas Systems.[69] They are discussed in more detail in the Regulatory Impact Analysis (RIA) for this final rule.[70]

The 2017 NEI provides a general picture of the relative contributions of ozone-forming emissions from the oil and natural gas sector as compared to other industry sectors, estimating that emissions from the production segment of the oil and natural gas sector were the largest anthropogenic [71] contributor of both VOC and NO_X emissions in the Uinta Basin, at 97 percent of the VOC emissions and 64 percent of the NO_X emissions. The WRAP study provides a general picture of the relative emissions contribution in the Basin from various oil and natural gas equipment and activities on Indian country lands. The existing minor source registration data provide a general picture of the large percentage of unpermitted and likely uncontrolled minor emissions sources on Indian country lands within the U&O Reservation. EPA Greenhouse Gas Reporting Program, subpart W, provides annual reports by operators of activity levels and methane emissions from oil and natural gas operations in the Uinta Basin. The UBEI2017-Update is a comprehensive source of oil and natural gas source VOC emissions data for the Uinta Basin that provided information for the cost and benefit analysis supporting this rulemaking.

The UBEI2017-Update indicates that the majority of existing oil and natural gas sources in the region are on Indian country lands within the U&O Reservation. As explained in more detail below, most of these are minor sources and are uncontrolled. The 2017 NEI indicates that, compared to other industry sector sources, existing oil and natural gas sources are cumulatively the largest anthropogenic contributor of VOC (97 percent) and NO_X (64 percent) to measured exceedances of the ozone NAAQS in the Uinta Basin. Existing oil and natural gas sources on the portions of the Basin regulated by the UDEQ are subject to emission reduction requirements, while existing sources on Indian country lands within the U&O Reservation were previously either subject to less stringent regulation or no regulation at all.

viewed in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709).

[62] ''Uinta Basin Ozone Studies (UBOS),'' *https://deq.utah.gov/air-quality/uinta-basin-ozone-studies-ubos,* accessed Mar. 11, 2022.

[63] As discussed in the RIA for this final rule (available at *https://www.regulations.gov,* Docket ID #EPA–R08–OAR–2015–0709), adoption of the VOC control measures required under this FIP may result in very small NO_X emission increases. We estimate that these additional NO_X emissions would be at most 27 tpy total. Considering the large amount of VOC emission reductions that the same controls will achieve, the small potential NO_X emissions increase will not counteract the effect of the VOC reductions or adversely affect the area's ability to attain the NAAQS.

[64] *See* 81 FR at 35963 (June 3, 2016).

[65] The inventory and supporting analysis can be viewed in the docket for this rule, in the Microsoft Excel spreadsheet titled, ''UO FIP cost and emissions analysis.xlsx'' (Docket ID No. EPA–R08–OAR–2015–0709). This U&O FIP requires owners and operators to submit triennial emissions inventories, similar to a requirement finalized by the UDEQ in March of 2018. These triennial updates will provide information on how emissions are changing in the Basin from the 2017 baseline. *See* Section V (Summary of FIP Provisions).

[66] *See* 2017 National Emissions Inventory (2017 NEI), available at *https://www.epa.gov/air-emissions-inventories/2017-national-emissions-inventory-nei-data,* accessed Sept. 28, 2020. Queried: Duchesne & Uintah Counties VOC–NOx all sectors; Ute Indian Tribe of the Uintah & Ouray Indian Reservation VOC–NOx all sectors. EPA's analysis of the 2017 NEI data is available in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709), Microsoft Excel spreadsheet titled ''2017 NEI Uinta Basin_Duchesne Counties_U&O_VOC-NOx.xlsx. The UDEQ submitted the UBEI2017 to the 2017 NEI, but later updated it for storage vessel, pneumatic controller, pneumatic pump, fugitive, gas well liquid unloading, blowdowns and pigging and oilfield wastewater emissions that are planned to be submitted to the NEI at a future date (see footnote 75). Analysis of the 2017 NEI for the purposes of this final U&O FIP was prepared using the version publicly available before incorporating these updates from the UDEQ.

[67] Western Regional Air Partnership (WRAP), O&G Emissions Workgroup: Phase III Inventory, Uinta Basin Reports, 2012 Mid-Term Projection Technical Memo, ''Development of 2012 Oil and Gas Emissions Projections for the Uinta Basin'', March 25, 2009, available at *http://www.wrapair2.org/PhaseIII.aspx,* accessed Mar. 14, 2022. Some of the 2014 Uinta Basin Emissions Inventory was generated from prorating the 2012 WRAP estimates (which prorated and adjusted their 2006 work) to 2014 activity levels.

[68] Data from existing true minor source registration reports and data from new and modified true minor oil and natural gas source registrations under the National O&NG FIP, submitted under 40 CFR 49.160 of the Federal Indian Country Minor NSR Program by operators of sources on the Indian country lands within the U&O Reservation.

[69] EPA Greenhouse Gas Reporting Program (GHGRP) Petroleum and Natural Gas Systems, available at *https://www.epa.gov/ghgreporting/ghgrp-petroleum-and-natural-gas-systems,* accessed Mar. 14, 2022.

[70] The RIA can be viewed in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709).

[71] The calculation excludes biogenic sources of VOC and NO_X, because elevated ozone occurs during the winter when vegetation and soils are presumed to not be a contributor because they are dormant or covered by snow.

Specifically, the UBEI2017-Update shows that 76 percent of all existing oil and natural gas facilities (including well sites processing fluids from multiple individual wells, as well as compressor stations and other processing facilities) in the Uinta Basin are located on Indian country lands within the U&O Reservation. According to the inventory, almost 73,000 tons of VOC and over 6,700 tons of NO_X emissions were emitted in 2017 from existing oil and natural gas sources on Indian country lands within the U&O Reservation. That is approximately 89 percent of the total oil and natural gas-related VOC emissions in the Uinta Basin and approximately 63 percent of the total oil and natural gas-related NO_X emissions in the Uinta Basin. These data confirm that the bulk of the ozone-related emissions in the Uinta Basin are released from sources on the Indian country lands within the U&O Reservation.

Many of the oil and natural gas sources on Indian country lands within the U&O Reservation are uncontrolled. According to the UEBI2017-Update, on the Indian country lands within the U&O Reservation, 85 percent of the total number of existing storage vessels, 98 percent of the total number of existing glycol dehydrators and 99 percent of existing pneumatic pumps are uncontrolled emitters of VOC. By contrast, in areas of the Basin where the EPA has approved the UDEQ to implement the CAA, 68 percent of the total number of existing storage vessels and 52 percent of the total number of existing glycol dehydrators are uncontrolled (uncontrolled pneumatic pump numbers are relatively equivalent to Indian country at 99 percent). The UDEQ has adopted revisions to existing oil and natural gas source requirements and existing minor source permitting requirements, and has adopted new requirements, including a Permit by Rule that replaces the requirement for minor oil and natural gas sources to obtain a site-specific permit.[72] Now that the revised and new requirements are effective, we expect the percentage of uncontrolled existing storage vessels and glycol dehydrators in areas of the Basin where the EPA has approved the UDEQ to implement the CAA will decrease from what was reported in the UBEI2017-Update. The UDEQ's rule revisions and new rules are discussed in more detail in the preamble to the proposed FIP.[73] In addition, the UBEI2017-Update shows that emissions from oil and natural gas wastewater disposal facilities on the Indian country lands within the U&O Reservation comprise approximately 35 percent of the total VOC emissions from oil and natural gas activity on the Indian country lands within the U&O Reservation. As explained in the preamble to the proposed FIP,[74] these facilities may not be controlled under the CAA, because they do not meet the applicability criteria of preconstruction permitting programs or federal emissions standards regulating them.

Based on this collection of emissions information (and other information about meteorological conditions and local geography), the EPA has concluded that winter ozone levels in the Uinta Basin are most significantly influenced by VOC emissions from the presence of numerous minor, unpermitted and largely uncontrolled oil and natural gas production operations on Indian country lands within the U&O Reservation.

F. What is a FIP?

Under section 302(y) of the CAA, the term ''Federal implementation plan'' means ''a plan (or portion thereof) promulgated by the Administrator to fill all or a portion of a gap or otherwise correct all or a portion of an inadequacy in a state implementation plan, and which includes enforceable emission limitations or other control measures, means or techniques (including economic incentives, such as marketable permits or auctions of emissions allowances), and provides for attainment of the relevant national ambient air quality standard.'' As discussed previously in section III.B., CAA sections 301(a) and 301(d)(4) and 40 CFR 49.11(a) authorize the EPA to promulgate such FIPs as are necessary or appropriate to protect air quality if a Tribe does not submit or receive EPA approval of a TIP.

The Federal Indian Country Minor NSR rule is an example of a FIP, as discussed in section III.C. Another example of the EPA's use of its FIP authority to protect air quality in areas of Indian country with no EPA-approved program, while at the same time seeking to provide a consistent regulatory environment where appropriate, is the ''FIP for Oil and Natural Gas Well Production Facilities; Fort Berthold Indian Reservation (FBIR; Mandan, Hidatsa, and Arikara Nation), North Dakota.'' [75] In that rule, we took an important initial step to control VOC emissions from existing, new, and modified oil and natural gas operations on the FBIR. We drafted requirements that were consistent to the greatest extent practicable with the most relevant aspects of neighboring state and local rules concerning the air pollutant emitting activities on the FBIR. We did not intend at the time, nor did we expect, the regulation to impose significantly different regulatory burdens upon industry or the residents of the FBIR than those imposed by the rules of state and local air agencies in the surrounding areas.

This U&O FIP specific to Indian country lands within the U&O Reservation will reduce VOC emissions related to the formation of ozone. Exceedances of both the 2008 and the 2015 ozone NAAQS have occurred at air quality monitors on and around the Reservation, and portions of the Uinta Basin, including portions of the U&O Reservation, were designated by the EPA in 2018 as nonattainment for the 2015 ozone NAAQS. There are no currently approved TIPs that apply to existing oil and natural gas sources on Indian country lands within the U&O Reservation. Finally, the majority of the sources covered by this U&O FIP have not previously been subject to federally required emissions controls, as discussed further in Section IV.A of the preamble to the proposed FIP.[76] For all of these reasons, we have concluded that is both necessary and appropriate to protect air quality on the Indian country lands within the U&O Reservation by promulgating this FIP.

G. Oil and Natural Gas Industry in the Uinta Basin

The oil and natural gas industry in the Uinta Basin includes the extraction and production of oil and natural gas, as well as the processing, transmission, and distribution of natural gas. Specifically, for oil, the industry in the Uinta Basin includes all operations from the well to transfer to an oil transmission pipeline or other means of transportation to a petroleum refinery. The petroleum refinery is not considered part of the oil and natural gas industry. Thus, with respect to

[72] Utah State Bulletin, Official Notices of Utah State Government, Filed Jan. 3, 2018, 12:00 a.m. through Jan. 16, 2018, 11:59 p.m., 11:59 p.m., Number 2018–3, February 01, 2018, Nancy L. Lancaster, Managing Editor, pages 46–68, available in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709.

[73] *See* 85 FR 3504–3506, Section IV. D. Developing the Proposed Control Requirements, 3. Evaluation of State Oil and Natural Gas and Permitting-Related Requirements.

[74] *See* 85 FR 3503–3504, Section IV. D. Developing the Proposed Control Requirements, 2. Evaluation of Federal Oil and Natural Gas and Permitting-Related Requirements.

[75] *See* 78 FR 17836 (Mar. 22, 2013).

[76] *See* 85 FR 3501, Section IV. Developing the Proposed Control Rule, A. Rationale for the Proposed Rule.

crude oil, the oil and natural gas industry ends where crude oil enters an oil transmission pipeline or other means of transportation to a petroleum refinery. For natural gas, the industry includes all operations from the well to the final end user.

The oil and natural gas industry in the Uinta Basin can generally be separated into four segments: (1) oil and natural gas production; (2) natural gas processing; (3) natural gas transmission and storage; and (4) natural gas distribution. This U&O FIP for oil and natural gas sources on Indian country lands within the U&O Reservation focuses on existing, new, and modified sources in the first and second segments, oil and natural gas production and natural gas processing, because the existing minor sources in those segments cumulatively contribute the largest portion of VOC emissions from the oil and natural gas industry on the Indian country portion of the U&O Reservation. There are more than 6,870 individual oil and natural gas sources (operated by 33 distinct entities) on the Indian country lands within the U&O Reservation, the majority of which are well sites in the oil and natural gas production segment.[77] As discussed earlier, the 2017 NEI shows that emissions from the production segment of the oil and natural gas sector were estimated to be the largest anthropogenic contributor of both VOC and NO_X emissions in the Uinta Basin. Comparatively, the categories that include oil and natural gas storage and transfer and bulk gasoline terminals (segments 3 and 4), are reported in the 2017 NEI as contributing less than one percent each of the total VOC and NO_X emissions in the Uinta Basin.[78] Of the 13,363 individual active oil and natural gas wells in the Uinta Basin, over 10,108 wells, or about 76 percent, are on Indian country lands within the U&O Reservation.

The oil and natural gas production segment in the Uinta Basin includes wells and all related processes used in the extraction, production, recovery, lifting, stabilization, and separation or treatment of oil and/or natural gas (including condensate). Production components in the Uinta Basin may include wells and related casing head, tubing head, and ''Christmas tree'' piping, as well as pumps, compressors, heater treaters, separators, storage vessels, pneumatic devices, pneumatic pumps, and natural gas dehydrators. Production operations in the Uinta Basin also include the well drilling, completion, and workover processes, and include all the portable non-self-propelled apparatuses associated with those operations. Production sites in the Uinta Basin include not only the sites where the wells themselves are located, but also centralized gas and liquid gathering sources where oil, condensate, produced water, and natural gas from several wells may be separated, stored, and treated. Production components in the Uinta Basin also include the smaller diameter, low-to-medium-pressure gathering pipelines and related components that collect and transport the oil, natural gas, and other materials and wastes from the wells or well pads.

The natural gas production segment in the Uinta Basin ends where the natural gas enters a natural gas processing plant. Where there is no processing plant, the natural gas production segment ends at the point where the natural gas enters the transmission segment for long-line transport. The crude oil production segment in the Uinta Basin ends at the storage and load-out terminal, which is the point of custody transfer to an oil pipeline or for transport of the crude oil to a petroleum refinery via trucks or railcars.

Each producing crude oil and natural gas field has its own unique properties. The composition of the crude oil and the natural gas as well as the reservoir characteristics are likely to be different across all reservoirs. The RIA for this rule provides a more detailed overview of the products and components of the oil and natural gas industry that are relevant to the activities in the Uinta Basin.[79]

IV. Summary of the Final U&O FIP

A. Overview

The emissions control and other requirements of this final FIP that will reduce VOC emissions from existing, new, and modified oil and natural gas sources on Indian country lands within the U&O Reservation are summarized in this section. Significant changes since proposal are discussed in more detail in section V of this preamble. The FIP includes emissions control efficiency requirements and operational and work practice standards, each with associated monitoring, testing, recordkeeping, and reporting requirements, as appropriate. Oil and natural gas sources must comply with these requirements, except as specifically exempted under the FIP for certain equipment or activities otherwise subject to existing federal standards 40 CFR part 60, subparts OOOO or OOOOa, or 40 CFR part 63, subpart HH. Also discussed in this section are the features of the FIP that are necessary to facilitate its implementation.

This final rule applies to owners or operators of oil and natural gas sources that either produce oil and natural gas or process natural gas, that are located on Indian country lands within the U&O Reservation, and that meet the applicability criteria specified for each set of requirements. It includes the following provisions in 40 CFR part 49:

49.4169 Introduction.
49.4170 Delegation of authority of administration to the Tribe.
49.4171 General provisions.
49.4172 Emissions Inventory.
49.4173 VOC emissions control requirements for storage vessels.
49.4174 VOC emissions control requirements for dehydrators.
49.4175 VOC emissions control requirements for pneumatic pumps.
49.4176 VOC emissions control requirements for covers and closed-vent systems.
49.4177 VOC emissions control devices.
49.4178 VOC emissions control requirements for fugitive emissions.
49.4179 VOC emissions control requirements for tank truck loading.
49.4180 VOC emissions control requirements for pneumatic controllers.
49.4181 Other combustion devices.
49.4182 Monitoring and testing requirements.
49.4183 Recordkeeping requirements.
49.4184 Notification and reporting requirements.

We do not expect a substantial number of the existing oil and natural gas sources subject to this U&O FIP to also be subject to NSPS OOOO or OOOOa, or NESHAP HH, for the specific equipment and activities regulated. However, to minimize regulatory burdens where such a potential overlap does exist, this rule finalizes the proposed provisions that equipment or activities that are affected

[77] *2017 Uinta Basin Oil and Natural Gas Emissions Inventory Update* (UBEI2017-Update). The inventory and supporting analysis can be viewed in the docket for this rulemaking. *See* ''UO FIP cost and emissions analysis.xlsx'' (Docket ID No. EPA–R08–OAR–2015–0709).

[78] Based on the NEI Source Type to Sector Crosswalk in the 2017 NEI, available at *https://www.epa.gov/air-emissions-inventories/2017-national-emissions-inventory-nei-data,* accessed Mar. 14, 2022. Queried: Duchesne & Uintah Counties VOC–NOx all sectors; Ute Indian Tribe of the Uintah & Ouray Indian Reservation VOC–NOx all sectors. The EPA's analysis of the 2017 NEI data is available in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709), Microsoft Excel spreadsheet titled ''2017 NEI Uinta Basin_Dechesne Counties_U&O_VOC-NOx.xlsx.''

[79] The RIA for the final rule can be viewed in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709).

by any requirement in this U&O FIP and that are also subject to the substantive emissions control requirements in those EPA standards will not be subject to this FIP's substantive emissions control requirements for such equipment and activities. As an example, given the exemptions being finalized, if an existing, new, or modified oil and natural gas source on Indian country lands within the U&O Reservation has storage vessels, pneumatic pumps, and fugitive emissions components that are subject to the emissions control requirements of NSPS OOOOa, then that source would be subject to the substantive emissions control requirements for glycol dehydrators in the FIP, but not to the FIP's substantive emissions control requirements for storage vessels, pneumatic pumps, or fugitive emissions components.

B. Introduction

In 40 CFR 49.4169 (Introduction) we are finalizing our proposal to specify: (1) the purpose of this U&O FIP; (2) the general applicability of this U&O FIP; and (3) the compliance schedule for this U&O FIP.

We are finalizing text that: (1) establishes provisions for delegation of authority to allow the Ute Indian Tribe to assist the EPA with administration of this U&O FIP in 40 CFR 49.4170; (2) establishes general provisions and definitions applicable to oil and natural gas sources in 40 CFR 49.4171; (3) establishes a requirement for oil and natural gas sources to submit emissions inventories on a triennial basis, beginning with an inventory for calendar year 2023 in 40 CFR 49.4172; and (4) establishes, in 40 CFR 49.4173 through 49.4184, enforceable requirements to control and reduce VOC emissions from oil and natural gas well production and storage operations, natural gas processing, and gathering and boosting operations at oil and natural gas sources on Indian country lands within the U&O Reservation.

This final rule provides that compliance with the rule for oil and natural gas sources that commence construction on or after the effective date of the final rule is required upon startup. Compliance for sources existing as of the effective date of the final rule is required no later than 12 months after the effective date of the final rule. We concluded that it is important to allow owners/operators of existing sources a reasonable period of time to conduct any necessary retrofit-related activities, such as (1) acquiring control devices, (2) conducting manufacturer-recommended testing to be compliant with the requirements, and (3) securing the necessary trained personnel to install compliant devices and associated piping and instrumentation. We expect that there will be about 2,165 existing oil and natural gas sources that may require equipment retrofit and installation of VOC emission control equipment (combustion controls) under the final rule. Additionally, we estimate that more than 700 high-bleed pneumatic controllers will need to be retrofitted to low-or no-bleed. We have determined that providing 12 months from the effective date of the final rule to install retrofits at existing sources is a reasonable amount of time for efficient, cost-effective project planning that accounts for a level, sustained equipment and labor resource demand that can be supported by the vendor community, while ensuring that meaningful emissions reductions will be achieved that provide near-term benefits to improve air quality and make progress toward future attainment.[80]

We are also finalizing a provision to allow an owner or operator on a case-specific basis to submit a written request to the EPA for an extension of the compliance deadline for existing sources, which must include appropriate justification of the reason for the request. Any approval or denial of an extension request, including the length of any approved extension, will be based on the merits of each case. Factors that the EPA will consider in deciding whether to grant an extension request under the provision include the economic and technical feasibility of meeting this U&O FIP's control requirements in the prescribed timeframe. The final FIP specifies the criteria that the EPA will apply in responding to requests for extension of the compliance period, including that the request must be submitted before the compliance deadline, must identify the specific provisions for which an extension is being requested and include an alternative compliance deadline, and must provide a rationale for the request with supporting information explaining how the operator will effectively meet all applicable requirements after the requested alternative compliance deadline.

[80] 12 months is a tighter compliance timeframe than is required for existing sources in NESHAP regulations, which is typically 3 years. The purpose of this proposed U&O FIP, though, is to address air quality in a timely fashion. Moreover, the final rule allows sources to request extensions of the compliance date beyond the 12 months if needed.

C. Provisions for Delegation of Administration to the Ute Indian Tribe

We are establishing in 40 CFR 49.4170 (Delegation of authority of administration to the Tribe) the steps by which the Ute Indian Tribe may request delegation to assist us with the administration of this rule, and the process by which the Regional Administrator of EPA Region 8 may delegate to the Ute Indian Tribe the authority to assist with such administration. As described in the regulatory provisions, any such delegation will be accomplished through a delegation of authority agreement between the Regional Administrator and the Tribe. This section provides for administrative delegation of this federal rule and does not affect the TAS eligibility criteria under CAA section 301(d) and 40 CFR 49.6 should the Ute Indian Tribe decide to seek such treatment for the purpose of administering its own EPA-approved TIP under tribal law. Administrative delegation is a separate process from TAS under the TAR. Under the TAR, Indian tribes seek the EPA's approval of their eligibility to implement CAA programs under their own laws. The Ute Indian Tribe will not need to seek TAS under the TAR for purposes of requesting to assist us with administration of this rule through a delegation of authority agreement. If delegation does occur, the rule would continue to operate under federal authority on Indian country lands within the U&O Reservation, and the Ute Indian Tribe would assist us with administration of the rule to the extent specified in the agreement.

D. General Provisions

We are finalizing in 40 CFR 49.4171 (General provisions): (1) a requirement to design, operate, and maintain all equipment used for hydrocarbon liquid and gas collection, storage, processing, and handling operations covered under this rule, in a manner consistent with good air pollution control practices and that minimizes leakage of VOC emissions to the atmosphere. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the EPA, including monitoring results, review of operating and maintenance procedures, and inspection of the source; and (2) definitions.

E. Emissions Inventory Requirements

We are finalizing in 40 CFR 49.4172 a requirement for owners/operators of oil and natural gas sources with the

potential to emit one or more NSR-regulated pollutants at levels greater than one tpy to submit an annual emissions inventory, once every three years beginning with calendar year 2024, that covers emissions from the previous calendar year (2023 for the first required inventory). Each triennial inventory must be submitted no later than April 15th of the year after each inventory year. The triennial emissions inventory requirement will suffice for the purpose of continued updates to the comprehensive Uinta Basin oil and natural gas emissions inventory by the UDEQ, the Ute Indian Tribe, and the EPA. Owners/operators must submit actual emissions for each emissions unit at each oil and natural gas source covered by the requirement in a standard format specified by the Regional Office and available on our website. The format will be consistent with the format used by the UDEQ to collect information from sources in the Uinta Basin outside of Indian country lands within the U&O Reservation.

F. VOC Emissions Control Requirements

The discussion in this section details the final VOC emissions control requirements of this FIP and how they compare to existing state and federal requirements for the equipment and activities listed in Table 3. The most notable difference between the final VOC emissions control requirements of this FIP and the Utah Oil and Gas Rules [81] and Utah Permit Requirements [82] is that the Utah permit by rule's 4 tpy total VOC emissions threshold for requiring controls does not include pneumatic pump emissions. We have determined that emissions from pneumatic pumps are a large source of VOC emissions on the Indian country lands within the U&O Reservation, but a negligible source of VOC emissions in the areas in the Basin where the EPA has approved the UDEQ to implement the CAA. This difference in the share of pneumatic pumps emissions in the inventory is because the majority of natural gas production operations, which use gas-driven pneumatic pumps, occurs on the Reservation, while lands where air quality is managed by the UDEQ feature mostly oil production. This difference is explained in more detail later in this section.

TABLE 3—U&O FIP VOC EMISSIONS CONTROL REQUIREMENTS FOR EXISTING, NEW, AND MODIFIED OIL AND NATURAL GAS SOURCES VERSUS UDEQ AND OTHER FEDERAL [83] CONTROL REQUIREMENTS

U&O FIP VOC Emissions Controls			Utah oil and gas rules and Utah permit requirements	NSPS OOOO	NSPS OOOOa	NESHAP HH
Final FIP requirements (section in 40 CFR part 49)	Applicability threshold	Control efficiency (percent)				
Storage vessel VOC emission control requirements (§ 49.4173).	Source-wide potential for VOC emissions from the collection of all storage vessels, dehydrators and pneumatic pumps ≥4 tpy.	Reduce VOC by 95.0 percent or route to a process. See also VOC emission control devices later in this table (§ 49.4177).	Issued Utah Permit Requirements (BACT for site-specific & general approval orders)—Reduce VOC by 98 percent or route to a process where source-wide uncontrolled actual VOC emissions from the collection of all storage vessels, dehydrators and pneumatic pumps ≥4 tpy. Utah Oil and Gas Rules—Reduce VOC by 95 percent or route to a process if total uncontrolled actual emissions from the collection of dehydrators and storage vessels ≥4 tpy VOC (does not include pneumatic pump emissions), or if source with storage vessels only has through put ≥8,000 bbl crude oil or 2,000 bbl condensate, on rolling 12-month basis—unless ≤4 tpy source-wide uncontrolled actual emissions of VOC from the collection of all storage vessels.	Reduce VOC by 95.0 percent or route to a process for individual storage vessels with potential for ≥6 tpy per storage vessel constructed, reconstructed or modified after August 23, 2011, and on or before September 18, 2015 (alternatively, no control required if uncontrolled actual VOC emissions maintained <4 tpy).	Reduce VOC by 95.0 percent or route to a process for individual storage vessels with potential for ≥6 tpy per storage vessel constructed, reconstructed or modified after September 18, 2015 (alternatively, no control required if uncontrolled actual VOC emissions maintained <4tpy).	Reduce HAP by 95.0 percent or route to a process for individual storage vessels with potential for flash emissions and actual annual average hydrocarbon liquid throughput ≥79,500 liters/day.

[81] Utah Administrative Code Chapter R307–500 Series (Oil and Gas), available in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709). These rules, referred to collectively as the ''Utah permit by rule,'' are state-only rules and the UDEQ has not submitted them to the EPA for approval in the Utah SIP.

[82] Utah Administrative Code Chapter R307–401 (Permits: New and Modified Sources), available in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709); See 40 CFR part 52, subpart TT.

[83] The National O&NG FIP incorporates the requirements of the eight standards, as they apply to a source. To make emissions control requirements across the Basin consistent, this U&O FIP goes beyond the eight federal standards to regulate certain equipment and activities that are not regulated by established EPA standards (or are regulated differently) but are regulated in UDEQ standards. In addition, the EPA issued subsequent rules that revised certain provisions of NSPS OOOO and OOOOa (The 2020 Policy Rule and 2020 Technical Rule; see discussion above in Section I.B.). The 2021 CRA resolution disapproved the policy amendments of NSPS OOOO and OOOOa. PL 17–23 (June 30, 2021). The requirements summarized in this table reflect the standards that are in effect today—the methane standards in the 2016 NSPS OOOOa and the 2016 VOC standards in NSPS OOOO and OOOOa, as they were amended in 2020. The EPA's Oil and Natural Gas Sector Climate Review Proposed Rule would revise existing VOC standards under NSPS OOOO and OOOOa, establish new methane and VOC standards for new and modified emissions sources not previously covered by NSPS OOOO and OOOOa, and establish emissions guidelines for existing sources. This table does not reflect those proposed standards and guidelines. We may revisit this final action in the future based on any final action we take under CAA section 111 with the Oil and Natural Gas Sector Climate Review rulemaking.

TABLE 3—U&O FIP VOC EMISSIONS CONTROL REQUIREMENTS FOR EXISTING, NEW, AND MODIFIED OIL AND NATURAL GAS SOURCES VERSUS UDEQ AND OTHER FEDERAL [83] CONTROL REQUIREMENTS—Continued

U&O FIP VOC Emissions Controls			Utah oil and gas rules and Utah permit requirements	NSPS OOOO	NSPS OOOOa	NESHAP HH
Final FIP requirements (section in 40 CFR part 49)	Applicability threshold	Control efficiency (percent)				
Dehydrators VOC emission control requirements (§ 49.4174).		See VOC emission control devices later in this table (§ 49.4177).	Issued Utah Permit Requirements (BACT for site-specific & general approval orders)—Reduce VOC by 98 percent or route to a process where source-wide uncontrolled actual VOC emissions from the collection of all storage vessels, dehydrators and pneumatic pumps ≥4 tpy. Utah Oil and Gas Rules—Reduce VOC by 95 percent if total uncontrolled actual emissions from the collection of dehydrators and storage vessels ≥4 tpy VOC (does not include pneumatic pump emissions).	Not covered	Not covered	For units at major HAP sources and non-urban area sources with actual annual average flowrate of natural gas ≥85,000 standard m3/day, reduce HAP by 95.0 percent or route to a process. Units with actual annual average flowrate of natural gas <85,000 standard m3/day not covered—this is the majority of units on Indian country lands within the U&O Reservation.
Pneumatic pumps VOC emission control requirements (§ 49.4175).		See VOC emission control devices later in this table (§ 49.4177).	Issued Utah Permit Requirements (BACT for site-specific & general approval orders)—Reduce VOC by 98 percent or route to a process where source-wide uncontrolled actual VOC emissions from the collection of storage vessels, dehydrators and pneumatic pumps ≥4 tpy. Utah Oil and Gas Rules does not require control of pneumatic pump emissions.	Not covered	Reduce VOC by 95.0 percent (if control device is already on site) or route to a process (if technically feasible) for natural gas-driven diaphragm pneumatic pumps at well sites constructed, reconstructed or modified after September 18, 2015. Zero natural gas emissions for natural gas processing plants constructed after September 18, 2015.	Not covered.
Covers and closed-vent system VOC emission control requirements (§ 49.4176).	Source-wide potential for VOC emissions from the collection of all storage vessels, dehydrators and pneumatic pumps ≥4 tpy.	100 percent of VOC emissions routed to process or control device.	100 percent of storage vessel, dehydrator and pneumatic pump emissions routed to control device or process in issued Utah Permit Requirements and Rules (BACT for site-specific & general approval orders). Utah Oil and Gas Rules—100 percent storage vessel and dehydrator emissions routed to control device or process (Utah Oil and Gas Rules do not include routing pneumatic pump emissions).	100 percent of storage vessel VOC emissions routed to control device or process.	100 percent of storage vessel emissions routed to control device or process.	100 percent of HAP emissions, if required to control glycol dehydrators and/or storage vessels.
VOC emission control devices (§ 49.4177).	Source-wide potential for VOC emissions from the collection of all storage vessels, dehydrators and pneumatic pumps ≥4 tpy.	95.0 percent continuously.	98.0 percent continuous VOC control efficiency for Issued Utah Permit Requirements (BACT for site-specific & general approval orders). 95 percent continuous control efficiency for Utah Oil and Gas Rules.	95.0 percent continuous VOC control efficiency.	95.0 percent continuous VOC control efficiency.	If required to control glycol dehydrator or storage vessel HAP emissions, must reduce HAP by 95.0 percent, or maintain <20 parts per million volume (ppmv) or 1 tpy benzene.

TABLE 3—U&O FIP VOC EMISSIONS CONTROL REQUIREMENTS FOR EXISTING, NEW, AND MODIFIED OIL AND NATURAL GAS SOURCES VERSUS UDEQ AND OTHER FEDERAL [83] CONTROL REQUIREMENTS—Continued

U&O FIP VOC Emissions Controls			Utah oil and gas rules and Utah permit requirements	NSPS OOOO	NSPS OOOOa	NESHAP HH
Final FIP requirements (section in 40 CFR part 49)	Applicability threshold	Control efficiency (percent)				
Fugitive emissions VOC emission control requirements (§ 49.4178).	Source-wide potential for VOC emissions from the collection of all storage vessels, dehydrators and pneumatic pumps ≥4 tpy. Or Well site production >15 boe per day (rolling consecutive 12-month average).	NA–Semi-annual surveys	Utah Oil and Gas Rules—semi-annual surveys at all registered well sites required to control storage vessel and/or dehydrator VOC emissions. Issued Utah Permit Requirements (sources exempt from Utah Oil and Gas Rules) require LDAR, ranging from annual to quarterly for all approved (*i.e.,* permitted) oil and natural gas sources, including compressor stations.	For natural gas processing plants constructed, reconstructed, or modified after August 23, 2011, and on or before September 18, 2015—LDAR requirements as referenced in NSPS VVa, with periodic EPA Method 21 surveys on specific equipment types.	For well sites and compressor stations constructed, reconstructed or modified after September 18, 2015—Fugitive emissions surveys using OGI conducted semiannually (well sites) and quarterly (compressor stations). For natural gas processing plants constructed, reconstructed or modified after September 18, 2015—LDAR requirements as referenced in NSPS VVa, with periodic EPA Method 21 surveys on specific equipment types.	Ensure closed-vent system operates with no detectable emissions if required to control glycol dehydrator or storage vessel HAP emissions.
Tank truck loading VOC emission control requirements (§ 49.4179).	None—applies to all existing sources.	NA—Bottom filling or submerged fill pipe.	Utah Oil and Gas Rules—more stringent, as capture and control of VOC emissions (95 percent efficiency) required at registered sources required to control storage vessel and glycol dehydrator emissions.	Not covered	Not covered	Not covered.
Pneumatic controllers VOC emission control requirements (§ 49.4180).		NA—meet the standards of NSPS OOOO or OOOOa.	Utah Oil and Gas Rules—Meet standards of NSPS OOOO.	For continuous bleed natural gas driven pneumatic controllers constructed, reconstructed or modified after October 15, 2013 and on or before September 18, 2015, zero-bleed for processing plants and low-bleed (<6 scfh) elsewhere.	For continuous bleed natural gas driven pneumatic controllers constructed, reconstructed or modified after September 18, 2015, zero-bleed for processing plants and low-bleed (<6 scfh) elsewhere.	Not covered.
Other combustion devices (§ 49.4181).		NA—must be equipped with automatic ignition device.	Utah Oil and Gas Rules—must be equipped with automatic ignition device.	Not covered	Not covered	Not covered.

1. Storage Vessels, Glycol Dehydrators, and Pneumatic Pumps

For existing, new, and modified sources, we are finalizing in 40 CFR 49.4173 (Storage vessel VOC emission control requirements), 40 CFR 49.4174 (Dehydrators VOC emission control requirements), and 40 CFR 49.4175 (Pneumatic pumps VOC emission control requirements) the requirement that owners and operators of affected storage vessels, glycol dehydrators, and natural gas-driven pneumatic pumps either: (1) reduce VOC emissions from flashing, working, standing, and breathing losses from the collection of all crude oil, condensate, intermediate hydrocarbon and produced water storage vessels, glycol dehydrator process vents (glycol dehydrator regenerator or still vent and the vent from the dehydrator flash tank, if present), and pneumatic pumps, by at least 95.0 percent on a continuous basis; or (2) maintain the source-wide uncontrolled actual VOC emissions from the collection of all storage vessels, glycol dehydrators, and pneumatic pumps at a rate of less than 4 tpy. We are finalizing the requirement that applicability for the VOC emissions control requirements be determined specifically according to the following criteria. For oil and natural gas sources that began operation before the effective date of the final rule, we are requiring that applicability be determined using potential for VOC emissions. Potential for VOC emissions must be calculated using a generally accepted model or calculation methodology based on the maximum average daily throughput, as determined for existing sources using the highest 30-day period of production in the 12 consecutive months before the compliance deadline of the rule for each affected source. The determination may take into account requirements under legally and practicably enforceable limits in an applicable operating permit or other applicable federal requirement, such as those in NSPS OOOO or OOOOa, or NESHAP HH. For oil and natural gas sources that begin operation or modification after the effective date of the final rule, we are requiring that applicability for glycol dehydrators and pneumatic pumps be determined using potential to emit VOC, and that emissions from the collection of all storage vessels be controlled upon startup for a minimum of 12 consecutive months. This requirement for new and modified storage vessels is being finalized because of the uncertainty of well production levels before operation begins. After a minimum of 12 consecutive months of operation, controls may be removed if source-wide uncontrolled actual VOC emissions from the collection of all storage vessels, glycol dehydrators, and pneumatic pumps are demonstrated to be less than 4 tpy.

We are requiring that owners or operators demonstrate that the source-wide uncontrolled actual VOC emissions from the collection of all

crude oil, condensate, intermediate hydrocarbon liquids and produced water storage vessels, glycol dehydrator process vents, and pneumatic pumps have been maintained below 4 tpy, using records of monthly determinations of uncontrolled actual VOC emission rates for the 12 consecutive months immediately preceding the demonstration. The uncontrolled actual VOC emissions rate must be calculated using a generally accepted model or calculation methodology.

The final rule requires that the owner or operator re-evaluate the source-wide uncontrolled actual VOC emissions on a monthly basis. If the results of the monthly determination show that the uncontrolled actual VOC emission rate is greater than or equal to 4 tpy, the owner or operator will have 30 days to switch to the first option specified and control VOC emissions by at least 95 percent continuously. We are finalizing an exemption to the VOC emissions control requirements for each emergency storage vessel that meets the following requirements: (1) the storage vessel is not used as an active storage vessel; (2) the owner or operator empties the storage vessel no later than 15 days after receiving fluids; (3) the storage vessel is equipped with a liquid level gauge or equivalent device; and (4) records of the use of each vessel are kept indicating the date the vessel received fluids or was discovered to have received fluids, the date the vessel was emptied and the volume of fluids emptied in barrels.

The final VOC emissions control applicability provisions and other requirements are the same as or comparable on balance with the requirements in the Utah Permit Requirements and/or Utah Oil and Gas Rules. The methods for determining applicability of the control requirements are the same as those in site-specific minor source BACT analyses in the Utah Permit Requirements. In site-specific approval orders that have been issued, the UDEQ requires VOC emissions controls for source-wide emissions from the collection of all storage vessels, glycol dehydrators, and pneumatic pumps at oil and natural gas sources [84] when the source-wide potential for VOC emissions from that equipment is greater than or equal to 4 tpy. We have also determined that controlling emissions above the 4 tpy VOC level is cost-effective and will achieve meaningful emissions reductions on Indian country lands within the U&O Reservation.[85] The methods for determining applicability of the control requirements are comparable on balance with the UDEQ's recently adopted Utah Oil and Gas Rules, except that those rules do not consider emissions from or control of pneumatic pumps.[86] The reason for this difference is discussed later when we describe this FIP's requirements for pneumatic pumps. The Utah Oil and Gas Rules require all new and modified storage vessels (*i.e.,* those that begin operation on or after January 1, 2018) to control emissions upon startup of operation for a minimum of one year. The requirement in this FIP to control emissions from the collection of all new and modified storage vessels for at least 12 consecutive months, the exemption for emergency storage vessels, and the provision allowing removal of controls from the collection of all storage vessels, glycol dehydrators, and pneumatic pumps are also the same as the requirements in the Utah Oil and Gas Rules, with the exception of pneumatic pump emissions and control mentioned earlier, which will be discussed in more detail later.

We are finalizing the option that the owner or operator capture and route all subject emissions through a closed-vent system to an enclosed combustor or flare that is designed and operated to reduce the mass content of VOC in the emissions vented to it by at least 95.0 percent. Requirements for closed-vent systems are established under conditions specified in 40 CFR 49.4176 (VOC emission control requirements for covers and closed-vent systems), and requirements for operation and monitoring of control devices are established under conditions specified in 40 CFR 49.4177 (VOC Emission Control Devices) and 40 CFR 49.4182 (Monitoring Requirements), all of which are discussed in detail below in the summaries of Covers, Closed-Vent Systems, and VOC Emission Control Devices and Monitoring Requirements.

We are finalizing the alternative option that the owner or operator design operations to recover 100 percent of the emissions and recycle them for use in a process unit or incorporate them into a product. These control options are the same as the Utah Permit Requirements and the Utah Oil and Gas Rules.

As described earlier, regulating pneumatic pumps in this U&O FIP is not comparable to the UDEQ's Utah Oil and Gas Rules, because those rules do not include requirements for pneumatic pumps.[87] But the approach in this U&O FIP to controlling pneumatic pumps by routing emissions to the same control device that controls emissions from the collection of all storage vessels and glycol dehydrators is the same as the UDEQ's approach to controlling pneumatic pumps in site-specific approval orders issued under Utah Permit Requirements. We are confident that this approach will help achieve ozone air quality improvements through this U&O FIP, as the UBEI2017-Update shows that VOC emissions from pneumatic pumps constitute 16 percent of the total oil and natural gas-related VOC emissions on Indian country lands within the U&O Reservation.[88]

We do not expect that a substantial number of existing oil and natural gas sources that would meet the applicability criteria of this U&O FIP will also be subject to NSPS OOOO or OOOOa, or NESHAP HH. However, to address any potential regulatory overlap, we are providing that any affected storage vessels, glycol dehydrators, or pneumatic pumps that

[84] The docket for this rulemaking contains several examples of UDEQ site-specific minor source NSR permits (approval orders) for Crude Oil and Natural Gas Well Sites and/or Tank Batteries (DAQE–AN151010001–15, DAQE–AN149250001–14, and DAQE–AN143640003–15). UDEQ site-specific approval order requirements are based on BACT analyses for oil and natural gas sources concluding that combustion of VOC emissions from crude oil and condensate storage tanks, glycol dehydrators, and pneumatic pumps is economically and technically feasible when the source-wide potential for VOC emissions from those emissions sources is equal to or greater than 4 tpy. The analyses rely in part on the EPA's analysis in the April 12, 2013 NSPS OOOO reconsideration, and the finding that emissions from those three emissions sources at a single source can feasibly be routed to the same combustor. Though the 4 tpy threshold is not specifically stated in the approval orders, if a source applying for a site-specific approval order has source-wide storage tank, glycol dehydrator, and pneumatic pump VOC emissions equal to or greater than 4 tpy, the order contains requirements to control those emissions.

[85] The RIA in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709) contains more detailed information on our analyses.

[86] In response to an EPA comment on UDEQ's proposal questioning why issued approval orders and the GAO cover pneumatic pumps, but the new Utah Oil and Gas Rules do not, the UDEQ stated that the 2014 Uinta Basin Emissions Inventory indicated that pneumatic pump emissions constitute an insignificant portion of the total VOC emissions at Utah-regulated sources in the Basin. The comments and UDEQ's responses are available in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709).

[87] We note that the Utah Oil and Gas Rules do not contain requirements for pneumatic pumps. We are finalizing requirements for pneumatic pumps requirements, as we have identified emissions from existing pneumatic pumps as being a significant source of VOC emissions on the Indian country lands within the U&O Reservation.

[88] By contrast, the UBEI2017-Update shows that there are a very low number of pneumatic pumps installed and operating on lands in areas of the Basin where the EPA has approved the UDEQ to implement the CAA; the UDEQ has stated that this fact is the reason the Utah Oil and Gas Rules do not have control requirements for pneumatic pumps (see the response to comments on the UDEQ's proposed rules in the docket for this rulemaking).

are subject to the emissions control requirements in those EPA standards, are not subject to the requirements in this U&O FIP for such equipment and activities, including monitoring, recordkeeping, and reporting requirements associated with such equipment and activities.

2. Covers, Closed-Vent Systems

For affected existing, new, and modified sources that are required to control emissions from the collection of all storage vessels, glycol dehydrators and pneumatic pumps per 40 CFR 49.4173 through 49.4175, we are finalizing in 40 CFR 49.4176 (VOC emission control requirements for covers and closed-vent systems) to require, as applicable, the use of covers on all storage vessels, and the use of closed-vent systems with equipment that captures and routes VOC emissions to the respective vapor recovery or VOC emission control devices. Because closed-vent systems are common to control requirements for storage vessels, glycol dehydrators and pneumatic pumps, we are finalizing these requirements in a separate section to avoid redundancy. Section 49.4176 also specifies construction and operational requirements for the covers and closed-vent systems. The construction and operational requirements for the covers and closed-vent systems are intended to provide legal and practical enforceability to ensure that all captured VOC emissions are routed to the respective vapor recovery or VOC emission control devices. In addition, for affected existing, new, and modified sources that are required to control emissions from the collection of all storage vessels, glycol dehydrators and pneumatic pumps, in 40 CFR 49.4177 (VOC emission control devices) we are finalizing specific legally and practicably enforceable construction and operational requirements for enclosed combustors and flares.

We are finalizing in 40 CFR 49.4176 (VOC emission control requirements for covers and closed-vent systems) the requirement that each owner or operator equip the openings on each affected storage vessel with a cover that ensures that flashing, working, standing and breathing losses are efficiently routed through a closed-vent system to a vapor recovery system, an enclosed combustor, or a flare. We are finalizing the requirement that each cover and all openings on the cover (*e.g.,* access hatches, sampling ports, and gauge wells) form a continuous barrier over the entire surface area of the crude oil, condensate, intermediate hydrocarbon liquids or produced water in the storage vessel. Each cover opening must be secured in a closed, sealed position (*i.e.,* covered by a gasketed lid or cap) whenever material is in the storage vessel on which the cover is installed, except when it is necessary to use an opening to: (1) add material to, or remove material from the unit (this includes openings necessary to equalize or balance the internal pressure of the unit following changes in the level of the material in the unit); (2) inspect or sample the material in the unit; or (3) inspect, maintain, repair, or replace equipment inside the unit.

We are requiring that all vent lines, connections, fittings, valves, relief valves, and any other appurtenance employed to contain and collect emissions and transport them to the vapor recovery or VOC control equipment be maintained and operated properly at all times, and that they be designed to operate with no detectable emissions. If a closed-vent system contains one or more bypass devices that could be used to divert all or a portion of the emissions from entering the vapor recovery or VOC control devices, we are requiring that the owner or operator meet one of the following options for each bypass device: (1) at the inlet to the bypass device, properly install, calibrate, maintain, and operate a flow indicator capable of taking periodic readings and sounding an alarm when the bypass device is open such that the emissions are being, or could be, diverted away from the control device and into the atmosphere; or (2) secure the bypass device valve in the non-diverting position using a car-seal or a lock-and-key type configuration.

The cover and closed-vent system requirements are comparable on balance with UDEQ requirements for storage vessels in both the issued site-specific approval orders and the Utah Oil and Gas Rules. The site-specific approval orders require storage vessel thief hatches to be closed and latched except during storage vessel unloading or other maintenance activities. They also require that thief hatches be inspected once every three months to ensure that thief hatches are closed and latched, and that any associated gaskets are in good working condition. Similarly, the Utah Oil and Gas Rules for storage vessels require thief hatches to be kept closed and latched except during unloading or maintenance. The U&O FIP requirements for covers and closed-vent systems were developed by consulting the cover and closed-vent system requirements of EPA standards, such as OOOO and OOOOa and NESHAP HH. For ease of implementation, these requirements provide more detail than the UDEQ requirements in both the issued site-specific approval orders and the Utah Oil and Gas Rules but are comparable on balance with the UDEQ requirements for storage vessels and closed-vent systems.

3. VOC Emission Control Devices

For existing, new, and modified sources that are required to control VOC emissions from the collection of all storage vessels, glycol dehydrators and pneumatic pumps, we are finalizing requirements in 40 CFR 49.4177 (VOC emission control devices) that each owner or operator follow the manufacturer's written operating instructions, procedures and maintenance schedules to ensure the use of good air pollution control practices for minimizing emissions from each enclosed combustor and flare. Each flare must be designed and operated according to the requirements of 40 CFR 60.18(b). Each enclosed combustor must be designed and operated to reduce the mass content of the VOC in the natural gas routed to it by at least 95.0 percent continuously. The control efficiency required for each VOC emissions control device is the same as the Utah Oil and Gas Rules.

We recognize that the site-specific approval orders issued to existing sources under the Utah Permit Requirements require control devices to meet 98 percent VOC control efficiency. But we have concluded that the differences between this U&O FIP, the Utah Oil and Gas Rules, and the Utah Permit Requirements are minimal, and all were designed to achieve a consistent result. The UDEQ requires permittees of minor oil and natural gas sources to show compliance with 98.0 percent VOC control device control efficiency by routing all exhaust gas/vapors (from the storage vessels, glycol dehydrators or pneumatic pumps) to the operating combustor, operating the device according to the manufacturer's written instructions when gases/vapors are routed to it, operating the device with no visible emissions, and by performing tests to visually determine smoke emissions according to EPA Method 22 at 40 CFR part 60, appendix A. The Utah Oil and Gas Rules require at least 95.0 percent VOC control efficiency and do not specify methods to ensure no visible emissions but refer to NSPS OOOOa for demonstrating compliance with the control efficiency requirements. We note that combustion devices can be designed to meet 98.0 percent control efficiencies, and can control emissions by 98.0 percent or

more, on average, in practice when properly operated.[89] Combustion devices designed to meet 98.0 percent control efficiency may not, however, be able to meet this efficiency level continuously in practice, due to factors such as the variability of field conditions and downtime.

During development of NSPS OOOO and OOOOa, 95.0 percent control efficiency was determined to be the best system of emission reduction (BSER) able to be continuously achieved by affected facilities (*e.g.,* storage vessels, centrifugal compressors) nationwide. The EPA is aware that enclosed combustors and flares may be capable of achieving instantaneous control efficiencies greater than 95.0 percent,[90] but in determining BSER the EPA must be confident that the control efficiency can be achieved continuously by affected facilities nationwide to which it applies. We are confident that combustors and flares can meet at least 95.0 percent VOC control efficiency on a continuous basis when they are designed, monitored and operated in a way that ensures effective performance on a continuous basis. While the EPA is aware that combustion devices commonly used to control VOC-containing gas streams are capable of demonstrating greater than 98.0 percent continuous VOC control efficiency in a controlled performance testing environment, under ideal conditions, based on widespread and readily available manufacturer test data,[91] we are not confident that the devices can achieve 98.0 percent continuous VOC control efficiency in the field without stronger flare performance requirements than are currently in effect today.[92]

We are requiring that all flares installed per this rule be designed and operated in accordance with applicable requirements in 40 CFR 60.18(b).[93] We are requiring that all enclosed combustors installed per this rule be models: (1) that have been tested by the manufacturer in accordance with specific requirements in NSPS OOOO and OOOOa; or (2) for which the owner or operator has conducted performance testing according to the requirements in NSPS OOOO and OOOOa. The Utah Oil and Gas Rules require that compliance for VOC control devices be demonstrated by meeting the performance test methods and procedures in NSPS OOOO. The Utah Oil and Gas Rules do not distinguish between flares and enclosed combustors. We determined, though, that it was important to have specific requirements for the different types of control devices that may be present at oil and natural gas sources on Indian country lands within the U&O Reservation, because EPA standards including NSPS OOOO and OOOOa and NESHAP HH make such distinctions for legal and practical enforceability. Therefore, although for ease of implementation this FIP's requirements for VOC control devices to demonstrate compliance with the control efficiency requirements are more detailed than the state's, they are comparable on balance with the Utah Oil and Gas Rules that reference such requirements in NSPS OOOO, as well as with NSPS OOOO and OOOOa and NESHAP HH.

We determined that certain work practice and operational requirements are also necessary for the practical enforceability of the VOC emission reduction requirements for flares or enclosed combustors. We are requiring that flares and enclosed combustors be operated within specific parameters to ensure the effective control of VOC emissions.[94] Specifically, we are requiring that each owner or operator ensure that each enclosed combustor or flare is: (1) operated at all times that emissions are routed to it; (2) equipped and operated with a liquid knockout system to collect any condensable vapors (to prevent liquids from going through the control device); (3) equipped and operated with a flashback flame arrestor; (4) equipped and operated with a continuous burning pilot flame, or an electronically controlled automatic ignition device; (5) equipped with a monitoring system for continuous recording of the parameters that indicate proper operation of each continuous burning pilot flame or electronically controlled automatic ignition device, such as a chart recorder, data logger or similar device, or connected to a Supervisory Control and Data Acquisition (SCADA) system, to monitor and document proper operation of the enclosed combustor or flare; (6) maintained in a leak-free condition; and (7) operated with no visible smoke emissions. These work practice and operational requirements are comparable to requirements of the Utah Oil and Gas Rules with respect to operation of the control devices with no visible emissions.

To ensure legal and practical enforceability, other work practice and operational requirements in this U&O FIP are different or more prescriptive than the Utah Oil and Gas Rules in several areas. For example, the Utah Oil and Gas Rules require all VOC emissions control devices simply to be equipped and operated with an operational automatic ignition device. This U&O FIP, on the other hand, requires each enclosed combustor or flare to be equipped and operated with either a continuous burning pilot flame or an electronically controlled automatic ignition device. Further, under this FIP all enclosed combustors and flares must be equipped with a monitoring system for continuous measurement and recording of the parameters that indicate proper operation of each continuous burning pilot flame or electronically controlled automatic ignition device, such as a chart recorder, data logger or similar device, or connected to a SCADA system to monitor and document proper operation of the device. The work practice and operational requirements for VOC control devices in this U&O FIP were developed by considering the UDEQ requirements for VOC control devices, in combination with consulting the work practice and operational requirements for control devices in EPA standards, including NSPS OOOO and OOOOa and NESHAP HH. Regarding

[89] The EPA has reviewed performance tests submitted for 19 different makes/models of combustor control devices and confirmed they meet the performance requirements in NSPS subpart OOOO and NESHAP subparts HH and HHH. All reported control efficiencies were above 99.9 percent at tested conditions. EPA notes that the control efficiency achieved in the field is likely to be lower than the control efficiency achieved at a bench test site under controlled conditions, but these units should be able to continuously meet a 95.0 percent control efficiency level when they are designed, monitored and operated in a way that ensures effective performance on a continuous basis. See Combustion Device Performance Testing Summary Table in the docket for this rule.

[90] See "Oil and Natural Gas Sector New Source Performance Standards and National Emissions Standards for Hazardous Air Pollutants reviews, Parts 60 and 63, Response to Public Comments on Proposed Rule, 76 FR 52738 (Aug. 23, 2011), available at *https://www.regulations.gov* (Docket ID EPA–HQ–OAR–2010–0505 (Section 2.5.4, pages 127–128; Section 3.4.1, pages 294–295; and Section 3.5.1, pages 302–303)).

[91] See Combustion Device Performance Testing Summary Table in the docket for this rule.

[92] The Oil and Natural Gas Sector Climate Review Proposed Rule is soliciting comment and information that would help us better understand the cost, feasibility, and emission reduction benefits associated with establishing a 98 percent control efficiency requirement for flares in the Crude Oil and Natural Gas source category, including information on the level of performance being achieved in practice by flares in the field, what conditions or factors contribute to malfunctions or poor performance at these flares, and what measures the EPA could or should require in order to ensure that flares perform at a 98 percent level of control. *See* 86 FR 63110 (Nov. 15, 2021).

[93] 40 CFR 60.18(b) for flares requires compliance with 40 CFR 60.18(c) through (f).

[94] The necessity of such a requirement was discussed in detail in the preamble and Technical Support Documents to the proposed and final NSPS OOOO. These documents can be found in the docket for the NSPS OOOO rulemaking (Docket ID EPA–HQ–OAR–2010–0505), available at *https://www.regulations.gov.*

the requirement to equip enclosed combustors and flares with either a continuous burning pilot flame or an electronically controlled automatic ignition device, provided there is a monitoring system to indicate proper operation of the device, the EPA has maintained the position as recently as 2016 that without a continuous ignition source, there may be periods of uncontrolled emissions, and continuous ignition sources are designed to combust the flammable portion of the gas stream, even if the gas stream has a low BTU content.[95] Therefore, we have maintained that automatic ignition devices alone may not be reliable in the field to ensure that there is an ignition source at all times gas is flowing to a control device, and EPA standards, such as NSPS OOOO and OOOOa, have commonly required that enclosed combustors be equipped with continuous burning pilot flames and continuous parameter monitoring systems to ensure the presence of a flame at all times a gas stream is routed to the control device. Additionally, since the final FIP requires compliance with 40 CFR 60.18(c)(2)[96] of the General Provisions for 40 CFR part 60 when using a flare, a continuous pilot flame is required, and we have determined that an equivalent requirement should be applicable to enclosed combustion control devices used for controlling emissions from storage vessels and other equipment at affected oil and natural gas sources.

We recognize that the UDEQ requires automatic ignition devices on all combustion devices. In the interest of establishing regulations on Indian country lands within the U&O Reservation that are comparable on balance with the UDEQ requirements, we are finalizing a hybrid approach that allows owners and operators required to control VOC emissions from the collection of all storage vessels, glycol dehydrators, and pneumatic pumps the option to use devices that comply with EPA standards (continuous burning pilot), or to use electronically controlled automatic ignition devices if the control device is also equipped with a system that can indicate to the owner and operator that the automatic ignition device is not operating properly while gas is being routed to the control device. We expect that these requirements for control devices will achieve a result comparable to the requirements for VOC control devices in the Utah Oil and Gas Rules and will ensure that the control device is operated properly to achieve the required control efficiency while providing consistency with EPA policy regarding flares and combustors.

Section 49.4177 allows owners or operators of oil and natural gas sources, on receiving written approval, to use control devices other than an enclosed combustor or flare, provided they continuously achieve at least 95.0 percent VOC control efficiency. We expect that this provision will allow owners and operators to take advantage of technological advances in VOC emission control in the oil and natural gas industry, and that it will provide us with valuable information on new control technologies.

4. Fugitive Emissions Control

For existing, new, and modified sources, we are finalizing LDAR requirements in 40 CFR 49.4178 (Fugitive emissions VOC emission control requirements) that each owner or operator of an oil and natural gas source conduct periodic inspections of the source to detect leaks from fugitive emissions components and repair them if either of the following is true: (1) the collection of fugitive emissions components is located at an oil and natural gas source that is required to control VOC emissions according to 40 CFR 49.4173 through 49.4177 of this FIP (*i.e.,* the source-wide potential for VOC emissions from the collection of all storage vessels, glycol dehydrators, and pneumatic pumps is equal to or greater than 4 tpy, as determined according to 40 CFR 49.4173(a)(1)); or (2) the collection of fugitive emissions components is located at a well site, as defined in 40 CFR 60.5430a, that at any time has total production greater than 15 boe per day based on a rolling 12-month average.[97] Owners and operators of the collection of fugitive emissions components for which neither of the aforementioned conditions are true have the option to either (1) implement a program of periodic fugitive emissions inspections and repair, or (2) demonstrate that the total daily oil and natural gas production of the collection of all wells producing to the well site is at or below 1 boe per day, based on a 12-month rolling average, calculated according to specific procedures specified in 40 CFR 49.4178(e). Owners and operators of the collection of fugitive emissions components at an oil and natural gas source that is subject to the fugitive emissions monitoring requirements of NSPS OOOOa are exempt from this FIP's fugitive emissions monitoring requirements for those components.

We are finalizing a definition of ''fugitive emissions component'' in 40 CFR 49.4171, consistent with the approach in NSPS OOOOa, that includes valves, connectors, open-ended lines, pressure relief devices, flanges, covers and closed-vent systems not subject to 40 CFR 49.4173 through 49.4175, thief hatches or other openings on controlled storage vessels not subject to 40 CFR 49.4173, compressors, instruments and meters.[98] Each owner or operator is required to develop and implement a Reservation-wide fugitive emissions monitoring plan for all of its affected oil and natural gas sources on Indian country lands within the U&O Reservation that must include the following elements, at a minimum:

(1) Conduct an initial monitoring of fugitive emissions components at each affected source within 12 months of the effective date of the rule.

(2) Conduct subsequent monitoring once every 6 months after the initial monitoring for fugitive emissions components at oil and natural gas sources.

(3) Describe the fugitive emissions detection monitoring method to be used (limited to onsite optical gas imaging instruments, with a leak defined as any visible emissions using an optical gas imaging instrument, EPA Reference Method 21, with an instrument reading of 500 parts per million volume (ppmv) VOC defined as a leak, or another method approved by the EPA other than optical gas imaging or EPA Reference Method 21).

(4) Identification of manufacturer and model number of any leak detection equipment to be used.

[95] The EPA's Response to Public Comments on the EPA's Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources. 40 CFR part 60, subpart OOOOa. May 2016. Chapter 11—Compliance. Comment Excerpt Number: 17. Pages 188–191 (Docket ID EPA–HQ–OAR–2010–0505–7632), available at *https://www.regulations.gov,* accessed Mar. 14, 2022.

[96] Per 40 CFR 60.18(b).

[97] As explained earlier, the Oil and Natural Gas Sector Climate Review Proposed Rule proposes a different approach for LDAR applicability based on the level of facility wide methane fugitive emissions. We are finalizing these requirements in the interest of taking action now to reduce VOC emissions on the Indian country lands within the U&O Reservation and recognizing the advantages of maximizing emissions reductions while providing a measure of consistency with the UDEQ and federal requirements that are in effect today. We may revisit this rulemaking in the future based on any final action we take under CAA section 111 with the Oil and Natural Gas Sector Climate Review rulemaking.

[98] Devices that vent as part of normal operations, such as natural gas-driven pneumatic controllers or natural gas-driven pumps, are not fugitive emissions components, insofar as the natural gas discharged from the device's vent is not considered a fugitive emission. Emissions originating from other than the vent, such as the thief hatch on a controlled storage vessel, would be considered fugitive emissions.

(5) Procedures and timeframes for identifying and repairing components from which leaks are detected, including a requirement to repair any identified leaks from components that are safe to repair and that do not require source shutdown within 30 days of discovering a leak, and identification of timeframes (which must be no later than the next required monitoring event after discovering the leak) to repair leaks that are designated as difficult-to-monitor or unsafe-to-monitor, or which require source shutdown. If the repair or replacement of a fugitive emissions component designated difficult-to-monitor or unsafe-to-monitor is technically infeasible, would require a vent blowdown, a compressor station shutdown, a well shutdown or shut-in, or would be unsafe to repair [99] during operation of the unit, the repair or replacement must be completed during the next scheduled compressor station shutdown, well shutdown, well shut-in, after a planned vent blowdown, or within 2 years, whichever is earlier.

(6) Procedures for verifying effective repair of leaking components, no later than 30 days after repairing a leak.

(7) Specific training and experience needed to perform inspections.

(8) Description of procedures for calibration and maintenance of any fugitive emissions monitoring device to be used.

(9) Standard monitoring protocols for each type of typical affected source (*e.g.,* well site, tank battery, compressor station), including a general list of component types that will be inspected and what supporting data will be recorded (*e.g.,* wind speed, detection method device-specific operational parameters, date, time, and duration of inspection).

We are finalizing in 40 CFR 49.4179 an exemption for source owners/operators from having to monitor and repair a fugitive emissions component under certain circumstances: (1) the contacting process stream only contains glycol, amine, methanol or produced water; or (2) the component to be inspected is buried, insulated in a manner that prevents access to the components by a monitor probe or optical gas imaging device, or obstructed in a manner that prevents access by a monitor probe or optical gas imaging device.

The fugitive emissions LDAR requirements in this U&O FIP are designed to be consistent with those in NSPS OOOOa. In developing the final FIP LDAR requirements, we also reviewed the UDEQ requirements. For existing, new, and modified sources subject to the Utah Oil and Gas Rules, the LDAR requirements were designed to be procedurally consistent with NSPS OOOOa, though the applicability threshold is different. The UDEQ's site-specific approval orders, a general approval order (GAO) for crude oil and natural gas well sites and tank batteries,[100] and the Utah Oil and Gas Rules all require implementation of an LDAR program at facilities that are required to control storage vessel, dehydrator, and/or pneumatic pump emissions. The Utah Oil and Gas Rules require semi-annual fugitive emissions monitoring and repair for any affected source. Existing oil and natural gas sources that were authorized under the UDEQ's site-specific approval orders are required to conduct fugitive emissions monitoring and repair at frequencies ranging from annual to quarterly. Existing oil and natural gas sources that are authorized under the UDEQ's GAO are subject to fugitive emissions monitoring at varying frequencies based on production levels and number of leaks detected.

The final FIP applicability threshold is consistent in part with the UDEQ's LDAR applicability threshold, though the final FIP also requires any additional sources where daily production exceeds 15 boe per day to conduct an LDAR inspection program, which is consistent in part with NSPS OOOOa. The LDAR inspection frequency requirements of this U&O FIP are the same as the Utah Oil and Gas Rules and NSPS OOOOa. For oil and natural gas sources that may have obtained coverage under the UDEQ's approval orders or the GAO, we concluded that the UDEQ's LDAR inspection frequency requirement is different than the LDAR inspection frequency requirements for oil and natural gas sources under this U&O FIP, which may require monitoring frequencies for only certain sources that are equivalent to this U&O FIP.

We are finalizing a provision allowing for the use of alternative methods of leak detection, other than EPA Reference Method 21 or optical gas imaging instrument, to demonstrate compliance with the fugitive emissions monitoring requirements, provided the method is approved by the EPA. We are finalizing language specifying that to be approved by the EPA, a demonstration that the alternative method achieves emissions reductions that equal or exceed those that would result from the application of either Method 21 or optical gas imaging instruments must be made and any proposed approval by the EPA will be subject to public notice and comment.

5. VOC Emissions Control Requirements for All Sources

Sections 49.4179 (VOC emission control requirements for tank truck loading), 49.4180 (VOC emission control requirements for pneumatic controllers) and 49.4181 (Other combustion devices) contain requirements for all existing, new, and modified existing oil and natural gas sources, regardless of source-wide or emission-unit-specific emissions. Like the requirements in Utah's Oil and Gas Rules for oil and natural gas sources in areas of the Basin where the EPA has approved the UDEQ to implement the CAA, the U&O FIP's requirements are as follows: (1) tank trucks used for transporting crude oil, condensate, intermediate hydrocarbon liquids or produced water must be loaded using bottom filling or submerged fill pipes; (2) all existing pneumatic controllers must meet the pneumatic controller standards in NSPS OOOO at 40 CFR 60.5390(b)(2) and (c)(2) and NSPS OOOOa at 40 CFR 60.5390a(b)(2) and (c)(2); and (3) all existing enclosed combustors, flares present and operating at sources on a voluntary basis—that is, those that are not required to control storage vessel, glycol dehydrator, and pneumatic pump emissions (per 40 CFR 49.4173 through 49.4175)—must be equipped with an electronically controlled automatic ignition device.

Our requirements for truck loading/unloading diverge in one respect from what the UDEQ is requiring in the Utah Oil and Gas Rule. The UDEQ requires that VOC emissions from tank truck loading and unloading at sources required to control storage vessel emissions be captured using a vapor capture line and routed to the onsite combustor or a separate combustor for VOC control. We are not finalizing an equivalent requirement at this time, as we did not receive sufficient cost and emissions reduction information during the public comment period for this rulemaking to sufficiently evaluate the cost effectiveness of such a requirement for the limited estimated emissions for truck loading/unloading on Indian country lands within the U&O Reservation, based on the UBEI2017-

[99] "Unsafe to repair" is defined in the final rule as meaning that operator personnel would be exposed to an imminent or potential danger as a consequence of the attempt to repair the leak during normal operation of the source.

[100] The docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709) contains an approval for coverage under the GAO for a Crude Oil and Natural Gas Well Site and/or Tank Battery (DAQE–MN149250001–14).

Update.[101] The inventory identifies 595 tpy VOC from truck loading/unloading. Assuming that the annualized cost to install a vapor capture line to an existing combustor is similar to that of routing pneumatic pump emissions to a combustor (approximately $1,627 per source) and assuming that there are approximately 2,165 sources that would be required to add a combustor, such a requirement to install an additional truck vapor capture line would result in high annualized costs relative to the VOC emissions reductions that would be achieved (over $6,000 per ton of VOC reduced per year).

Concerning pneumatic controllers, the U&O FIP adopts by reference the definitions of *natural gas-driven pneumatic controller* in NSPS OOOO and OOOOa (40 CFR 60.5430 and 60.5430a, which are identical) and requires owners/operators of affected pneumatic controllers (those controllers not subject to and controlled in accordance with the requirements for pneumatic controllers in NSPS OOOO or OOOOa) to meet the standards established for pneumatic controllers in NSPS OOOO. We are finalizing the requirement that owners/operators of affected controllers meet the tagging requirements in 40 CFR 60.5390(b)(2), 60.5390(c)(2), except that the month and year of installation, reconstruction, or modification is not required. This exception is consistent with the Utah Oil and Gas Rules.

Lastly, for existing enclosed combustors, flares present and operating at sources that would not be required to comply with the substantive VOC emissions control requirements of sections 40 CFR 49.4173 through 49.4177, we are finalizing a requirement that those voluntarily operated control devices be equipped with an electronically controlled automatic ignition device. This approach is the same as the requirements of the Utah Oil and Gas Rules, which require automatic igniters on all existing combustion devices. In contrast to the 40 CFR 49.4177 (VOC Emission Control Devices) requirements for devices used to comply with this FIP's substantive VOC emissions control requirements, we determined that it would be unreasonable to require voluntarily operated devices to have a system to monitor proper operation of devices used to ensure the presence of a flame at all times a gas stream is routed to the device, and that such a requirement would result in requirements for such sources on Indian country lands within the U&O Reservation that are not comparable to requirements for such sources in areas where the EPA has approved the UDEQ to implement the CAA.

G. Monitoring and Testing Requirements

For existing, new, and modified sources, in 40 CFR 49.4182 (Monitoring and testing requirements) we are requiring each owner or operator to conduct source monitoring necessary for the practical enforceability of the U&O FIP's VOC emission reduction requirements, including: (1) monthly inspections of each cover and closed-vent system, including storage vessel openings, thief hatches, pressure relief valves, and bypass devices, to ensure proper condition and functioning and for defects that can result in air emissions consistent with the procedures in 40 CFR 60.5416a(c) [NSPS OOOOa], correcting or repairing any defects identified within 30 days of identification; and (2) monthly inspections of each VOC emissions control device to ensure proper functioning and demonstrate compliance with the VOC emissions control device requirements by (a) checking the control device and parameter monitoring system for proper operation, including system integrity and leak-free operation, at least once per calendar month; (b) responding to any indication of pilot flame failure and ensuring the pilot flame is relit as soon as practicably and safely possible after discovery; and (c) monitoring visible emissions consistent with the requirements in 40 CFR 60.5412(d), using EPA Method 22 visual emissions testing to demonstrate there are no visible smoke emissions.

These monitoring requirements are comparable on balance to those in the Utah Permit Requirements and Utah Oil and Gas Rules, with some exceptions made to ensure legally and practicably enforceable control of VOC emissions. For example, the Utah Permit Requirements and Utah Oil and Gas Rules require installation and operation of an automatic ignition device and operations with no visible emissions for all VOC control devices, but there are no corresponding monitoring requirements to demonstrate compliance with those requirements. We expect that this FIP's monitoring requirements for ensuring there is a constant ignition source when gas is flowing to the control device and for visible emissions testing will provide legal and practical enforceability.

H. Recordkeeping Requirements

For existing, new, and modified sources, in 40 CFR 49.4183 (Recordkeeping Requirements) we are requiring that each owner or operator of an affected oil and natural gas source keep specific records to be made available upon request, in lieu of voluminous reporting requirements. The records that must be kept include required inspections, measurements, monitoring results, emissions calculations, and deviations or exceedances of rule requirements and corrective actions taken, as well as any manufacturer specifications and guarantees or engineering analyses. These recordkeeping requirements provide legal and practical enforceability for the control and emission reduction requirements of this rule.

I. Notification and Reporting Requirements

For existing, new, and modified sources, we are finalizing in 40 CFR 49.4184 (Notification and reporting requirements) to require that each owner or operator of an affected oil and natural gas source prepare and submit an annual compliance report, with the initial report due April 1st of the calendar year following the effective date of the final rule and must cover all affected operations for the previous calendar year on and after the effective date of the final rule. Subsequent annual reports are due on the same date each year as the date the initial annual report was submitted and must cover all affected operations for the previous calendar year. The report must include a summary of deviations or exceedances of any requirements of the final FIP and the corrective measures taken for a specific subset of targeted required records for each enclosed combustor or flare, each cover and closed-vent system, fugitive emissions monitoring inspection, and each high-bleed controller, as identified in the rule. Annual reports may coincide with Title V, NSPS OOOO or OOOOa or NESHAP HH reports as long as all the required elements of the annual report are included. Additionally, a report of results must be submitted for any performance test we require. These reporting requirements provide legal and practical enforceability for the control and emission reduction requirements of this rule.

[101] The Oil and Natural Gas Sector Climate Review Proposed Rule is soliciting comment and information that would help us better understand the cost, feasibility, and emission reduction benefits associated with controlling truck loading/unloading emissions. As with LDAR applicability, we may revisit this rulemaking in the future based on any final action we take under CAA section 111 with the Oil and Natural Gas Sector Climate Review rulemaking.

V. Significant Changes Since Proposal

This U&O FIP, which is intended to address winter air quality impacts from ozone pollution, contains a common set of VOC emissions control requirements for certain existing, new, and modified oil and natural gas sources on the Indian country lands within the U&O Reservation. We consulted existing federal CAA oil and natural gas source category standards in developing the VOC emissions control requirements of this U&O FIP. To make VOC emissions control requirements across the Basin consistent, this U&O FIP goes beyond the federal standards in some cases, regulating equipment and activities that are not covered by those standards but that are regulated by the UDEQ. Such equipment and activities include small, remote glycol dehydrators; low throughput storage vessels; tank truck loading and unloading; and certain voluntarily operated control devices. Applicability of the requirements, including for equipment and activities that are regulated by the federal standards, is also consistent with the applicability for equivalent equipment and activities regulated by the UDEQ.

As previously mentioned, the streamlined construction authorization mechanism in the National O&NG FIP applies on the Indian country portions of the U&O Reservation that are part of the Uinta Basin Ozone Nonattainment Area, as a result of our recent separate action amending the National O&NG FIP. Such true minor sources are required to register and comply with the eight federal standards in the National O&NG FIP, as applicable, to meet the preconstruction permitting requirements of the Federal Indian Country Minor NSR Program. Compliance with the eight federal standards in the National O&NG FIP, as applicable, does not relieve the owners/operators from the other applicable VOC control requirements of this U&O FIP, except that this U&O FIP exempts certain equipment and activities from it that are in compliance with the applicable requirements of the National O&NG FIP.

We have made some changes to the requirements in the U&O FIP after considering public comments and evaluating more recent emissions inventories and air quality information. More details on our evaluation of available information and reasons for these decisions are described in our summary of responses to comments in Section VI of this preamble, and in the RIA and Response to Public Comments documents for this final rule.[102]

A. Final Rule Effective Date and Compliance Deadline

In the proposed U&O FIP, we stated that we might issue a final action based on the proposal as soon as the date of publication of a final U&O FIP. We believed that there would be ''good cause,'' within the meaning of 5 U.S.C. 553(d)(3), to make the final rule effective as soon as published, if that proved necessary to ensure that this rule began to provide emission reductions before the next winter ozone season. As discussed above in Section II.D., winter ozone in the Uinta Basin is a serious public health problem, which this final rule is intended to help address. In addition, the reductions provided by this rule are an integral part of the Agency's strategy to address the air quality problem on the Indian country lands within the U&O Reservation while maintaining a permitting mechanism that allows appropriate continued oil and natural gas production. The primary other component of that strategy is a separate action to amend the National O&NG FIP to extend its geographic coverage to the Indian country portions of the U&O Reservation that are part of the Uinta Basin Ozone Nonattainment Area. Over the long term, we are relying on the VOC emissions reductions achieved through this action to ensure that the previous extension of the scope of the National O&NG FIP does not jeopardize air quality.

After careful consideration of the comments received, and of the requirements under the Congressional Review Act (CRA) specifying that a major rule may become effective no earlier than 60 days after it is published in the **Federal Register**,[103] the EPA is finalizing an effective date 60 days after the final rule is published in the **Federal Register**.

We proposed to require compliance by oil and natural gas sources existing as of the effective date of the final rule no later than 18 months after the effective date of the final rule. We have revised that compliance period to a 12-month compliance deadline. The proposed 18-month compliance period was informed by what we had learned about the time needed for sources in areas of the Basin where the EPA has approved the UDEQ to implement the CAA to comply with Utah's requirements for oil and natural gas sources. We had been informed by UDEQ compliance staff that the majority of existing oil and natural gas sources in areas of the Basin where the EPA has approved the UDEQ to implement the CAA that had been required to install VOC emission control retrofits in had completed the required retrofits within 9 months of the effective dates of their minor source approval orders, ahead of the 18-month deadline in UDEQ approval orders for operators to notify the UDEQ of the status of retrofit construction.[104] The UDEQ estimated that approximately 1,600 existing sources had been required to install retrofits to control emissions from the collection of all storage vessels, glycol dehydrators, and/or pneumatic pumps on non-Indian country lands in the Uinta Basin. For the proposal, on the other hand, we estimated that there were approximately 2,100 sources on Indian country lands within the U&O Reservation that would be subject to such requirements in this U&O FIP. We considered it likely in light of this larger number of sources, and the presumably finite availability of equipment and personnel, that owners and operators would need longer than 9 months to complete the necessary retrofits to the greater number of Indian country sources. Therefore, we proposed an 18-month compliance deadline for the U&O FIP as reasonable to accommodate the challenges of procurement of equipment and labor to complete the retrofits of a larger number of sources. Using the UBEI2017-Update, we now estimate that 2,165 existing sources on the Indian country lands within the U&O Reservation will be required to install retrofits to control emissions from the

[102] These documents can be found in the docket for this rulemaking (Docket ID EPA–R08–OAR–2015–0709).

[103] Id. at 5 U.S.C. 801(a)(3)(A). This rule is considered an economically significant rule under Executive Order 12866, as a rule that imposes costs or generates benefits of at least $100 million per year, which is the same economic threshold applied in defining what constitutes a ''major rule'' under the CRA (one that ''is or is likely to result in . . . an annual effect on the economy of $100,000,000 or more.'').

[104] Email correspondence with UDEQ staff regarding their source inventory and experiences regulating existing oil and natural gas sources in areas of the Basin where the EPA has approved the UDEQ to implement the CAA is included in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709). UDEQ compliance staff target each new approval order for inspection within 18 months of the date it is issued. They document the status of construction at the time of inspection and note whether the permitted source has provided a notification of construction status, which is required within 18 months of the date the approval order is issued. UDEQ compliance staff have inspected hundreds of such existing oil and natural gas sources without observing any compliance issues with the 18-month notification requirement. While UDEQ compliance staff do not compile this information into any readily available summary format, details about the status of construction are included in the inspection report for each source.

collection of all storage vessels, glycol dehydrators, and pneumatic pumps under this U&O FIP, which is only slightly more than the number of existing affected sources estimated for the proposed FIP using the UBEI2014.

Although the number of estimated affected sources is still higher than the number in areas where the EPA has approved the UDEQ to implement the CAA, after considering public comments received on the proposed 18-month compliance deadline and the demonstrated need for more near-term air quality benefits to improve air quality in and around the U&O Reservation, we have revised the proposed 18-month compliance period to a 12-month compliance period from the effective date of the rule. In the EPA's judgment, this shorter compliance schedule (especially when combined with the 60-day effective date) will sufficiently accommodate the potentially limited availability of equipment and personnel, and thus still reasonably allow industry to comply with the new requirements in a timely manner, while also ensuring that meaningful reductions will be achieved that will help make progress toward future attainment. Further, potentially affected owners and operators have been on notice of the possibility that these rules might come into effect since the proposed FIP was published in January 2020.

We also enhanced the final FIP to specify the process the EPA would take to decide requests for extension of the compliance period, in particular adding the requirement that the request be submitted before the compliance deadline, identify the specific provisions for which an extension is being requested and include an alternative compliance deadline, and provide a rationale for the request with supporting information explaining how the operator will effectively meet all applicable requirements after the requested alternative compliance deadline.

B. Triennial Emissions Inventory

In the proposed FIP we contemplated establishing the due date for the submittal of annual emissions covering the first triennial inventory year 2020 as October 1, 2021, to allow operators time to set up an appropriate emissions tracking and reporting system. However, given the time that has elapsed since the proposal, we are revising the proposal to require the first triennial emissions inventory to cover calendar year 2023, with the first inventory due on April 15, 2024, and thereafter, every three years, the inventory will be due on April 15th of the year following the inventory year. This is in line with the UDEQ's triennial emissions inventory collection, and the schedule for the NEI. This revised schedule will also allow additional time for operators to set up an appropriate emissions tracking and reporting system, according to the instructions we will make available on our website for the rule once it is finalized.

C. Streamlined Construction Authorization

In the proposed FIP we contemplated moving the authority for streamlined construction authorization mechanism of true minor oil and natural gas sources on the Indian country portions of the U&O Reservation that are part of the Uinta Basin Ozone Nonattainment Area in the National O&NG FIP (through 40 CFR part 49, subpart K) to this FIP, so as to consolidate air quality requirements for oil and natural gas sources in the Indian country portions of the U&O Reservation that are part of the Uinta Basin Ozone Nonattainment Area within one part of the Code of Federal Regulations, which we believed could provide a more efficient and user-friendly approach. However, we have decided not to finalize that approach in this FIP because, after further consideration, including consideration of public comments received, we believe that modifying the National O&NG FIP is unnecessary.

D. Applicability

In the proposed FIP, we defined some terms, such as storage tank, pneumatic pump, pneumatic controller, and fugitive emissions component, in a way that were different from the definitions of equivalent equipment and activities in NSPS OOOO and OOOOa. The proposed FIP was designed in part for consistency with NSPS OOOO and OOOOa and the Oil and Gas CTG, and for consistency with the Utah Oil and Gas Rules (which were also designed for consistency with NSPS OOOO and OOOOa). After considering public comments received, and for ease of implementation and compliance, we have revised the proposed definitions, and are finalizing definitions that are consistent with those in NSPS OOOO and OOOOa.

Another difference with NSPS OOOO and OOOOa and the Oil and Gas CTG that was identified in comments on the proposed FIP is in the method used to calculate VOC emissions from the collection of all storage vessels to determine applicability of the control requirements for storage vessels, glycol dehydrators and pneumatic pumps in 40 CFR 49.4173 through 49.4177. We proposed that VOC emissions from the collection of all storage vessels should be calculated based on uncontrolled actual emissions. To provide consistency with NSPS OOOO and OOOOa and the Oil and Gas CTG, we are finalizing requirements that VOC emissions from the collection of all storage vessels be calculated based on potential emissions, which may account for enforceable control requirements already applicable to certain storage vessels. The Utah Oil and Gas Rules require all storage vessels located at a well site that are in operation as of January 1, 2018, with a site-wide throughput of 8,000 bbl or greater of crude oil or 2,000 bbl or greater of condensate per year on a rolling 12-month basis, to control emissions unless an exemption applies that total VOC emissions from the collection of all storage vessels are demonstrated to be less than 4 tpy of uncontrolled actual emissions (defined as actual emissions or the potential to emit without considering controls) on a rolling 12-month basis. Emissions to meet the exemption must be calculated using direct site-specific sampling data and any software program or calculation methodology in use by industry that is based on AP–42 Chapter 7. A separate provision allows controls to be removed after a minimum of one year of operation if source-wide throughput is less than 8,000 bbl crude oil or 2,000 bbl condensate on a rolling 12-month basis or uncontrolled actual VOC emissions are demonstrated to be less than 4 tons per year. For sources that operate only storage vessels and not glycol dehydrators or pneumatic pumps, the proposed 8,000 bbl of crude oil/2,000 bbl of condensate throughput applicability threshold for control of storage vessel emissions was the same as the control applicability threshold for storage vessels in the UDEQ's recently adopted Utah Oil and Gas Rules. However, based on public comments received on the proposed rule, we decided not to finalize the production-based threshold for oil and natural gas sources with only storage vessels and no glycol dehydrators or pneumatic pumps. Several commenters expressed the view that, while they appreciated the effort to establish consistent requirements across all areas of the Basin, determining applicability for VOC combustion control requirements would be simpler and more straightforward if applicability was based solely on the annual facility-wide VOC emissions threshold for storage vessels, glycol dehydrators and pneumatic pumps of 4 tpy.

We noted in the preamble to the proposed U&O FIP that in January 2019, the Utah Air Quality Board approved an additional rule in the Utah Administrative Code Chapter R307–500 Series (Oil and Gas) at R307–511 to manage associated gas from a completed oil well by either routing it to a process unit for combustion, routing it to a sales pipeline, or routing it to a VOC control device, except for emergency release situations. This rule was approved after we had drafted and evaluated the emissions reductions and costs of the provisions in the proposed U&O FIP. We noted our intent to evaluate and consider incorporating equivalent associated gas requirements in a final U&O FIP. After careful consideration of the comments received and evaluation of the data used to estimate associated gas emissions in the UBEI2017-Update used to analyze the costs and benefits of this final FIP, we have decided not to finalize requirements to control associated gas emissions in the U&O FIP, because we do not have adequate information specific to the Uinta Basin operations to accurately assess and develop cost-effective requirements.

In the proposed U&O FIP, we based the applicability of the requirement to implement a semiannual fugitive emissions monitoring program on whether the oil and natural gas source was required to control facility-wide emissions from the collection of all storage vessels, glycol dehydrators, and pneumatic pumps. After considering public comments on the proposed FIP, we have revised the proposed fugitive emissions monitoring applicability, and in the final rule are requiring semiannual fugitive emissions monitoring for each owner or operator of an oil and natural gas source where either of the following is true: (1) As proposed, the collection of fugitive emissions components is located at an oil and natural gas source that is required to control VOC emissions according to 40 CFR 49.4173 through 49.4177 of this FIP (*i.e.,* the source-wide potential for VOC emissions from the collection of all storage vessels, glycol dehydrators, and pneumatic pumps is equal to or greater than 4 tpy, as determined according to 40 CFR 49.4173(a)(1)); or (2) As revised, the collection of fugitive emissions components is located at a well site, as defined in 40 CFR 60.5430a, that at any time has total production greater than 15 boe per day based on a rolling 12-month average.

The Uinta Basin generally encompasses an area of over 6,800 square miles with hundreds of miles of dirt roads connecting over 10,000 oil and natural gas wells. According to the Updated 2017 Uinta Basin Emissions Inventory (UBEI2017-Update),[105] the average number of wells per well pad is 1.5. The inventory shows that fugitive emissions are the second highest VOC emissions source on Indian country lands within the U&O Reservation, at about 15,600 tpy. Studies have been conducted specific to the Uinta Basin that investigated the sources of VOC emissions from oil and natural gas production operations. Certain high emitting sources, or ''super-emitters,'' are likely due to abnormal process conditions.[106] Examples of abnormal process conditions, which could be persistent or episodic, include: failures of storage vessel control systems; malfunctions upstream of the point of emissions (for example, stuck separator dump valve resulting in produced gas venting from storage vessels); design failures (for example, vortexing or gas entrainment during separator liquid dumps); and equipment or process issues (for example, over-pressured separators, malfunctioning or improperly operated dehydrators or compressors).[107] A July 2017 study by Utah State University, TriCounty Health Department, and the UDEQ surveyed 400 oil and natural gas well pads using an IR camera for fugitive emissions detection at storage vessels and found that emissions plumes were detected at 37 percent of well pads where the storage vessels were controlled. A November 2018 Utah State University study employed a hybrid of both ground based and aerial IR detection methods. The study found that the majority of observed fugitive emissions plumes originated from storage vessels (over 75 percent) and that facilities where emissions were detected were primarily younger, high production facilities with more liquid storage vessels, and, in the case of the aerial observations only, that primarily produce oil. The study found that emissions that were more likely to be characterized as large were observed at well pads with controlled storage vessels. The emissions were observed upstream of the control device, from thief hatches, vents and piping on the tanks. The results of these two studies strongly suggest that a significant quantity of emissions from controlled storage vessels were not reaching the designated control device. Requiring owners and operators of oil and natural gas sources that are required to control storage vessel, dehydrator and pneumatic pump emissions to implement a LDAR program will help reduce fugitive emissions from well sites with controlled storage vessels. We acknowledge that the definition of fugitive emissions component in the final U&O FIP excludes valves, connectors, pressure relief devices, open-ended lines, flanges, covers, closed-vent systems, thief hatches, and other openings associated with storage vessels or closed-vent systems subject to the control requirements of 40 CFR 49.4173 and 49.4176. Those activities are subject to specific integrity monitoring requirements in 40 CFR 49.4182, discussed later in this section, to ensure that 100 percent of the emissions are routed either to a process or an emissions control device. However, the LDAR requirements of final 40 CFR 49.4177 do apply to components associated with storage vessels and closed-vent systems that are not subject to the requirements of 40 CFR 49.4173 and 49.4176. We expect that the combination of the LDAR requirements of final 40 CFR 49.4177 and the integrity monitoring requirements of final 40 CFR 49.4182 will effectively reduce VOC emissions from equipment leaks at oil and gas sources with controlled storage vessels.

We determined that to maximize VOC emissions reductions and the resulting expected improvements in air quality on the U&O Reservation and surrounding areas, finalizing a balance between the LDAR applicability thresholds of the Utah Oil and Gas Rules and the CTG is appropriate, as it will result in emissions reductions at more existing sources than if we finalized the proposed applicability threshold. It will not impose the requirement to implement an LDAR program at every oil and natural gas source on the Indian country lands within the U&O Reservation, which could potentially create a competitive disadvantage to operating on the Reservation, resulting

[105] UBEI2017-Update. The inventory and supporting analysis can be viewed in the docket for this rulemaking, Microsoft Excel spreadsheet titled, ''UO FIP cost and emissions analysis.xlsx'' (Docket ID No. EPA–R08–OAR–2015–0709).

[106] Zavala-Araiza, D., Alvarez, R. A., Lyon, D. R., Allen, D. T., Marchese, A. J., Zimmerle, D. J., & Hamburg, S. P.; ''Super-emitters in Natural Gas Infrastructure are Caused by Abnormal Process Conditions,'' *Nature Communications* 8, 14012 (2017).

''Storage Tank Emissions Pilot Project (STEPP): Fugitive Organic Compound Emissions from Liquid Storage Tanks in the Uinta Basin,'' Final Report to The Utah State Legislature (USU, TriCounty Health Dept, UDEQ, July 17, 2017) available in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709).

''Hydrocarbon Emission Detection Survey of Uinta Basin Oil and Gas Wells''. November 2018. Bingham Research Center, Utah State University, available in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709).

[107] The UBEI2017-Update has not accounted for the phenomenon of ''super-emitters.''

in potentially negative economic impacts for the Ute Indian Tribe and other mineral owners. We acknowledge that NSPS OOOOa currently contains two different LDAR inspection standards for well sites and gathering and boosting compressor stations controlling methane emissions and those controlling VOC emissions and that the EPA has published a proposed national rule to reduce methane and other pollutants from existing, new, and modified sources in the oil and natural gas industry that seeks to align those standards to require semiannual LDAR inspections for all well sites (*e.g.,* remove the exemption for low-production wells) and quarterly LDAR inspections for all compressor stations.[108] We also acknowledge that the rule proposes to establish new methane and VOC fugitive emissions monitoring standards for new and modified sources and similar methane fugitive emissions monitoring guidelines for existing sources.

We expect that the final LDAR requirements of this FIP will result in meaningful reductions in VOC emissions and ground-level ozone production, significantly furthering our main objective for this U&O FIP of improving air quality. We determined that, particularly for existing sources, in order to meet our goal to provide consistent requirements across the Uinta Basin, the LDAR inspection frequency requirements in this U&O FIP should provide a measure of consistency with the LDAR inspection frequency requirements in the Utah Oil and Gas Rules, as those rules apply prospectively to all oil and natural gas well sites on non-reservation Indian country lands in the Uinta Basin that are not already subject to site-specific approval orders or the GAO. If the sources in the Uinta Basin that are in areas where the EPA has approved the UDEQ to implement the CAA are also subject to the LDAR requirements of the NSPS OOOOa, the NSPS requirements supersede the UDEQ requirements if the UDEQ requirements are less stringent. Similarly, if the sources in the Uinta Basin that are regulated by the EPA on Indian country lands within the U&O Reservation are subject to the LDAR requirements of NSPS OOOOa, those sources are exempt from complying with the LDAR requirements in this U&O FIP. We may revisit this final action in the future based on any final action we take under CAA section 111 with the Oil and Natural Gas Sector Climate Review rulemaking to address application of LDAR at sources covered by this FIP in a manner similar to the final national rule's provisions for sources that it covers. Also, if the Uinta Basin Ozone Nonattainment Area's Marginal classification is reclassified (''bumped up'') to a Moderate nonattainment classification, or if air quality concerns otherwise warrant, we may conclude that further rulemaking is necessary or appropriate.

We proposed general language in the fugitive emissions provisions allowing for the use of methods of leak detection other than EPA Reference Method 21 or optical gas imaging instrument to demonstrate compliance with the fugitive emissions monitoring requirements, provided the method is approved by the EPA. We solicited information in the proposed U&O FIP on alternative methods of leak detection (*e.g.,* aerial) that could potentially achieve meaningful and more cost-effective reductions in fugitive VOC emissions that contribute to ozone formation, and whether any of these advanced monitoring technologies would be effective in the Uinta Basin and should be approvable as an alternative leak detection compliance method under a final U&O FIP. We also solicited input on the criteria that the EPA should consider in approving alternative leak detection compliance methods, including appropriate accuracy and quality assurance standards that alternative methods would need to meet to demonstrate equivalency to onsite optical gas imaging instruments or onsite EPA Reference Method 21. We noted that specific descriptions of the approach, frequency of monitoring, detection thresholds, limiting factors in detection, costs and availability for alternative leak detection methods would be helpful. We did not receive any new information on the costs and effectiveness of alternative leak detection methods during the public comment period. However, we did receive suggestions for criteria we should consider in approving alternative leak detection compliance methods to demonstrate equivalency to EPA Reference Method 21 or optical gas imaging. Based on those comments, we have added language to the final FIP specifying that to be approved by the EPA, a demonstration that the alternative method achieves emissions reductions that equal or exceed those that would result from the application of either Method 21 or optical gas imaging instruments must be made and any proposed approval by the EPA will be subject to public notice and comment.

Studies specific to the Uinta Basin have investigated the viability of leak detection method alternatives to conventional onsite instrument detection, including detection methods from an aerial platform. One study[109] employed a helicopter-based infrared camera at an elevation of approximately 50 meters above ground level to survey more than 8,000 oil and natural gas well pads in seven United States basins. The goal of this aerial survey was to assess the prevalence and distribution of hydrocarbon sources whose fugitive emissions were high enough to be labeled high-emitters. At each site with detected emissions, the survey team reported the site's location and the number and equipment type of each observed emission source. Survey results indicated that high-emitting sites constituted four percent of all the sites surveyed across the seven basins examined. In the Uinta Basin, 1,389 well pad facilities were flown over, and high emissions were observed at 6.6 percent of those well pads. Another previously discussed study[110] that employed a hybrid of both ground-based and aerial IR detection methods found that observations using an IR camera from a helicopter in winter were hampered by the cold land temperatures of the background against which the plumes would be observed. The ground-based part of this study, as previously discussed, showed a fairly high prevalence of observed emissions from controlled storage vessels.

We are finalizing the proposed provisions allowing operators to use

[108] *See* 85 FR 63110. Nov. 15, 2021. *Proposed Rule. Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review,* available at *https://www.regulations.gov* (Document ID #EPA–HQ–OAR–2021–0317–0001), accessed Mar. 14, 2022. The regulatory inconsistencies stem from the recent joint resolution under the Congressional Review Act that disapproved the 2020 Policy Rule. That rule, which was issued by the previous Administration, had eliminated important requirements to reduce methane and other air pollution from new and modified sources in the oil and natural gas source category. However, the joint resolution did not address a separate 2020 rule known as the ''Technical Rule,'' which remains in place today. The EPA is proposing to repeal amendments in the Technical Rule that exempted low-production well sites from monitoring fugitive emission; and changed VOC monitoring requirements at gathering and boosting compressor stations from quarterly to semi-annually.

[109] ''Aerial Surveys of Elevated Hydrocarbon Emissions from Oil and Gas Production Sites,'' Environmental Science and Technology, 2016, 50 (9), pp 4877–4886, publication date Apr. 5, 2016, available at *http://pubs.acs.org/doi/abs/10.1021/acs.est.6b00705,* accessed Mar. 14, 2022.

[110] ''Hydrocarbon Emission Detection Survey of Uinta Basin Oil and Gas Wells''. Nov. 2018. Bingham Research Center, Utah State University, available at available in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709).

alternative methods of leak detection, other than EPA Reference Method 21 or optical gas imaging instruments, to demonstrate compliance with the fugitive emissions monitoring requirements, provided the method is approved by the EPA. We added language specifying that to be approved by the EPA, a demonstration that the alternative method achieves emissions reductions that equal or exceed those that would result from the application of either Method 21 or optical gas imaging instruments must be made and any proposed approval by the EPA will be subject to public notice and comment. The total fugitive VOC emissions reduced does not account for emissions due to abnormal process operations, which was discussed earlier. Recognizing that technology used to detect, measure, and mitigate emissions is rapidly developing, on July 18, 2016, the EPA issued a request for information, (RFI) [111] inviting all parties to provide information on innovative technologies to accurately detect, measure, and mitigate emissions from the oil and natural gas industry. The intent of this notice was to solicit data supporting alternative approaches to limit emissions from this industry.

E. Monitoring and Testing

In response to several comments, and to clarify one provision, we made some changes to the proposed monitoring requirements for covers and closed vent systems and VOC emissions control devices to provide more consistency with NSPS OOOO and OOOOa. The proposed requirements for inspecting covers and closed vent systems were different than NSPS OOOOa in that they did not allow the option to demonstrate compliance by conducting optical gas imaging inspections on the same schedule as fugitive emissions inspections. We have added that option to the final FIP. Additionally, rather than adopt by reference the inspection requirements of NSPS OOOOa at 40 CFR 60.5416a(c), we incorporated streamlined inspection requirements for covers and closed vent systems into a common set of provisions, because the separate provisions in NSPS OOOOa are essentially the same. Although the preamble to the proposed rule explained that it would require that facilities ''ensure that each enclosed combustor or utility flare is. . . operated with no visible smoke emissions,'' in the proposed regulatory text we inadvertently mentioned only enclosed combustors, not flares, in the provision requiring owners and operators to verify on a monthly basis that there are no detectable smoke emissions. To make the regulatory text of the FIP consistent with the intent explained in the proposed rule as to flares, and also in response to comments that the FIP should provide more consistency with NSPS OOOO and OOOOa, the monitoring requirements being finalized today, consistent with NSPS OOOO and OOOOa, require Method 22 monitoring for all VOC control devices. We also streamlined the requirements to perform monthly inspections of the covers closed-vent systems and monthly inspections of the VOC emissions control devices, each separated by at least 15 days between each inspection, to provide operators the flexibility to schedule inspections in the same visit.

F. Recordkeeping and Reporting

In response to several comments, we also made some changes to the proposed recordkeeping requirements to provide more consistency with the records that the UDEQ requires of oil and natural gas sources, as well as with the records required by NSPS OOOO and OOOOa. Regarding annual reports, we made changes to clarify in the final FIP the April 1st due date of each annual report, and that the reporting period for the initial annual report will be the period beginning with the effective date of the final rule through the end of that calendar year. Additionally, in response to public comments that annual reporting should be limited to targeted records that most efficiently indicate the degree of compliance with the U&O FIP, we have specified a subset of required records that must be summarized in the annual report related to each enclosed combustor or flare, each cover and closed-vent system, fugitive emissions monitoring and each high-bleed pneumatic controller, including deviations from rule requirements and corrective actions taken to address deviations.

VI. Summary of Significant Comments and Responses

This section summarizes the significant public comments on the proposed FIP and our response to those comments as they related to the specific requirements being finalized today in this U&O FIP. More detailed summaries of the comments and our responses are available in the docket for this rulemaking.[112]

A. Major Comments Concerning Effective Date and Compliance Deadline

Comment: Industry commenters asserted that since the EPA has determined that the rule is an economically significant regulatory action subject to Office of Management and Budget Review under E.O. 12866, the rule must also be a ''major rule'' under the Congressional Review Act, which mandates that it may become effective no earlier than 60 days after it is published in the **Federal Register**.

Response: We agree and have finalized an effective date 60 days after publication in the **Federal Register**.

Comment: Industry commenters claimed that air quality studies in the Uinta Basin and available air quality data support that emissions reductions needed to attain the NAAQS only need to occur in the winter, rather than year-round as the EPA proposed, and claimed it was unreasonable and arbitrary that the EPA did not evaluate a seasonal regulatory option.

Response: We disagree that it was unreasonable or arbitrary not to evaluate a seasonal regulatory option to address elevated ozone and emissions reductions with this rulemaking. Through the stakeholder outreach we participated in during the rulemaking process, we heard feedback from the Ute Indian Tribe, the UDEQ, and oil and natural gas operators alike that consistent regulatory requirements across all areas in the Basin are important to ensuring a cohesive strategy to improve air quality, providing regulatory certainty and avoiding disadvantages to development in one area versus another. Based on verified ozone measurements during summer months at regulatory monitors in the Basin from 2017 to 2020, there have been at least a few exceedances of the 8-hour ozone daily maximum, and many other readings that have been close to the NAAQS. Imposing a seasonal control program for this rulemaking when the UDEQ requires year-round controls and the majority of the existing VOC emissions in the Basin are occurring on the Indian country lands within the U&O Reservation was not considered for several reasons. Doing so would continue inconsistent regulatory requirements across all areas in the Basin, potentially creating incentives to develop sources with higher emissions on the Reservation. Seasonal emissions reductions requirements would be complex to implement, enforce and quantify the effects to defensibly justify continued

[111] *See* 81 FR 46670 (July 18, 2016).

[112] Response to Public Comments. Proposed Federal Implementation Plan: Managing Emissions from Oil and Natural Gas Sources on Indian Country Lands within the Uintah and Ouray Indian Reservation in Utah. May 2021, available in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709).

minor source development on the Reservation. The opportunity to achieve VOC emissions reductions that could improve ozone air quality close to the NAAQS during summer months would be lost. We may consider seasonal emissions mitigation measures in a future rulemaking if additional CAA nonattainment requirements are triggered.

Comment: Environmental organization commenters asserted that the EPA must ensure existing sources are in compliance immediately upon the effective date of the final rule, rather than allowing an 18-month period for affected sources to come into compliance. The commenters claimed that the EPA failed to provide adequate justification for why vendors need 18 months to provide equipment to owners and operators when the estimated number of affected existing sources needing to install retrofits is similar to the number that were cited as able to install retrofits in in areas of the Basin where the EPA has approved the UDEQ to implement the CAA. Commenters also asserted that the EPA should promulgate the FIP with a specific process of how decisions will be made to grant requested extensions of the 18-month compliance period.

Response: We acknowledge the commenters' requests urging the agency to finalize and fully implement the FIP in a shorter timeframe than was proposed. We disagree that existing sources should be required to have all required controls installed immediately upon the effective date of the final rule. The final FIP may require operators of an estimated 2,165 existing sources on Indian country lands within the U&O Reservation to retrofit existing equipment and install combustion devices, at an estimated capital cost of about $230 million. We determined it would not be practical for affected operators to acquire the necessary equipment from vendors and have it installed at that many existing sources in two months. The evaluation of anecdotal information from the UDEQ on the time it took a similar number of existing sources to come into compliance was not comparable to the FIP, as the UDEQ's approvals were spread out over time and that information was only used as a data point to help inform our belief that a certain period of time is appropriate to allow existing sources to come into compliance. We agree, however, given the urgency of the need to improve air quality in the Basin and the fact that owners and operators have been on notice that the rule might come into effect since the proposed rule was published in January 2020, the compliance period can reasonably be shortened to ensure meaningful VOC emissions reductions will be achieved in a timely manner. Therefore, we are finalizing a 12-month period for existing sources to come into compliance with the FIP. We have retained flexibility for operators to request extensions to the compliance deadline but agree with commenters that the regulatory language should specify the process the EPA would take to make decisions granting requested extensions of the compliance period and have included such language in the final rule.

B. Major Comments Concerning Regulatory Authority for Minor Source Streamlined Construction Authorization

Comment: Industry commenters asserted that, given the amendment of the National O&NG FIP to permanently extend the streamlined approach for approval of new and modified true minor oil and natural gas sources to the portions of the Indian country lands within the U&O Reservation that are part of the 2015 Uinta Basin Ozone Nonattainment Area was already permanently finalized at its current location in the Code of Federal Regulations (CFR), it is not necessary to remove the regulatory authority from that FIP and add it to the final U&O FIP. The same commenters also asserted that it is not appropriate to take comment on the National O&NG FIP amendment as part of this rulemaking. Environmental organization commenters asserted, on the other hand, that the EPA must analyze the air quality impacts of the National O&NG FIP amendment, claiming that the EPA failed to do so as part of that action. The commenters noted that the EPA has a mandate under the CAA's minor NSR provisions to ensure that implementation of the program assures that the NAAQS are achieved and, therefore, cannot authorize construction of new and modified sources in a nonattainment area unless it demonstrates protection of the NAAQS through a modeling analysis and a mechanism that tracks emissions consumed by new and modified sources against emissions that are reduced.

Response: We agree with commenters that it is not necessary to move the location of the authority for the already-effective amendments to the National O&NG FIP to the final U&O FIP. We disagree that the proposed U&O FIP provided a fresh opportunity to comment on the merits of the National O&NG FIP amendment and that the proposed U&O FIP should have analyzed the air quality impacts of extending the National O&NG FIP to the Indian country portions of the nonattainment area. That action was promulgated through a separate rulemaking process [113] and was not challenged within the judicial review period of that regulatory action and is thus today fully effective. At most, the proposal to include this authority in the U&O FIP would have shifted the location of already-existing authority within the CFR, which might have promoted easier compliance for affected oil and natural gas sources but would not have established any new requirements. In any event, we have decided not to finalize the proposed shift in the location of the authority to the U&O FIP, as we determined that the agency resources required to revise the National O&NG FIP through the rulemaking process would outweigh any streamlining advantage gained; thus, the authority will remain in the National O&NG FIP, as established in the May 24, 2019, final rule.

Further, we disagree with the assertion that only modeling can support a conclusion that substantial emissions reductions from this FIP could be relied on to support authorization to construct new and modified minor oil and natural gas sources under the National O&NG FIP. Unlike the NSR program for major sources in nonattainment areas, the minor NSR program does not require emissions offsets from existing sources in authorizing construction of new or modified minor sources in nonattainment areas, but rather requires the reviewing authority to demonstrate that new or modified minor sources in a nonattainment area would not cause or contribute to a NAAQS violation. The reviewing authority is not required to conduct modeling of minor source emissions to make such a demonstration. Rather, the rule provides the reviewing authority discretion to require modeling if it is concerned that new construction may cause or contribute to NAAQS violations. That discretion in demonstrating NAAQS protection was at work in the action to amend the National O&NG FIP, where we relied on existing source emissions reductions that we expect will be achieved from implementation of a U&O FIP. Based on our analysis of the current pace of new development under the National O&NG FIP, we expect that these reductions will far exceed the expected emissions from new construction. Our estimate for the expected magnitude of future development was based on a

[113] *See* 84 FR 21240 (May 14, 2019).

quantitative analysis of the rate of new and modified true minor source development and emissions increases on the Indian country lands within the Uintah & Ouray Reservation for each of the full calendar years since the effective date of the National O&NG FIP (2017–2019). We have updated that estimate for the final FIP to include 2020 and 2021 and we find that the pace of development has not noticeably changed, such that development of new and modified true minor oil and natural gas sources would need to occur at over 90 times the current pace of development to consume the annual headroom that full compliance with this FIP is expected to generate.[114] With this reevaluation, we continue to support the conclusion that the reductions achieved by this FIP will create more than enough headroom for the current or higher rates of development for years to come while first and foremost improving ozone air quality. We plan to periodically reevaluate our assumptions in the future based on changes in the pace of development and may take additional actions to protect air quality as necessary or appropriate.

C. Major Comments Concerning Rule Applicability

Comment: (VOC Emissions from Storage Vessels, Glycol Dehydrators and Pneumatic Pumps) Environmental organization commenters claimed that the proposed VOC emissions control requirements for storage vessels, glycol dehydrators and pneumatic pumps should be strengthened to place a priority on the option of routing emissions to a process to meet the emissions reduction requirement over the option of combusting those emissions. The commenters reference the EPA's FIP for the FBIR (FBIR FIP) [115] and NSPS OOOOa [116] as examples where the EPA has previously done this. The commenters also asserted that, to the extent that the EPA does permit gas combustion, it must only permit the use of VOC emissions control devices designed to reduce VOC emissions by 98 percent and require annual control efficiency performance testing for those devices.

Response: Regarding the comment that priority should be codified for the option of routing emissions to a process to meet the emissions reduction requirement over the option of combusting those emissions, we disagree. The commenters reference the EPA's FBIR FIP and NSPS OOOOa as examples of placing such priority, but that is a misinterpretation of the nuances of these regulations. The FBIR FIP allows lower-efficiency combustion of produced gas during well completion and through the first 90 days of production (using what is commonly known as pit flares). Within those first 90 days, the FBIR FIP requires all natural gas emissions from production operations and storage operations to be captured and routed through a closed-vent system to either a beneficial process or a high-efficiency combustion device, only allowing limited lower-efficiency combustion if routing to a process or high-efficiency combustion is temporarily infeasible (not to exceed 500 hours annually).[117] The FBIR thus places a priority on routing to a process or high-efficiency combustion over lower-efficiency combustion, but there is equal allowance for routing to a process and routing to a high-efficiency combustion device. NSPS OOOOa does prioritize routing of produced gas to a process over combustion for each well completion operation with hydraulic fracturing during the separation flowback stage. However, the same prioritization is not expressed for treatment of gases and vapors during ongoing production post-completion, which is only covered under NSPS OOOOa for well sites through the requirements for centrifugal compressors, reciprocating compressors, pneumatic controllers, pneumatic pumps, storage vessels, and the collection of fugitive emissions components at a well site's affected facilities.[118] Unlike the FBIR FIP and NSPS OOOOa, the final U&O FIP does not cover well completion operations. As the primary goal is to reduce existing source emissions to improve air quality in the Uinta Basin, the U&O FIP covers ongoing production operations at existing, new, and modified oil and natural gas sources that are not already subject to federal standards, including NSPS OOOO and OOOOa and NESHAP HH.

Regarding the comment that the EPA must only permit the use of VOC emissions control devices designed to reduce VOC emissions by 98 percent and require annual control efficiency performance testing for those devices, we disagree. As explained earlier,[119] we are reiterating our position in the proposed FIP that even devices that are designed to achieve at least 98 percent VOC control efficiency and able to demonstrate that control efficiency in controlled testing environments may not reliably achieve 98 percent control efficiency in the field on a continuous basis without stronger flare performance requirements than are currently in effect today in EPA's federal regulations that apply nationally. We believe that 95.0 percent continuous control efficiency is achievable when supplemented by the design, operational and parameter monitoring requirements in the final FIP. We expect that requirements for robust design of combustion devices, initial and subsequent performance testing (every 5 years) of enclosed combustors according to the procedures in NSPS OOOO and OOOOa (adopted by reference in the proposed FIP), and continuous monitoring of manufacturer-specified parameters that indicate optimal operation of a control device, including combustion temperature and a continuous pilot flame while emissions are routed to a device, are effective at indicating proper operation of a control device and more affordable and flexible than requiring annual performance testing of thousands of control devices or requiring exclusive use of particular devices. Requiring 95.0 percent continuous control efficiency also provides consistency with the EPA's federal regulations that apply nationally and consistency across all areas in the Uinta Basin, which operators are accustomed to complying with in the Uinta Basin already. Imposing more stringent control requirements on Indian country lands within the U& Reservation than are imposed in areas where the EPA has approved the UDEQ to implement the CAA may also unnecessarily create a competitive disadvantage to developing on the Indian country lands within the U&O Reservation, causing economic impacts to the Ute Indian Tribe and its citizens.

Comment: Industry asserted that the definition of ''fugitive emissions component'' and the repair timeline and inspection frequency should be consistent with those in NSPS OOOOa, to avoid divergent requirements for operators with sources subject to LDAR under the NSPS and sources subject to LDAR under the FIP. Environmental organization commenters asserted that the FIP applicability to the requirement to implement an LDAR program should not be limited to the minimum threshold for sources with total emissions from the collection of all

[114] The analysis is included in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709), Microsoft Excel spreadsheet titled, ''OGFIP Emissions_UO_2017–2021.xlsx.''

[115] *See* 40 CFR 49.4164(d).

[116] *See* 40 CFR 60.5375a(a)(1)(ii) and 60.5375a(a)(3).

[117] *See* 40 CFR 49.4164(b) through (e) and 49.4165(d)(2)(ii).

[118] *See* 40 CFR 60.5380a, 60.5385a, 60.5393a, 60.5395a, 60.5397a, 60.5410a, and 60.5411a.

[119] *See* Section IV.F.3 of this preamble.

storage vessel, glycol dehydrator and pneumatic pump emissions equal to or greater than 4 tpy VOC, because there is no inherent relationship between the quantity of vented emissions from tanks, dehydrators and pneumatic pumps (intended) and the source's fugitive emissions (unintended), and because the proposed LDAR requirements apply to components, such as compressors, that are categorically different than storage tanks, dehydrators and pneumatic pumps. These commenters asserted that all oil and natural gas sources should be required to implement an LDAR program, based on the results of recent studies indicating pneumatic devices often emit at higher rates than they are designed. The same commenters also asserted that the definition of ''fugitive emissions component'' should not exclude natural gas-driven pneumatic controllers and pumps that are designed to vent as part of normal operations.

Response: We agree with comments that the definition of ''fugitive emissions component'' should be consistent with that in NSPS OOOOa and we have revised the definition accordingly in the final FIP. We disagree with comments that the definition should not exclude pneumatic devices. The EPA has already codified that exclusion in NSPS OOOOa. Additionally, pneumatic devices are also subject to specific control requirements in the FIP, namely the requirements to control VOC emissions from pneumatic pumps at certain sources and to ensure that pneumatic controllers have a bleed rate of 6 scf/hr or less (*i.e.,* ''low-bleed''). We are aware of the studies regarding malfunctioning pneumatic controllers and refer the reader to the previous summaries of comments and our responses in this section regarding the applicability of pneumatic controllers. We agree with comments that the repair timeline should be consistent with those in NSPS OOOOa. We have not revised the LDAR inspection frequency of the proposed FIP to be entirely consistent with the frequency that is in NSPS OOOOa. The majority of the oil and natural gas sources that are subject to the FIP are existing sources that are not subject to NSPS OOOOa. The final semiannual inspection frequency for affected well sites is consistent with what is in the Utah Oil and Gas Rules, the CTG and NSPS OOOOa. For affected gathering and boosting compressor stations and natural gas processing plants, it is less frequent than the CTG and NSPS OOOOa in part.[120] The Utah Oil and Gas Rules do not cover gathering and boosting compressor stations or natural gas processing plants and the Utah Permit Requirements require varying inspection frequencies ranging from semiannual to monthly. There are far fewer existing gathering and boosting compressor stations, and even less existing natural gas processing plants, on the Indian country lands within the U&O Reservation than there are well sites. Because the CTG VOC guidelines and the NSPS OOOOa methane standards require at least quarterly inspections for existing, new, and modified compressor stations and natural gas processing plants, but the NSPS OOOOa VOC standards for new and modified compressor stations and natural gas processing plants and the Utah Permit Requirements for existing compressor stations and natural gas processing plants mandate LDAR inspection frequencies widely ranging from semi-annual to monthly, we determined that it is reasonable to simplify compliance with the final FIP by requiring a consistent semi-annual inspection frequency for all types of oil and natural gas sources. We note that the gathering and boosting compressor stations and natural gas processing plants subject to NSPS OOOOa would be required to comply with those fugitive emissions inspection requirements, rather than the FIP. We have, however, revised the procedural LDAR requirements of the proposed FIP to maximize consistency with the equivalent requirements of NSPS OOOOa, which addresses the concern that operators would be subject to divergent procedural requirements for sources subject to LDAR under the NSPS and sources subject to LDAR under the FIP.

In response to the comment criticizing our proposal to apply LDAR requirements to sources that are required to control facility-wide VOC emissions from the collection of all storage vessels, glycol dehydrators and pneumatic pumps (*i.e.,* emissions from those equipment are greater than or equal to 4 tpy), we do agree that there is not strong evidence of a direct inherent relationship between the quantity of vented emissions from the collection of all storage vessels, dehydrators and pneumatic pumps (intended) and a source's fugitive emissions (unintended). We also agree that the proposed LDAR requirements apply to components, such as compressors, that are categorically different than storage vessels, dehydrators and pneumatic pumps. But we disagree that these observations compel the conclusion that the FIP should apply LDAR requirements to all sources, for the reasons explained below. Applying LDAR requirements to all existing, new, and modified oil and natural gas sources would be significantly more stringent than the Utah Oil and Gas Rules given the total number of existing oil and natural gas sources on the Reservation (6,870), versus the number of sources we estimate will be required to implement LDAR under this final rule (3,100). An even broader LDAR applicability than what is being finalized today, which itself is already broader than that in the Utah Oil and Gas Rules, would create inconsistency across all areas of the Basin that may prompt operators to shift development and associated emissions to areas of the Basin where the EPA has approved the UDEQ to implement the CAA or to cease existing production on Indian country lands within the U&O Reservation, both of which could have economic disbenefits for the Ute Indian Tribe. We evaluated whether there was a more appropriate measure to limit applicability to a required LDAR program in the final FIP. We evaluated exempting ''low-production'' well sites, or those with total daily production less than or equal to 15 boe, similar to the CTG. We also evaluated applying LDAR requirements to all oil and natural gas sources that meet either criterion: (1) VOC emissions from the collection of all storage vessels, glycol dehydrators and pneumatic pumps that are greater than or equal to 4 tpy; or (2) well sites with production greater than 15 boe per day. Applying LDAR to all oil and natural gas sources was analyzed as part of regulatory Option 3. In the final FIP we are applying LDAR requirements to all oil and natural gas sources that meet either criterion: (1) VOC emissions from the collection of all storage vessels, glycol dehydrators and pneumatic pumps that are greater than or equal to 4 tpy; or (2) well sites with production greater than 15 boe per day. We determined this approach would address the comment that there is not strong evidence of a direct inherent relationship between the quantity of vented emissions from storage vessels, dehydrators and pneumatic pumps

[120] As discussed earlier in Section V.D. of this preamble, we acknowledge that NSPS OOOOa currently contains two different LDAR inspection standards for well sites and gathering and boosting compressor stations controlling methane emissions and those controlling VOC emissions and that the EPA has published a proposed national rule to reduce methane and other pollutants from existing, new, and modified sources in the oil and natural gas industry that proposes to align those standards to require semiannual LDAR inspections for all well sites (no exemption for low-production wells) and quarterly LDAR inspections for all compressor stations (*see* 86 FR 63110, Nov. 15, 2021).

(intended) and a source's fugitive emissions (unintended). This approach is a middle ground that provides some consistency with both the LDAR applicability of the Utah Oil and Gas Rules and that of the CTG for existing sources. Additionally, from an air quality protection perspective, it is reasonable to make a change from what was proposed that would maximize VOC emissions reduced without requiring all existing oil and natural gas sources to implement an LDAR program. We acknowledge some recent studies indicating that leaks have consistently been observed at certain well sites with less than 15 boe per day.[121] We also acknowledge that the EPA has published a proposed national rule to reduce methane and other pollutants from existing, new, and modified sources in the oil and natural gas industry that proposes to repeal amendments in the 2020 Technical Rule that exempted low-production well sites from monitoring fugitive emission.[122] We may revisit this final action in the future based on any final action we take under CAA section 111 with the Oil and Natural Gas Sector Climate Review rulemaking to address application of LDAR at sources covered by this FIP in a manner similar to the final national rule's provisions for sources that it covers. Also, if the Uinta Basin Ozone Nonattainment Area's Marginal classification is reclassified (''bumped up'') to a Moderate nonattainment classification, or if air quality concerns otherwise warrant, we may conclude that further rulemaking is necessary or appropriate.

Comment: Environmental organization commenters asserted that the proposed FIP requirement that all pneumatic controllers be continuous low-bleed controllers, consistent with NSPS OOOO and OOOOa, is insufficient, adding that while continuous low-bleed controllers are superior to high-bleed controllers, they are documented in recent studies to emit significant VOC emissions both from normal operations (*i.e.,* by design) and often due to equipment malfunctions. The commenters asserted that recent evidence indicates zero-emissions controllers (*e.g.,* electric valve, instrument air-actuated, and solar power valve actuated) are cost-effective, widely used, and environmentally necessary.

Response: We disagree that the EPA mandating zero-emissions controllers is necessary or required here and provided reasoning in the proposed FIP for requiring low-bleed pneumatic controllers rather than zero-emissions pneumatic controllers. The EPA believes that, within the context of this rulemaking and the specific purposes it is intended to accomplish, we do not have sufficient information to finalize such a requirement for the Indian country lands within the U&O Reservation at this time. Further, including such a requirement in the final FIP would not serve to further the EPA's goal of providing regulatory consistency at this time. In the interest of improving air quality by achieving emissions reductions as soon as possible and in a manner that promotes regulatory consistency across all areas in the Uinta Basin, we are finalizing the FIP with the requirement that pneumatic controllers be at least low-bleed. Although zero-bleed controllers are not specifically required, the regulatory text of the final U&O FIP does not prohibit operators from using zero-bleed controllers to comply with the rule, as it incorporates by reference the pneumatic controller requirements of NSPS OOOOa at 40 CFR 60.5390a, which specify at 40 CFR 60.5390a(c)(1) that ''Each pneumatic controller affected facility at a location other than at a natural gas processing plant must have a bleed rate *less than or equal* to 6 standard cubic feet per hour.'' (emphasis added). We acknowledge that the EPA's Oil and Gas Sector Climate Review Proposed Rule proposes to require pneumatic controllers to have zero emissions, subject to limited exceptions.[123] However, that proposed requirement is not yet final and the EPA did not include a similar requirement as part of the proposal for this rulemaking. We may revisit this final action in the future based on any final action we take under CAA section 111 with the Oil and Natural Gas Sector Climate Review rulemaking to address pneumatic controllers at sources covered by this FIP in a manner similar to the final national rule's provisions for sources that it covers. Also, if the Uinta Basin Ozone Nonattainment Area's Marginal classification is reclassified (''bumped up'') to a Moderate nonattainment classification, or if air quality concerns otherwise warrant, we may conclude that further rulemaking is necessary or appropriate.

Comment: Environmental organization commenters asserted that the proposed FIP should require capture and control of VOC emissions during truck loading and unloading. The commenters claimed that the EPA failed to take into account that truck loading and unloading is an activity that occurs repeatedly and provides an opportunity for emissions reductions and the EPA failed to provide calculations to support the cost-prohibitiveness of requiring such controls.

Response: We disagree. In developing the proposed rule, we found that the estimated annual share of VOC emissions from truck loading and unloading in the UBEI2014 was only 2 percent of the VOC emissions inventory and such a requirement would not be expected to contribute to meaningful VOC reductions compared to submerged fill and bottom loading requirements. The UBEI2017-Update indicates that truck loading and unloading represents an even smaller portion of the VOC emissions inventory at 1 percent. We did not receive new information during the public comment period on the cost of capture and control of emissions from truck loading and unloading to compel us to change the proposed requirement. Therefore, we are finalizing truck loading and unloading requirements as proposed. We may consider such a requirement in a future rulemaking if additional action is required to address air quality impacts from ozone pollution, or we may consider it as a creditable emissions reduction to offset permitting of a new or modified major source or demonstrating general conformity. We acknowledge that the EPA's Oil and Natural Gas Sector Climate Review Proposed Rule solicits comment on whether the EPA should propose to require capture and control

[121] A study by the Boulder County Health Department, ''Leak Inspection and Repair at Oil and Gas Well Sites

Boulder County Public Health Voluntary Inspection Program Results 2014–2018,'' tracked leaks at well pads in Boulder County over a five-year period using OGI. The program resulted in 1,022 inspections at 147 well pad sites across the county from 2014 through 2018. Cumulatively, gas leaks were detected at 86 percent [*i.e.,* 126/147] of inspected sites, with the percentage each year ranging from 38 percent to 49 percent. 64 percent of the sites with leaks experienced them in multiple calendar years. An earlier version of the study (2014–2016) was referenced via comments on the proposed NSPS OOOOa technical revisions, available in the docket for that rulemaking at *https://www.regulations.gov* (Docket ID No. EPA–HQ–OAR–2010–0483–0748). Since then, two additional study years through 2018 were added. The report is available in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709). We conducted an analysis showing that of the average BOED per well ranged from 1.6 to 2.3 from 2014–2018, indicated in the November 18, 2019, email from Cindy Beeler, EPA, available in the docket for this rulemaking at *https://www.regulations.gov* (Docket ID No. EPA–R08–OAR–2015–0709); and Deighton, J. A., Townsend-Small, A., Sturmer, S. J., Hoschouer, J., & Heldman, L. (2020). Measurements show that marginal wells are a disproportionate source of methane relative to production. Journal of the Air & Waste Management Association, available at *https://www.tandfonline.com/doi/full/10.1080/10962247.2020.1808115,* accessed Mar. 14, 2022.

[122] *See* 86 FR 63110 (Nov. 15, 2021).

[123] *See* 86 FR 63110, Nov. 15, 2021.

of VOC and methane emissions from truck loading and unloading.[124] We may revisit this final action in the future based on any proposal and subsequent final action we take under CAA section 111 for the Oil and Natural Gas Sector to address truck loading and unloading at sources covered by this FIP in a manner similar to a final national rule's provisions for sources that it covers. Also, if the Uinta Basin Ozone Nonattainment Area's Marginal classification is reclassified (''bumped up'') to a Moderate nonattainment classification, or if air quality concerns otherwise warrant, we may conclude that further rulemaking is necessary or appropriate.

Comment: Several commenters claimed the EPA should regulate VOC emissions from additional equipment or activities as part of the final FIP, including oil and natural gas wastewater pond evaporation facilities, intermittent bleed pneumatic devices, well production associated gas and small two-stroked rich-burn engines. Commenters also asserted that the EPA should regulate sources of NO_X emissions as part of the final FIP, as it is an ozone precursor and some studies have indicated the NO_X reductions in the Uinta Basin may result in meaningful reductions in the formation of ozone. NO_X emissions sources that commenters asserted should be covered by the FIP include engines, turbines, boilers, heaters, flares and thermal incinerators.

Response: Regarding the comments that the FIP should cover additional VOC emissions sources, we are not finalizing emissions control requirements for any sources in addition to what was proposed. The primary reason is that we proposed to act on the sources as to which we had sufficient cost and emissions reduction information specific to the Uinta Basin and from which we expected that significant emissions reductions could be achieved in a manner that maximizes regulatory consistency across all areas in the Basin. We are finalizing this rule as applicable to those sources in order to achieve emissions reductions quickly and improve air quality and public health within the U&O Reservation as soon as possible. It may be possible in the future to achieve further reductions by regulating additional sources, and if we conclude that such further regulation is appropriate, we will propose action on it in a future U&O Reservation rulemaking in order to receive public comment. The EPA is actively participating in ongoing research to better understand emissions from all of the aforementioned VOC emissions sources in the Uinta Basin. We acknowledge that the EPA's Oil and Natural Gas Sector Climate Review Proposed Rule has presented new information and analysis that will likely be relevant for reducing emissions on the U&O Reservation and solicits additional information on evaluating and potentially covering at least some of these sources on a national basis.[125] Our assessment of new, potentially relevant information will continue in the context of the Climate Review Rule still being developed. If we finalize a national Climate Review Rule in the future, its requirements will apply directly to covered sources. As to sources not covered by a final national rule, we may find it necessary or appropriate to revisit this final action in the future and revise it through the rulemaking process (including public notice and comment) based on information evaluated in issuance of that final national rule. Also, if the Uinta Basin Ozone Nonattainment Area is reclassified to a Moderate nonattainment classification, or if air quality concerns otherwise warrant, we may find that further rulemaking is necessary or appropriate.

Regarding the comments that the FIP should cover sources of NO_X emissions, we maintain our conclusion from the proposed rule that most recent studies on winter ozone in the Uinta Basin indicate that ozone in the Basin is sensitive to changes in VOC emissions and that the effect of changes in NO_X emissions is less certain, and, therefore, VOC reductions will have the most cost-effective impact in reducing winter ozone formation in the Basin. We may consider focusing on NO_X emissions reduction in future rulemakings if additional action is required to address air quality impacts from ozone pollution and any control technology and cost information commenters provided may be useful in those cases. We may also consider future NO_X emissions reductions as creditable to offset permitting of a new or modified major NO_X emissions source or in demonstrating general conformity. We refer the reader to the Response to Comments document in the docket for this rulemaking for more details on our consideration comments related to regulating additional VOC emissions sources and regulating NO_X emissions sources.

Comment: Industry commenters asserted that the U&O FIP should only apply to Indian country lands within the Uinta Basin Ozone Nonattainment Area boundary, rather than all Indian country lands within the U&O Reservation, as proposed. Environmental organization commenters asserted that the term ''Uintah and Ouray Reservation'' must be defined in the regulatory text of the rule and should mean the lands ''within the exterior boundaries of the U&O Reservation.''

Response: We disagree with the comment that the FIP should only apply to Indian country lands within the Uinta Basin Ozone Nonattainment Area boundary. We are finalizing the FIP to impose the VOC emissions reduction requirements to all Indian country lands within the U&O Reservation for multiple reasons: (1) Implementing the requirements only to sources in the nonattainment area would be complex to implement, because it would present a second layer to already complex case-specific determinations of CAA jurisdiction and applicability to the FIP and would result in operators potentially needing to comply with different regulatory requirements within Indian country; and (2) Applying the FIP only to the Indian country portions of the nonattainment area would result in inconsistent requirements across all areas in the Uinta Basin, as the Utah Oil and Gas Rules apply to all oil and natural gas sources in areas of the Bain where the EPA has approved the UDEQ to implement the CAA, not just those in the nonattainment area. We agree with the comment that the term ''U&O Reservation'' was undefined in the regulatory text of the proposed rule and have added clarification to the final rule regulatory text in 40 CFR 49.4169 that ''U&O Reservation'' refers to the ''Uintah and Ouray Indian Reservation.'' We disagree that the rule text should state that it applies ''within the exterior boundaries of the U&O Reservation.'' The proposed rule stated that it applies to the ''Indian country lands within the U&O Reservation.'' There are non-Indian country lands within the exterior boundaries of the U&O Reservation. Therefore, we have added a definition of ''Indian country'' to 40 CFR 49.4171 that references the corresponding definition at 18 U.S.C. 1151.

D. Major Comments Concerning Monitoring and Testing Requirements

Comment: Industry commenters asserted that the proposed requirement to perform auditory/visual/olfactory (AVO) surveys while crude oil, condensate, intermediate hydrocarbon liquids and produced water storage vessels are being filled is impractical, due to the non-static nature of separators cycling and liquids transfer

[124] *See* 86 FR 63110, Nov. 15, 2021.

[125] *See* 86 FR 63110 (Nov. 15, 2021).

that could result in an operator being on location for a burdensome period of time to comply. The commenters also asserted that the proposed required monthly AVO inspections should not be finalized because they go beyond NSPS OOOOa and the UDEQ requirements and are duplicative of the proposed monthly inspections required in 40 CFR 49.4183(c) and (e) and the semi-annual monitoring of fugitive emissions components in 40 CFR 49.4179. The commenters asserted that the final FIP should provide more flexibility in determining compliance with the no detectable emissions limit for covers and closed-vent systems by allowing multiple options to perform inspections, including AVO and OGI.

Response: We agree with the commenters that the monitoring requirements in proposed 40 CFR 49.4183(c), (d) and (e) contained some redundancy and risk affected sources being subject to duplicative requirements. We have revised paragraphs (c) through (e) to merge paragraphs (c) and (d) (now in 40 CFR 49.4182 in the final FIP) for more consistency with NSPS OOOOa. We have also incorporated more streamlined language that is still consistent with that section, rather than incorporate by reference the cover and closed vent system inspection requirements from 40 CFR 60.5416a(c). Additionally, we agree with comments that, in addition to AVO inspections, consistent with NSPS OOOOa, the FIP should provide the option to conduct optical gas imaging inspections of covers and closed vent systems at the same frequency as required fugitive emissions inspections and have included a similar option.

Regarding the proposed requirement that monthly inspections must be performed while storage vessels are being filled, we acknowledge that storage vessel filling at certain well sites may occur less frequently than at other sites, due to the non-static nature of separator cycling and liquids transfer. We have removed the portion of the requirement that inspections must be performed while storage vessels are being filled. Because one cannot always hear or smell emissions from the collection of all storage vessels, we continue to hold the view that inspections conducted during filling events can be valuable for identifying storage vessel and closed vent system integrity defects, as filling events generate the largest flashing emissions. To maintain the effectiveness of visual inspections in identifying defects, in light of removal of the requirement that they be conducted during filling events, we have added language to 40 CFR 49.4182(c) that inspectors should note whether there are signs of oil releases around storage vessel thief hatches, seals and pressure relief valves (*i.e.,* staining on the storage vessel), which may indicate over-pressure events that have occurred when the storage vessel was being filled. We emphasize that final 40 CFR 49.4173(c)(1) requires that all flashing, working, standing and breathing losses from storage vessels must be routed through a closed-vent system. This includes flashing losses during filling events.

Comment: Industry commenters suggested that the FIP should include language consistent with the provisions of NSPS OOOOa for unsafe and difficult to monitor fugitive emissions components and delay of repair if repair or replacement is technically infeasible, would require a vent blowdown, compressor station shutdown, well shutdown or shut-in, or would be unsafe to repair during operation of the unit.

Response: We agree and have revised the language of the proposed FIP to include language more consistent with the difficult-to-monitor and unsafe-to-monitor provisions of the NSPS, including exceptions for the timelines to inspect and repair such fugitive emissions components and requirements that the fugitive emissions plan include the specialized timelines.

Comment: Environmental organization commenters asserted that, given the urgent need to reduce ozone pollution in the Uinta Basin and the high cost-effectiveness of LDAR, the FIP must require quarterly or monthly LDAR surveys instead of the proposed semi-annual surveys, and must require leaking equipment repair more quickly than 30 days after discovering the leak. While the proposed requirements are consistent with NSPS OOOOa, the commenters referenced that EPA either contemplated during proposal or had required such provisions in previous versions of NSPS OOOOa and that other oil and gas producing states impose such requirements.

Response: Regarding LDAR survey frequency, we direct the reader to our response to comments on LDAR applicability. We disagree with commenters suggesting the final FIP should contain stricter procedural LDAR requirements than are effective in NSPS OOOOa, including repair of leaking equipment more quickly than 30 days after discovering the leak. We determined that finalizing procedural LDAR requirements that are consistent with NSPS OOOOa (and by extension, UDEQ oil and gas rules) addresses the concern expressed by other commenters that affected operators would have to comply with different fugitive emissions monitoring programs than they are required to implement for sources in the same area that are subject to NSPS OOOOa or the UDEQ Oil and Gas Rules and will allow for more straightforward compliance throughout the Basin. Implementing LDAR requirements in the final FIP that are procedurally different than the requirements in NSPS OOOOa or the Utah Oil and Gas rules may also potentially create disincentives for development on the Reservation and of Tribally owned resources, leading to economic disadvantages for the Ute Indian Tribe and its members. While we appreciate the alternative cost information and comparison of state oil and gas LDAR requirements provided by commenters, we do not agree that the information provided is relevant to establishing requirements for monitoring in the Uinta Basin for the purposes and goals of this rulemaking. We determined that the LDAR procedural requirements will still result in meaningful VOC emissions reductions from LDAR on the Indian country lands within the U&O Reservation, while avoiding a complex regulatory scheme for entities that operate some sources subject to the FIP requirements and other sources subject to NSPS OOOOa or requirements in areas where the EPA has approved the UDEQ to implement the CAA.

E. Major Comments Concerning Recordkeeping and Reporting

Comment: Industry commenters suggested that the recordkeeping and reporting requirements should align with those in the UDEQ regulations, saying that the proposed FIP requirements were in many cases more detailed, prescriptive and stringent than those in UDEQ regulations and could result in discouraging oil and gas development on the U&O Reservation. Examples provided of discrepancies in recordkeeping requirements included that the UDEQ does not require annual compliance reports or that records be kept of all required monitoring of operations every time an operator is on site. The commenters referenced other examples where the UDEQ requires certain records that were not proposed in the U&O FIP. The commenters suggested recordkeeping and reporting requirements should be limited to those that help demonstrate compliance with the VOC emission reduction requirements, such as records of instances when closed-vent-systems conveying emissions to a control device bypass the device, records of observed

instances when the combustor or flare is inoperable or not operating properly, as well as information on actual emissions. The commenters encouraged the EPA to increase the number of recordkeeping requirements in alignment with the UDEQ requirements in exchange for removing the annual compliance reporting requirement.

Response: We agree with commenters that required elements of recordkeeping and reporting in the final FIP should be limited to the most relevant information to assure compliance with the emissions control requirements of the FIP. We have revised the list of required records accordingly and streamlined the required annual report content to only include summaries of the records of the most relevant information to demonstrate compliance. We disagree with commenters that the U&O FIP should not require compliance reporting. Reporting at regular intervals is an important mechanism to ensure that regulations are enforceable as a practical matter. We recognize that the UDEQ regulations do not require annual compliance reporting and are not commenting on the efficacy of the UDEQ's regulations with this response. It is not reasonable for the EPA to rely only on records to assure compliance, particularly in an area with thousands of affected facilities, as we do not have the resource capacity to visit every facility to access them and it would be inefficient to use CAA section 114 authority on a case-by-case basis to obtain them. It is common for the EPA to require both recordkeeping and reporting in CAA regulations, using the broad authority of section 114, sufficient for practical enforceability of the requirements and so that the public has transparent access to records demonstrating compliance.

Comment: Commenters requested the proposed requirement to keep records of the inspector signature be removed from the recordkeeping and reporting requirements, because many operators have moved to digital recordkeeping systems and physical signatures are not feasible with those systems. Commenters instead requested that it would be sufficient to just require inspector IDs be maintained and reported.

Response: We agree that recordkeeping and reporting requirements should facilitate the increasing use of digital recordkeeping and have finalized regulatory text in 40 CFR 49.4184(a)(1)(v)(D) accordingly to require the inspector's name or identification number.

F. Major Comments Concerning Cost-Benefit Analysis

Comment: Industry commenters asserted that the cost benefit analysis completed by the EPA for the proposed FIP lacked transparency and relied on information collected over 5 years ago for the CTG, failing to check the accuracy of the cost information included for that action and disregarding information previously submitted for the proposed CTG specific to VOC emissions control and storage vessel retrofit costs. Commenters incorporated those comments by reference in their comments to the proposed U&O FIP. The commenters also claimed that the EPA did not account for all burdens and costs associated with compliance with the VOC emissions control requirements, particularly higher costs for retrofitting existing storage vessels with controls, monthly storage vessel inspections and associated recordkeeping and reporting costs.

Response: The EPA responded to the referenced comments submitted for the draft CTG and we are, therefore, not including new responses to those comments here.[126] We note that in response to those comments, the EPA did make small changes to the cost elements included in the cost analysis for existing storage vessels that did not result in any change to the EPA's recommended applicability threshold for storage vessels in the final CTG. We based costs for retrofitting existing storage vessels on those costs in the final CTG that included those minor revisions. The costs recognize that it is more expensive to retrofit existing storage vessels for emissions control than to install controlled equipment upon construction. We did not update any of those costs for the final FIP, as we did not receive any new cost information on retrofitting storage vessels during the comment period for the proposed FIP. We acknowledge that the EPA's Oil and Natural Gas Sector Climate Review Proposed Rule[127] uses updated costs and emissions reduction estimates, including for fugitive emissions monitoring, retrofitting of existing storage vessels, storage vessel monthly inspections, installing zero emissions pneumatic devices, and associated recordkeeping and reporting costs.[128] [129] In order to achieve emissions reductions quickly and improve air quality and public health within the U&O Reservation as soon as possible, we have not updated our costs and emissions reductions estimates for the final FIP using those proposed estimates. If we conclude that further regulation is necessary or appropriate in the future, we will propose action on it in a future U&O Reservation rulemaking in order to receive public comment and would analyze any such rulemaking using the best available costs and emissions reductions estimates at that time.

Comment: Industry commenters also incorporated by reference portions of the comments they submitted for the draft CTG in their comments on the proposed FIP with regard to LDAR costs being underestimated.

Response: Again, the EPA previously responded to the referenced comments in issuing the final CTG and, therefore, we are not including new responses to those comments here. While we based the costs of implementing an LDAR program at existing oil and natural gas sources for the proposed FIP on those equivalent costs used for the final CTG, since the proposed FIP was issued the EPA has issued final technical revisions to NSPS OOOOa that included changes to fugitive emissions monitoring costs and emissions reduction estimates.[130] We have updated our costs and emissions reductions estimates for the final U&O FIP, relying in part on the updated fugitive emissions monitoring costs and emissions reduction estimates

[126] *Responses to Public Comments on the Draft Control Techniques Guidelines for the Oil and Natural Gas Industry.* Final Document. October 2016. Available in *https://www.regulations.gov,* Document ID No.EPA–HQ–OAR–2015–0216–0235, accessed Mar. 14, 2022.The Response to Comments Document for the U&O FIP summarizes the comments and the EPA's responses to those comments on the proposed CTG, as they relate to various provisions of the proposed U&O FIP.

[127] *See* 86 FR 63110, Nov. 15, 2021.

[128] *Regulatory Impact Analysis for the Proposed Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review.* Nov. 14, 2021, available at *https://www.regulations.gov,* Document ID No. EPA–HQ–OAR–2021–0317–0173, accessed Mar. 14, 2022.

[129] *Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources and Emission Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review.* October 2021, available at *https://www.regulations.gov,* Document ID No. EPA–HQ–OAR–2021–0317–0166. In general, many of the cost factors used were taken from technical support documents for earlier rulemakings, such as the 2012 NSPS OOOO, the 2016 CTG and NSPS OOOOa, and the 2020 Technical Rule, and were only updated to reflect 2019$. Most of the cost and emission reduction factors that were reevaluated for the 2021 proposed rule evaluated alternative compliance options, rather than significantly updating costs for control measures. Cost factor changes were characterized as minor. For example, see Tables 12–8a and 12–8b.

[130] The **Federal Register** document for the rulemaking, known as the technical amendments to the 2016 NSPS (85 FR 57398, Sept. 15, 2020), is available at *https://www.regulations.gov,* Document ID No. EPA–HQ–OAR–2017–0483 2247, accessed Mar. 14, 2022.

used for the final NSPS OOOOa revisions. We also acknowledge that the EPA has published a proposed national rule to reduce methane and other pollutants from existing, new, and modified sources in the oil and natural gas industry [131] that uses further updated fugitive emissions monitoring costs and emissions reduction estimates. In order to achieve emissions reductions quickly and improve air quality and public health within the U&O Reservation as soon as possible, we have not updated our costs and emissions reductions estimate for the final FIP using those proposed estimates. If we conclude that further regulation is necessary or appropriate in the future, we will propose action on it in a future U&O Reservation rulemaking in order to receive public comment and would analyze any such rulemaking using the best available costs and emissions reductions estimates at that time.

Comment: Environmental organization commenters asserted several flaws in the EPA's cost-benefit analysis regarding the societal benefits that will result from the avoided methane emissions due to VOC emissions reductions under the FIP. The most prominent flaw the commenters noted is the use of an interim value for the social cost of methane (SC–CH_4) that arbitrarily accounts only for domestic benefits of reduced methane emissions, which diverted from previously long-established and scientifically supported factors recognizing that methane emissions reductions have global benefits. The commenters also noted that the EPA arbitrarily discounted future climate effects at a 7 percent discount rate in addition to a 3 percent discount rate, which is inconsistent with Circular A–4's requirements to distinguish social discount rates from rates based on private returns to capital; to make plausible assumptions; to adequately address uncertainty, especially over long-time horizons; and to rely on the best available economic data and literature.

Response: We acknowledge these comments and that EPA policies have changed since we developed and analyzed the benefits of the proposed U&O FIP. The SC–CH_4 estimates presented in the RIA for the final U&O FIP are the SC–CH_4 estimates presented in the *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990* (IWG 2021) (hereafter, ''February 2021 TSD''). EPA has evaluated the SC–CH_4 estimates in the February 2021 TSD and has determined that these estimates are appropriate for use in estimating the social benefits of CH_4 emission reductions expected to result from this final rule.[132] These SC–CH_4 estimates are interim values developed for use in benefit-cost analyses until updated estimates of the impacts of climate change can be developed based on the best available science and economics. After considering the TSD, and the issues and studies discussed therein, EPA concludes that it agrees with the rationale for these estimates presented in the TSD and summarized below.

In particular, the IWG concluded that the SC–GHG estimates developed under E.O. 13783, and used in the RIA of the proposed rule, fail to reflect the full impact of GHG emissions in multiple ways. First, the IWG concluded that those estimates fail to capture many climate impacts that can directly and indirectly affect the welfare of U.S. citizens and residents. Examples of affected interests include direct effects on U.S. citizens and assets located abroad, international trade, U.S. military assets and interests abroad, and tourism, and spillover pathways such as economic and political destabilization and global migration that can lead to adverse impacts on U.S. national security, public health, and humanitarian concerns. Those impacts are better captured within global measures of the social cost of greenhouse gases.

In addition, assessing the benefits of U.S. GHG mitigation activities requires consideration of how those actions may affect mitigation activities by other countries, as those international mitigation actions will provide a benefit to U.S. citizens and residents by mitigating climate impacts that affect U.S. citizens and residents. A wide range of scientific and economic experts have emphasized the issue of reciprocity as support for considering global damages of GHG emissions. Using a global estimate of damages in U.S. analyses of regulatory actions allows the U.S. to continue to actively encourage other nations, including emerging major economies, to take significant steps to reduce emissions. The only way to achieve an efficient allocation of resources for emissions reduction on a global basis—and so benefit the U.S. and its citizens—is for all countries to base their policies on global estimates of damages.

Therefore, for purposes of the RIA for this final rule EPA centers attention on a global measure of SC–CH_4. This approach is the same as that taken in EPA regulatory analyses over 2009 through 2016, as well as in more recent regulatory analyses, including for the *Final Revised Cross-State Air Pollution Rule (CSAPR) Update for the 2008 Ozone NAAQS.*[133] The present value of net benefits is estimated as the difference in the present values of monetized benefits and costs calculated at the 3 percent percent discount rates. We do not discount future climate effects at a 7 percent discount rate.

Finally, a comprehensive estimate of climate damages to U.S. citizens and residents does not currently exist in the literature. Existing estimates are both incomplete and an underestimate of total damages that accrue to the citizens and residents of the U.S. because they do not fully capture the regional interactions and spillovers discussed above, nor do they include all of the important physical, ecological, and economic impacts of climate change recognized in the climate change literature, as discussed further below. EPA, as a member of the IWG, will continue to review developments in the literature, including more robust methodologies for estimating the magnitude of the various direct and indirect damages to U.S. populations from climate impacts and reciprocal international mitigation activities, and explore ways to better inform the public of the full range of carbon impacts. While the IWG works to assess how best to incorporate the latest, peer reviewed science to develop an updated set of SC–GHG estimates, it recommended the interim estimates to be the most recent estimates developed by the IWG prior to the group being disbanded in 2017. The estimates rely on the same models and harmonized inputs and are calculated using a range of discount rates.

The response to comments document and the RIA for the final FIP provide more detailed discussion of the revised approach to estimating climate benefits from reducing methane as a benefit to reducing VOC.

[131] *See* 86 FR 63110, Nov. 15, 2021.

[132] We note that the monetized climate benefits presented in the RIA analysis and discussed here are not a part of the technical or legal basis of this action but are instead presented as part of the RIA analysis as required pursuant to Executive Orders, including E.O. 12866.

[133] Regulatory Impact Analysis for the Final Revised Cross-State Air Pollution Rule (CSAPR) Update for the 2008 Ozone NAAQS (EPA–452/R–21–002) (EPA Office of Air Quality Planning and Standards, Mar. 2021); available at *https://www.epa.gov/sites/default/files/2021-03/documents/revised_csapr_update_ria_final.pdf,* accessed July 30, 2021.

G. Other Comments of Significant Interest

Comments Concerning CAA Nonattainment Requirements

Comment: Environmental organization commenters asserted that CAA general conformity requirements apply to the EPA's issuance of this FIP, requiring a conformity analysis and a conformity determination.

Response: We disagree with these comments because under 40 CFR 93.153(a), the final action will not cause emissions increases above the threshold required to trigger conformity requirements (*i.e.,* no or de minimis emissions increase, see 40 CFR 93.153(c)(2)).

Comment: Industry commenters asserted that the EPA should preserve maximum flexibility for federal agencies to determine that their actions conform and take steps to streamline conformity demonstrations, such as including a statement that implementation of this FIP satisfies federal agency general conformity obligations or a clarification that all legal options for demonstrating conformity are available, including those listed at 40 CFR 93.153(f), 93.158(a)(1), 93.158(a)(5)(i)(A), 93.158(a)(5)(i)(B), and 40 CFR 93.158(a)(5)(iv). One commenter asserted that the EPA should clarify that the FIP is not a ''relevant'' implementation plan within the meaning of 40 CFR 93.158(a)(5)(iv) and that approval of the final FIP will not limit federal agencies' ability to rely on 40 CFR 93.158(a)(5)(iv) when demonstrating conformity.

Response: We disagree with these comments. We concluded that this FIP is exempt from the general conformity requirements in 40 CFR part 93, subpart B (see 40 CFR 93.153(c)(2)). As such, the FIP does not otherwise address general conformity or the responsibilities for the EPA or other federal agencies and federal agencies authorizing new emissions of NO_X and VOC that are from sources not covered by this FIP must conduct an applicability analysis, and must, if project emissions are above the applicable de minimis thresholds, make a conformity determination in accordance with 40 CFR part 93, subpart B. This review would also consider whether any activities are on a federal agency's Presumed to Conform List (PTC). (Individual federal agencies can develop their own list of activities that are presumed to conform (40 CFR 93.153(f) through (j)); to date, however, neither the Ute Indian Tribe, BLM, the EPA, nor the state of Utah have developed a PTC list for the Uinta Basin ozone nonattainment area.) Federal agencies needing to make a general conformity determination have an option available for the Indian country lands within the U&O Reservation: Demonstrate that the emissions from the federal action are fully offset within the nonattainment area through a revision to the applicable SIP (or TIP or FIP) or an equally enforceable measure that effects emissions reductions equal to or greater than the total of direct and indirect emissions from the action so that there is no net increase in emissions of that pollutant. 40 CFR 93.158(a)(5)(iii).

Comment: Environmental organization commenters asserted that the EPA is required to directly address the ways in which this FIP will have environmental justice implications and ensure that any final action puts into practice environmental justice principles. The commenters claimed that the EPA's environmental justice analysis for the proposed FIP was insufficient in focusing only on demographic information and concluding that the impacts would be positive for all populations and failing to address whether the FIP will sufficiently ameliorate the disproportionate public health impacts caused by high ozone levels in the region.

Response: We agree that environmental justice implications are required to be evaluated for any final U&O FIP action to improve the degraded air quality in the Basin—the primary purpose for this rulemaking. We expect this rulemaking to result in reductions of 23,000 tpy of VOC ozone precursor emissions on the Indian country lands within the U&O Reservation and subsequent reductions in ground level ozone formation in the Basin, which will reduce the adverse health impacts caused by ozone for any population residing in the Basin, on and off the Indian country lands within the U&O Reservation. We acknowledged in the proposal that this FIP is an important initial step in bringing the area back into attainment with the ozone NAAQS, but it is not expected to meet the requirements of an attainment FIP that we may prepare per the CAA if the area is bumped up to a Moderate nonattainment classification or higher in the future. We anticipate that the effects of this rulemaking will help demonstrate compliance in such future actions, while allowing more time to improve our understanding of emissions and our ability to model the full suite of actions necessary to achieve NAAQS attainment. We made improvements in the environmental justice analysis, contained in the RIA for this final rule, compared to that for the proposed FIP, including incorporating data on potential existing disproportionate impacts related to environmental burden, socio-economic vulnerability, and health. Evaluation of the additional data did not result in finalizing a substantially different rule than was proposed and follows existing EPA guidance [134] on environmental justice in rulemaking per the directives to federal agencies in the February 11, 1994, Presidential E.O. 12898 [135] and the January 20, 2021, Presidential E.O. 13985.[136]

VII. Impacts of This Final FIP

A. Air Emissions Impacts

The EPA projects that from 2023 to 2032, relative to the baseline, the final rule will result in about 23,000 tons of VOC emissions reductions, 59,000 tons of methane emissions reductions, and 3,100 tons of HAP emission reductions from affected oil and natural gas sources annually. We have estimated regulatory impacts beginning in 2023 as it is the first full year of implementation of this rule and have estimated impacts through 2032 to illustrate the accumulating effects of this rule over a longer period. The EPA did not estimate impacts after 2032 for reasons including limited information, as explained in the RIA.

B. Energy Impacts

There will likely be minimal change in emissions control energy requirements resulting from this rule. Additionally, this final action encourages the use of emission controls that recover hydrocarbon products that can be used on-site as fuel or reprocessed within the production process for sale. The energy impacts described in this section are those energy requirements associated with the operation of emission control devices.

[134] According to the EPA's June 2016 *Technical Guidance for Assessing Environmental Justice in Regulatory Analysis,* page 66 and Section 2.1, the term ''disproportionate impacts'' refers to differences in impacts or risks that are extensive enough that they may merit Agency action. The determination of whether there is a disproportionate impact that may merit Agency action is a policy judgment informed by analysis of any discernable differences in anticipated impacts from the rulemaking on population groups of concern compared to all other population groups.

[135] E.O. 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,* Feb. 11, 1994.

[136] EPA expressed a commitment to conducting environmental justice analysis for rulemakings based on a framework described in the final revisions to the Cross-State Air Pollution Rule (86 FR 23054, 23162, Apr. 30, 2021). And E.O. 13895, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,* Jan. 20, 2021.

Potential impacts on the national energy economy of the rule are discussed in the economic impacts section.

C. Compliance Costs

The EPA estimates the total capital cost of the final FIP to be $280 million for affected sources. We looked at the effect of recovered methane as a cost saving measure. The value of recovered methane amounted to $2.1 million per year. The net PV of the regulatory compliance costs associated with this final rule over the 2023 to 2032 period when accounting for additional revenue from product recovery was estimated to be $560 million (in 2016 dollars) using a 7 percent discount rate and $610 million using a 3 percent discount rate. The net EAV of these costs when accounting for additional revenue from product recovery is estimated to be $81 million per year using a 7 percent discount rate and $72 million using a 3 percent discount rate.

D. Economic and Employment Impacts

Executive Order 13563 directs Federal agencies to consider the effect of regulation on job creation and employment. According to the Executive order, ''our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. It must be based on the best available science.'' (Executive Order 13563, 2011). While a standalone analysis of employment impacts is not included in a standard benefit-cost analysis, such an analysis is of concern in the current economic climate given continued interest in the employment impact of regulations such as this final rule.

With respect to energy markets, the EPA has concluded that, while this action may affect the supply, distribution or use of energy, it is not likely to have significant energy market effects. For small entities, we conducted a screening analysis. Based on the results of this screening analysis, which is presented in the RIA for the final FIP, the EPA concluded that that the rule will not have a Significant Impact on a Substantial Number of Small Entities (SISNOSE). For employment impacts, we did not perform a quantitative analysis on all categories of employment changes as a result of the rule. This rule is expected to result in little change in oil and natural gas exploration and production and is not expected to result in significant changes to employment dedicated to these tasks. The EPA did, however, in its cost analysis for the rule, estimate changes in labor due to compliance activities. As presented in the RIA for this action, the EPA projected there will be increases in the labor required for compliance-related activities associated with this final rule. As the rule imposes VOC emission control requirements that are consistent with federal standards for the oil and natural gas industry that apply nation-wide or rules for similar sources that apply in areas of the Basin where the EPA has approved the UDEQ to implement the CAA, we expect that many operators of affected oil and natural gas sources may already have sufficient systems established for complying with the federal standards for other sources they operate in the Basin, and therefore labor impacts may be overstated in our estimates.

E. Benefits

The EPA expects climate and health benefits due to the VOC emissions reductions projected under this final rule, as well as climate benefits from methane emissions reductions. Climate benefits from reducing emissions of CH_4 can be estimated and monetized using interim estimates of the social cost of methane (SC–CH_4). The SC–CH_4 estimates used here are the SC–CH_4 estimates presented in the *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990* (IWG 2021) (hereafter, ''February 2021 TSD''). EPA has evaluated the SC–CH_4 estimates in the February 2021 TSD and has determined that these estimates are appropriate for use in estimating the social benefits of CH_4 emission reductions expected to result from this final rule. These SC–CH_4 estimates are interim values developed for use in benefit-cost analyses until updated estimates of the impacts of climate change can be developed based on the best available science and economics. EPA and other agencies intend to undertake a fuller update of the SC–GHG estimates that takes into consideration the advice of the National Academies and other recent scientific literature.

We note that the methodology underlying the SC–CH4 estimates used in this RIA been subject to public comment in the context of dozens of proposed rulemakings as well as in a dedicated public comment period in 2013. Further, the monetized climate benefits presented in this analysis are not a part of the technical or legal basis of the proposed action for which the RIA was prepared. Rather, the monetized benefits associated with projected reductions in greenhouse gas emissions that may result from the final rule are presented solely for purposes of compliance with E.O. 12866 and to present the public with information regarding the full scope of potential benefits of the final rule. We note that there is an ongoing interagency process to update the SC–GHG estimates, including the SC–CH4 estimates used in this analysis, and there will be further opportunity to provide public input on the SC–GHG methodology through that process.[137] The RIA for the final FIP provides a more detailed discussion of the approach to estimating climate benefits from reducing methane as a benefit to reducing VOC.

The EPA estimated the PV of monetized climate benefits over the 2023 to 2032 period to be $1 billion using a 3 percent discount rate and estimated the PV of monetized net benefits to be $390 million using a 3 percent discount rate and $440 million using a 7 percent discount rate for costs and a 3 percent discount rate for benefits. We estimate the EAV of monetized climate benefits over the 2023 to 2032 period to be $120 million using a 3 percent discount rate. We estimated the EAV of net benefits to be $48 million using a 3 percent discount rate for both benefits and costs. We estimated the EAV of net benefits to be $39 million using a 3 percent discount rate for benefits and a 7 percent discount rate for costs.[138] These values do not account for health effects of ozone exposure from the decrease in methane emissions. Under the final rule, the EPA expects that VOC emissions reductions will improve air quality and are likely to result in health and welfare benefits associated with reduced exposure to ozone, $PM_{2.5}$, and HAP, but we did not quantify these effects at this time due to the data limitations described below. This omission should not imply that these benefits may not exist; rather, it reflects

[137] For example, EPA, on behalf of the IWG, published a **Federal Register** document on January 25, 2022, to solicit public nominations of scientific experts for the upcoming peer review the forthcoming update. *See https://www.federalregister.gov/documents/2022/01/25/2022-01387/request-for-nominations-of-experts-for-the-review-of-technical-support-document-for-the-social-cost.* EPA has a web page where additional information regarding the peer review process will be posted as it becomes available: *https://www.epa.gov/environmental-economics/scghg-tsd-peer-review.* There will be a separate **Federal Register** document for the public comment period on the forthcoming SC–GHG technical support document once it is released.

[138] As explained in the RIA, For the presentational purposes, we discuss the benefits associated with the average SC-CH_4 at a 3 percent discount rate, but the Agency does not have a single central SC-CH_4 point estimate. The EAV of benefits at a 3 percent discount rate is used to estimate the net benefits at a 7 percent discount rate for costs.

the inherent difficulties in accurately modeling the direct and indirect impacts of the projected VOC emissions reductions for the oil and natural gas industry in the Uinta Basin. To the extent that the EPA were to quantify these ozone and PM impacts, it would estimate the number and value of avoided premature deaths and illnesses using an approach detailed in the Particulate Matter NAAQS and Ozone NAAQS RIAs.[139] This approach relies on full-form air quality modeling for the oil and natural gas source category that would be suitable for use in regulatory analysis in the context of NSPS, including ways to address the uncertainties regarding the scope and magnitude of VOC emissions.

When quantifying the incidence and economic value of human health impacts of air quality changes, the Agency sometimes relies upon alternative approaches to using full-form air quality modeling, called reduced-form techniques, often reported as ''benefit-per-ton'' values that relate air pollution impacts to changes in air pollutant precursor emissions.[140] Several studies have discussed the air quality and health impacts from the oil and natural gas industry.[141] The Agency believes more work needs to be done to vet the analysis and methodologies for all potential approaches to valuing the health effects of VOC emissions changes in areas experiencing elevated winter ozone before they are used in regulatory analysis, but is committed to continuing this work. Recently, the EPA systematically compared the changes in benefits, and concentrations where available, from its benefit-per-ton technique and other reduced-form techniques to the changes in benefits and concentrations derived from full-form photochemical model representation of a few different specific emissions scenarios.[142] The Agency's goal was to create a methodology by which investigators could better understand the suitability of alternative reduced-form air quality modeling techniques for estimating the health impacts of criteria pollutant emissions changes in the EPA's benefit-cost analysis, including the extent to which reduced form models may over-or-under-estimate benefits (compared to full-scale modeling) under different scenarios and air quality concentrations. The EPA Science Advisory Board (SAB) recently convened a panel to review this report.[143] In particular, the SAB will assess the techniques the Agency used to appraise these tools; the Agency's approach for depicting the results of reduced-form tools; and steps the Agency might take for improving the reliability of reduced-form techniques for use in future RIAs.

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is an economically significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket. The EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis, ''Regulatory Impact Analysis of the Final Federal Implementation Plan for Managing Emissions from Oil and Natural Gas Sources on Indian Country Lands Within the Uintah and Ouray Indian Reservation in Utah'' (Ref. EPA–908/Z–16–001), is available in the docket, and is summarized in *Section VII. Impacts of this Final FIP.*

B. Paperwork Reduction Act (PRA)

The information collection activities in this rule will be submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2539.02. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

This final action imposes a new information collection burden under the PRA. The ICR covers information collection necessary to meet the requirements in this U&O FIP. In general, owners or operators are required to maintain records of required monitoring and other rule compliance. This U&O FIP also requires annual reports containing information for each oil and natural gas source, including a summary of certain required records during the reporting period, and a summary of certain instances where operation was not performed in compliance with the requirements of this U&O FIP during the reporting period. Additionally, a summary emissions inventory is required for each source covered under this rulemaking once every three years. These reports and records are essential in determining compliance and are required of all sources subject to this U&O FIP. The information collected will be used by the EPA or the Ute Indian Tribe to determine the compliance status of sources subject to the rule.

The EPA received one comment letter specifically on the ICR for the proposed U&O FIP, as well as several other comments related to the monitoring, recordkeeping, and reporting in the proposed rule. The EPA responded to these comments, as summarized in Sections VI.E and F. of this preamble and in the response to comments document in the docket for this rulemaking.[144]

Respondents/affected entities: The potential respondents are owners or operators of existing, new, and modified oil and natural gas sources on Indian country lands within the U&O Reservation.

Respondent's obligation to respond: Mandatory. The EPA is charged under sections 301(a) and 301(d)(4) of the CAA to promulgate regulations as necessary

[139] U.S. EPA. December 2012. ''Regulatory Impact Analysis for the Final Revisions to the National Ambient Air Quality Standards for Particulate Matter.'' EPA–452/R–12–005. Office of Air Quality Planning and Standards, Health and Environmental Impacts Division, available in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709).

U.S. EPA. September 2015. ''Regulatory Impact Analysis of the Final Revisions to the National Ambient Air Quality Standards for Ground-Level Ozone.'' EPA–452/R–15–007. Office of Air Quality Planning and Standards, Health and Environmental Impacts Division, available in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709).

[140] U.S. EPA. 2018. ''Technical Support Document: Estimating the Benefit per Ton of Reducing $PM_{2.5}$ Precursors from 17 Sectors.'' February, available in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709).

[141] Fann, N., K.R. Baker, E.A.W. Chan, A. Eyth, A. Macpherson, E. Miller, and J. Snyder. 2018. ''Assessing Human Health $PM_{2.5}$ and Ozone Impacts from U.S. Oil and Natural Gas Sector Emissions in 2025.'' Environmental Science and Technology 52(15):8095–8103.

Litovitz, A., A. Curtright, S. Abramzon, N. Burger, and C. Samaras. 2013. ''Estimation of Regional Air-Quality Damages from Marcellus Shale Natural Gas Extraction in Pennsylvania.'' Environmental Research Letters 8(1), 014017.

Loomis, J. and M. Haefele. 2017. ''Quantifying Market and Non-market Benefits and Costs of Hydraulic Fracturing in the United States: A Summary of the Literature.'' Ecological Economics 138:160–167.

[142] This analysis compared the benefits estimated using full-form photochemical air quality modeling simulations (CMAQ and CAMx) against four reduced-form tools: InMAP, AP2/3 EASIUR, and the EPA's benefit-per-ton.

[143] 85 FR 23823 (Apr. 29, 2020).

[144] *Response to Public Comments, Proposed Federal Implementation Plan: Managing Emissions from Oil and Natural Gas Sources on Indian Country Lands within the Uintah and Ouray Indian Reservation in Utah, April 2022,* available in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709).

to protect tribal air resources. Promulgating this U&O FIP will address winter ozone air quality concentrations that exceed the NAAQS, and given the 2015 ozone NAAQS marginal nonattainment designation, when combined with the National O&NG FIP amendments, would provide justification to allow continued streamlined construction authorization of new or modified true minor oil and natural gas sources, all in a manner that seeks to provide regulatory consistency between state and federal requirements with regard to controlling VOC emissions from existing, new, and modified oil and natural gas operations on the Indian country lands within the U&O Reservation. There is no other federal rule, including the recently finalized NSPS and NESHAP for the Oil and Natural Gas Sector (NSPS OOOO, NSPS OOOOa, and NESHAP HH), that establishes air pollution control regulations for the particular oil and natural gas operations that exist on the Indian country lands within the U&O Reservation that are appropriate to address the issues identified for this area. This is in contrast to oil and natural gas operations in areas where the EPA has approved the UDEQ to implement the CAA, which are governed by the UDEQ regulations and Utah Division of Oil, Gas, and Mining regulations. Consistent with the regulatory structure that exists in those areas, this U&O FIP has requirements for VOC emissions control and reductions, monitoring, recordkeeping, and reporting.

In addition, section 114(a) states that the Administrator may require any owner or operator subject to any requirement of this Act to:

- Establish and maintain such records;
- Make such reports;
- Install, use, and maintain such monitoring equipment, and use such audit procedures, or methods;
- Sample such emissions (in accordance with such procedures or methods, at such locations, at such intervals, during such periods, and in such manner as the Administrator shall prescribe);
- Keep records on control equipment parameters, production variables or other indirect data when direct monitoring of emissions is impractical;
- Submit compliance certifications in accordance with section 114(a)(3); and
- Provide such other information as the Administrator may reasonably require.

Estimated number of respondents: We estimate that an average of 6,870 oil and natural gas sources will be subject to one or more requirements in this U&O FIP over the next three years (including the requirement to report triennial emissions inventories as one requirement).

Frequency of response: Annual reports are required. Respondents must monitor all specified criteria at each affected source and maintain these records for five years.

Total estimated burden: 154,630 hours per year (3-year average), for all operators subject to this U&O FIP.

Total estimated cost: $26.2 million per year (3-year average); includes labor cost of $9.6 million, annualized capital cost of $10.4 million, and $6.1 million in operation and maintenance costs for all of the operators that would subject to this U&O FIP.

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 OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. The small entities subject to the requirements of this action are owners/operators of oil and natural gas sources on the Indian country lands within the U&O Reservation. They were identified through a screening analysis of existing oil and natural gas sources and emissions submitted by owners/operators on the Indian country lands within the U&O Reservation under UBEI2017–Update. The Agency has determined that only two out of 14 total small entities, or 14 percent, may experience an annualized cost impact of 1 percent to 3 percent of annual revenues, and thus may potentially incur significant economic impact. It was determined that the other 12 small entities would incur annualized costs less than 1 percent of annual sales, and therefore, are not expected to incur significant economic impacts from this rule. Details of this analysis are presented in the RIA and can be viewed in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709).

D. Unfunded Mandates Reform Act (UMRA)

This final action does not contain an unfunded mandate of $100 million of more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments or the private sector.

1. Statutory Authority

The legal authority for this rule stems from sections 301(a) and 301(d)(4) of the CAA and 40 CFR 49.11(a). See section III.B of this preamble for more information.

2. Costs and Benefits

As discussed in *Section VII. Impacts of this Final FIP,* the estimated equivalent annualized costs of this rule in 2023, accounting for additional revenue from recovered natural gas, are $81 million in 2016 dollars using a 7 percent discount rate and $72 million in 2016 dollars using a 3 percent discount rate.[145] EPA estimates that the rule will lead to equivalent annual monetized benefits of about $120 million using a 3 percent discount rate. The quantified equivalent annualized net benefits of the regulation (the difference between the equivalent annualized monetized benefits and net equivalent annualized compliance costs) are estimated to be $39 million in 2016 dollars using a 7 percent discount rate and $48 million using a 3 percent discount rate.[146] More in-depth information on costs and benefits of the final regulation can be found in the RIA, including certain climate benefits and other benefits that were not quantified or monetized.[147]

3. Effects on National Economy

The EPA estimated the labor impacts due to compliance with the final rule for affected entities within the oil and natural gas industry, including the installation, operation, and maintenance of control equipment and control activities, as well as the labor associated

[145] The recordkeeping and reporting costs calculated for the ICR analysis, discussed earlier, are imbedded in the total annualized engineering costs included here.

[146] Benefits (methane reductions) were only calculated at a 3 percent discount rate, as that is the only rate that both cost and benefit analyses have in common. Therefore, the net benefits for the 7 percent discount rate were compared to benefits at a 3 percent discount rate to calculate the annualized net benefits of the final rule. The RIA in the docket for this rulemaking discusses this calculation in detail.

[147] The RIA includes a more detailed discussion of the potential costs and benefits associated with this rule. It can be viewed in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709).

with new reporting and recordkeeping requirements. We did not estimate any potential changes in labor outside of the affected industry, and due to data and methodology limitations we did not estimate net employment impacts for the affected industry, apart from the partial estimate of the labor requirements related to control strategies. The labor requirements analysis used a bottom-up engineering-based methodology to estimate employment impacts. The engineering cost analysis of the RIA includes estimates of the labor requirement costs associated with implementing the regulations. Each of these labor changes may be required as part of an initial effort to comply with the new regulation.

4. Regulatory Alternatives

Alternate regulatory options examined in the RIA include a low-impact option (Option 1) and a high-impact option (Option 3). Option 1 would not include control of emissions from glycol dehydrators. This is in contrast to preferred Option 2, which requires control of emissions from glycol dehydrators where the source-wide VOC emissions from the collection of all storage vessels, glycol dehydrators and pneumatic pumps is equal to or greater than 4 tpy per 40 CFR 49.4173 through 49.4177. The EPA could have considered a range of even less stringent regulatory options than Option 1 to evaluate and propose, including an option that would not require retrofit of existing storage vessels with controls or require controls less broadly. Retrofitting existing storage vessels with controls is one of the higher costs evaluated in this rulemaking. Such an option, however, would lead to even greater disparity with the requirements for similar sources in in areas of the Basin where the EPA has approved the UDEQ to implement the CAA than Option 1. Option 3 (high impact) would require implementation of an LDAR program at all existing oil and natural gas sources, regardless of daily production, or storage vessel, dehydrator, and pneumatic pump annual VOC emissions. We sought comment on the proposed FIP for whether it was appropriate to consider less or more stringent regulatory options, for example, an option that does not include retrofitting existing storage vessels for controls. We acknowledged that if comments supported finalizing less or more stringent regulatory options as viable and if the agency decided to adopt an option that was not offered in the proposal, the EPA may be required to hold an additional public comment period on this rulemaking. We did receive comments asserting both that less stringent and more stringent options were appropriate for this rulemaking. We summarized our responses to comments related to the regulatory options evaluated in the response to comments document in the docket for this rulemaking.[148]

The EPA estimates the equivalent annualized costs of the preferred option in 2023 in 2016 dollars using a 7 percent discount rate when accounting for additional revenue from product recovery are $81 million ($3,500 per ton of VOC reduced). When using a 3 percent discount rate, the estimates of total equivalent annualized costs of the final FIP when accounting for additional revenue from product recovery are $72 million when accounting for additional revenue from product recovery ($3,200 per ton of VOC reduced).

The equivalent annualized costs of the less stringent option (Option 1) when accounting for additional revenue from product recovery would be $77 million in 2023 in 2016 dollars using a 7 percent discount rate, resulting in a cost of control of $4,100 per ton of the estimated 19,000 tons of VOC reduced, and $69 million in 2023 using a 3 percent discount rate, resulting in a cost of control of $3,600 per ton of VOC reduced. Option 1 was analyzed to reduce burden on small entities, while still achieving meaningful VOC emissions reductions. Although this option would cost less overall than preferred Option 2, it would achieve less benefits in the form of VOC emissions reductions (19,000 tons versus 23,000 tons for final Option 2), as emissions from glycol dehydrators would not be controlled and a smaller number of oil and natural gas sources would be required to control storage vessels and pneumatic pumps, because a larger amount of VOC emissions would be required from the collection of all storage vessels and pneumatic pumps at sources that also have glycol dehydrators in order to trigger the control applicability threshold than under Option 2.[149] Additionally, by not controlling glycol dehydrator emissions in Option 1, there would also be significantly less benefits from the associated reductions in HAP emissions that are more reactive in forming ozone than the lighter-end VOC emissions resulting from storage vessels, pneumatic pumps and fugitive emissions. Implementation of Option 1 would also result in regulatory requirements that are inconsistent with the requirements for equivalent sources in areas of the Basin where the EPA has approved the UDEQ to implement the CAA, thus not meeting our goal of regulatory consistency across the Uinta Basin.

The equivalent annualized costs of the most stringent option (Option 3) when accounting for additional revenue from product recovery would be $88 million in 2023 in 2016 dollars using a 7 percent discount rate, resulting in a cost of control of $3,500 per ton of the estimated 25,000 tons of VOC reduced, and $79 million in 2023 using a 3 percent discount rate, resulting in a cost of control of $3,100 per ton of VOC reduced. Option 3 was analyzed to achieve a greater level of VOC emissions reductions. Although this option would achieve about 3,000 more tons of VOC emissions reductions than preferred Option 2 (25,000 tons versus 23,000 tons for final Option 2), it would also result in increased costs (though the cost of control per ton of VOC reduced would be about the same as Option 2). Additionally, Option 3 would result in regulatory requirements that are inconsistent with the requirements for equivalent sources in areas of the Basin where the EPA has approved the UDEQ to implement the CAA, thus not meeting our goal of regulatory consistency across the Uinta Basin.

For a more in-depth analysis of these options, see the RIA for this final U&O FIP.

E. Executive Order 13132: Federalism

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

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This final action has tribal implications, because it establishes rules affecting a substantial number of industrial operations in Indian country within the U&O Reservation. The emissions improvement measures required by this rule will benefit the health and welfare of members of the Tribe. In addition, some of these

[148] *Response to Public Comments, Proposed Federal Implementation Plan: Managing Emissions from Oil and Natural Gas Sources on Indian Country Lands within the Uintah and Ouray Indian Reservation in Utah, March 2022,* available in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709).

[149] Under Option 1, the EPA would determine the 4 tpy threshold triggering control with source-wide potential VOC emissions from the collection of all storage vessels and pneumatic pumps only.

operations provide revenue to the Ute Indian Tribe, directly or indirectly. For example, the Tribe benefits from royalties paid by companies developing oil and natural gas resources on the Indian country lands within the U&O Reservation, which are administered by the U.S. Bureau of Indian Affairs. However, this rule will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law.

The EPA consulted with tribal officials under the EPA Policy on Consultation and Coordination with Indian Tribes early in the process of developing this regulation to permit them to have meaningful and timely input on its development. A summary of that consultation and other communications with the Ute Indian Tribe follows. The EPA has conducted outreach on this final rule consistent with the *EPA Policy on Consultation and Coordination with Indian Tribes* (May 4, 2011) via ongoing monthly meetings with tribal environmental professionals [150] before and during the development of this final action, and further as follows: (1) via formal Tribal consultation and informal informational meetings with the Ute Indian Tribe Business Committee regarding options that the EPA could consider to address the Uinta Basin air quality concerns; (2) via stakeholder meetings where the Tribe was included and participated in emissions contributions discussions specific to the EPA's strategy for addressing the Uinta Basin air quality concerns; and (3) via ongoing stakeholder working group meetings convened by the Ute Indian Tribe Business Committee where the EPA participated in discussions with the Tribe and industrial operators on strategies to reduce existing ozone-related emissions and provide a streamlined construction authorization mechanism for new and modified minor oil and natural gas sources given the recent nonattainment designation for the 2015 ozone NAAQS.

The EPA held consultations with elected officials of the Ute Indian Tribe Business Committee on the following dates: July 22, 2015; December 17, 2016; November 13, 2017; March 22, 2018, August 17, 2018; November 14, 2018; February 28, 2019; April 2, 2019; February 5, 2020; and August 2, 2022. The EPA has also participated in tribally convened stakeholder meetings on March 22, 2017, and June 1–2, 2017, as well as many informal informational meetings with tribal elected officials and air quality staff.[151]

During the consultations and other discussions on this U&O FIP, the Tribe expressed concerns regarding their economic needs to develop and generate revenue from Tribal oil and natural gas resources; to consider air quality effects on the health, safety, and welfare concerns of their tribal membership living within the exterior boundaries of the U&O Reservation and the Uinta Basin; and to reconcile regulatory requirements for an even economic and regulatory playing field. We addressed questions the Tribe had regarding the controls being considered, the ability for owners or operators to take credit for the controls for purposes such as permitting and NAAQS attainment, the estimated costs of proposed controls, the characterization of Indian country, and the breadth of oil and natural gas source category types proposed to be regulated. The Ute-Tribe-convened stakeholder meetings involved discussions on appropriate ways to expedite nonattainment permitting for new and modified minor oil and natural gas sources on the Indian country lands within the U&O Reservation. Ute Indian Tribe and industry participants recognized that existing source emissions reductions would likely be necessary in order for the EPA to demonstrate that construction authorization for new and modified sources would not cause or contribute to NAAQS violations in the nonattainment area.

Enacting a FIP for Indian country lands within the U&O Reservation is directly responsive to the Ute Indian Tribe's air quality concerns in that we are implementing our CAA authority to protect air quality on and surrounding Indian country lands within the U&O Reservation in a manner that provides regulatory consistency with respect to requirements for oil and natural gas sources in areas of the Basin where the EPA has approved the UDEQ to implement the CAA. We are committed to supporting tribes' right to self-governance and to protecting their inherent sovereignty. Throughout development of this final action, we continued to provide outreach to tribal environmental professionals and continued consultation with tribal leadership.

As required by section 7(a), the EPA's Tribal Consultation Official has certified that the requirements of the executive order have been met in a meaningful and timely manner. A copy of the certification is included in the docket for this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is subject to Executive Order 13045 because it is an economically significant regulatory action as defined by Executive Order 12866 and the EPA has concluded that the environmental health or safety risk addressed by this final action has a disproportionate effect on children. Accordingly, we have evaluated the environmental health or safety effects of exposure to elevated ozone concentrations on children. This action's health and risk assessments are contained in the Impacts of this Final FIP and Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations sections in this preamble (sections VII. and VIII.K., respectively), with more detailed information contained in the RIA for this rulemaking.[152] This final U&O FIP should have a positive effect on the health of the residents of the Indian country lands within the U&O Reservation, including children, as it is expected to result in a reduction in ambient ozone concentrations, which disproportionately impact children, elderly, and those with respiratory ailments.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'', because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The basis for these determinations follows.

The EPA prepared an analysis of the potential costs and benefits associated with this action, which is included in the RIA,[153] and is summarized in *Section VII. Impacts of this Final FIP.* Based on this analysis, we have concluded that, while this action may have some effects on the supply, distribution, or use of energy, it is not likely to have significant adverse energy

[150] These monthly meetings are general in nature, dealing with many air-related topics, and are not specific to this proposed U&O FIP.

[151] The records of communication for all formal consultations and other discussions with the Ute Indian Tribe are included in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709).

[152] The RIA includes more detailed discussions of the health and risk assessments for this rule and can be viewed in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709).

[153] The RIA includes a more detailed discussion of the potential costs and benefits associated with this rule. It can be viewed in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709).

effects. Most owners/operators of existing oil and natural gas production sources on Indian country lands within the U&O Reservation also operate sources on non-Indian country lands within and outside of the U&O Reservation, where they are already required to employ the emissions control technologies required by this U&O FIP. Additionally, we expect that these owners/operators will also operate new and modified sources in the Uinta Basin that are subject to similar NSPS OOOO and OOOOa, NESHAP HH, and other oil and natural gas source category-related control requirements within the Uinta Basin. Therefore, it is expected that the owners/operators will continue to procure necessary control equipment and supplies from the same suppliers they currently use for non-Indian country existing, new or modified sources. Further, only the higher-producing sources are expected to be subject to the more substantive emission control requirements in this U&O FIP, and those sources are more likely to be able to accommodate the additional costs, so it is not expected that the new requirements alone would factor significantly into decisions to slow or halt production and thereby cause a shortfall in supply. Rather, the prices of oil and natural gas are likely to be a more significant factor in decisions on reducing production from existing sources.[154]

Additionally, this U&O FIP establishes several emissions control standards that give regulated entities flexibility in determining how to best comply with the regulation. Even within the geographically and economically homogeneous affected area within the Uinta Basin, this flexibility is an important factor in reducing regulatory burden. For more information on the estimated energy effects of the rule, please see the RIA, which is in the docket for this rule.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272 note, directs the EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards, which include materials specifications, test methods, sampling protocols, business practices and management systems developed or adopted by voluntary consensus standards bodies (VCSB), both domestic and international. These bodies plan, develop, establish or coordinate voluntary consensus standards using agreed-upon procedures.

This action involves technical standards. Therefore, the EPA conducted a search to identify potentially applicable VCS. However, the Agency identified no such standards and none were brought to its attention in comments. [155] Therefore, the EPA has decided to use EPA Methods 21 and 22 of 40 CFR part 60, appendix A–7 and part 63, appendix A.[156]

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

While the EPA finds that communities in the Uinta Basin with higher proportions of low-income populations and people of color rank in the 90th percentile for ozone concentrations in the baseline based on EJSCREEN, the EPA concludes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898.[157]

The documentation for this decision is contained in the RIA [158] for this final rule. Our objective in developing this rule is to improve air quality and thereby protect the communities in the Uinta Basin, including those in and near Indian country lands within the U&O Reservation, where existing oil and natural gas operations have been shown to contribute to exceedances of the ozone NAAQS. The impacts of this final rule are expected to be beneficial, rather than adverse, and its benefits are expected to accrue to communities in and near Indian country lands within the U&O Reservation. As explained in Section VII.A. of this preamble, the EPA has quantified the expected emissions impacts from this final action and found that the action will result in large reductions of VOC emissions.

This final action will also provide regulatory certainty to owners/operators, by imposing, to the extent appropriate, requirements that are the same as or consistent with those applicable to such existing sources that in areas of the Basin where the EPA has approved the UDEQ to implement the CAA because they are not on Indian country lands within the Reservation. This will ensure that economic impacts are consistent and air quality is protected consistently across the Uinta Basin. Our Environmental Justice (EJ) analysis that can be found in the RIA for this rulemaking supports the conclusion that this action is not expected to result in disproportionate impacts.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 49

Environmental protection, Administrative practice and procedure, Air pollution control, Indians, Indians-law, Indians-tribal government, Intergovernmental relations, Reporting and recordkeeping requirements.

Michael S. Regan,

Administrator.

For reasons set forth in the preamble, part 49 of title 40 of the Code of Federal Regulations is amended as follows:

PART 49—INDIAN COUNTRY: AIR QUALITY PLANNING AND MANAGEMENT

■ 1. The authority citation for part 49 continues to read as follows:

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

■ 2. Add the undesignated center heading ''Federal Implementation Plan for Managing Emissions from Oil and Natural Gas Sources on the Indian Country Lands Within the Uintah and Ouray Indian Reservation in Utah'' immediately following § 49.4168 and add §§ 49.4169 through 49.4184 to subpart K to read as follows:

Subpart K–Implementation Plans for Tribes–Region VIII

* * * * *

[154] The RIA includes more detailed information on oil and natural gas prices. It can be viewed in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709).

[155] ''Voluntary Consensus Standard Results for Federal Implementation Plan for Managing Emissions from Oil and Natural Gas Sources on the Uintah and Ouray Indian Reservation in Utah,'' Memorandum from Steffan Johnson, Group Leader, U.S. EPA, Measurement Technology Group, to Deirdre Rothery, Unit Chief Air Permitting and Monitoring Unit, U.S. EPA Region 8 Air Program, dated Dec. 22, 2017, available in the Docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709).

[156] The EPA Reference Methods 21 and 22 can be accessed at *https://www.ecfr.gov/cgi-bin/ECFR?page=browse* (Search Title 40, Part 60 and Part 63), accessed Mar. 14, 2022.

[157] *See* 59 FR 7629 (Feb. 16, 1994).

[158] The RIA includes a more detailed discussion of the environmental justice analysis for this rule. It can be viewed in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709).

Federal Implementation Plan for Managing Emissions From Oil and Natural Gas Sources on the Indian Country Lands Within the Uintah and Ouray Indian Reservation in Utah

Sec.

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§ 49.4169 Introduction.

(a) *What is the purpose of §§ 49.4169 through 49.4184?* Sections 49.4169 through 49.4184 establish legally and practicably enforceable requirements for oil and natural gas sources on Indian country lands within the Uintah and Ouray Indian Reservation (U&O Reservation) to address ozone air quality. Section 49.4170 establishes provisions for delegation of authority to allow the Ute Indian Tribe to assist the EPA with administration of this Federal Implementation Plan (U&O FIP). Section 49.4171 contains general provisions and definitions applicable to oil and natural gas sources. Sections 49.4173 through 49.4184 establish legally and practicably enforceable requirements to control and reduce VOC emissions from oil and natural gas well production and storage operations, natural gas processing, and gathering and boosting operations at oil and natural gas sources that are located on Indian country lands within the U&O Reservation.

(b) *Am I subject to §§ 49.4169 through 49.4184?* Sections 49.4169 through 49.4184, as appropriate, apply to each owner or operator of an oil and natural gas source (as defined at 40 CFR 49.102) located on Indian country lands within the U&O Reservation that has equipment or activities that meet the applicability thresholds specified in each section. Generally, the equipment and activities at oil and natural gas sources that are already subject to and in compliance with VOC emission control requirements under another EPA standard or other federally enforceable requirement, as specified in each appropriate subsection later, are considered to be in compliance with the requirements to control VOC emissions from that same equipment under this U&O FIP.

(c) *When must I comply with §§ 49.4169 through 49.4184?* For oil and natural gas sources that commence construction before February 6, 2023, compliance with §§ 49.4169 through 49.4171 and §§ 49.4173 through 49.4184, as applicable, is required no later than February 6, 2024. You may submit a written request to the EPA for an extension of the compliance date for existing sources. The extension request must be submitted to the EPA at least 60 days before the compliance deadline, must identify the specific provision(s) for which you seek an extension, must include an alternative compliance deadline(s), and must provide the rationale for the requested extension with supporting information explaining how you will effectively meet all applicable requirements after the requested alternative compliance deadline. Any decision to approve or deny a request, including the length of time of an approved request, will be based on the merits of case-specific circumstances. For oil and natural gas sources that commence construction on or after February 6, 2023, compliance with §§ 49.4169 through 49.4171 and §§ 49.4173 through 49.4184, as applicable, is required upon startup.

§ 49.4170 Delegation of authority of administration to the Tribe.

(a) *What is the purpose of this section?* The purpose of this section is to establish the process by which the Regional Administrator may delegate to the Ute Indian Tribe the authority to assist the EPA with administration of this U&O FIP. This section provides for administrative delegation and does not affect the eligibility criteria under § 49.6 for treatment in the same manner as a state.

(b) *How does the Ute Indian Tribe request delegation?* To be delegated authority to assist the EPA with administration of this U&O FIP, the authorized representative of the Ute Indian Tribe must submit a written request to the Regional Administrator that:

(1) Identifies the specific provisions for which delegation is requested;

(2) Includes a statement by the Ute Indian Tribe's legal counsel (or equivalent official) with the following information:

(i) A statement that the Ute Indian Tribe is an Indian tribe recognized by the Secretary of the Interior;

(ii) A descriptive statement that meets the requirements of § 49.7(a)(2) and demonstrates that the Ute Indian Tribe is currently carrying out substantial governmental duties and powers over a defined area;

(iii) A description of the laws of the Ute Indian Tribe that provide adequate authority to carry out the aspects of the rule for which delegation is requested; and

(3) Demonstrates that the Ute Indian Tribe has, or will have, adequate resources to carry out the aspects of the rule for which delegation is requested.

(c) *How is the delegation of administration accomplished?* (1) A Delegation of Authority Agreement setting forth the terms and conditions of the delegation and specifying the provisions of this rule that the Ute Indian Tribe will be authorized to implement on behalf of the EPA will be entered into by the Regional Administrator and the Ute Indian Tribe. The Agreement will become effective on the date that both the Regional Administrator and the authorized representative of the Ute Indian Tribe have signed the Agreement. Once the delegation becomes effective, the Ute Indian Tribe will be responsible, to the extent specified in the Agreement, for assisting the EPA with administration of the FIP and will act as the Regional Administrator as that term is used in these regulations. Any Delegation of Authority Agreement will clarify the circumstances in which the term ''Regional Administrator'' found throughout the FIP is to remain the EPA Regional Administrator and when it is intended to refer to the ''Ute Indian Tribe,'' instead.

(2) A Delegation of Authority Agreement may be modified, amended, or revoked, in part or in whole, by the Regional Administrator after consultation with the Ute Indian Tribe.

(d) *How will any Delegation of Authority Agreement be publicized?* The Agency will publish a document in the **Federal Register** informing the public of any Delegation of Authority Agreement with the Ute Indian Tribe to assist the EPA with administration of all or a portion of the FIP and identifying such delegation in the FIP. The EPA will also publish an announcement of the Delegation of Authority Agreement in local newspapers.

§ 49.4171 General provisions.

(a) At all times, including periods of startup, shutdown, and malfunction, each owner or operator must, to the extent practicable, design, operate, and maintain all equipment used for crude oil, condensate, intermediate hydrocarbon liquid, or produced water, and gas collection, storage, processing, and handling operations covered under §§ 49.4171 and 49.4173 through 49.4184, regardless of emissions rate and including associated air pollution control equipment, in a manner that is consistent with good air pollution control practices and that minimizes leakage of VOC emissions to the atmosphere. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Administrator, including monitoring results, review of operating and maintenance procedures, and inspection of the source.

(b) *Definitions.* As used in §§ 49.4169 through 49.4184, all terms not defined have the meaning given them in the Act, in 40 CFR parts 60 and 63, in the Prevention of Significant Deterioration regulations at 40 CFR 52.21, in the Federal Minor New Source Review Program in Indian Country at § 49.151, or in the Federal Implementation Plan for Managing Air Emissions from True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector at § 49.102. The following terms are defined here:

Bottom filling means the filling of a storage vessel through an inlet at or near the bottom of the storage vessel designed to have the opening covered by the liquid after the pipe normally used to withdraw liquid can no longer withdraw any liquid.

Condensate means hydrocarbon liquid separated from produced natural gas that condenses due to changes in temperature, pressure, or both, and that remains liquid at standard conditions.

Crude oil means hydrocarbon liquids that are separated from well-extracted reservoir fluids during oil and natural gas production operations, and that are stored or injected to pipelines as a saleable product. Condensate is not considered crude oil.

Electronically controlled automatic ignition device means an electronic device which generates sparks across an electrode and reaches into a combustible gas stream traveling up a flare stack or entering an enclosed combustor, at the point of the pilot tip, equipped with a temperature monitor that signals the device to attempt to re-light an extinguished pilot flame.

Enclosed combustor means a thermal oxidation system with an enclosed combustion chamber that maintains a limited constant temperature by controlling fuel and combustion air.

Flare means a thermal oxidation system using an open (without enclosure) flame that is designed and operated in accordance with the requirements of 40 CFR 60.18(b). An enclosed combustor is not considered a flare. A combustion device is not considered a flare when installed horizontally or vertically within an open pit and used to combust produced natural gas during initial well completion or temporarily during emergencies when enclosed combustors or flares installed at a source are not operational or injection of recovered produced natural gas is unavailable.

Flashing losses means natural gas emissions resulting from the presence of dissolved natural gas in the crude oil, condensate, intermediate hydrocarbon liquids or produced water, which are under high pressure that occurs as the liquids are transferred to storage vessels that are at atmospheric pressure.

Fugitive emissions component means any component that has the potential to emit fugitive emissions of VOC at an oil and natural gas source, such as valves, connectors, pressure relief devices, open-ended lines, flanges, covers and closed vent systems not subject to § 49.4176, thief hatches or other openings on a controlled storage vessel not subject to § 49.4173, compressors, instruments, and meters. Devices that vent as part of normal operations, such as natural gas-driven pneumatic controllers or natural gas-driven pneumatic pumps, are not fugitive emissions components, insofar as the natural gas discharged from the device's vent is not considered a fugitive emission. Emissions originating from locations other than the device's vent, such as the thief hatch on a controlled storage vessel, would be considered fugitive emissions.

Glycol dehydration unit process vent emissions means VOC-containing emissions from the glycol dehydration unit regenerator or still vent and the vent from the dehydration unit flash tank (if present).

Indian country is defined at 18 U.S.C. 1151 and means.

(i) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation,

(ii) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and

(iii) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Intermediate hydrocarbon liquids means any naturally occurring, unrefined petroleum liquid.

Malfunction alarm and remote notification system means a system connected to an electronically controlled automatic ignition device that sends an alarm through a remote notification system to an owner or operator's central control center, if an attempt to relight the pilot flame is unsuccessful.

Pneumatic controller means a *natural gas-driven pneumatic controller* as defined at 40 CFR 60.5430 and 60.5430a.

Pneumatic pump means a *natural gas-driven diaphragm pump* as defined at 40 CFR 60.5430a.

Pneumatic pump emissions means the VOC-containing emissions from pneumatic pumps.

Produced natural gas means natural gas that is separated from extracted reservoir fluids during oil and natural gas production operations.

Produced water means water that is extracted from the earth from an oil or natural gas production well, or that is separated from crude oil, condensate, or natural gas after extraction.

Regional Administrator means the Regional Administrator of EPA Region 8 or an authorized representative of the Regional Administrator of EPA Region 8, except to the extent otherwise specifically specified in a Delegation of Authority Agreement between the Regional Administrator and the Ute Indian Tribe.

Repaired means, for the purposes of fugitive emissions components, that fugitive emissions components are adjusted, replaced, or otherwise altered in order to eliminate fugitive emissions as defined in § 49.4178(d)(1)(iii), and subsequently monitored as specified in § 49.4178(d)(1)(ii), and that it is verified that emissions from the fugitive emissions components are below the applicable fugitive emissions definition.

Standing and breathing losses means VOC emissions from fixed-roof storage vessels as a result of evaporative losses during storage.

Storage vessel means a tank or other vessel that contains an accumulation of crude oil, condensate, intermediate hydrocarbon liquids, or produced water, and that is constructed primarily of non-earthen materials (such as wood,

concrete, steel, fiberglass, or plastic), which provide structural support. A well completion vessel that receives recovered liquids from a well after startup of production following flowback for a period which exceeds 60 days is considered a storage vessel under this subpart. A tank or other vessel will not be considered a storage vessel if it has been removed from service in accordance with the requirements of § 49.4173(a)(3), until that tank or other vessel has been returned to service. For the purposes of this subpart, the following are not considered storage vessels:

(i) Vessels that are skid-mounted or permanently attached to something that is mobile (such as trucks, railcars, barges or ships), and are intended to be located at a site for less than 180 consecutive days. If you do not keep or are not able to produce records, as required by § 49.4183(a)(1)(iv), showing that the vessel has been located at a site for less than 180 consecutive days, the vessel is considered to be a storage vessel from the date it was first located at the site. This exclusion does not apply to a well completion vessel as described above.

(ii) Process vessels such as surge control vessels, bottoms receivers, and knockout vessels.

(iii) Pressure vessels designed to operate in excess of 204.9 kilopascals and without emissions to the atmosphere.

Submerged fill pipe means any fill pipe with a discharge opening that is entirely submerged when the liquid level is six inches above the bottom of the storage vessel and the pipe normally used to withdraw liquid from the storage vessel can no longer withdraw any liquid.

Supervisory Control and Data Acquisition (SCADA) system generally refers to industrial control computer systems that monitor and control industrial infrastructure or source-based processes.

Unsafe to repair means (in the context of fugitive emissions monitoring) that operator personnel would be exposed to an imminent or potential danger as a consequence of the attempt to repair the leak during normal operation of the source.

Visible smoke emissions means air pollution generated by thermal oxidation in a flare or enclosed combustor and occurring immediately downstream of the flame present in those units. Visible smoke occurring within, but not downstream of, the flame, does not constitute visible smoke emissions.

Working losses means natural gas emissions from fixed roof storage vessels resulting from evaporative losses during filling and emptying operations.

§ 49.4172 Emissions inventory.

(a) *Applicability.* The emissions inventory requirements of this section apply to each oil and natural gas source, as identified in § 49.4169(b), that has actual emissions of any pollutant identified in paragraph (c) of this section greater than or equal to one ton in any consecutive 12-month period.

(b) Each oil and natural gas source must submit an inventory for every third year, beginning with the 2023 calendar year, for all emission units at a source.

(c) The inventory must include the total emissions for PM_{10}, $PM_{2.5}$, oxides of sulfur, nitrogen oxides, carbon monoxide, and volatile organic compounds, as defined at 40 CFR 51.50, for each emissions unit at the source. Emissions for each emissions unit at the source must be calculated using the emissions unit's actual operating hours, appropriate emissions rates, the use of performance test results where applicable, product rates and types of materials processed, stored, or combusted during the calendar year of the reporting period.

(d) The inventory must include the type and efficiency, for each pollutant controlled, of any air pollution control equipment present at the reporting source. The detail of the emissions inventory must be consistent with the detail and data elements required by 40 CFR part 51, subpart A.

(e) The inventory must be submitted to the EPA no later than April 15th of the year following each inventory year.

(f) The inventory must be submitted in an electronic format specific to this source category, as instructed on the EPA Region 8 website at *https://www.epa.gov/air-quality-implementation-plans/approved-air-quality-implementation-plans-region-8.*

§ 49.4173 VOC emissions control requirements for storage vessels.

(a) *Applicability.* The VOC emissions control requirements of this section apply to storage vessels at an oil and natural gas source (as specified in § 49.4169(b)) as follows:

(1) For oil and natural gas sources that began operations before February 6, 2023, the VOC emissions control requirements of this section apply when the source-wide potential for VOC emissions from the collection of all storage vessels, glycol dehydrators, and pneumatic pumps is equal to or greater than 4 tpy, as determined according to this section. The potential for VOC emissions must be calculated using a generally accepted model or calculation methodology, based on the maximum average daily throughput determined for a 30-day period of production during the 12 months before the compliance deadline for the affected source under this rule. The determination may take into account requirements under a legally and practicably enforceable limit in an operating permit or other federally enforceable requirement. You must reevaluate the source-wide VOC emissions from the collection of all storage vessels, glycol dehydrators and pneumatic pumps for each modification to an existing source; or

(2) For oil and natural gas sources that began operations on or after February 6, 2023, the VOC emissions control requirements of this section apply upon startup of operation.

(3) Modification to an oil and natural gas source requires a re-evaluation of the source-wide VOC emissions from the collection of all storage vessels, glycol dehydrators and pneumatic pumps. Adding production from a new well or increasing production at an existing well is considered a modification of a well site. Increasing maximum throughput at a tank battery, compressor station or natural gas processing plant is considered a modification.

(b) *Exemptions.* (1) This section does not apply to storage vessels located at an oil and natural gas source that are subject to the emissions control requirements for storage vessels in 40 CFR part 60, subparts OOOO or OOOOa, or 40 CFR part 63, subpart HH.

(2) This section does not apply to an emergency storage vessel located at an oil and natural gas source, if it meets the following requirements:

(i) The emergency storage vessel is not used as an active storage vessel;

(ii) The owner or operator empties the emergency storage vessel no later than 15 days after receiving fluids;

(iii) The emergency storage vessel is equipped with a liquid level gauge or equivalent device; and

(iv) Records are kept of the usage of each emergency storage vessel as required in § 49.4183(a)(3), including the date the vessel received fluids, the volume of fluids received in barrels, the date the vessel was emptied, and the volume of fluids emptied in barrels.

(3) This section does not apply to storage vessels that are removed from service. If you remove a storage vessel from service, you must comply with paragraphs (b)(3)(i) through (iii) of this section.

(i) For a storage vessel to be removed from service, you must comply with the requirements of paragraphs (b)(3)(i)(A) and (B) of this section.

(A) You must completely empty and degas the storage vessel, such that the storage vessel no longer contains crude oil, condensate, intermediate hydrocarbon liquids or produced water. A storage vessel where liquid is left on walls, as bottom clingage, or in pools due to floor irregularity is considered to be completely empty.

(B) You must keep records as required in § 49.4183(a)(4), identifying each storage vessel removed from service and the date of its removal from service.

(ii) If a storage vessel identified in paragraph (b)(3)(i)(B) of this section is returned to service, you must determine its applicability as provided in paragraph (a) of this section, and you must keep records as required in § 49.4183(a)(4), identifying the storage vessel and the date of its return to service.

(c) *VOC emission control requirements.* For each storage vessel, you must comply with the VOC emissions control requirements of paragraph (c)(1) or (c)(2) of this section.

(1) You must reduce VOC emissions from each storage vessel by at least 95.0 percent on a continuous basis according to paragraph (c)(1)(i) or (ii) of this section. You must equip each storage vessel with a cover that meets the conditions specified in § 49.4176(c), and must route all flashing, working, standing and breathing losses from the storage vessels through a closed-vent system that meets the conditions specified in § 49.4176(d) to:

(i) An operating system designed to recover 100 percent of the emissions and recycle them for use in a process unit or incorporate them into a product; or

(ii) An enclosed combustor or flare that is designed to reduce the mass content of VOC in the natural gas emissions vented to the device by at least 95.0 percent and that is operated as specified in § 49.4177;

(2) You must maintain the source-wide uncontrolled actual VOC emissions from the collection of all storage vessels, glycol dehydrators, and pneumatic pumps at an oil and natural gas source at less than 4 tpy. Before using the uncontrolled actual VOC emission rate for compliance purposes, you must demonstrate that the uncontrolled actual VOC emissions have remained at less than 4 tpy, as determined monthly for 12 consecutive months. After such demonstration, you must determine the uncontrolled actual VOC emission rate each month. The uncontrolled actual VOC emissions must be calculated using a generally accepted model or calculation methodology. Monthly calculations must be based on the average throughput of the source for the month. Monthly calculations must be separated by at least 14 days. You must comply with paragraph (c)(1) of this section within 30 days of the monthly emissions determination required in this section if the determination indicates that VOC emissions from the collection of all storage vessels, glycol dehydrators, and pneumatic pumps at your oil and natural gas source increased to 4 tpy or greater.

(3) Except as provided in paragraph (c)(4) of this section, if you use a control device to reduce emissions from your storage vessels, you must equip each storage vessel with a cover that meets the requirements of § 49.4176(c).

(4) If you use a floating roof to reduce emissions, you must meet the requirements of § 60.112b(a)(1) or (2) and the relevant monitoring, inspection, recordkeeping, and reporting requirements in 40 CFR part 60, subpart Kb.

(5) After a minimum of 12 consecutive months of operation at a source that begins operation on or after February 6, 2023, controls may be removed if the source-wide uncontrolled actual VOC emissions from the collection of all storage vessels, glycol dehydrators, and pneumatic pumps has been maintained at a rate less than 4 tpy, as determined according to paragraph (c)(2) of this section.

§ 49.4174 VOC emissions control requirements for dehydrators.

(a) *Applicability.* The VOC emissions control requirements of this section apply to each glycol dehydration unit located at an oil and natural gas source as identified in § 49.4169(b) where the source-wide potential for VOC emissions from the collection of all storage vessels, glycol dehydrators, and pneumatic pumps is equal to or greater than 4 tpy, as determined according to § 49.4173. You must reevaluate the source-wide VOC emissions from the collection of all storage vessels, glycol dehydrators and pneumatic pumps for each modification to an existing source, as described in § 49.4173(a)(3). Applicability for glycol dehydrators that began operation before February 6, 2023 must be determined using uncontrolled actual emissions. Applicability for glycol dehydrators that began operation on or after February 6, 2023 must be determined using potential to emit.

(b) *Exemptions.* This section does not apply to glycol dehydration units subject to the emissions control requirements for glycol dehydration unit process vents in 40 CFR part 63, subpart HH.

(c) *VOC emissions control requirements.* For each glycol dehydration unit, you must comply with the VOC emissions control requirements of paragraphs (c)(1) or (2) of this section.

(1) You must reduce VOC emissions from each glycol dehydration unit process vent by at least 95.0 percent on a continuous basis according to paragraphs (c)(1)(i) and (ii) of this section. You must route all glycol dehydration unit process vent emissions through a closed-vent system that meets the conditions specified in § 49.4176(d) to:

(i) An operating system designed to recover 100 percent of the emissions and recycle them for use in a process unit or incorporate them into a product; or

(ii) An enclosed combustor or flare designed to reduce the mass content of VOC in the emissions vented to the device by at least 95.0 percent and operated as specified in § 49.4177; or

(2) You must maintain the source-wide uncontrolled actual VOC emissions from the collection of all storage vessels, glycol dehydrators, and pneumatic pumps at an oil and natural gas source at less than 4 tpy for 12 consecutive months in accordance with the procedures specified in § 49.4173(c)(2).

§ 49.4175 VOC emissions control requirements for pneumatic pumps.

(a) *Applicability.* The requirements of this section apply to each pneumatic pump located at an oil and natural gas source as identified in § 49.4169(b) where the source-wide potential for VOC emissions from the collection of all storage vessels, glycol dehydrators, and pneumatic pumps is equal to or greater than 4 tpy, as determined according to § 49.4173. You must reevaluate the source-wide VOC emissions from the collection of all storage vessels, glycol dehydrators and pneumatic pumps for each modification to an existing source, as described in § 49.4173(a)(3). Applicability for pneumatic pumps that began operation before February 6, 2023 must be determined using uncontrolled actual emissions. Applicability for pneumatic pumps that began operation on or after February 6, 2023 must be determined using potential to emit.

(b) *Exemptions.* This section does not apply to pneumatic pumps subject to the emissions control requirements for pneumatic pumps in 40 CFR part 60, subpart OOOOa.

(c) *VOC Emission Control Requirements.* For each pneumatic pump, you must comply with the VOC emissions control requirements of paragraph (c)(1) or (2) of this section.

(1) You must reduce VOC emissions from each pneumatic pump by at least 95.0 percent on a continuous basis according to paragraph (c)(1)(i) or (ii) of this section. You must route all pneumatic pump emissions through a closed-vent system that meets the conditions specified in § 49.4176(d) to:

(i) An operating system designed to recover 100 percent of the emissions and recycle them for use in a process unit or incorporate them into a product; or

(ii) An enclosed combustor or flare designed to reduce the mass content of VOC in the emissions vented to the device by at least 95.0 percent and operated as specified in § 49.4177; or

(2) You must maintain the source-wide uncontrolled actual VOC emissions from the collection of all storage vessels, glycol dehydrators, and pneumatic pumps at an oil and natural gas source at less than 4 tpy for any 12 consecutive months in accordance with the procedures specified in § 49.4173(c)(2).

§ 49.4176 VOC emissions control requirements for covers and closed-vent systems.

(a) *Applicability.* The VOC emissions control requirements in this section apply to each cover on a storage vessel that is subject to § 49.4173, and to each closed-vent system that is used to convey VOC emissions from the collection of all storage vessels, glycol dehydration units, or pneumatic pumps (to a vapor recovery system or control device) that are subject to §§ 49.4173 through 49.4175.

(b) *Exemptions.* This section does not apply to covers and closed-vent systems that are subject to the requirements for covers and closed-vent systems in 40 CFR part 60, subparts OOOO or OOOOa, or 40 CFR part 63, subpart HH.

(c) *Covers.* Each owner or operator must equip all openings on each storage vessel with a cover to ensure that all flashing, working, standing and breathing loss emissions are routed through a closed-vent system to a vapor recovery system, an enclosed combustor, or a flare.

(1) Each cover and all openings on the cover (*e.g.,* access hatches, sampling ports, pressure relief valves (PRV), and gauge wells) must form a continuous impermeable barrier over the entire surface area of the crude oil, condensate, intermediate hydrocarbon liquids, or produced water in the storage vessel.

(2) Each cover opening must be secured in a closed, sealed position (*e.g.,* covered by a gasketed lid or cap) whenever material is in the unit on which the cover is installed except when it is necessary to use an opening as follows:

(i) To add fluids to, or remove fluids from the unit (this includes openings necessary to equalize or balance the internal pressure of the unit following changes in the level of the material in the unit);

(ii) To inspect or sample the fluids in the unit; or

(iii) To inspect, maintain, repair, or replace equipment located inside the unit.

(3) Each thief hatch cover must be weighted and properly seated to ensure that flashing, working, standing, and breathing loss emissions are routed through the closed-vent system to the vapor recovery system, the enclosed combustor, or the flare under normal operating conditions.

(4) Each PRV must be set to release at a pressure that will ensure that flashing, working, standing, and breathing loss emissions are routed through the closed-vent system to the vapor recovery system, the enclosed combustor, or the flare under normal operating conditions.

(d) *Closed-vent systems.* Each owner or operator must meet the following requirements for closed-vent systems:

(1) Each closed-vent system must route all captured storage vessel emissions from flashing, working, standing, and breathing losses; glycol dehydration unit process vent emissions; and pneumatic pump emissions from the oil and natural gas source to a gathering pipeline system for sale, use in a process unit, incorporation into a product, or other beneficial purpose, or to a VOC emission control device, as specified in §§ 49.4173 through 49.4175.

(2) All vent lines, connections, fittings, valves, relief valves, and any other appurtenances employed to collect or contain captured storage vessel emissions from flashing, working, standing, and breathing losses; glycol dehydration unit process vent emissions; or pneumatic pump emissions; or to transport such emissions to a gathering pipeline system for sale, use in a process unit, incorporation into a product, or other beneficial purpose, or to a VOC emission control device, as specified in §§ 49.4173 through 49.4175, must be maintained and operated properly at all times.

(3) Each closed-vent system must be designed to operate with no detectable emissions, as demonstrated by the closed-vent system monitoring requirements in § 49.4182(c).

(4) If any closed-vent system contains one or more bypass devices that could be used to divert all or a portion of the captured storage vessel flashing, working, standing, and breathing losses; glycol dehydration unit process vent emissions; or pneumatic pump emissions from entering a gathering pipeline system for sale, use in a process unit, incorporation into a product, or other beneficial purpose, or from being transferred to the VOC emissions control device, the owner or operator must meet one of the requirements in paragraphs (d)(4)(i) or (ii) of this section for each bypass device. Low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, and safety devices are not subject to the requirements applicable to bypass devices.

(i) At the inlet to a bypass device the owner or operator must properly install, calibrate, maintain, and operate a flow indicator that is capable of taking continuous readings and sounding an alarm when the bypass device is open such that emissions are being, or could be, diverted away from a gathering pipeline system for sale, use in a process unit, incorporation into a product, or other beneficial purpose, or the VOC emission control device and into the atmosphere; or

(ii) The owner or operator must secure the bypass device valve installed at the inlet to the bypass device in the non-diverting position using a car-seal or a lock-and-key type configuration.

§ 49.4177 VOC emissions control devices.

(a) *Applicability.* The requirements in this section apply to all flares and enclosed combustors used to control VOC emissions at an oil and natural gas source, as identified in § 49.4169(b), in order to meet the requirements specified in §§ 49.4173 through 49.4176, as applicable.

(b) *Exemptions.* This section does not apply to VOC emission control devices that are subject to the requirements for control devices used to comply with the emissions standards in 40 CFR part 60, subparts OOOO or OOOOa; or 40 CFR part 63, subpart HH.

(c) *Enclosed combustors and flares.* Each owner or operator must meet the following requirements for enclosed combustors and flares:

(1) For each enclosed combustor or flare, the owner or operator must follow the manufacturer's written operating instructions, procedures, and

maintenance schedule to ensure good air pollution control practices for minimizing emissions;

(2) The owner or operator must ensure that each enclosed combustor or flare is designed to have sufficient capacity to reduce the mass content of VOC in the captured emissions routed to it by at least 95.0 percent for the minimum and maximum natural gas volumetric flow rate and BTU content routed to the device;

(3) Each enclosed combustor or flare must be operated to reduce the mass content of VOC in the captured emissions routed to it by continuously meeting at least 95.0 percent VOC control efficiency;

(4) The owner or operator must ensure that each flare is designed and operated in accordance with the requirements of 40 CFR 60.18(b) for such flares;

(5) The owner or operator must ensure that each enclosed combustor is:

(i) A model that is:

(A) Demonstrated by a manufacturer to meet the VOC control efficiency requirements of §§ 49.4173 through 49.4176 using EPA-approved performance test procedures specified in 40 CFR 60.5413; or

(B) Demonstrated by the owner or operator to meet the VOC control efficiency requirements of §§ 49.4173 through 49.4176 according to the procedures and schedule specified in § 49.4182(d)(1);

(ii) Operated properly at all times that captured emissions are routed to it;

(iii) Operated with a liquid knock-out system to collect any condensable vapors (to prevent liquids from going through the control device);

(iv) Equipped and operated with a flash-back flame arrestor;

(v) Equipped and operated with one of the following:

(A) A continuous burning pilot; or

(B) An operational electronically controlled automatic ignition device;

(vi) Equipped with a monitoring system for continuous measuring and recording of the parameters that indicate proper operation of each enclosed combustor or flare, including each continuous burning pilot flame or electronically controlled automatic ignition device, to monitor and document proper operation of the enclosed combustor or flare. Examples of such continuous monitoring systems may include a thermocouple and a chart recorder, data logger or similar device, or connection to a SCADA system;

(vii) Maintained in a leak-free condition; and

(viii) Operated with no visible smoke emissions.

(d) *Other control devices.* Upon prior written approval by the EPA, the owner or operator may use control devices other than those listed above that are determined by the EPA to be capable of reducing the mass content of VOC in the natural gas routed to it by at least 95.0 percent, provided that:

(1) In operating such control devices, the owner or operator must follow the manufacturer's written operating instructions, procedures and maintenance schedule to ensure good air pollution control practices for minimizing emissions; and

(2) The owner or operator must ensure there is sufficient capacity to reduce the mass content of VOC in the produced natural gas and natural gas emissions routed to such other control devices by at least 95.0 percent for the minimum and maximum natural gas volumetric flow rate and BTU content routed to each device.

(3) The owner or operator must operate such a control device to reduce the mass content of VOC in the produced natural gas and natural gas emissions routed to it by at least 95.0 percent.

§ 49.4178 VOC emissions control requirements for fugitive emissions.

(a) *Applicability.* The requirements of this section apply to all owners or operators of the collection of fugitive emissions components, as defined in § 49.4171, located at any oil and natural gas source, as identified in § 49.4169(b), except that this section does not apply to owners or operators of the collection of fugitive emissions components at an oil and natural gas source that is subject to the fugitive emissions monitoring requirements in 40 CFR part 60, subpart OOOOa.

(b) Owners or operators of the collection of fugitive emissions components must comply with paragraph (d) of this section if either of the following is true:

(1) The collection of fugitive emissions components is located at an oil and natural gas source that is required to control VOC emissions according to §§ 49.4173 through 49.4177 of this section (*i.e.,* the source-wide potential for VOC emissions from the collection of all storage vessels, glycol dehydrators, and pneumatic pumps is equal to or greater than 4 tpy, as determined according to § 49.4173(a)(1)); or

(2) The collection of fugitive emissions components is located at a well site, as defined in 40 CFR 60.5430a, that at any time has total production greater than 15 barrels of oil equivalent (boe) per day based on a rolling 12-month average.

(c) Owners or operators of the collection of fugitive emissions components for which neither (b)(1) nor (b)(2) is true must comply with either paragraph (c)(1) or paragraph (c)(2) of this section.

(1) You must monitor all fugitive emissions components and repair all sources of fugitive emissions in accordance with paragraph (d) of this section. You must keep records in accordance with § 49.4183 and report in accordance with § 49.4184; or

(2) You must maintain the total production for the well site at or below 15 boe per day based on a rolling 12-month average. You must demonstrate that the total daily oil and natural gas production from the collection of all wells producing to the well site is at or below 15 boe per day, based on a 12-month rolling average, according to the procedures in paragraph (e) of this section. You must maintain records as specified in § 49.4183(a)(11).

(d) *Monitoring requirements.* (1) Each owner or operator must develop and implement a fugitive emissions monitoring plan to reduce emissions from fugitive emissions components at all of their oil and natural gas sources on Indian country lands within the U&O Reservation. This Reservation-wide monitoring plan must include the following elements, at a minimum:

(i) A requirement to perform an initial monitoring of the collection of fugitive emissions components at each oil and natural gas source by February 6, 2024;

(ii) A requirement to perform subsequent monitoring of the collection of fugitive emissions components at each oil and natural gas source once every 6 months after the initial monitoring survey, with consecutive monitoring surveys conducted at least 4 months apart and no more than 7 months apart.

(iii) A description of the technique used to identify leaking fugitive emission components, which must be limited to:

(A) Onsite EPA Reference Method 21, 40 CFR part 60, appendix A, where an analyzer reading of 500 parts per million volume (ppmv) VOC or greater is considered a leak in need of repair;

(B) Onsite optical gas imaging instruments, as defined in 40 CFR 60.18(g)(4), where any visible emissions are considered a leak in need of repair, unless the owner or operator evaluates the leak with an analyzer meeting EPA Reference Method 21 at 40 CFR part 60, appendix A, and the concentration is less than 500 ppmv. The optical gas imaging instrument must be capable of meeting the optical gas imaging

equipment requirements specified in 40 CFR part 60, subpart OOOOa; or

(C) Another method approved by the Administrator to demonstrate compliance with the fugitive emissions monitoring requirements. To be approved, you must demonstrate that the alternative method achieves emissions reductions that equal or exceed those that would result from the application of either Method 21 or optical gas imaging instruments. Approval of an alternative method will be subject to public notice and comment.

(iv) The manufacturer and model number of any fugitive emissions monitoring device to be used;

(v) Procedures and timeframes for identifying and repairing components from which leaks are detected, including:

(A) A requirement to repair any leaks identified from components that are safe to repair and do not require source shutdown as soon as practicable, but no later than 30 calendar days after discovering the leak;

(B) Timeframes for inspecting and repairing leaking components that are difficult-to-monitor, unsafe-to-monitor, or require source shutdown, to be no later than the next required monitoring event, as noted in paragraphs (c)(1)(v)(B)(*1*) through (*3*) of this section:

(*1*) If using Method 21, fugitive emissions components that cannot be monitored without elevating the monitoring personnel more than 2 meters above the surface may be designated as difficult-to-monitor and must meet the specifications in paragraphs (c)(1)(v)(B)(*1*)*(i)* through *(iv)* of this section:

(i) For all fugitive emissions components designated difficult-to-monitor, a written plan must be developed and incorporated into the fugitive emissions monitoring plan.

(ii) The plan must include the identification and location of each fugitive emissions component designated difficult-to-monitor.

(iii) The plan must include an explanation of why each fugitive emissions component designated as difficult-to-monitor is difficult-to-monitor.

(iv) The plan must include a schedule for monitoring the difficult-to-monitor fugitive emissions components at least once per calendar year and a schedule for repairing such fugitive emissions components according to paragraph (c)(1)(v)(B)(*3*) of this section;

(*2*) Fugitive emissions components that cannot be monitored because monitoring personnel would be exposed to an immediate danger while conducting a monitoring survey may be designated as unsafe-to-monitor and must meet the specification in paragraphs (c)(1)(v)(B)(*2*)*(i)* through *(iv)* of this section:

(i) A written plan must be developed for all of the fugitive emissions components designated unsafe-to-monitor and incorporated into the fugitive emissions monitoring plan;

(ii) The plan must include the identification and location of each fugitive emissions component designated unsafe-to-monitor.

(iii) The plan must include an explanation of why each fugitive emissions component designated as unsafe-to-monitor is unsafe-to-monitor.

(iv) The plan must include a schedule for monitoring the unsafe-to-monitor fugitive emissions components as frequently as practicable during safe to inspect times and for repairing such fugitive emissions components according to paragraph (c)(1)(v)(B)(*3*) of this section;

(*3*) If the repair or replacement of a fugitive emissions component designated difficult-to-monitor or unsafe-to-monitor is technically infeasible; would require a vent blowdown, a compressor station shutdown, a well shutdown, or well shut-in; or would be unsafe to repair during operation of the unit, the repair or replacement must be completed during the next scheduled compressor station shutdown, well shutdown, or well shut-in; after a planned vent blowdown; or within 2 years, whichever is earlier; and

(C) Procedures for verifying leaking component repairs, no more than 30 calendar days after repairing the leak;

(vi) Training and experience needed before performing surveys;

(vii) Procedures for calibration and maintenance of any fugitive emissions monitoring device to be used; and

(viii) Standard monitoring protocols for each type of typical oil and natural gas source (*e.g.,* well site, tank battery, compressor station), including a general list of component types that will be inspected and what supporting data will be recorded (*e.g.,* wind speed, detection method device-specific operational parameters, date, time, and duration of inspection).

(2) The owner or operator is exempt from inspecting and repairing a fugitive emissions component under any of the following circumstances:

(i) The contacting process stream only contains glycol, amine, methanol, or produced water; or

(ii) The component to be inspected is buried, insulated in a manner that prevents access to the components by a monitor probe or optical gas imaging device, or obstructed by equipment or piping that prevents access to the components by a monitor probe or optical gas imaging device.

(e) *Procedures for determining total well site production.* The total well site production must be determined according to the following procedures:

(1) Calculate the total average boe per day for each calendar month using:

(i) For existing well sites, the records of production for the first 30 days after becoming subject to this section.

(ii) For well sites that commence construction, reconstruction or modification on or after February 6, 2023, the first 30 days of production, performing the calculation within 45 days of the end of the first 30 days of production.

(2) Determine the daily oil and natural gas production for each individual well at the well site for the month. To convert gas production to equivalent barrels of oil, divide the cubic feet of gas produced by 6,000.

(3) Sum the daily production for each individual well at the well site to determine the total well site production and divide by the total number of days in the calendar month. This is the average daily total well site production for the month.

(4) Use the result determined in paragraph (e)(2) of this section and average with the daily average well site production values determined for each of the preceding 11 months to calculate the rolling 12-month average of the total well site production.

§ 49.4179 VOC emissions control requirements for tank truck loading.

(a) *Applicability.* The requirements in this section apply to each owner or operator who loads or permits the loading of any intermediate hydrocarbon liquid or produced water at an oil and natural gas source as identified in § 49.4169(b).

(b) *Tank truck loading requirements.* Tank trucks used for transporting intermediate hydrocarbon liquid or produced water must be loaded and unloaded using measures to minimize VOC emissions. These measures must include, at a minimum, bottom filling or a submerged fill pipe, as defined in § 49.4171(b).

§ 49.4180 VOC emissions control requirements for pneumatic controllers.

(a) *Applicability.* The VOC emissions control requirements in this section apply to each owner or operator of any existing pneumatic controller located at an oil and natural gas source as identified in § 49.4169(b).

(b) *Exemptions.* This section does not apply to pneumatic controllers subject to and controlled in accordance with the requirements for pneumatic controllers in 40 CFR part 60, subparts OOOO or OOOOa.

(c) *Retrofit requirements.* All existing pneumatic controllers must meet the standards established for pneumatic controllers that are constructed, modified, or reconstructed on or after October 15, 2013, as specified in 40 CFR part 60, subpart OOOO.

(d) *Documentation requirements.* The owner or operator of any existing pneumatic controllers must meet the tagging requirements in 40 CFR 60.5390(a), except that the month and year of installation, reconstruction or modification is not required.

§ 49.4181 Other combustion devices.

(a) *Applicability.* The VOC emission control requirements in this section apply to each owner or operator of any existing enclosed combustor or flare located at an oil and natural gas source as identified in § 49.4169(b) that is used to control VOC emissions, but that is not required under §§ 49.4173 through 49.4175 of this rule.

(b) *Retrofit requirements.* All existing enclosed combustors and flares must be equipped with an operational electronically controlled automatic ignition device.

§ 49.4182 Monitoring and testing requirements.

(a) *Applicability.* The monitoring and testing requirements in paragraphs (c) and (d) of this section apply, as appropriate, to each oil and natural gas source as identified in § 49.4169(b) with equipment or activities that are subject to §§ 49.4173 through 49.4177.

(b) *Exemptions.* Paragraphs (c) and (d) of this section do not apply to any storage vessels, glycol dehydration units, pneumatic pumps, covers, or closed-vent systems, or to VOC emission control devices subject to and monitored in accordance with the monitoring requirements for such equipment and activities in 40 CFR part 60, subparts OOOO or OOOOa, or 40 CFR part 63, subpart HH.

(c) Each owner or operator must inspect each cover and closed-vent system as specified in paragraphs (c)(1) or (2).

(1) Conduct olfactory, visual, and auditory inspections at least once every calendar month, separated by at least 15 days between each inspection, of each cover and closed-vent system, including each bypass device, and each storage vessel thief hatch, seal, and pressure relief valve, to ensure proper condition and functioning of the equipment to identify defects that can result in air emissions according to the procedures. Examples of defects are visible cracks, holes, or gaps in the cover or piping, or between the cover and the separator wall; loose connections; liquid leaks; and broken, cracked, or otherwise damaged seals or gaskets on closure devices, caps, or other closure devices. If the storage vessel is partially or entirely buried, you must inspect only those portions of the cover that extend to or above the ground surface, and those connections that are on such portions of the cover (*e.g.,* fill ports, access hatches, gauge wells) and can be opened to the atmosphere. The inspector should note whether there are signs of oil releases around storage vessel thief hatches, seals and pressure relief valves (*e.g.,* staining on the storage vessel), which may indicate over-pressure events that occurred when the storage vessel was being filled. Any defects identified must be corrected or repaired within 30 days of identification.

(2) Conduct optical gas imaging inspections of each cover and closed vent system for any visible emissions at the same frequency as the frequency for the collection of fugitive emissions components located at the oil and natural gas source, as specified in § 49.4178(d)(1).

(d) Each owner or operator must monitor the operation of each enclosed combustor and flare to confirm proper operation and demonstrate compliance with the requirements of § 49.4177(c), as follows and as applicable:

(1) Demonstrate compliance with the requirement of § 49.4177(c)(5)(i)(B) that each enclosed combustor must be demonstrated by the owner or operator to meet the VOC control efficiency requirements of §§ 49.4173 through 49.4176, by conducting performance tests using EPA-approved performance test methods and procedures specified in 40 CFR 60.5413 and according to the schedule specified in paragraphs (d)(1)(i) and (ii) of this section.

(i) You must conduct an initial performance test within 180 days after the effective date of this rule for existing enclosed combustors, and within 180 days after initial startup for new enclosed combustors. You must submit the performance test results as specified in § 49.4184(a) within 60 days of completing the test.

(ii) You must conduct periodic performance tests for all enclosed combustors required to conduct initial performance tests. You must conduct the first periodic performance test no later than 60 months after the initial performance test required in paragraph (d)(1)(i) of this section. You must conduct subsequent periodic performance tests at intervals no longer than 60 months following the previous periodic performance test or whenever you desire to establish a new operating limit. You must submit the periodic performance test results as specified in § 49.4184(a) within 60 days of completing each test.

(iii) The owner or operator of an enclosed combustor whose model is tested under, and meets the criteria of, § 49.4177(c)(5)(i)(A) is not required to conduct performance testing.

(2) Conduct inspections of each enclosed combustor or flare at least once every calendar month, separated by at least 15 days between each inspection, to confirm proper operation of the device, as follows:

(i) Demonstrate that each enclosed combustor or flare is operated with no visible smoke emissions, except for periods not to exceed a total of 1 minute during any 15-minute period, by conducting a visible emissions test using section 11 of EPA Method 22 of appendix A–7 of 40 CFR part 60. The observation period must be of sufficient length to meet the requirement for determining compliance with this visible emissions standard. Devices failing the visible emissions test must follow manufacturer's repair instructions, if available, or best combustion engineering practice as outlined in the unit inspection and maintenance plan, to return the unit to compliant operation. All inspection, repair, and maintenance activities for each unit must be recorded in a maintenance and repair log and must be available for inspection. Following return to operation from maintenance or repair activity, each device must pass a Method 22 of Appendix A–7 of 40 CFR part 60 visual observation as described in this paragraph.

(ii) Conduct visual inspections to confirm that the pilot is lit when vapors are being routed to the device and that the continuous burning pilot or electronically controlled automatic ignition device and the continuous parameter monitoring system is operating properly;

(iii) Conduct olfactory, visual and auditory inspections of all other equipment associated with the combustion device to ensure system integrity; and

(iv) Respond to any indication of pilot flame failure and ensure that the pilot flame is relit as soon as practically and safely possible after discovery.

(e) Where sufficient to meet the monitoring requirements in this section,

the owner or operator may use a SCADA system to monitor and record the required data.

§ 49.4183 Recordkeeping requirements.

(a) Each owner or operator of an oil and natural gas source as identified in § 49.4169(b) must maintain the following records, as applicable:

(1) Monthly calculations, as specified in § 49.4173(c)(2), demonstrating that the uncontrolled actual VOC emissions from the collection of all storage vessels, glycol dehydrators, and pneumatic pumps at an oil and natural gas source, as identified in § 49.4169(b), have been maintained at less than 4 tpy;

(2) Records of monthly and rolling 12-month crude oil, condensate, intermediate hydrocarbon liquids, produced water or natural gas throughput;

(3) For each emergency storage vessel that is exempted from the control requirements of § 49.4173(b)(2), records of usage including:

(i) The date the vessel received fluids;

(ii) The volume of fluids received in barrels;

(iii) The date the overflow vessel was emptied; and

(iv) The volume of fluids emptied in barrels.

(4) Identification of each storage vessel that is removed from service or returned to service as specified in § 49.4173(b)(3), including the date the storage vessel was removed from service or returned to service.

(5) For storage vessels that are skid-mounted or permanently attached to something that is mobile (such as trucks, railcars, barges or ships), records indicating the number of consecutive days that the vessel is located at an oil and natural gas source. If a storage vessel is removed from an oil and natural gas source and, within 30 days, is either returned to the source or replaced by another storage vessel at the source to serve the same or similar function, then the entire period since the original storage vessel was first located at the source, including the days when the storage vessel was removed, must be added to the count of the number of consecutive days.

(6) For each enclosed combustor or flare at an oil and natural gas source required under §§ 49.4173 through 49.4177:

(i) Manufacturer-written, site-specific designs, operating instructions, operating procedures and maintenance schedules, including those of any operation monitoring systems;

(ii) Date of installation;

(iii) Records of required monitoring of operations in § 49.4182(d)(1);

(iv) Records of any instances in which the pilot flame is not present or the monitoring equipment is not functioning in the enclosed combustor or flare, the date and times of the occurrence, the corrective actions taken, and any preventative measures adopted to prevent recurrence of the occurrence; and

(v) Records of any visible emissions tests conducted according to § 49.4182(d)(3), including any time periods in which visible smoke emissions are observed emanating from the enclosed combustor or flare.

(7) For each closed-vent system:

(i) The date of installation; and

(ii) Records of any instances in which any closed-vent system or control device was bypassed or down, the reason for each incident, its duration, and the corrective actions taken, and any preventative measures adopted to avoid such bypasses or downtimes.

(8) Documentation of all storage vessel and closed-vent system inspections required in § 49.4182(c). All inspection records must include the following information:

(i) The date of the inspection;

(ii) The findings of the inspection;

(iii) Any adjustments or repairs made as a result of the inspection, and the date of the adjustment or repair; and

(iv) The inspector's name or identification number;

(9) The Uinta Basin-wide fugitive emissions monitoring plan for the Indian country lands within the U&O Reservation, including all elements required by § 49.4178(d).

(10) Documentation of each fugitive emissions inspection conducted in accordance with § 49.4178(d). All inspection records must include the following information:

(i) The date of the inspection;

(ii) The identification of any component that was determined to be leaking;

(iii) The identification of any component designated difficult-to-monitor or unsafe-to-monitor that was not inspected, and the reason it was not inspected;

(iv) The date of the first attempt to repair the leaking component;

(v) The identification of any leaking component with a delayed repair and the reason for the delayed repair:

(A) For unavailable parts:

(*1*) The date of ordering a replacement component; and

(*2*) The date the replacement component was received; and

(B) For a shutdown:

(*1*) The reason the repair is technically infeasible;

(*2*) The date of the shutdown;

(*3*) The date of subsequent startup after a shutdown; and

(*4*) Emission estimates of the shutdown and the repair if the delay is longer than 6 months;

(vi) The date and description of any corrective action taken, including the date the component was verified to no longer be leaking;

(vii) The identification of each component exempt under § 49.4178(d)(2), including the type of component and a description of the qualifying exemption; and

(viii) The inspector's name or identification number.

(11) For each well site complying with either § 49.4178(b)(2) or § 49.4178(c)(2), you must maintain records of the rolling 12-month average daily production no later than 12 months before complying with § 49.4178(b)(2) or § 49.4178(c)(2).

(12) For each electronically controlled automatic ignition system required under § 49.4181, records demonstrating the date of installation and manufacturer specifications; and

(13) For each retrofitted pneumatic controller, the records required in 40 CFR 60.5420(c)(4)(i).

(b) Each owner or operator must keep all records required by this section onsite at the source or at the location that has day-to-day operational control over the source and must make the records available to the EPA upon request.

(c) Each owner or operator must retain all records required by this section for a period of at least 5 years from the date the record was created.

§ 49.4184 Notification and reporting requirements.

(a) Unless otherwise specified, each owner or operator must submit any documents required under this rule to: U.S. EPA Region 8, Enforcement and Compliance Assurance Division, Air and Toxics Enforcement Branch, 8ENF–AT, 1595 Wynkoop St., Denver, CO 80202, or documents may be submitted electronically to *r8airreportenforcement@epa.gov* and/or to the EPA's Compliance and Emissions Data Reporting Interface (CEDRI). Information on CEDRI is available at *https://www.epa.gov/electronic-reporting-air-emissions/cedri;* CEDRI can be accessed directly through the EPA's Central Data Exchange (CDX) at *https://cdx.epa.gov/.* The EPA will make all the information submitted through CEDRI available to the public without further notice to you. Do not use CEDRI to submit information you claim as confidential business information (CBI). Anything submitted using CEDRI cannot

later be claimed CBI. Although we do not expect persons to assert a claim of CBI, if you wish to assert a CBI claim, you must submit a complete file, including the information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage media to the EPA, and the electronic media must be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same information, with the CBI omitted, must be submitted to the EPA via *r8airreportenforcement@epa.gov* or the EPA's CDX as described earlier in this paragraph. All claims of CBI must be asserted at the time of submission. Furthermore, under CAA section 114(c), emissions data is not entitled to confidential treatment, and the EPA is required to make emissions data available to the public. Thus, emissions data will not be protected as CBI and will be made publicly available.

(b) Each owner and operator of an affected oil and natural gas source as identified in § 49.4169(b) must submit an annual report containing the information specified in paragraphs (b)(1) through (3) of this section, as applicable. The annual report must cover affected operations for the previous calendar year. The initial annual report is due April 1st of the calendar year following February 6, 2023 and must cover all affected operations for the previous calendar year on and after February 6, 2023. Subsequent annual reports are due on the same date each year as the date the initial annual report was submitted. If you own or operate more than one oil and natural gas source, you may submit one report for multiple oil and natural gas sources, provided the report contains all of the information required as specified in paragraphs (b)(1) through (3) of this section. Annual reports may coincide with title V, NSPS OOOO or OOOOa, or NESHAP HH reports as long as all the required elements of the annual report are included. An alternative schedule on which the annual report must be submitted will be allowed as long as the schedule does not extend the reporting period. The annual report must include:

(1) The owner or operator name, and the name and location (decimal degree latitude and longitude location indicating the datum used in parentheses) of each oil and natural gas source being included in the annual report.

(2) The beginning and ending dates of the reporting period.

(3) For each oil and natural gas source, a summary of the required records specified in § 49.4183 that are identified in paragraphs (b)(3)(i) through (iv) of this section as they relate to the source's compliance with the requirements of §§ 49.4173 through 49.4183.

(i) For each enclosed combustor or flare at an oil and natural gas source required under §§ 49.4173 through 49.4177:

(A) Records of any instances in which the pilot flame is not present or the monitoring equipment is not functioning, the date and times of the occurrence, the corrective actions taken, and any preventative measures adopted to prevent recurrence of the occurrence; and

(B) Records of any time periods in which visible smoke emissions are observed emanating from the enclosed combustor or flare.

(ii) For each closed-vent system:

(A) Records of any instances in which any closed-vent system or control device was bypassed or down, the reason for each incident, its duration, the corrective actions taken, and any preventative measures adopted to avoid such bypasses or downtimes; and

(B) Records of any instances of defects identified during the monthly inspection required in § 49.4182(c), including:

(*1*) The date of the inspection;

(*2*) The findings of the inspection;

(*3*) Date and description of corrective adjustments or repairs made as a result of the inspection or reason for delay of repair; and

(iii) For Fugitive Emissions Monitoring, records documenting each fugitive emissions inspection, including:

(A) The date of the inspection;

(B) Identification of any component that was determined to be leaking;

(C) Identification of any component designated difficult-to-monitor or unsafe-to-monitor that was not inspected and the reason it was not inspected;

(D) The date of repair of each leaking component;

(E) Identification of any leaking component with a delayed repair, the reason for the delayed repair and the emission estimates associated with any shutdown and repair if the delay is longer than 6 months;

(F) The date and description of any corrective action taken, including the date the component was verified to no longer be leaking;

(G) The inspector's name or identification number;

(H) For each well site complying with § 49.4178(c)(2), you must specify that the well site is exempt from the requirements of § 49.4178(d) and submit the average daily production for the well site; and

(iv) For each pneumatic controller with a natural gas bleed rate greater than the applicable standard, records of the reason for the use of the controller.

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Part III

Department of Energy

10 CFR Part 431

Energy Conservation Program: Energy Conservation Standards for Single Package Vertical Units; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2019–BT–STD–0033]

RIN 1904–AE78

Energy Conservation Program: Energy Conservation Standards for Single Package Vertical Units

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking; notification of proposed determination and announcement of public meeting.

SUMMARY: The Energy Policy and Conservation Act, as amended (EPCA), prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including single package vertical air conditioners (SPVACs) and single package vertical heat pumps (SPVHPs), collectively referred to as single package vertical units (SPVUs). EPCA also requires the U.S. Department of Energy (DOE) to periodically review standards. In this notice of proposed rulemaking (NOPR); notification of proposed determination (NOPD), DOE proposes to amend the current energy conservation standards for SPVUs such that the existing standard levels would be based on a new cooling efficiency metric of Integrated Energy Efficiency Ratio (IEER) for SPVACs and SPVHPs, and the current heating efficiency metric of Coefficient of Performance (COP) for SPVHPs (but without any increase in stringency), In addition, DOE has initially determined that more-stringent standards for SPVUs would not be economically justified and would not result in a significant conservation of energy. DOE also announces a public meeting to receive comment on these proposed standards and associated analyses and results.

DATES: *Comments:* DOE will accept comments, data, and information regarding this NOPR/NOPD no later than February 6, 2023.

Meeting: DOE will hold a public meeting via webinar on Monday, January 9th, 2023, from 1:00 p.m. to 4:00 p.m. See section VIII, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

Comments regarding the likely competitive impact of the proposed standard should be sent to the Department of Justice contact listed in the **ADDRESSES** section on or before January 9, 2023. DOE notes that the Department of Justice is required to transmit its determination regarding the competitive impact of the proposed standard to DOE no later than February 6, 2023. Commenters who want to have their comments considered by DOE as part of any further rulemaking resulting from this NOPR/NOPD also should submit such comments to DOE in accordance with the procedures detailed in this proposal.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov,* under docket number EERE–2019–BT–STD–0033. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2019–BT–STD–0033 and/or RIN 1904–AE78, by any of the following methods:

Email: SPVU2019STD@ee.doe.gov. Include the docket number EERE–2019–BT–STD–0033 and/or RIN 1904–AE78 in the subject line of the message.

Postal Mail: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1445. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

Hand Delivery/Courier: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, 6th Floor, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimiles (faxes) will be accepted. For detailed instructions on submitting comments and additional information on this process, see section VIII of this document (Public Participation).

Docket: The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as those containing information that is exempt from public disclosure.

The docket web page can be found at: *www.regulations.gov/search/docket?filter=EERE-2019-BT-STD-0033.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section VIII (Public Participation) of this document for information on how to submit comments through *www.regulations.gov.*

EPCA requires the U.S. Attorney General to provide DOE a written determination of whether the proposed standard is likely to lessen competition. The U.S. Department of Justice (DOJ) Antitrust Division invites input from market participants and other interested persons with views on the likely competitive impact of the proposed standard. Interested persons may contact the Antitrust Division at *energy.standards@usdoj.gov* in advance of the date specified in the **DATES** section. Please indicate in the ''Subject'' line of your email the title and Docket Number of this rulemaking.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Rivest, 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) 586–7335. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC, 20585–0121. Telephone: (202) 586–5827. Email: *Eric.Stas@hq.doe.gov.*

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting webinar, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

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I. Synopsis of the Proposed Rule

The Energy Policy and Conservation Act,[1] as amended, Public Law 94–163 (42 U.S.C. 6291–6317, as codified) authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, part C[2] of EPCA, established the Energy Conservation Program for Certain Industrial Equipment. (42 U.S.C. 6311–6317) This equipment includes single package vertical air conditioners (SPVACs) and single package vertical heat pumps (SPVHPs), collectively referred to as single package vertical units (SPVUs), the subject of this proposed rulemaking. SPVUs are a category of commercial package air conditioning and heating equipment. (42 U.S.C. 6311(1)(B)–(D); 42 U.S.C. 6313(a)(10))

Pursuant to EPCA, DOE must consider amending the Federal energy efficiency standards for certain types of commercial and industrial equipment, including the equipment at issue in this document, whenever the Department is triggered by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) acting to amend the standard levels or design requirements prescribed in ASHRAE Standard 90.1, ''Energy Standard for Buildings Except Low-Rise Residential Buildings,'' (ASHRAE Standard 90.1). (42 U.S.C. 6313(a)(6)(A)–(B)) In addition, EPCA contains an independent review requirement for this same equipment (the 6-year-lookback review), which requires DOE to consider the need for amended standards every six years. To adopt standard levels more stringent than those contained in ASHRAE Standard 90.1, DOE must have clear and convincing evidence to show that such standards would be technologically feasible and economically justified and would save a significant additional amount of energy. (42 U.S.C. 6313(a)(6)(C)) DOE is conducting this proposed rulemaking under EPCA's 6-year-lookback review authority.

The current Federal energy conservation standards for SPVUs are set forth at title 10 of the Code of Federal Regulations (CFR), 10 CFR 431.97(d) and, as specified in 10 CFR 431.96, those standards are denominated in terms of the cooling efficiency metric, Energy Efficiency Ratio (EER) and the heating efficiency metric, Coefficient of Performance (COP), and based on the rating conditions in American National Standards Institute (ANSI)/Air-Conditioning, Heating, and Refrigeration Institute (AHRI) Standard 390–2003, ''Performance Rating of Single Package Vertical Air-Conditioners and Heat Pumps'' (ANSI/AHRI 390–2003). ASHRAE Standard 90.1–2019 references this same industry test standard.

On June 24, 2021, AHRI published AHRI Standard 390–2021, ''Performance Rating of Single Package Vertical Air-Conditioners and Heat Pumps'' (AHRI 390–2021), which supersedes ANSI/AHRI 390–2003. AHRI 390–2021, which was developed as part of an industry consensus process, includes revisions that DOE determined improve the representativeness, repeatability, and reproducibility of the test methods. Among other things, AHRI 390–2021 maintains the existing efficiency metrics—EER for cooling mode and COP for heating mode—but it also added a seasonal efficiency metric that includes part-load cooling performance—the Integrated Energy Efficiency Ratio (IEER). In November 2022, DOE issued a Test Procedure Final Rule for SPVUs that amended the test procedures for SPVUs to incorporate by reference AHRI 390–2021. As discussed in section III.C of this document, DOE has determined that the IEER metric is more representative of the cooling efficiency for SPVUs on an annual basis than the current EER metric. As a result, DOE is proposing to amend the standards for SPVUs to be based on the seasonal cooling metric, IEER, and the existing heating metric, COP. As discussed in section IV of this document, DOE conducted a crosswalk analysis to develop IEER levels that are of equivalent stringency to the current EER standard levels.[3]

To satisfy its review obligations under EPCA's 6-year-lookback provision, DOE analyzed the technological feasibility of more energy-efficient SPVUs. For those SPVUs for which DOE determined higher standards to be technologically feasible, DOE evaluated whether higher standards would be economically justified by conducting life-cycle cost (LCC) and payback period (PBP)

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact parts A and A–1 of EPCA.

[2] For editorial reasons, upon codification in the U.S. Code, part C was redesignated part A–1.

[3] EPCA provides that in the case of any amended test procedure where DOE deviates from the industry test standard referenced in ASHRAE Standard 90.1, DOE must determine, to what extent, if any, the proposed test procedure would alter the measured energy efficiency, measured energy use, or measured water use of the subject ASHRAE equipment as determined under the existing test procedure. (*See* 42 U.S.C 6293(e); 42 U.S.C. 6314(a)(4)(C)) DOE refers to this as the ''crosswalk'' analysis.

analyses. As discussed in the following sections, DOE has tentatively determined that it lacks the clear and convincing evidence required under the statute to show that amended standards would be economically justified. DOE did not conduct a national impact analysis to measure the national energy savings of higher efficiency levels, because the weighted average LCC savings were strongly negative across the four equipment classes.

Based on the results of the analyses conducted, summarized in section VI of this document, DOE has tentatively determined that it lacks clear and convincing evidence that amended standards for SPVUs, in terms of IEER and COP, that are more stringent than the current standards for SPVUs would be economically justified. The clear and convincing threshold is a heightened standard and would only be met where the Secretary has an abiding conviction, based on available facts, data, and DOE's own analyses, that it is highly probable an amended standard would result in a significant additional amount of energy savings, and is technologically feasible and economically justified. *See American Public Gas Association* v. *U.S. Dep't of Energy,* No. 20–1068, 2022 WL 151923, at *4 (D.C. Cir. Jan. 18, 2022) (citing *Colorado* v. *New Mexico,* 467 U.S. 310, 316, 104 S.Ct. 2433, 81 L.Ed.2d 247 (1984)). DOE did not conduct the shipments analysis, manufacturer impact analysis, and other such analyses typically conducted at the NOPR stage due to the results of the initial analysis conducted (discussed in further detail elsewhere in this document).

In this NOPR/NOPD, DOE is proposing to adopt standards based on IEER and COP that are of equivalent stringency as the current DOE energy conservation standard levels and the current standard levels specified in ASHRAE Standard 90.1–2019. The proposed standards are presented in Table I–1. These proposed standards, if adopted, would apply to all SPVUs listed in Table I–1 manufactured in, or imported into, the United States starting on the tentative compliance date of 360 days after the publication in the **Federal Register** of the final rule for this rulemaking. *See* section VI.B of this NOPR/NOPD for a discussion on the applicable lead-times considered to determine this compliance date.

TABLE I–1—PROPOSED ENERGY CONSERVATION STANDARDS FOR SPVUS

Equipment class	Proposed standard level
SPVAC <65,000 Btu/h	IEER = 12.5
SPVHP <65,000 Btu/h	IEER = 12.5 COP = 3.3
SPVAC ≥65,000 Btu/h and <135,000 Btu/h.	IEER = 10.3
SPVHP ≥65,000 Btu/h and <135,000 Btu/h.	IEER = 10.3 COP = 3.0
SPVAC ≥135,000 Btu/h and <240,000 Btu/h.	IEER = 11.2
SPVHP ≥135,000 Btu/h and <240,000 Btu/h.	IEER = 11.2 COP = 3.0

II. Introduction

The following section briefly discusses the statutory authority underlying this proposal, as well as some of the relevant historical background related to the establishment of energy conservation standards for SPVUs.

A. Authority

EPCA, Pub. L. 94–163, as amended, among other things, authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, part C of EPCA, added by Public Law 95–619, title IV, section 441(a), (42 U.S.C. 6311–6317, as codified), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This equipment includes SPVUs, which are a category of small, large, and very large commercial package air conditioning and heating equipment and the subject of this document. (42 U.S.C. 6311(1)(B)–(D); 42 U.S.C. 6313(a)(10)) EPCA prescribed initial standards for these products. (42 U.S.C. 6313(a)(1)–(2)) Congress updated the standards for SPVUs through amendments to EPCA contained in the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140 (Dec. 19, 2007). (42 U.S.C. 6313(a)(10)) Additionally, DOE is triggered to consider amending the energy conservation standards for certain types of commercial and industrial equipment, including the equipment at issue in this document, whenever ASHRAE amends the standard levels or design requirements prescribed in ASHRAE/IES Standard 90.1, and independent of that requirement, a separate provision of EPCA requires DOE to consider amended standards for that equipment at a minimum, every six years. (42 U.S.C. 6313(a)(6)(A)–(C))

The energy conservation program under EPCA consists essentially of four parts: (1) testing; (2) labeling; (3) the establishment of Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316; 42 U.S.C. 6296).

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 (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 set forth under EPCA. (42 U.S.C. 6316(b)(2)(D))

Under 42 U.S.C. 6314, EPCA sets forth the criteria and procedures DOE is required to 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 and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)) Manufacturers of covered equipment must use the Federal test procedures 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(b); 42 U.S.C. 6296), and (2) making representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE uses these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA. The DOE test procedures for SPVUs appear at 10 CFR part 431, subpart F, appendices G and G1.

ASHRAE Standard 90.1 sets industry energy efficiency levels for small, large, and very large commercial package air-conditioning and heating equipment, packaged terminal air conditioners, packaged terminal heat pumps, warm air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks (collectively referred to as

''ASHRAE equipment''). For each type of listed equipment, EPCA directs that if ASHRAE amends Standard 90.1, DOE must adopt amended standards at the new ASHRAE efficiency level, unless DOE determines, supported by clear and convincing evidence, that adoption of a more-stringent level would produce significant additional conservation of energy and would be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)) Under EPCA, DOE must also review energy efficiency standards for SPVUs every six years and either: (1) issue a notice of determination that the standards do not need to be amended as adoption of a more-stringent level is not supported by clear and convincing evidence; or (2) issue a notice of proposed rulemaking including new proposed standards based on certain criteria and procedures in subparagraph (B) of 42 U.S.C. 6313(a)(6). (42 U.S.C. 6313(a)(6)(C))

In deciding whether a more-stringent standard is economically justified, under either the provisions of 42 U.S.C. 6313(a)(6)(A) or 42 U.S.C. 6313(a)(6)(C), DOE must determine whether the benefits of the standard exceed its burdens. DOE must make this determination after receiving comments on the proposed standard, and by considering, to the maximum extent practicable, the following seven factors:

(1) The economic impact of the standard on manufacturers and consumers of equipment subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered equipment in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered equipment that are likely to result from the standard;

(3) The total projected amount of energy savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the covered equipment likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy conservation; and

(7) Other factors the Secretary of Energy considers relevant.

(42 U.S.C. 6313(a)(6)(B)(ii)(I)–(VII))

Further, EPCA establishes a rebuttable presumption that an energy conservation standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product that complies with the standard will be less than three times the value of the energy (and, as applicable, water) savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii)) However, while this rebuttable presumption analysis applies to most commercial and industrial equipment (42 U.S.C. 6316(a)), it is not a required analysis for ASHRAE equipment (42 U.S.C. 6316(b)(1)).

EPCA also contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6313(a)(6)(B)(iii)(I)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6313(a)(6)(B)(iii)(II)(aa))

B. Background

1. Current Standards

In a final rule published in the **Federal Register** on September 23, 2015 (September 2015 Final Rule), DOE prescribed the current energy conservation standards for SPVUs in accordance with the 3-year review prescribed by EPCA and in response to the 2013 update to ASHRAE Standard 90.1 (ASHRAE Standard 90.1–2013). 80 FR 57438. As part of the September 2015 Final Rule, DOE evaluated whether more-stringent standards for SPVUs were economically justified consistent with the requirements in EPCA at 42 U.S.C. 6313(a)(6)(B)(ii)(I)–(VII). For four of the six SPVU equipment classes, DOE adopted the levels specified in ASHRAE Standard 90.1–2013. 80 FR 57438, 57439 (Sept. 23, 2015). For the remaining two equipment classes, DOE concluded that there was clear and convincing evidence that standards more stringent than the levels in ASHRAE Standard 90.1–2013 were technologically feasible and economically justified and would save a significant additional amount of energy. *Id.* The current energy conservation standards are codified at 10 CFR 431.97 and are set forth in Table II–1.

TABLE II–1—FEDERAL ENERGY CONSERVATION STANDARDS FOR SPVUS

Equipment type	Cooling capacity	Sub-category	Efficiency level	Compliance date: products manufactured on and after . . .
Single package vertical air conditioners and single package vertical heat pumps, single-phase and three-phase.	<65,000 Btu/h	AC	EER = 11.0	September 23, 2019.
		HP	EER = 11.0 COP = 3.3	September 23, 2019.
Single package vertical air conditioners and single package vertical heat pumps.	≥65,000 Btu/h and <135,000 Btu/h.	AC	EER = 10.0	October 9, 2015.
		HP	EER = 10.0 COP = 3.0	October 9, 2015.
Single package vertical air conditioners and single package vertical heat pumps.	≥135,000 Btu/h and <240,000 Btu/h.	AC	EER = 10.0	October 9, 2016.
		HP	EER = 10.0 COP = 3.0	October 9, 2016.

ASHRAE Standard 90.1 has been updated on several occasions since the 2013 version, the most recently being released on October 24, 2019 (*i.e.,* ASHRAE 90.1–2019). The standard levels for SPVUs were revised in ASHRAE 90.1–2019 to match the current DOE standard levels.

2. History of the Current Energy Conservation Standards Rulemaking for SPVUs

On April 24, 2020, DOE published in the **Federal Register** a request for information regarding energy conservation standards for SPVUs (April 2020 RFI). 85 FR 22958. The April 2020 RFI solicited information from the public to help DOE determine whether amended standards for SPVUs would result in significant additional energy savings and whether such standards would be technologically feasible and economically justified. DOE received comments in response to the April 2020 RFI from the interested parties listed in Table II–2.

TABLE II–2—APRIL 2020 RFI WRITTEN COMMENTS

Commenter(s)	Abbreviation	Docket No.	Commenter type
Air-Conditioning, Heating, & Refrigeration Institute	AHRI	9	Manufacturer Trade Association.
Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy.	ASAP/ACEEE	11	Efficiency Advocacy Organizations.
GE Appliances, a Haier company	GE	7	Manufacturer.
Institute for Policy Integrity at New York University School of Law.	NYU	5	Educational Institution.
Lennox International Inc	Lennox	8	Manufacturer.
Northwest Energy Efficiency Alliance	NEEA	6	Efficiency Advocacy Organization.
Pacific Gas and Electric Company (PG&E), San Diego Gas and Electric (SDG&E), and Southern California Edison (SCE); collectively referred to as the California Investor-Owned Utilities.	CA IOUs	10	Utilities.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[4]

The following provides an overview of the public comments received on the April 2020 RFI. In general, AHRI recommended that DOE not amend the current minimum energy conservation standards for SPVUs. The commenter stated that DOE should wait until the revised edition of the industry test procedure for SPVUs has published and has been referenced in ASHRAE Standard 90.1. AHRI added that a crosswalk should be developed by testing and calculation using current baseline-efficiency SPVU equipment to establish the energy conservation standards using the new metric. (AHRI, No. 9 at p. 6)

The CA IOUs recommended DOE investigate increasing the baseline efficiency levels for SPVUs in conjunction with establishing standards and test procedures that incorporate part-load performance. Based on their analysis of DOE's Compliance Certification Database (CCD), the CA IOUs noted that over 70 percent of products in each SPVU equipment class are at the minimum efficiency level, but many products have varied features and compressor configurations that are likely to translate into differences in part-load performance. Based on this, the CA IOUs encouraged DOE to consider shifting to a more-stringent, full-load metric. (CA IOUs, No. 10 at p. 2)

ASAP and ACEEE commented that greater energy savings are possible than those evaluated for the September 2015 Final Rule. ASAP and ACEEE argued that the most-efficient SPVU models currently available have either Energy Efficiency Ratio (EER) or COP ratings that are higher than the max-tech levels considered in the September 2015 Final Rule. (ASAP/ACEEE, No. 11 at pp. 1–2)

As discussed in section III.C of this document, DOE has amended its test procedures for SPVUs to incorporate by reference the updated industry test procedure, AHRI Standard 390–2021, ''Performance Rating of Single Package Vertical Air-Conditioners and Heat Pumps'' (AHRI 390–2021), which includes the existing efficiency metrics—EER for cooling mode and COP for heating mode—but it also adds a cooling-mode seasonal metric that includes part-load cooling performance—the IEER metric. Accordingly, DOE is proposing to amend the energy conservation standards for SPVUs to be based on the seasonal cooling metric, IEER, and the existing heating metric, COP. As discussed in section IV of this document, DOE conducted a crosswalk analysis in collaboration with AHRI and SPVU manufacturers to translate the current SPVU standard levels based on EER to the new metric, IEER, to establish baseline efficiency levels for the current analysis considering the potential for more-stringent SPVU standard levels.

C. Deviation From Appendix A

In accordance with section 3(a) of 10 CFR part 430, subpart C, appendix A (appendix A), ''Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Certain Commercial/Industrial Equipment,'' DOE notes that it is deviating from the provision in appendix A regarding the NOPR/NOPD stages for an energy conservation standards rulemaking. *See* 86 FR 70892 (Dec. 13, 2021).

Section 8(d)(1) of appendix A states that the Department will finalize amended test procedures 180 days prior to the close of the comment period of a NOPR proposing new or amended standards or a notice of proposed determination that standards do not need to be amended. For the reasons that follow, DOE finds it necessary and appropriate to deviate from this step in appendix A by publishing this NOPR/NOPD such that the comment period will end before 180 days has elapsed from the publication of the test procedure final rule. As discussed in a final rule pertaining to Procedures, Interpretations, and Policies for Consideration in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment, the 180-day period may not always be necessary. As an example, DOE noted

[4] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop energy conservation standards for SPVUs. (Docket Number: EERE–2019–BT–STD–0033, which is maintained at *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

that it will typically use an industry test procedure as the basis for a new DOE test procedure. If DOE adopts the industry test procedure without modification, stakeholders should already be familiar with the test procedure. In such cases, requiring the new test procedure to be finalized 180 days prior to the close of the comment period for a NOPR proposing new energy conservation standards would offer little benefit to stakeholders while delaying DOE's promulgation of new energy conservation standards. 86 FR 70892, 70896 (Dec. 13, 2021). In this analogous case, DOE is deviating from the 180-day provision because it has incorporated by reference the industry consensus test procedure for SPVUs, AHRI 390–2021. DOE also notes that AHRI 390–2021 was published in June 2021, so DOE expects that manufacturers are already familiar with the test procedure.

III. General Discussion

DOE developed this proposal after considering oral and written comments, data, and information from interested parties that represent a variety of interests. The following discussion addresses issues raised by these commenters.

A. Scope of Coverage

EPCA, as amended by the EISA 2007 defines ''single package vertical air conditioner'' and ''single package vertical heat pump'' at 42 U.S.C. 6311(22) and (23), respectively. In particular, single package vertical air conditioners can be single- or three-phase; must have major components arranged vertically; must be an encased combination of components; and must be intended for exterior mounting on, adjacent interior to, or through an outside wall. Single package vertical heat pumps are single package vertical air conditioners that use reverse cycle refrigeration as their primary heat source and may include secondary supplemental heating by means of electrical resistance, steam, hot water, or gas. DOE codified the statutory definitions into its regulations at 10 CFR 431.92. Additionally, EPCA established initial equipment classes and energy conservation standards for SPVUs based on cooling capacity, and for those SPVUs with a capacity less than 65,000 Btu/h, also based on phase. (42 U.S.C. 6313(a)(10)(A)(i)–(ii) and (v)–(vi))

DOE defines an SPVAC as air-cooled commercial package air conditioning and heating equipment that: (1) is factory-assembled as a single package that: (i) has major components that are arranged vertically; (ii) is an encased combination of cooling and optional heating components; and (iii) is intended for exterior mounting on, adjacent interior to, or through an outside wall; (2) is powered by a single-phase or three-phase current; (3) may contain one or more separate indoor grilles, outdoor louvers, various ventilation options, indoor free air discharges, ductwork, well plenum, or sleeves; and (4) has heating components that may include electrical resistance, steam, hot water, or gas, but may not include reverse cycle refrigeration as a heating means. 10 CFR 431.92. Additionally, DOE defines an SPVHP as a single package vertical air conditioner that: (1) uses reverse cycle refrigeration as its primary heat source; and (2) may include secondary supplemental heating by means of electrical resistance, steam, hot water, or gas. *Id.* The Federal test procedures are applicable to SPVUs with a cooling capacity less than 760,000 Btu/h. (42 U.S.C. 6311(8)(D)(ii)) DOE currently only prescribes energy conservation standards for SPVUs less than 240,000 Btu/h (see section III.B of this document for details).

As part of the April 2020 RFI, DOE requested commented on whether the definitions for SPVUs should be revised. 80 FR 22958, 22961 (April 24, 2020). On that topic, AHRI commented that the definitions of SPVAC and SPVHP generally remain appropriate and did not suggest any modifications. (AHRI, No. 9 at p. 3)

As part of the most recent energy conservation standards rulemaking for SPVUs, DOE published a notice of data availability in the **Federal Register** on April 11, 2014 (April 2014 NODA). 79 FR 20114. In the April 2014 NODA, DOE noted that ASHRAE Standard 90.1–2013 created a new equipment class for SPVACs and SPVHPs used in space-constrained and replacement-only applications, with a definition for ''nonweatherized space constrained single-package vertical unit'' and efficiency standards for the associated equipment class. *Id.* at 79 FR 20121–20122. In the April 2014 NODA, DOE tentatively concluded that there was no need to establish a separate space-constrained class for SPVUs, given that certain models listed by manufacturers as SPVUs, most of which would meet the ASHRAE space-constrained definition, were being misclassified and should have been classified as central air conditioners (in most cases, space-constrained central air conditioners). *Id.* at 79 FR 20122–20123. DOE reaffirmed this position in the NOPR published in the **Federal Register** on December 30, 2014 NOPR (December 2014 NOPR). 79 FR 78614, 78625–78627. In response to the December 2014 NOPR, DOE received several comments from stakeholders related to the classification of products that these commenters are referring to as space-constrained SPVUs, the statutory definition of SPVU, how these products are applied in the field or specified for purchase, and whether the products warranted a separate equipment class within SPVU. In the final rule published in the **Federal Register** on September 23, 2015, DOE stated that it would consider those comments and take appropriate action in a separate rulemaking. 80 FR 57438, 57448. In response to the April 2020 RFI, Lennox commented that this remains an important outstanding issue for resolution in order to ensure that current products and new entries to the market are treated equitably. (Lennox, No. 8 at pp. 1–2)

In November 2022, DOE issued a final rule to amend the test procedure for SPVUs (the November 2022 Test Procedure Final Rule).[5] As part of the November 2022 Test Procedure Final Rule, DOE added specific definitions for ''single-phase single package vertical air conditioner with cooling capacity less than 65,000 Btu/h'' and ''single-phase single package vertical heat pump with cooling capacity less than 65,000 Btu/h'' to explicitly delineate such equipment from certain covered consumer products, such as central air conditioners, based on design characteristics. DOE defined this equipment as SPVACs and SPVHPs that are either: (1) weatherized, or (2) non-weatherized and have the ability to provide a minimum of 400 CFM of outdoor air. As discussed in the November 2022 Test Procedure Final Rule, single-phase single package products with cooling capacity less than 65,000 Btu/h not meeting these definitions would be properly classified as consumer central air conditioners, not commercial SPVUs.

B. Equipment Classes

EISA 2007, Public Law 110–140, amended EPCA in relevant part by establishing equipment classes and minimum energy conservation standards for SPVUs. (42 U.S.C. 6313(a)(10)(A)) In doing so, the EISA 2007 amendments established Federal energy conservation standards for SPVUs at levels that generally corresponded to the levels in the 2004 edition of the American Society of Heating, Refrigerating and Air-

[5] The November 2022 Test Procedure Final Rule is available at: *https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=30.*

Conditioning Engineers (ASHRAE) Standard 90.1, *Energy Standard for Buildings Except Low-Rise Residential Buildings* (*i.e.,* ASHRAE Standard 90.1–2004). On March 23, 2009, DOE published a final rule technical amendment in the **Federal Register** that codified the statutory equipment classes and energy conservation standards for SPVUs into DOE's regulations in the Code of Federal Regulations (CFR) at 10 CFR 431.97. 74 FR 12058, 12073–12074. EPCA generally directs DOE to adopt the equipment class structure for SPVUs from ASHRAE Standard 90.1. (*See* 42 U.S.C. 6313(a)(6)(A)(i)) For SVPUs, the current energy conservation standards specified in 10 CFR 431.97 are based on six equipment classes [6] determined according to the following: (1) cooling capacity and (2) whether the equipment is an air conditioner or a heat pump. These equipment classes are identical to those described in ASHRAE Standard 90.1.

TABLE III–1—SPVU EQUIPMENT CLASSES

	Equipment class
1	SPVAC <65,000 Btu/h.
2	SPVHP <65,000 Btu/h.
3	SPVAC ≥65,000 Btu/h and <135,000 Btu/h.
4	SPVHP ≥65,000 Btu/h and <135,000 Btu/h.
5	SPVAC ≥135,000 Btu/h and <240,000 Btu/h.
6	SPVHP ≥135,000 Btu/h and <240,000 Btu/h.

C. Test Procedure and Efficiency Metrics

EPCA sets forth generally applicable criteria and procedures for DOE's adoption and amendment of test procedures. (42 U.S.C. 6314(a)) Manufacturers of covered equipment must use these test procedures to certify to DOE that their equipment complies with energy conservation standards and to quantify the efficiency of their equipment. DOE's current energy conservation standards for SPVUs are expressed in terms of the full-load cooling metric, EER, and the heating metric, COP. (*See* 10 CFR 431.97(d)(3))

ASHRAE 90.1–2019 references, as the test procedure for SPVUs, ANSI/AHRI 390–2003, which does not include a seasonal efficiency metric for cooling mode. At the time of the April 2020 RFI, DOE's test procedure for SPVUs also incorporated by reference ANSI/AHRI 390–2003, omitting section 6.4. Hence, DOE's test procedure for SPVUs at that time likewise did not include a seasonal metric that accounted for part-load performance.

In response to the April 2020 RFI, NEEA, the CA IOUs, and ASAP/ACEEE commented that the existing SPVUs test procedure using the full-load EER metric does not account for the energy savings from variable-speed fans, multi-stage compressors, electronic expansion valves, and other technologies, and that there would likely be significant energy savings potential if a part-load metric were to be used. (NEEA, No. 6 at p. 2; CA IOUs, No. 10 at p. 1; ASAP/ACEEE, No. 11 at pp. 1, 2) NEEA and the CA IOUs commented that nearly 25 percent of units in the AHRI Directory of Certified Product Performance are rated with the integrated part-load value (IPLV) metric (in addition to EER), which considers part-load efficiency. (NEEA, No. 6 at pp. 2–3; CA IOUs, No. 10 at pp. 1–2) NEEA commented that there is a significant range in IPLV values for units available on the market (from approximately 13.5 to 17 IPLV), whereas EER only ranges from 11 to 12.5, with most units at the minimum of 11 EER. (NEEA, No. 6 at pp. 2–3) NEEA, the CA IOUs, and ASAP/ACEEE recommended that DOE should amend the test procedure for SPVUs to consider part-load performance so as to better represent performance during an average use cycle. (NEEA, No. 6 at p. 3; CA IOUs, No. 10 at p. 2; ASAP/ACEEE, No. 11 at p. 1)

The CA IOUs added that while part-load performance is key to representing an average use cycle, full-load performance is critical for enabling utilities to effectively manage grid services. The CA IOUs expressed support for a regulatory model in which both full-load EER and part-load efficiency are published in the AHRI database. (CA IOUs, No. 10 at p. 2)

AHRI and GE commented at the time of the April 2020 RFI that the industry, in collaboration with DOE, was in the process of finalizing a revised test procedure for SPVUs that adopts a seasonal cooling mode metric, IEER. (AHRI, No. 9 at p. 2; GE, No. 7 at p. 2) AHRI stated that any proposal to change the SPVU efficiency metric should be developed through the ASHRAE Standard 90.1 process. (AHRI, No. 9 at p. 2; GE, No. 7 at p. 2)

In response to these comments, DOE notes that as part of the November 2022 Test Procedure Final Rule, the Department amended its test procedure for SPVUs to incorporate by reference AHRI 390–2021, the latest version of the relevant industry standard. Among other things, AHRI 390–2021 maintains the existing efficiency metrics—EER for cooling mode and COP for heating mode—but it also added a seasonal metric that includes part-load cooling performance—the IEER metric. As part of the November 2022 Test Procedure Final Rule, DOE added a new appendix G1 at 10 CFR part 431, subpart F, that includes the relevant test procedure requirements for SPVUs for measuring with updated cooling efficiency metric, IEER, and heating efficiency metric, COP. The relevant test procedure requirements for SPVUs for measuring the existing efficiency metrics, EER and COP were included in appendix G at 10 CFR part 431, subpart F. Beginning 360 days on or after the date of publication of the test procedure final rule in the **Federal Register,** manufacturers must use appendix G for compliance, but if manufacturers make voluntary representations with respect to the integrated energy efficiency ratio (IEER), such representations must be based on testing conducted in accordance with appendix G1. All manufacturers must use appendix G1 on and after the compliance date of any amended standards for single packaged vertical air conditioners and single package vertical heat pumps denominated in terms of IEER, as set forth in 10 CFR 431.97.

[6] Although EPCA divided SPVACs and SPVHPs with < 65,000 Btu/h cooling capacity into equipment classes based on the phase of the electrical power (*see* 42 U.S.C. 6313(a)(10)(A)), it set the same energy conservation standards for both single-phase and three-phase equipment. DOE's current standards, as codified in 10 CFR 431.97, divide SPVU equipment into six equipment classes based on the cooling capacity and whether the equipment is an air conditioner or a heat pump, a class structure consistent with ASHRAE Standard 90.1.

DOE notes that SPVUs often operate at part-load (*i.e.,* less than designed full-load capacity) in the field, depending on the application and location. The current Federal metric for cooling efficiency, EER, captures the system performance at a single, full-load operating point (*i.e.,* single outdoor air temperature). As noted in section 6.2.2 of AHRI 390–2021, the full-load operating conditions (*i.e.,* 95 °F outdoor air dry-bulb temperature) accounts for only 1 percent of the time on average for SPVU applications. Hence, EER is not necessarily representative of energy efficiency over a full cooling season. In contrast, the IEER metric factors in the efficiency of operating at full-load conditions when outdoor temperature is high, as well as part-load conditions of 75-percent, 50-percent, and 25-percent of full-load capacity at outdoor temperatures appropriate for these load levels. This is accomplished by weighting the full- and part-load efficiencies with a representative average amount of time operating at each loading point. Under part-load conditions, SPVUs may cycle off/on, may operate at lower compressor stage levels, or (if they have variable-capacity compressors) may modulate capacity to match the cooling load. The test conditions and weighting factors for this IEER metric in AHRI 390–2021 were developed specifically for SPVUs based on an annual building load analysis and temperature data for buildings representative of SPVU installations, including modular classrooms, modular offices, and telecommunication shelters across 15 different climate zones.[7] Based on the weighting factors specified in section 6.2.2 of AHRI 390–2021, SPVUs spend a significant amount of time operating at milder outdoor air conditions with lower cooling loads. DOE's analysis also indicates that the efficiency at the milder part-load operating conditions can be significantly different than at the full-load operating conditions, and efficiency also can be significantly different between single-stage and two-stage units. The test conditions and weighting factors for the four load levels representing 100, 75, 50, and 25 percent of full-load capacity for SPVUs under the IEER metric are different than those used in the IEER metric in AHRI 340/360–2019, which were developed based on CUAC building types. For these reasons, DOE considers the IEER metric to be representative of the cooling efficiency for SPVUs on an annual basis, and more representative than the current EER metric. Accordingly, DOE is proposing to amend the standards for SPVUs to be based on the seasonal cooling metric, IEER, and the existing heating metric, COP.

DOE notes that the IPLV metric specified in AHRI 390–2003 integrates unit performance at each capacity step provided by the refrigeration system. However, the IPLV tests at each capacity step are all conducted at constant outdoor air conditions of 80 °F dry-bulb temperature and 67 °F wet-bulb temperature. As discussed, the IEER metric was developed considering climate data to reflect the outdoor temperatures representative of different load levels. As a result, DOE considers the IEER metric specified in AHRI 390–2021 to be more representative of annual energy use than the IPLV metric specified in AHRI 390–2003. DOE has determined, by clear and convincing evidence, that AHRI 390–2021 is more representative on annual energy use than AHRI 390–2003. As discussed, SPVUs often operate at part-load conditions. DOE notes that the IPLV metric specified in AHRI 390–2003 integrates unit performance at each capacity step provided by the refrigeration system. However, the IPLV tests at each capacity step are all conducted at constant outdoor air conditions of 80 °F dry-bulb temperature and 67 °F wet-bulb temperature. As discussed, the IEER metric was developed considering climate data to reflect the outdoor temperatures representative of different load levels. As a result, DOE considers the IEER metric specified in AHRI 390–2021 to be more representative of annual energy use than the IPLV metric specified in AHRI 390–2003.

NEEA and ASAP/ACEEE commented that DOE should also amend the test procedure for SPVUs to fully account for embedded fan energy use and revise the external static pressure requirements to accurately reflect field conditions. (NEEA, No. 6 at p. 1; ASAP/ACEEE, No. 11 at p. 1) ASAP/ACEEE also commented that DOE should incorporate defrost and reflect heating performance at lower ambient temperatures in the heating efficiency metric. (ASAP/ACEEE, No. 11 at pp. 1, 2) DOE has addressed all of these comments related to test procedure issues in the November 2022 Test Procedure Final Rule.

In the November 2022 Test Procedure Final Rule, DOE determined that it does not have sufficient information regarding the operation of fans outside of mechanical cooling and heating modes (*e.g.,* economizing, ventilation), regarding the installations for SPVHPs and the frequency of operation of defrost cycles, or regarding representative low ambient conditions during field use that would be necessary to develop representative testing procedures for these operating modes. DOE also determined that that it does not have information indicating that the current minimum ESPs are unrepresentative of field conditions.

D. Technological Feasibility

1. General

In each energy conservation standards rulemaking, DOE conducts a screening analysis based on information gathered on all current technology options and prototype designs that could improve the efficiency of the products or equipment that are the subject of the rulemaking. As the first step in such an analysis, DOE develops a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. DOE then determines which of those means for improving efficiency are technologically feasible. DOE considers technologies incorporated in commercially-available products or in working prototypes to be technologically feasible. *See generally* 10 CFR 431.4; 10 CFR part 430, subpart C, appendix A, sections 6(b)(3)(i) and 7(b)(1).

After DOE has determined that particular technology options are technologically feasible, it further evaluates each technology option in light of the following additional screening criteria: (1) practicability to manufacture, install, and service; (2) adverse impacts on product utility or availability; (3) adverse impacts on health or safety, and (4) unique-pathway proprietary technologies. *See generally* 10 CFR 431.4; 10 CFR part 430, subpart C, appendix A, sections 6(b)(3)(ii)–(v) and 7(b)(2)–(5). Section V.B of this document discusses the results of the screening analysis for SPVUs, particularly the designs DOE considered, those it screened out, and those that are the basis for the standards considered in this rulemaking. For further details on the screening analysis for this rulemaking, see chapter 4 of the NOPR/NOPD technical support document (TSD).

2. Maximum Technologically Feasible Levels

When DOE proposes to adopt an amended energy conservation standard for a type or class of covered equipment

[7] Based on EnergyPlus analysis developed for the previous energy conservation standards rulemaking for SPVUs. 80 FR 57438, 57462 (Sept. 23, 2015). EnergyPlus is a whole building energy simulation program (Available at: *http://apps1.eere.energy.gov/buildings/energyplus/*).

more stringent than the level in ASHRAE Standard 90.1, the Department must conduct the requisite analyses to show by clear and convincing evidence that such standard would result in significant additional conservation of energy and would be technologically feasible and economically justified. Under such analysis, DOE determines the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such equipment. (*See* 42 U.S.C. 6313(a)(6)(A)(ii)(II)) Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible (max-tech) improvements in energy efficiency for SPVUs, using the design parameters for the most-efficient products available on the market or in working prototypes. The max-tech levels that DOE determined for this rulemaking are described in section V.C.1.b of this proposed rule and in chapter 5 of the NOPR/NOPD TSD.

E. Energy Savings

In determining whether standards for the subject equipment should be amended, DOE would typically determine whether such standards would result in significant additional conservation of energy, as required by 42 U.S.C. 6313(a)(6)(A)(ii)(II) and 42 U.S.C. 6313(a)(6)(C)(i). However, as discussed in section VI of this document, DOE has tentatively determined that amended standards for the subject equipment would not be economically justified. Because clear and convincing evidence of economic justification is necessary to adopt more-stringent standards for the subject equipment, DOE has tentatively concluded that quantification of energy savings from potential amended standards is not necessary in the case of this proposed rulemaking.

F. Economic Justification

As noted, EPCA provides seven factors to be evaluated in determining whether a potential amended energy conservation standard is economically justified. (42 U.S.C. 6313(a)(6)(B)(ii)(I)-(VII)) The following sections discuss how DOE has addressed each of those seven factors in this NOPR/NOPD.

1. Economic Impact on Consumers and Manufacturers

For individual consumers, DOE measures the economic impact by calculating the changes in LCC and PBP associated with new or amended energy conservation standards for the equipment in question. These measures are discussed further in the following section. For consumers in the aggregate, DOE also calculates the national net present value (NPV) of the consumer costs and benefits expected to result from particular standards. DOE also evaluates the impacts of potential standards on identifiable subgroups of consumers that may be affected disproportionately by a standard. However, DOE's analysis showed negative LCC savings for SPVUs for nearly all efficiency levels, and, therefore, DOE is not proposing to amend standards for SPVUs, because the Department anticipates that it would not have the clear and convincing evidence to support amended standards more stringent that those set forth in ASHRAE Standard 90.1. Accordingly, DOE did not conduct a consumer subgroup analysis or a national impact analysis for this NOPR/NOPD.

In determining the impacts of a potential standard on manufacturers, DOE typically conducts a manufacturer impact analysis (MIA). However, because DOE is tentatively unable to determine via clear and convincing evidence that a more-stringent standard level would result in significant additional conservation of energy and is technologically feasible and economically justified, DOE decided not to conduct an MIA. Nonetheless, DOE did examine the potential impacts of amended energy conservation standards for SPVUs on small manufacturers in its Regulatory Flexibility Act analysis, which is presented in section VII.B of this NOPR/NOPD. The following section discusses additional comments received from the April 2020 RFI regarding manufacturer impacts and cumulative regulatory burden.

In response to the April 2020 RFI, AHRI, Lennox, and GE urged DOE to consider the cumulative regulatory burden for heating, ventilation, air conditioning, and refrigeration (HVACR) manufacturers. (AHRI, No. 9 at p. 2; GE, No. 7 at p. 3; Lennox, No. 8 at p. 2) AHRI, Lennox, and GE argued that requirements for new low-GWP refrigerants will have a significant impact on the HVAC industry, and these commenters stated that in certain States, these requirements will take effect prior to the compliance date of any amended standards that would be adopted by DOE in the course of this proposed rulemaking. (AHRI, No. 9 at p. 5; GE, No. 7 at p. 3; Lennox, No. 8 at p. 2) AHRI stated that because nearly all of these new refrigerants have been designated flammable (A2L), all new safety standards have been developed that address the application of these new flammable refrigerants and subsequent leak mitigation. (AHRI, No. 9 at p. 5) AHRI stated that DOE's analysis should account for the challenge that manufacturers will face due to the need to develop, test, and certify two product lines for models with current refrigerants and new, A2L refrigerants. (*Id.*) AHRI and Lennox also noted that all current equipment will need to be tested to the new safety standard, Underwriters Laboratories/Canadian Standards Association (UL/CSA) Standard 60335–2–40, ''Standard for Household and Similar Electrical Appliances—Safety—Part 2–40: Particular Requirements for Electrical Heat Pumps, Air-Conditioners and Dehumidifiers,'' prior to its effective date of January 1, 2023. (AHRI, No. 9 at p. 5; Lennox, No. 8 at p. 3)

In addition to the cumulative burden concerns noted with refrigerants, AHRI stated that the industry is preparing for additional new efficiency metrics and standard levels for residential central air conditioners and heat pumps; small, large, and very large commercial package air conditioners and heat pump; and air-cooled, water-cooled, evaporatively-cooled; water-source unitary air conditioners and heat pumps; and variable refrigerant flow equipment. (AHRI, No. 9 at p. 2)

DOE notes that a full consideration of more-stringent levels, if undertaken, would assess manufacturer impacts, including cumulative burden. However, in the absence of proposing more-stringent standards, DOE has tentatively determined that the proposals set forth in this NOPR/NOPD would not be unduly burdensome to manufacturers.

For a more complete discussion of consumer impacts, see chapter 8 of the NOPR/NOPD TSD.

2. Savings in Operating Costs Compared To Increase in Price (LCC and PBP)

EPCA requires DOE to consider the savings in operating costs throughout the estimated average life of the covered equipment in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered equipment that are likely to result from a standard. (42 U.S.C. 6313(a)(6)(B)(ii)(II)) DOE conducts this comparison in its LCC and PBP analysis.

The LCC is the sum of the purchase price of a product (including its installation) and the operating expense (including energy, maintenance, and repair expenditures) discounted over the lifetime of the product. The LCC analysis requires a variety of inputs, such as equipment prices (which includes manufacturer selling price, distribution channel markups, and sales tax), equipment energy consumption,

energy prices, maintenance and repair costs, equipment lifetime, discount rates appropriate for consumers, and the year that compliance with new or amended standards would be required. To account for uncertainty and variability in specific inputs, such as equipment lifetime and discount rate, DOE uses a distribution of values, with probabilities attached to each value.

The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of more-efficient equipment through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost due to a more-stringent energy conservation standard by the change in annual operating cost for the year that such standards are assumed to take effect.

For its LCC and PBP analysis, DOE assumes that consumers will purchase the covered equipment in the first year of compliance with new or amended energy conservation standards. The LCC savings for the considered efficiency levels are calculated relative to the case that reflects projected market trends in the absence of new or amended standards. DOE's LCC and PBP analysis is discussed in further detail in section V.F. of this document.

For a more complete discussion of the LCC and PBP analysis, see chapter 8 of the NOPR/NOPD TSD.

3. Energy Savings

Although significant additional conservation of energy is a separate statutory requirement for adopting an energy conservation standard, EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected quantity of energy savings that are expected to result directly from the standard. (42 U.S.C. 6313(a)(6)(B)(ii)(III)) DOE is not proposing amended standards for SPVUs due to the negative LCC savings at nearly all efficiency levels, so, therefore, DOE did not project the total energy savings from higher efficiency levels.

4. Lessening of Utility or Performance of Equipment

In evaluating design options and the impact of potential standard levels, DOE evaluates potential amended energy conservation standards that would not lessen the utility or performance of the subject equipment. (42 U.S.C. 6313(a)(6)(B)(ii)(IV)) Because DOE is not proposing amended standards for SPVUs, the Department has tentatively concluded that this NOPR/NOPD would not impact the utility or performance of such equipment.

5. Impact of Any Lessening of Competition

EPCA directs DOE to consider the impact of any lessening of competition, as determined in writing by the Attorney General that is likely to result from a proposed standard. (42 U.S.C. 6313(a)(6)(B)(ii)(V)) Because DOE is not proposing standards for SPVUs more stringent than the current Federal standards for that equipment, DOE did not transmit a copy of its proposed determination to the Attorney General for anti-competitive review.

6. Need for National Energy Conservation

DOE also considers the need for national energy conservation in determining whether a new or amended standard is economically justified. (42 U.S.C. 6313(a)(6)(B)(ii)(VI)) Typically, energy savings from proposed standards would be likely to provide improvements to the security and reliability of the Nation's energy system, and reductions in the demand for electricity also may result in reduced costs for maintaining the reliability of the Nation's electricity system. DOE conducts a utility impact analysis to estimate how potential standards may affect the Nation's needed power generation capacity. However, because DOE is not proposing amended standards for SPVUs that increase stringency beyond the current Federal standard levels, the Department did not conduct this analysis for the present rulemaking.

DOE maintains that environmental and public health benefits associated with the more-efficient use of energy are important to take into account when considering the need for national energy conservation. Typically, proposed standards would be likely to result in environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases (GHGs) associated with energy production and use. Therefore, DOE routinely conducts an emissions analysis to estimate how potential standards might affect these emissions. DOE also estimates the economic value of emissions reductions resulting from the considered TSLs (*i.e.,* standards above the base case). However, because DOE is not proposing amended standards for SPVUs at levels more stringent than the current Federal standard levels, the Department did not conduct this analysis for the present rulemaking.

7. Other Factors

In determining whether a potential energy conservation standard is economically justified, DOE may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6313(a)(6)(B)(ii)(VII)) To the extent DOE identifies any relevant information regarding economic justification that does not fit into the other categories described previously, DOE could consider such information under ''other factors.'' DOE did not identify any other factors in this NOPR/NOPD.

IV. Crosswalk Analysis

As discussed in section II.B.1 of this document, DOE's current energy conservation standards for SPVUs are based on the full-load cooling efficiency metric, EER, and the heating efficiency metric, COP. As further discussed in section III.C of this document, DOE has amended the Federal test procedures for SPVUs to incorporate by reference AHRI 390–2021, including the seasonal cooling efficiency metric, IEER. Accordingly, DOE is proposing to amend the energy conservation standards for SPVUs to rely on the IEER metric for cooling efficiency (while retaining the COP metric for determining the heating efficiency of SPVHPs). As explained in section III.C of this document, DOE has tentatively determined that the IEER metric is representative of the cooling efficiency for SPVUs in terms of both an average use cycle and also on an annual basis, and that it is more representative than the current EER metric.

EPCA provides that in the case of any amended test procedure for covered ASHRAE equipment for which there is clear and convincing evidence to support deviation from the test procedure for such equipment referenced in ASHRAE Standard 90.1, DOE must determine, to what extent, if any, the proposed test procedure would alter the measured energy efficiency, measured energy use, or measured water use of the subject ASHRAE equipment as determined under the existing test procedure. (*See* 42 U.S.C 6293(e); 42 U.S.C. 6314(a)(4)(C)) If the Secretary determines that the amended test procedure will alter the measured efficiency or measured use, the Secretary shall amend the applicable energy conservation standard during the rulemaking carried out with respect to such test procedure. In such case, under the process prescribed in EPCA, DOE is directed to measure, pursuant to the amended test procedure, the energy efficiency or energy use of a

representative sample of covered products that minimally comply with the existing standard. (*See* 42 U.S.C. 6293(e)(2); 42 U.S.C. 6314(a)(4)(C)) The average of such energy efficiency or energy use determined under the amended test procedure constitutes the amended energy conservation standard for the applicable covered products. (*Id.*)

Pursuant to these statutory directives, DOE conducted a ''crosswalk'' analysis to translate the current SPVU standard levels based on EER to standard levels based on the new metric, IEER. DOE worked with AHRI and SPVU manufacturers (collectively referred to as the ''AHRI 390 Task Force'') to develop the crosswalk analysis, during which, both DOE and manufacturers conducted testing of minimally-compliant units. Pursuant to the requirements of EPCA (42 U.S.C. 6293(e)(2); 42 U.S.C. 6314(a)(4)(C)), the AHRI 390 Task Force conducted testing on a sample of minimally-compliant SPVUs. DOE observed instances where both single-stage and two-stage SPVUs are minimally compliant with the current EER standards because the full-load EER metric does not capture the benefits of part-load technologies. As discussed in section V.C of this document, two-stage units have higher efficiencies than single-stage units when using the seasonal IEER metric. As a result, the sample of minimally-compliant SPVUs selected for testing specifically focused on single-stage units, as these units are expected to be the least efficient under the amended SPVUs test procedure.

Collectively, the AHRI 390 Task Force conducted testing on 17 SPVUs with <65,000 Btu/h cooling capacity and 2 SPVUs with ≥65,000 Btu/h cooling capacity to measure the percentage change in efficiency between EER and IEER for each unit.[8] The test sample included a mix of both SPVACs and SPVHPs. Using these test data, the average percentage change was calculated for SPVUs <65,000 Btu/h cooling capacity and ≥65,000 Btu/h cooling capacity separately. Based on testing, SPVACs and SPVHPs showed the same percentage increase from EER to IEER. These test results are summarized in Table IV–1.

TABLE IV–1—AHRI 390 CROSSWALK TESTING RESULTS FOR MINIMALLY-COMPLIANT, SINGLE-STAGE SPVUS

Equipment class	Current minimum EER	Average percentage change from EER to IEER
SPVU <65,000 Btu/h	11	+13.4%
SPVU ≥65,000 Btu/h	10	+2.6%

Based on these test results, DOE is proposing baseline IEER levels that are 13.4 percent higher than current EER standard levels for SPVUs <65,000 Btu/h cooling capacity and 2.6 percent higher than the current EER standard levels for SPVUs ≥65,000 and <135,000 Btu/h cooling capacity. For SPVUs ≥135,000 and <240,000 Btu/h cooling capacity, DOE noted that there were only eight basic models currently available on the market. Based on review of product literature, all of these larger SPVU models operated with multiple compressor stages and staged airflow. The testing conducted as part of the AHRI 390 Task Force included only single stage units and, therefore, is not representative of the baseline IEER levels for these larger SPVU units currently available on the market. Consequently, in order to determine an appropriate baseline IEER level for these larger SPVU equipment classes, DOE applied the crosswalk of 2.6 percent, then applied the percent improvement in IEER associated with moving from single-stage compressor and airflow to multiple compressor stages and stage airflow, consistent with the improvement used for SPVUs <135,000 Btu/h cooling capacity (*i.e.,* a 9.6 percent increase in IEER, see section V.C.1.b of this document).

The proposed baseline efficiency levels for each equipment class, denominated in terms of IEER and COP (where appliable), are presented in Table IV–2. The methodology and results of the crosswalk analysis are presented in detail in the chapter 5 of the NOPR/NOPD TSD.

TABLE IV–2—CROSSWALKED BASELINE EFFICIENCY LEVELS

Subcategory	Current minimum standard levels	Proposed baseline efficiency levels*
SPVAC <65,000	EER = 11.0	IEER = 12.5.
SPVHP <65,000	EER = 11.0	IEER = 12.5.
	COP = 3.3	COP = 3.3.
SPVAC ≥65,000 and <135,000	EER = 10.0	IEER = 10.3.
SPVHP ≥65,000 and <135,000	EER = 10.0	IEER = 10.3.
	COP = 3.0	COP = 3.0.
SPVAC ≥135,000 and <240,000	EER = 10.0	IEER = 11.2.
SPVHP ≥135,000 and <240,000	EER = 10.0	IEER = 11.2.
	COP = 3.0	COP = 3.0.

* Reflects translation of existing energy conservation standards using a full-load EER cooling metric to a proposed equivalent energy conservation standard using a seasonal IEER metric.

Issue–1: DOE requests comment on the proposed baseline IEER levels for SPVUs, as well as comment on any aspect of its crosswalk analysis. DOE continues to seek information which compares EER to IEER for the SPVUs

[8] The percentage change from EER to IEER was used to ensure that data was anonymized for presentation to the AHRI 390 Task Force.

that are representative of the market baseline efficiency level for all equipment classes.

V. Methodology and Discussion of Related Comments

This section addresses the analyses DOE has performed for this proposed rulemaking with regard to SPVUs. Separate subsections address each component of DOE's analyses.

DOE used Python [9]-based analytical tools to estimate the impact of the potential energy conservation standards considered as part of this proposed rulemaking on consumers. These tools calculate the LCC savings and PBP of potential amended or new energy conservation standards for three consumer sectors: (1) schools, (2) offices, and (3) telecommunications structures. The LCC and PBP inputs, outputs, and summary tables are available for download in spreadsheet form at *https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=30.* DOE did not perform any analysis beyond the LCC, as the LCC results were negative for nearly all product classes, and, therefore, DOE tentatively determined that an increased standard level would not be economically justified.

A. Market and Technology Assessment

DOE develops information in the market and technology assessment that provides an overall picture of the market for the equipment concerned, including the purpose of the equipment, the industry structure, manufacturers, market characteristics, and technologies used in the equipment. This activity includes both quantitative and qualitative assessments, based primarily on publicly-available information. The subjects addressed in the market and technology assessment for this rulemaking include: (1) a determination of the scope of the rulemaking and product classes; (2) manufacturers and industry structure; (3) existing efficiency programs; (4) shipments information; (5) market and industry trends; and (6) technologies or design options that could improve the energy efficiency of SPVUs. The key findings of DOE's market assessment are summarized in the following sections. See chapter 3 of the NOPR/NOPD TSD for further discussion of the market and technology assessment.

1. Equipment Classes

As discussed in section III.B of this document, the current energy conservation standards for SPVUs specified in 10 CFR 431.97 are based on six equipment classes determined by: (1) cooling capacity and (2) whether the equipment is an air conditioner or a heat pump.

TABLE V–1—EQUIPMENT CLASSES FOR SPVUS

	Equipment class
1	SPVAC <65,000 Btu/h.
2	SPVHP <65,000 Btu/h.
3	SPVAC ≥65,000 Btu/h and <135,000 Btu/h.
4	SPVHP ≥65,000 Btu/h and <135,000 Btu/h.
5	SPVAC ≥135,000 Btu/h and <240,000 Btu/h.
6	SPVHP ≥135,000 Btu/h and <240,000 Btu/h.

In response to the April 2020 RFI, AHRI commented that it does not recommend any changes to the existing equipment classes. (AHRI, No. 9 at p. 3) DOE did not identify any performance-related features that would justify creating a new equipment class for SPVUs. Accordingly, DOE is proposing to maintain the existing equipment classes in this NOPR/NOPD.

In the April 2020 RFI, DOE requested comment on the availability of units on the market in the following equipment classes: SPVHP ≥65,000 Btu/h and <135,000 Btu/h, SPVAC ≥135,000 Btu/h and <240,000 Btu/h, and SPVHP ≥135,000 Btu/h and <240,000 Btu/h. 85 FR 22958, 22962 (April 24, 2020). At the time AHRI commented, that organization stated that the largest SPVHP in the AHRI Directory is 60,000 Btu/h and that the largest SPVAC is 146,000 Btu/h. (AHRI, No. 9 at p. 4) DOE conducted a more recent review of DOE's Compliance Certification Database,[10] and Table V–2 shows the number of models listed within the DOE Compliance Certification Database that DOE has identified for each class of SPVUs. Based on DOE's review of equipment currently available on the market, DOE determined that there are SPVHPs available up to 67,000 Btu/h and SPVACs up to 180,000 Btu/h. As discussed in section I of this document, DOE is not proposing to increase the stringency of the energy conservation standards for any SPVUs, including SPVHP ≥135,000 Btu/h and <240,000 Btu/h.

TABLE V–2—NUMBER OF MODELS UNDER CURRENT SPVU EQUIPMENT CLASSES

Cooling capacity range (Btu/h)	Number of models	
	SPVACs	SPVHPs
<65,000	467	303
≥65,000 and <135,000	43	2
≥135,000 and <240,000	8	0

2. Technology Options

In the technology assessment, DOE identifies technology options and prototype designs that appear to be feasible mechanisms for improving equipment efficiency. This assessment provides the technical background and structure on which DOE bases its screening and engineering analyses.

[9] Python is an open-source programming language. For more information, see: *www.python.org.*

[10] DOE's Compliance Certification Database can be found at *https://www.regulations.doe.gov/certification-data/products.html#q=Product_Group_s%3A** (Last accessed Feb. 16, 2022).

In the April 2020 RFI, DOE presented a preliminary list of technology options primarily based on the technologies identified in the most recent rulemaking for SPVUs (*i.e.,* the September 2015 final rule). 85 FR 22958, 22962 (April 24, 2020). In the April 2020 RFI, DOE requested comment on the technology options listed in Table V–3 regarding their applicability to the current market and how these technologies may impact the efficiency of SPVUs.

TABLE V–3—TECHNOLOGY OPTIONS PRESENTED IN APRIL 2020 RFI

	Technology options
Heat Exchanger Improvements	Increased Frontal Coil Area. Increased Depth of Coil. Microchannel Heat Exchangers. Dual Condensing Heat Exchangers.
Indoor Blower and Outdoor Fan Improvements	Improved Fan Motor Efficiency. Improved Fan Blades. Variable Speed Condenser Fan/Motor. Variable Speed Indoor Blower/Motor.
Compressor Improvements	Improved Compressor Efficiency. Multi-Speed Compressors.
Other Improvements	Thermostatic Expansion Valves. Electronic Expansion Valves. Thermostatic Cyclic Controls.

In response to the April 2020 RFI, AHRI and GE commented that since the last rulemaking, there are no new technology developments for SPVUs that are commercially available or that are not already accounted for in the existing EER metric. (AHRI, No. 9 at p. 4; GE, No. 7 at p. 2) AHRI added that all of the technology options presented in the April 2020 RFI (now listed in Table V–3), with the exception of increased coil size, are incorporated in minimum-efficiency equipment and would not increase SPVU efficiencies beyond the current levels. (AHRI, No. 9 at p. 7)

AHRI commented that in many replacement applications, the physical size of the replacement equipment cabinet is constrained by the original equipment size, particularly for classroom applications. (AHRI, No. 9 at p. 4) According to AHRI, cabinets project out into the room and are typically installed under windows, and as a result, the dimensions are limited in height by the window, in depth by the allowable projection into the floor space, and in length by the footprint of the original cabinet. (AHRI, No. 9 at p. 4) Therefore, AHRI commented that increasing heat exchanger size significantly is not possible in these cases and that appropriate boundaries must be established when considering increasing component sizes in the analysis, considering ASHRAE Standard 90.1's definition for non-weatherized space-constrained SPVU. (AHRI, No. 9 at pp. 4–5) AHRI added that SPVU manufacturers also need to be cognizant of product noise levels, particularly for classroom settings. AHRI stated that some SPVUs are installed within a cabinet in the room, which typically have sound limits, so all individual components and the combination of components in the final product are considered very carefully to achieve a quiet product. (AHRI, No. 9 at p. 8)

AHRI noted that SPVU manufacturers face limitations in terms of available compressor options; scroll compressors are not available below 17,000 Btu/h, so rotary compressors are employed. (AHRI, No. 9 at p. 8)

As discussed in section V.C.1 of this document, DOE conducted testing and physical teardowns on a sample of currently available SPVUs using the amended SPVU test procedure and based on the seasonal IEER metric. DOE supplemented this approach with a review of product literature for currently available models. Through such efforts, DOE identified technology options that are used in higher-efficiency equipment. Based on this review, DOE believes that the technology options identified for this NOPR/NOPD, as presented subsequently in Table V–5, are consistent with existing equipment on the market (*e.g.,* heat exchanger sizes, fan and fan motor types, controls, air flow) with consideration of the installation constraints noted by AHRI. DOE notes that where certain design options may increase cabinet sizes, DOE considered any additional costs associated with the installation of the equipment (*e.g.,* transition curbs to accommodate existing wall openings in replacement applications).

In the April 2020 RFI, DOE also noted that it did not consider improved fin design, improved tube design, and hydrophilic coating on fins in the engineering analysis for the previous rulemaking because they were commonly found in most baseline and higher-efficiency SPVUs. 85 FR 22958, 22963 (April 24, 2020). AHRI commented that SPVU manufacturers use the best commercially-available fin and tube designs in both baseline and higher-efficiency SPVUs. AHRI stated that hydrophilic film coating on fins are not used in SPVUs due to concern about degradation over time. (AHRI, No. 9 at p. 6) DOE maintains that improved fin and tube design are incorporated into baseline SPVUs and, as a result, DOE did not consider these as technology options in this NOPR/NOPD. DOE is unaware of publicly-available data quantifying the impact of hydrophilic film coating on fins or whether this is used in commercially-available equipment. As a result, DOE did not consider hydrophilic film coating as a technology option in this NOPR/NOPD.

Microchannel Heat Exchangers

As discussed in the April 2020 RFI, DOE did not evaluate microchannel heat exchangers for the September 2015 Final Rule engineering analysis because there was insufficient information regarding improvements to the overall system's energy efficiency. 85 FR 22958, 22962 (April 24, 2020); 80 FR 57438, 57455 (Sept. 23, 2015). On this topic, AHRI and GE agreed that there is insufficient information regarding microchannel heat exchangers impact on the overall system's energy efficiency, and, therefore, such technology should be excluded from the analysis. (AHRI, No. 9 at p . 5; GE, No. 7 at p. 2) GE added that microchannel heat exchangers are of limited usefulness as a technology option due to the constraints imposed by the architecture of the space in which they are installed (*i.e.,* the size of the exterior wall and the wall openings). (GE, No. 7 at p. 2) In light of these reasons, DOE

maintains that there is insufficient information regarding improvements to the overall system's energy efficiency for microchannel heat exchangers, and as a result, DOE did not consider them as a technology option for further consideration.

Part-Load Technology Options

In the April 2020 RFI, DOE noted that the test procedure for SPVUs at that time only measured efficiency at full-load steady-state conditions, while thermostatic expansion valves (TXVs), electronic expansion valves (EEVs), thermostatic cyclic controls, multi-speed compressors, variable speed condenser fan/motor and variable speed indoor blower/motor technologies only provide benefit at part-load conditions. 85 FR 22958, 22962–22963 (April 24, 2020).

AHRI commented that changing the efficiency metric to reflect part-load performance would change how these technology options impact the efficiency of SPVUs. AHRI stated that it does not support the inclusion of any technology option that does not impact efficiency using the current DOE test procedure. (AHRI, No. 9 at p. 5) AHRI commented that neither variable speed condenser fan/motors nor indoor blower/motors will impact efficiency using the existing EER metric and, therefore, should not be considered in this rulemaking. (AHRI, No. 9 at p. 5) The commenter argued that indoor blower/fan improvements will impact unit size, which can be problematic for space-constrained units. AHRI added that not all products have condenser fans to improve, specifically non-weatherized units. (*Id.*)

AHRI and GE commented that variable speed compressors, TXVs, and EEVs do not provide a benefit using the existing EER metric and, therefore, should not be considered in this rulemaking. (AHRI, No. 9 at pp. 5–6; GE, No. 7 at p. 2) AHRI commented that in the event that DOE amends the test procedure and efficiency metric for SPVUs to account for part-load performance, variable speed compressors still may not be a viable technology option due to cost and availability. AHRI and GE noted that SPVUs are designed to accommodate a wide variety of voltages but that currently available variable speed compressors that operate at lower capacities are designed for residential applications and voltages. Consequently, AHRI and GE argued that because variable speed compressors are not available that accommodate all commercial voltages, there is a limitation on the wide-scale adoption of variable speed equipment. (AHRI, No. 9 at p. 6; GE, No. 7 at p. 2) In addition, AHRI mentioned that compressor manufacturers are also working to develop full product lines to accommodate A2L refrigerants. AHRI commented that this effort requires significant research and design resources, so they do not expect timely availability of variable speed compressors for the full voltage range required for SPVUs. (AHRI, No. 9 at p. 6)

In response, as discussed in section III.C of this document, DOE has amended its test procedure for SPVUs to include a seasonal cooling efficiency metric that includes part-load performance, and, therefore, the Department is proposing to consider amended energy conservation standards based on the IEER metric in this NOPR/NOPD. As a result, DOE considered multi-speed compressors, TXVs, EEVs, thermostatic cyclic controls, variable speed condenser fan/motors, and variable speed indoor blower/motors as technology options, because these technologies improve the performance of SPVUs during part-load operation. However, based on DOE's testing, DOE does not have sufficient test data showing that variable-speed compressors provide a measurable improvement over two-stage compressors. As a result, DOE only considered two-stage compressors as a technology option for this NOPR/NOPD. DOE understands that two-stage compressors are available for the full range of cooling capacities for SPVUs. With regards to AHRI's comment that indoor blower/fan improvements will impact unit size and that not all products have condenser fans to improve, DOE notes that it considered application of these technology options consistent with existing equipment on the market.

Additionally, DOE is no longer considering improved compressor efficiency as a technology option, as the Department is not aware of any commercially-available compressors with improved efficiency that are used in SPVUs.

Refrigerants

Nearly all SPVUs are currently designed with R–410A as the refrigerant. The U.S. Environmental Protection Agency (EPA) Significant New Alternatives Policy (SNAP) Program evaluates and regulates substitutes for the ozone-depleting chemicals (such as air conditioning refrigerants) that are being phased out under the stratospheric ozone protection provisions of the Clean Air Act (CAA). (42 U.S.C. 7401 *et seq.*) [11] The EPA SNAP Program currently includes 31 [12] acceptable alternatives for refrigerants used in the new Residential and Light Commercial Air Conditioning class of equipment (which includes SPVUs),[13] On May 6, 2021, the EPA published a final rule in the **Federal Register** allowing the use of R–32, R–452B, R–454A, R–454B, R–454C, and R–457A, subject to use conditions. These refrigerants may now be used in commercial HVAC applications, but any listed available substitute for Residential and Light Commercial Air Conditioning may be used as a refrigerant in SPVU equipment. 86 FR 24444.

On December 27, 2020, the American Innovation and Manufacturing Act of 2020 was enacted in section 103 in Division S, Innovation for the Environment, of the Consolidated Appropriations Act, 2021 (Pub. L. 116–260; codified at 42 U.S.C. 7675). The American Innovation and Manufacturing Act of 2020 provides EPA specific authority to address hydrofluorocarbons (HFC), including to: (1) phase down HFC production and consumption of listed HFCs through an allowance allocation and trading program; (2) establish requirements for the management of HFCs and HFC substitutes in equipment (*e.g.,* air conditioners); and (3) facilitate sector-based transitions away from HFCs. (42 U.S.C. 7675(e), (h), (i)) Under the American Innovation and Manufacturing Act of 2020, EPA is also authorized to issue rules in response to petitions to establish sector-based HFC restrictions. (42 U.S.C. 7675(i)(3)) On October 14, 2021, EPA published a notice in the **Federal Register** which granted ten petitions in full, including one petition by AHRI *et al.,* titled ''Restrict the Use of HFCs in Residential and Light Commercial Air Conditioners'' (AHRI petition), in which the petitioners requested EPA to require residential and light commercial air conditioners (which includes SPVUs) to use refrigerants with GWP of 750 or less, with such requirement applying to these equipment manufactured after January

[11] Additional information regarding EPA's SNAP Program is available online at: *www.epa.gov/ozone/snap/* (Last accessed July 22, 2022).

[12] Refrigerant THR–03 is not included in this count because it is acceptable for use only in residential window air conditioners; Refrigerants R–1270 and R–443A were deemed unacceptable as of January 3, 2017; Refrigerants R–417C, R427–A and R–458A are only approved for retrofit applications.

[13] Information available at: *www.epa.gov/snap/substitutes-residential-and-light-commercial-air-conditioning-and-heat-pumps* (Last accessed July 22, 2022).

1, 2025, excluding variable refrigerant flow (VRF) equipment.[14] 86 FR 57141. DOE is also aware that the California Air Resources Board (CARB) finalized a rulemaking effective January 1, 2022, which prohibits the use of refrigerants with a GWP of 750 or greater starting January 1, 2023 in several new type of air-conditioning equipment, including SPVUs.[15]

In commenting on the April 2020 RFI, ASAP/ACEEE argued that alternatives to R410A such as R32, R452B, and R454B can improve efficiency by at least 5 percent[16] and that DOE should consider alternative refrigerants in its analysis. (ASAP/ACEEE, No. 11 at p. 2)

In response, DOE is aware of the changing landscape of refrigerants as they relate to SPVUs, particularly the AHRI petition that requested the EPA to require residential and light commercial air conditioners to use refrigerants with GWP of 750 or less, with such requirement applying to this equipment manufactured after January 1, 2025 (excluding VRF) and that was granted by EPA on October 14, 2021. 86 FR 57141 (Oct. 14, 2021).[17] In light of this AHRI petition which would impact SPVUs, DOE reviewed certain SNAP-approved substitutes that met this criterion for use of a refrigerant with GWP of 750 or less.[18] These are listed in Table V–4.

TABLE V–4—POTENTIAL SUBSTITUTES FOR HFCS IN NEW RESIDENTIAL AND LIGHT COMMERCIAL AIR CONDITIONING EQUIPMENT, WITH GWP OF 750 OR LESS

Approved substitute	GWP value	Approval date [1]	ASHRAE safety classification [2]
R–457A	140	May 6, 2021	A2L
R–454C	150		
R–454A	240		
R–454B	470		
R–32	675		
R–452B	700		

[1] Approved by EPA. 86 FR 24444.

[2] ASHRAE assigns safety classifications to the refrigerants based on toxicity and flammability data. The capital letter designates a toxicity class based on allowable exposure and the numeral denotes flammability. For toxicity, Class A denotes refrigerants of lower toxicity, and Class B denotes refrigerants of higher toxicity. For flammability, class 1 denotes refrigerants that do not propagate a flame when tested as per the standard; class 2 and 2L denotes refrigerants of lower flammability; and class 3, for highly flammable refrigerants such as the hydrocarbons.

DOE reviewed several studies[19] to gauge the potential efficiency improvements of the substitute refrigerants identified in Table V–4, as compared to R–410A. Most of these studies suggested comparable performance to R410A, with some studies showing slightly reduced efficiency and others showing improvement as high as six percent (for R–32). DOE notes that most of these studies were performed with drop-in applications (where an alternate refrigerant replaces the existing refrigerant in a system that is optimized for the existing refrigerant) and were not performed on SPVUs specifically. It is possible that these substitute refrigerants might show efficiencies higher than R–410A in specific applications that have been optimized for such refrigerants. However, given the uncertainty associated with the studies reviewed, DOE was unable to conclude with reasonable confidence that these refrigerants will result in a specific improvement in energy efficiency. Therefore, DOE has tentatively decided to not consider alternate refrigerants as a technology option for increasing SPVU efficiency. On the other hand, DOE does not expect that the anticipated refrigerant change will reduce SPVU efficiency. Also, as discussed in section III.F.1 of this NOPR, because DOE is not proposing amended standards for SPVUs that increase stringency beyond the current Federal standard levels, DOE did not assess the cumulative regulatory burden associated with potential refrigerant requirements.

NOPR/NOPD Technology Options

Based on the previous discussion, DOE identified nine technology options for this NOPR/NOPD, presented in Table V–5, that would be expected to improve the efficiency of SPVUs, as measured by the amended DOE test procedure.

TABLE V–5—NOPR/NOPD TECHNOLOGY OPTIONS

	Technology options
Heat Exchanger Improvements	Increased Frontal Coil Area.
	Increased Depth of Coil.
	Dual Condensing Heat Exchangers.
Indoor Blower and Outdoor Fan Improvements	Improved Fan Motor Efficiency.

[14] Available at: *www.regulations.gov/document/EPA-HQ-OAR-2021-0289-0011* (Last accessed July 22, 2022).

[15] Available at: *www.arb.ca.gov/rulemaking/2020/hfc2020* (Last accessed July 22, 2022).

[16] See *www.aceee.org/files/proceedings/2016/data/papers/3_406.pdf* (Last accessed July 22, 2022).

[17] After granting a petition, EPA must initiate a rulemaking and publish a final rule within two years of the petition grant date (*i.e.,* by Oct. 15, 2023).

[18] On December 29, 2021, EPA published in the **Federal Register** a notification informing the public that they would not be using a negotiated rulemaking procedure to develop a proposed rule or rules associated with the eleven American Innovation and Manufacturing Act of 2020 petitions (including the AHRI petition) but will instead use the typical notice-and-comment rulemaking process. 86 FR 74080.

[19] See: (1) *https://www.aceee.org/files/proceedings/2016/data/papers/3_406.pdf;*

(2) *https://core.ac.uk/download/pdf/4955522.pdf;*

(3) *https://docs.lib.purdue.edu/iracc/1211/;*

(4) *https://docs.lib.purdue.edu/iracc/1235/;*

(5) *https://docs.lib.purdue.edu/cgi/viewcontent.cgi?article=3097&context=icec;*

(6) *https://www.optimizedthermalsystems.com/images/pdf/about/An-Evaluation-of-R32-for-the-US-HVACR-Market.pdf;*

(7) *https://www.nature.com/articles/ncomms14476;*

(8) *https://docs.lib.purdue.edu/cgi/viewcontent.cgi?article=3089&context=iracc;*

(9) *https://www.osti.gov/biblio/1823375;* and

(10) *https://climate.emerson.com/documents/copeland-scroll-yp-compressors-designed-for-r32-en-gb-7125818.pdf.*

(All last accessed July 25, 2022).

TABLE V–5—NOPR/NOPD TECHNOLOGY OPTIONS—Continued

	Technology options
Compressor Improvements	Improved Fan Blades.
Other Improvements	Two-Stage Compressors.
	Thermostatic Expansion Valves.
	Electronic Expansion Valves.
	Thermostatic Cyclic Controls.

Issue–2: DOE requests comment on the proposed technology options for SPVUs. DOE also requests data on the potential improvement in IEER and COP associated with these technology options.

B. Screening Analysis

DOE uses the following five screening criteria to determine which technology options are suitable for further consideration in an energy conservation standards rulemaking:

(1) Technological feasibility. Technologies that are not incorporated in commercial products or in working prototypes will not be considered further.

(2) Practicability to manufacture, install, and service. If it is determined that mass production and reliable installation and servicing of a technology in commercial products could not be achieved on the scale necessary to serve the relevant market at the time of the projected compliance date of the standard, then that technology will not be considered further.

(3) Impacts on product utility or product availability. If it is determined that a technology would have a significant adverse impact on the utility of the product/equipment for significant subgroups of consumers or would result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time, it will not be considered further.

(4) Adverse impacts on health or safety. If it is determined that a technology would have significant adverse impacts on health or safety, it will not be considered further.

(5) Unique-Pathway Proprietary Technologies. If a design option utilizes proprietary technology that represents a unique pathway to achieving a given efficiency level, that technology will not be considered further due to the potential for monopolistic concerns.

10 CFR 431.4; 10 CFR part 430, subpart C, appendix A, sections 6(b)(3) and 7(b).

In summary, if DOE determines that a technology, or a combination of technologies, fails to meet one or more of the listed five criteria, it will be excluded from further consideration in the engineering analysis. The reasons for eliminating any technology are discussed in the following sections.

After a review of each technology, DOE tentatively concludes that all of the other identified technologies listed in Table V–5 of section V.A.3 of this document meet all five screening criteria to be examined further as design options in DOE's NOPR/NOPD analysis. In summary, DOE did not screen out the following technology options:

TABLE V–6—TECHNOLOGY OPTIONS RETAINED FOR ENGINEERING ANALYSIS

	Technology options
Heat Exchanger Improvements	Increased Frontal Coil Area.
	Increased Depth of Coil.
	Dual Condensing Heat Exchangers.
Indoor Blower and Outdoor Fan Improvements	Improved Fan Motor Efficiency.
	Improved Fan Blades.
Compressor Improvements	Two-Stage Compressors.
Other Improvements	Thermostatic Expansion Valves.
	Electronic Expansion Valves.
	Thermostatic Cyclic Controls.

DOE has initially determined that these technology options are technologically feasible because they are being used or have previously been used in commercially-available products or working prototypes. DOE also finds that all of these technology options meet the other screening criteria (*i.e.,* practicable to manufacture, install, and service and do not result in adverse impacts on consumer utility, product availability, health, or safety, and are not unique-pathway proprietary technologies). For additional details on DOE's screening analysis, see chapter 4 of the NOPR/NOPD TSD.

C. Engineering Analysis

The purpose of the engineering analysis is to establish the relationship between the efficiency and cost of SPVUs. There are two elements to consider in the engineering analysis: (1) the selection of efficiency levels to analyze (*i.e.,* the ''efficiency analysis'') and (2) the determination of equipment cost at each efficiency level (*i.e.,* the ''cost analysis''). In determining the performance of higher-efficiency equipment, DOE considers technologies and design option combinations not eliminated by the screening analysis. For each equipment class, DOE estimates the baseline cost, as well as the incremental cost for the equipment at efficiency levels above the baseline. The output of the engineering analysis is a set of cost-efficiency ''curves'' that are used in downstream analyses (*i.e.,* the LCC and PBP analyses and the NIA).

1. Efficiency Analysis

DOE typically uses one of two approaches to develop energy efficiency levels for the engineering analysis: (1) relying on observed efficiency levels in the market (*i.e.,* the efficiency-level approach), or (2) determining the incremental efficiency improvements associated with incorporating specific design options to a baseline model (*i.e.,* the design-option approach). Using the

efficiency-level approach, the efficiency levels established for the analysis are determined based on the market distribution of existing equipment (in other words, based on the range of efficiencies and efficiency level ''clusters'' that already exist on the market). Using the design-option approach, the efficiency levels established for the analysis are determined through detailed engineering calculations and/or computer simulations of the efficiency improvements from implementing specific design options that have been identified in the technology assessment. DOE may also rely on a combination of these two approaches. For example, the efficiency-level approach (based on actual products on the market) may be extended using the design option approach to ''gap fill'' levels (to bridge large gaps between other identified efficiency levels) and/or to extrapolate to the max-tech level (particularly in cases where the max-tech level exceeds the maximum efficiency level currently available on the market).

In this rulemaking, DOE relies on a design-option approach. Consistent with its previous rulemaking analysis, DOE focused the analysis on representative capacities for each equipment class. Based on market data, DOE identified representative cooling capacities for SPVACs and SPVHPs as presented in Table V–7. More specifically, DOE identified 36,000 Btu/h, 72,000 Btu/h, and 180,000 Btu/h as the nominal cooling capacities representing the most models in DOE's CCD for each SPVU equipment class.

TABLE V–7—SPVU EQUIPMENT CLASS REPRESENTATIVE COOLING CAPACITIES

Equipment class	Representative cooling capacity
SPVAC and SPVHP <65,000 Btu/h	36,000 Btu/h.
SPVAC and SPVHP ≥65,000 Btu/h and <135,000 Btu/h	72,000 Btu/h.
SPVAC and SPVHP ≥135,000 Btu/h and <240,000 Btu/h	180,000 Btu/h.

DOE initially considered the range of efficiencies available on the market based on the data provided in DOE's CCD for SPVUs for EER and COP, as shown in Figure V–1 and Figure V–2.

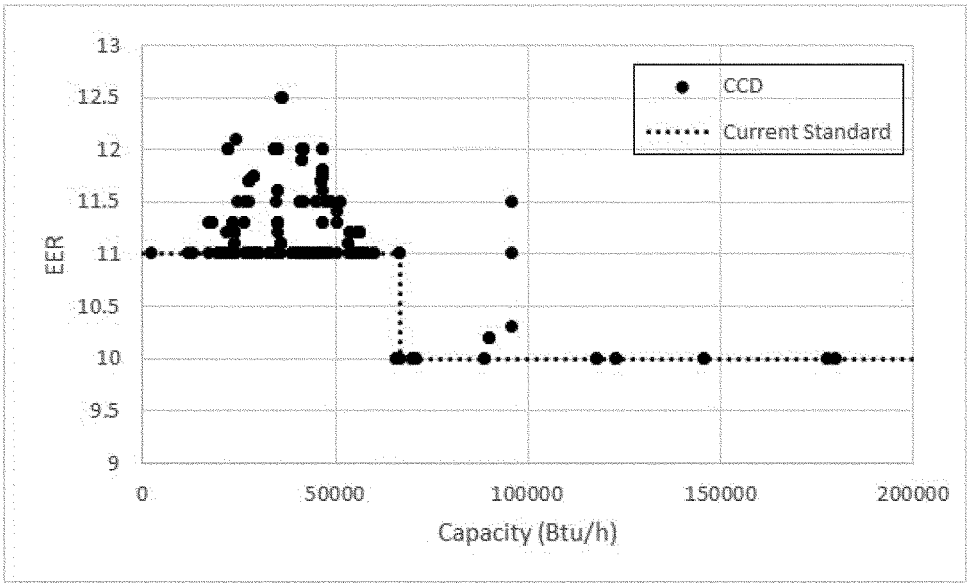

Figure V–1 DOE SPVu EER Compliance Certification Data

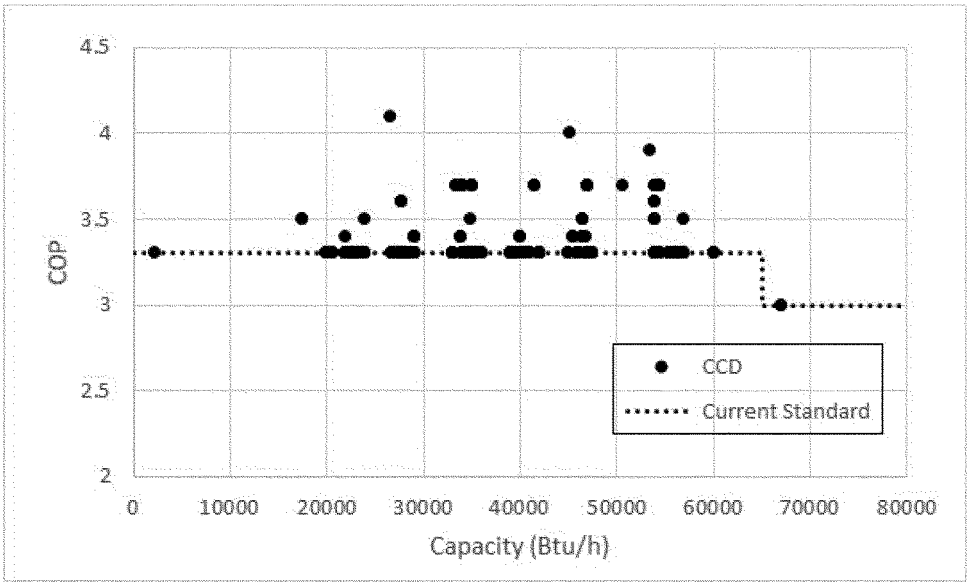

Figure V–2 DOE SPVu COP Compliance Certification Data

However, as discussed in section III.C of this document, DOE is now proposing to amend the energy conservation standards for SPVUs so as to be based on the seasonal cooling metric, IEER, and the existing heating metric, COP. Because SPVU manufacturers currently do not report IEER, DOE conducted testing on a sample of units that included a variety of the design options presented in Table V–6. The results of DOE's testing are presented in Table V–8. DOE used these test results along with additional information gathered using reverse engineering (*i.e.,* teardown) methodologies, information from manufacturer product literature, and consideration of the range of efficiencies based on EER in DOE's CCD, to evaluate the range of design options used for units available on the market at different efficiencies in support of developing efficiency levels for the NOPR/NOPD analysis. DOE anticipates that the test results are applicable to all equipment classes when considering the relative improvement in efficiency associated with various design options due to the similarity in platform design and cabinet construction for units across equipment classes.

TABLE V–8—DOE TEST RESULTS

Test unit	Equipment class	Rated cooling capacity (Btu/h)	Rated EER	Tested IEER	Cooling stages
1	AC <65,000 Btu/h	35,600	11.25	12.5	1
2	AC <65,000 Btu/h	35,000	11	11.6	2
3	HP <65,000 Btu/h	36,000	11.1	12.2	1
4	AC <65,000 Btu/h	36,000	12.5	13.2	2
5	AC <65,000 Btu/h	35,000	12	17.7	2
6	HP <65,000 Btu/h	35,000	11	11.7	1
7	HP <65,000 Btu/h	33,800	11	13.7	2
8	AC <65,000 Btu/h	54,000	11	16.1	2
9	HP <65,000 Btu/h	54,000	11.2	16.8	2
10	HP <65,000 Btu/h	57,000	11	12.7	2

a. Baseline Efficiency Levels

For each equipment class, DOE generally selects a baseline model as a reference point for each class, and measures any changes resulting from potential new or amended energy conservation standards against the baseline. The baseline model in each product/equipment class represents the characteristics of a product/equipment typical of that class (*e.g.,* capacity, physical size). Generally, a baseline model is one that just meets current energy conservation standards and provides basic consumer utility. If no standards are in place, the baseline is typically the most common or least-efficient unit on the market.

As part of the April 2020 RFI, DOE requested comment on appropriate baseline efficiency levels. 85 FR 22958, 22964 (April 24, 2020). On this topic, AHRI commented that DOE should use the current baseline efficiency levels for SPVACs ≥135,000 and <240,000 Btu/h cooling capacity, noting that there are only two models on the market and that it is doubtful these two models account for significant sales volume. (AHRI, No. 9 at p. 6)

As discussed in section IV of this document, DOE's current cooling mode efficiency standards for SPVUs are based on the full-load metric, EER. AHRI and DOE jointly developed a crosswalk from EER to IEER based on testing of a sample of minimally-compliant single-stage units. DOE considered these crosswalked IEER levels as the baseline cooling mode efficiency levels for this analysis. For

heating mode for SPVHPs, DOE considered the current COP standard levels as the baseline efficiency levels. The proposed baseline efficiency levels are shown in Table V–9.

TABLE V–9—BASELINE EFFICIENCY LEVELS

Equipment class	Current EER standard levels	Baseline IEER levels	Baseline COP levels
SPVAC <65,000 Btu/h	11.0	12.5	.....
SPVHP <65,000 Btu/h	11.0	12.5	3.3
SPVAC ≥65,000 Btu/h and <135,000 Btu/h	10.0	10.3	.....
SPVHP ≥65,000 Btu/h and <135,000 Btu/h	10.0	10.3	3.0
SPVAC ≥135,000 Btu/h and <240,000 Btu/h	10.0	11.2	.....
SPVHP ≥135,000 Btu/h and <240,000 Btu/h	10.0	11.2	3.0

Based on physical teardowns of units at the baseline efficiency levels, DOE noted that baseline units for the <65,000 Btu/h cooling capacity equipment classes and ≥65,000 and <135,000 Btu/h cooling capacity equipment classes had a single stage of compressor operation and indoor/outdoor fan speeds. These units used single-speed compressors, permanent-split capacitor (PSC) outdoor fan motors with single-stage outdoor airflow, and electronically-commutated indoor blower motors (ECM) with single-stage indoor airflow. For the ≥135,000 and <240,000 Btu/h cooling capacity equipment classes, as discussed in section V.C.1.b of this document, DOE notes that all units available on the market operated with multiple compressor stages and staged airflow, using multiple compressors along with ECM indoor blowers and outdoor fans. Therefore, DOE expects that all units on the market in this equipment class can meet the efficiency level proposed.

Issue–3: DOE requests comment on the proposed baseline efficiency levels and the design options associated with these levels.

b. Higher Efficiency Levels

As part of DOE's analysis, the maximum available efficiency level is the highest-efficiency unit currently available on the market. DOE also defines a ''max-tech'' efficiency level to represent the maximum possible efficiency for a given product. In many cases, the max-tech efficiency level is not commercially available because it is not economically feasible.

In the April 2020 RFI, DOE noted that in the previous energy conservation standards rulemaking for SPVUs for all equipment classes, DOE determined that the max-tech efficiency was the maximum available efficiency. Accordingly, DOE presented the maximum available efficiency levels using the full-load EER cooling efficiency metric and COP heating efficiency metric based on review of the DOE's CCD. DOE requested comment on appropriate max-tech efficiency levels based on EER and COP and the design options associated with these levels, as well as appropriate efficiency levels based on the seasonal efficiency metric. 85 FR 22958, 22964–22965 (April 24, 2020).

On this topic, AHRI commented that DOE should only consider currently-available technologies based on DOE's CCD for SPVUs as max-tech levels. AHRI stated that theoretical design-option approaches for max-tech levels should be avoided, as it precludes stakeholders from being able to accurately develop estimates for repair costs, predict failure modes associated with such design options, and predict costs associated with platform/design changes. (AHRI, No. 9 at p. 7) AHRI further commented that using the DOE test procedure (*i.e.,* the one available at the time of the April 2020 RFI), the max-tech efficiency level would be no different now than it was in DOE's 2015 standards rulemaking analysis. AHRI asserted that one of the only design options that would increase EER is increasing coil size, but the commenter cautioned that there are limitations on this design option due to constraints for through-the-wall or classroom replacement installations. According to AHRI, the incremental and maximum available efficiency levels and associated design options for each equipment class using a part-load energy efficiency metric would be substantially different than using a full-load metric, but the commenter argued that those matters can only be evaluated properly after the revised AHRI 390 has published. (AHRI, No. 9 at p. 7) DOE notes that as discussed in section III.C of this document, DOE is conducting this analysis with respect to the IEER metric published in AHRI 390–2021.

The CA IOUs commented that more-efficient models (based on EER) were added to the DOE's CCD for SPVUs since DOE's review in preparation for the April 2020 RFI, so DOE should update the maximum available efficiency levels. (CA IOUs, No. 10 at p. 3)

In response, for this NOPR/NOPD, DOE considered efficiency levels based on the seasonal cooling efficiency metric that includes part-load performance, IEER, and the heating efficiency metric, COP. For SPVUs <65,000 Btu/h cooling capacity, DOE developed incremental IEER and COP higher efficiency levels up to the max-tech level based on DOE's testing of a sample of units, review of manufacturer product literature, and consideration of the range of efficiencies observed in DOE's CCD for SPVUs based on EER. As discussed in section V.C.2 of this document, DOE conducted physical teardowns on the units in its test sample. This allowed DOE to identify the design options associated with units at different efficiencies. In selecting efficiency levels, DOE primarily focused on the representative cooling capacity for this equipment class of 36,000 Btu/h. DOE notes that this method does not rely on theoretical efficiencies, per AHRI's concern.

DOE identified the first efficiency level of 13.7 IEER for SPVUs with <65,000 Btu/h cooling capacity based on units that incorporated 2-speed compressors and 2-stage indoor airflow and control logic to provide staged compressor and airflow operation. In addition, DOE observed that units at this efficiency level incorporated an increase in indoor and outdoor heat exchanger total volume compared to baseline efficiency units. Based on DOE's test data and review of available product literature, DOE expects that 13.7 IEER represents the efficiency level that can be achieved without requiring a substantial increase in heat exchanger and cabinet redesign compared to baseline efficiency units. For the max-tech efficiency level, DOE found that units with tested cooling mode

efficiencies between 16.1 and 17.7 IEER covered both SPVACs and SPVHPs with cooling capacities at 35,000 Btu/h and 54,000 Btu/h. DOE noted that these units were built using the same platform/cabinet and similar design options. To ensure that all equipment across the range of cooling capacities within this equipment class can achieve the analyzed efficiency level, DOE selected 16.1 IEER as the max-tech efficiency level. DOE further noted that, in addition to the design changes to reach efficiency level 1, units at the max-tech efficiency level also incorporated substantially larger indoor and outdoor heat exchangers, along with higher horsepower indoor and outdoor blower/fan motors, which require an increase in cabinet size. DOE's findings on the increases in heat exchanger size align with AHRI's comments on the matter, in that at a certain point, increases in cabinet size would be necessary to accommodate increases in heat exchanger size. For heating mode, DOE used the rated COP values corresponding to the units in DOE's test sample at each IEER efficiency level.

For SPVUs with ≥65,000 and <135,000 Btu/h cooling capacity, DOE applied the same design changes and the equivalent percentage increase to reach efficiency level 1 as used for the <65,000 Btu/h cooling capacity equipment class (*i.e.,* a 9.6 percent increase in IEER). DOE notes that baseline IEER units, which were units with nominal cooling capacities of 72,000 Btu/h or less, had similar platform design and cabinet construction as units less than 65,000 Btu/h. Based on this, DOE preliminarily concluded that the percentage increase used for less than 65,000 Btu/h units to reach efficiency level 1 is also applicable to this equipment class. DOE noted that larger capacity units in this equipment class already incorporated staged compressor and airflow operation. As a result, DOE believes these units would be capable of meeting efficiency level 1. Efficiency level 1 represents the max-tech level for these two equipment classes.

For SPVUs with ≥135,000 and <240,000 Btu/h cooling capacity, DOE found that there are only a small number of basic models, all of which were rated at the baseline EER of 10.0. Per the discussion in section IV of this document, all of these models operate with multiple compressor stages and staged airflow, and incorporate design options similar to efficiency level 1 for the equipment classes with cooling capacities less than 135,000 Btu/h. Therefore, the baseline efficiency was assumed to be the percent improvement in IEER associated with moving from baseline to efficiency level 1 for SPVUs <135,000 Btu/h cooling capacity (*i.e.,* a 9.6 percent increase in IEER). Based on DOE's review of product literature, DOE did not have sufficient information to justify analyzing higher efficiency levels for this equipment class. Therefore, the baseline equipment are also the max-tech.

Table V–10 presents the efficiency levels examined for each SPVU equipment class.

TABLE V–10—INCREMENTAL EFFICIENCY LEVELS

Equipment class	Baseline	Efficiency level 1	Efficiency level 2
Representative Design Options	Single-speed compressor, single-stage indoor/outdoor airflow, ECM indoor blower motor, PSC outdoor fan motor.	Baseline + 2-speed compressor, staged indoor airflow, improved control logic, larger heat exchangers.	Efficiency level 1 + larger indoor and outdoor heat exchangers, higher horsepower (hp) indoor blower/outdoor fan motors.
SPVAC <65,000 Btu/h	12.5 IEER	13.7 IEER	16.1 IEER (Max-Tech).
SPVHP <65,000 Btu/h	12.5 IEER/3.3 COP	13.7 IEER/3.3 COP	16.1 IEER/3.6 COP (Max-Tech).
SPVAC ≥65,000 Btu/h and <135,000 Btu/h	10.3 IEER	11.2 IEER (Max-Tech).	
SPVHP ≥65,000 Btu/h and <135,000 Btu/h	10.3 IEER/3.0 COP	11.2 IEER/3.0 COP (Max-Tech).	
SPVAC ≥135,000 Btu/h and <240,000 Btu/h	11.2 IEER* (Max-Tech).		
SPVHP ≥135,000 Btu/h and <240,000 Btu/h	11.2 IEER/3.0 COP* (Max-Tech).		

*Representative design options for baseline SPVU ≥135,000 Btu/h and <240,000 Btu/h are equivalent to the design options observed at efficiency level 1 for SPVU ≥65,000 Btu/h and <135,000 Btu/h.

Issue–4: DOE requests comment on the proposed incremental higher efficiency levels for each equipment class. DOE requests data showing the range of efficiencies based on IEER and COP available for SPVUs on the market, as well as the design options associated with units at different efficiency levels for each equipment class.

2. Cost Analysis

The cost analysis portion of the engineering analysis is conducted using one or a combination of cost approaches. The selection of cost approach depends on a suite of factors, including the availability and reliability of public information, characteristics of the regulated equipment, and the availability and timeliness of purchasing the equipment on the market. The cost approaches are summarized as follows:

• *Physical teardowns:* Under this approach, DOE physically dismantles commercially-available equipment, component-by-component, to develop a detailed bill of materials for that equipment.

• *Catalog teardowns:* In lieu of physically deconstructing equipment, DOE identifies each component using parts diagrams (*e.g.,* available from manufacturer websites or appliance repair websites) to develop the bill of materials for that equipment.

• *Price surveys:* If neither a physical nor catalog teardown is feasible (*e.g.,* for tightly integrated products such as fluorescent lamps, which are infeasible to disassemble and for which parts diagrams are unavailable) or cost-prohibitive and otherwise impractical (*e.g.,* large commercial boilers), DOE conducts price surveys using publicly-available pricing data published on major online retailer websites and/or by soliciting prices from distributors and other commercial channels.

In the September 2015 final rule, DOE directly analyzed one equipment class (*i.e.,* SPVACs <65,000 Btu/h cooling capacity), then performed a more limited analysis of the other equipment classes based on limited physical/virtual teardowns and scaling the results from the analysis conducted for SPVACs with a cooling capacity less than 65,000 Btu/h. 80 FR 57438, 57459–57460 (Sept. 23, 2015). In the April 2020 RFI, DOE requested comment on whether using this same approach for the current rulemaking is appropriate. DOE also requested comment on the increase in manufacturing production costs (MPCs) associated with each design option and how the costs estimated in the September 2015 final rule have changed. 85 FR 22958, 22965–22966 (April 24, 2020).

In response to this issue raised in the April 2020 RFI, AHRI expressed support for once again directly analyzing the SPVACs <65,000 Btu/h cooling capacity

equipment class and scaling the results to other equipment classes for a future SPVU energy conservation standards rulemaking. (AHRI, No. 9 at p. 8) The commenter suggested extending the cost-efficiency analyses for equipment classes with models to those equipment classes without models on the market, as was done in the previous standards rulemaking. (AHRI, No. 9 at p. 8) AHRI also commented that the costs estimated for each particular design options have not changed significantly since the September 2015 Final Rule analysis. In addition, AHRI cautioned that incorporating backward curve fans would require a total redesign of units and would likely be the last, most expensive improvement that manufacturers would implement. (AHRI, No. 9 at p. 7) As discussed in section V.A.2 of this document, DOE conducted the cost-efficiency analysis consistent with SPVU equipment available on the market. DOE notes that backward curve fans were not necessary to achieve SPVU performance up to the max-tech efficiency level, and as a result, DOE did not consider that technology in its analysis.

In the present case, DOE conducted its cost analysis using physical teardowns on units in its test sample and catalog teardowns to expand the analysis to additional cooling capacities. Similar to the previous rulemaking, DOE conducted physical teardowns with a focus on SPVUs with <65,000 Btu/h cooling capacity. The resulting bill of materials provides the basis for the MPC estimates. As discussed in section V.C.1 of this document, DOE selected a cooling capacity of 36,000 Btu/h as the representative cooling capacity for this equipment class. DOE developed MPC estimates for SPVACs with <65,000 Btu/h cooling capacity based on the physical teardowns of 36,000 Btu/h units at each efficiency level. Where necessary, DOE ensured that the MPC estimates were based on minimally-featured equipment design so that non-efficiency related features (*e.g.,* economizers, dust sensors) are not included in the cost estimates. For SPVHPs, DOE estimated the costs based on the design differences between baseline SPVACs and SPVHPs from the same model line. DOE assumed that this cost difference would be applied to the baseline efficiency level and would remain constant at incremental efficiency levels. For the remaining larger cooling capacity equipment classes, DOE estimated the MPCs based on catalog teardowns and information regarding the design options implemented at each efficiency level scaled from the <65,000 Btu/h cooling capacity equipment class, as discussed in section V.C.1.b of this document.

To account for manufacturers' non-production costs and profit margin, DOE applies a non-production cost multiplier (the manufacturer markup) to the MPC. The resulting manufacturer selling price (MSP) is the price at which the manufacturer distributes a unit into commerce. In the April 2020 RFI, DOE requested comment on whether a manufacturer markup of 1.28, as used in September 2015 final rule, is appropriate for SPVUs. 85 FR 22958, 22966 (April 24, 2020). On this topic, AHRI commented that a manufacturer markup of 1.28 continues to be generally appropriate for SPVUs. (AHRI, No. 9 at p. 8) Accordingly, DOE has retained a manufacturer markup of 1.28 for this analysis.

Because the design options associated with each incremental efficiency level involved increases in cabinet sizes, DOE also estimated the incremental shipping cost at each efficiency level separate from the MSP. More specifically, DOE estimated the per-unit shipping costs based on the outer dimensions (including shipping pallets) at each efficiency level, assuming the use of a typical 53-foot straight-frame trailer with a storage volume of 4,240 cubic feet. DOE notes that SPVAC and SPVHP at the same cooling capacity used the same cabinet design and that the weight differential is typically small between otherwise identical SPVACs and SPVHPs. For shipping of HVAC equipment, the size threshold of a container is typically met before the weight threshold. Accordingly, because SPVACs and SPVHPs use the same cabinet size, DOE estimated the incremental shipping costs for SPVACs and SPVHPs would be equivalent.

3. Cost-Efficiency Results

The results of the engineering analysis are reported as cost-efficiency data (or ''curves'') in the form of IEER (and COP for SPVHPs) versus MSP (in dollars). DOE developed separate cost-efficiency curves for each equipment class. These results are presented in Table V–11 through Table V–14. As discussed in section V.C.1.b of this document, DOE did not analyze any higher efficiency levels for SPVUs ≥135,000 and <240,000 Btu/h cooling capacity, because all units available on the market incorporate the same design features and have the same rated efficiency. As a result, DOE is not presenting any cost-efficiency results for this equipment class. *See* Chapter 5 of the NOPR/NOPD TSD for additional detail on the engineering analysis.

TABLE V–11—COST-EFFICIENCY RESULTS SPVACS <65,000 BTU/H

Efficiency level	Incremental cost ($2021)		
	MPC	MSP	Shipping
Baseline	.....	.....	.....
EL 1	$296.57	$379.61	$42.67
EL 2	1,261.63	1,614.88	57.01

TABLE V–12—COST-EFFICIENCY RESULTS SPVHPS <65,000 BTU/H

Efficiency level	Incremental cost ($2021)		
	MPC	MSP	Shipping
Baseline	.....	.....	.....
EL 1	$296.57	$379.61	$42.67
EL 2	1,261.63	1,614.88	57.01

TABLE V–13—COST-EFFICIENCY RESULTS SPVACS ≥65,000 BTU/H AND <135,000 BTU/H

Efficiency level	Incremental cost ($2021)		
	MPC	MSP	Shipping
Baseline	.....	.....	.....
EL 1	$360.18	$461.03	$161.94

TABLE V–14—COST-EFFICIENCY RESULTS SPVHPS ≥65,000 BTU/H AND <135,000 BTU/H

Efficiency level	Incremental cost ($2021)		
	MPC	MSP	Shipping
Baseline	.....	.....	.....
EL 1	$360.18	$461.03	$161.94

Issue–5: DOE requests comment on the cost-efficiency results. In particular, DOE requests comment on the costs associated with the design options analyzed, as well as the shipping costs associated with each efficiency level.

D. Markups Analysis

The markups analysis develops appropriate markups in the distribution chain (*e.g.,* retailer markups, distributor markups, contractor markups) and sales taxes to convert the MSP estimates for the subject equipment derived in the engineering analysis to consumer prices, which are then used in the LCC and PBP analysis and in the manufacturer impact analysis. At each step in the distribution channel, companies mark up the price of the product to cover business costs and profit margin.

In the September 2015 final rule (and set forth once again here), DOE identified four distribution channels for SPVUs to describe how this equipment passes from the manufacturer to the consumer. 80 FR 57438, 57461 (Sept. 23, 2015).

The first two distribution channels are used in the new construction market:

Manufacturer → HVAC Distributor [20] → Modular Building Manufacturer → Modular Building Distributor → End User

Manufacturer → HVAC Distributor → Modular Building Manufacturer → General Contractor → End User

The other two distribution channels are used in the replacement market:

Manufacturer → HVAC Distributor → Modular Building Distributor → End User

Manufacturer → HVAC Distributor → Mechanical Contractor → End User

In the April 2020 RFI, DOE requested information on the existence of any distribution channels other than the four distribution channels identified in the September 2015 final rule. DOE also requested data on the fraction of SPVU sales that go through each of the four identified distribution channels, as well as the fraction of sales through any other identified channels. DOE also requested comment on its approach to estimating markups and any financial data available that would assist the Department in developing markups for the various segments of the SPVU distribution channels. 85 FR 22958, 22966 (April 24, 2020).

On this topic, AHRI and NEEA commented that there are more SPVU distribution channels than the four identified in the September 2015 final rule, although the four from the previous rule make up the majority of the market. AHRI and NEEA stated that SPVUs are also commonly installed in other non-modular applications such as multi-family housing, residential care, lodging, and other applications, and, therefore, those distribution channels would differ from the four used in the September 2015 final rule. (AHRI, No. 9 at p. 8; NEEA, No. 6 at p. 3) For this reason, AHRI recommended that DOE should add the following three distribution channels for SPVUs. (AHRI, No. 9 at p. 8)

Manufacturer → Sales Representative → HVAC Distributor → End User

Manufacturer → End User (National Account)

Manufacturer → Sales Representative → General Contractor → End User

AHRI did not provide the fraction of overall SPVU sales that travel through each of these new distribution channels.

As discussed in section III.A of this document, DOE updated the definitions pertaining to SPVUs in the November 2022 Test Procedure Final Rule so as to distinguish between commercial SPVUs and consumer central air conditioners. DOE notes that many of the products currently certified as SPVUs that are marketed for multi-family and lodging applications are being misclassified and should be properly classified as central air conditioners. DOE understands that the distribution channels for this equipment would be different than that of SPVUs used in modular buildings, and the Department believes that the distribution channels suggested by AHRI and NEEA fall in this category. To reiterate, central air conditioners that are misclassified as SPVUs are not included in this NOPR/NOPD, so, therefore, DOE did not adopt any of the additional distribution channels suggested by commenters to its analysis for this NOPR.

In summary, for this NOPR/NOPD, DOE considered the four distribution channels shown in Table V–15. The estimated percentages of the total sales in the new construction and replacement markets for each of the four distribution channels is listed in the bottom row of Table V–15.

[20] In the 2015 final rule, the second step in the distribution channel was designated as HVAC Distributor or Manufacturer Representative. Subsequently, DOE has determined that these markups are the same, so this step in the channel is now simply referred to as HVAC Distributor for consistency with the other HVAC product markups.

TABLE V–15—DISTRIBUTION CHANNELS FOR SPVU EQUIPMENT

Channel 1	Channel 2	Channel 3	Channel 4
New construction	New construction	Replacement	Replacement
Manufacturer	Manufacturer	Manufacturer	Manufacturer.
HVAC Distributor	HVAC Distributor	HVAC Distributor	HVAC Distributor.
Modular Building Manufacturer	Modular Building Manufacturer	Modular Building Distributor	Mechanical Contractor.
Modular Building Distributor	General Contractor		
Consumer	Consumer	Consumer	Consumer.
12.5%	12.5%	37.5%	37.5%.

Once these distribution channels were developed, DOE developed baseline and incremental markups for each actor in the distribution chain. Baseline markups are applied to the price of equipment with baseline efficiency, while incremental markups are applied to the difference in price between baseline and higher-efficiency models (the incremental cost increase). The incremental markup is typically less than the baseline markup and is designed to maintain similar per-unit operating profit before and after new or amended standards.[21]

DOE updated the sources used in the September 2015 final rule to derive markups for each step of the distribution channel with the following sources: (1) the 2017 Annual Wholesale Trade Survey [22] to develop HVAC and Modular Building wholesaler markups; (2) the Air Conditioning Contractors of America's (ACCA) ''2005 Financial Analysis for the HVACR Contracting Industry'' [23] and 2017 U.S. Census Bureau economic data [24] to develop mechanical contractor markups; (3) 2017 U.S. Census Bureau economic data for the commercial and institutional building construction industry to develop general contractor markups; [25] and (4) the U.S. Census Bureau's Annual Survey of Manufacturers.[26] The overall markup is the product of all the markups (baseline or incremental markups) for the different steps within a distribution channel. Replacement channels include sales taxes, which were calculated based on State sales tax data reported by the Sales Tax Clearinghouse.[27]

Chapter 6 of the NOPR/NOPD TSD provides details on DOE's development of markups for SPVUs.

E. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual energy consumption of SPVUs at different efficiencies in representative commercial buildings, and to assess the energy savings potential of increased SPVU efficiency. The energy use analysis estimates the range of energy use of SPVUs (unit energy consumption (UEC)) in the field (*i.e.,* as they are actually used by commercial consumers). The energy use analysis provides the basis for other analyses DOE performed, particularly assessments of the energy savings and the savings in consumer operating costs that could result from adoption of amended or new standards.

In the September 2015 final rule, DOE analyzed the energy consumption of SPVUs using a whole building energy simulation approach for three types of commercial buildings: modular offices, modular schools, and telecommunication structures. The annual energy use was simulated using Energy Plus.[28] 80 FR 57438, 57462 (Sept. 23, 2015). For this analysis, DOE developed three prototypical building models to simulate modular offices, modular schools, and telecommunications structures. For offices and schools, a 1,568 ft^2 wood-frame structure was developed with performance characteristics (lighting density, ventilation, envelope, economizer usage) meeting the requirements of ASHRAE Standard 90.1–2004. Schedules and load profiles were taken from the DOE commercial reference buildings [29] for primary schools and small offices. For telecommunications shelters, a 240 ft^2 precast concrete structure was developed. These shelters were assumed to operate with a constant thermal load of 6.86 kW (23,400 Btu/h) in all hours of the year, thus requiring year round cooling. 80 FR 57438, 57462 (Sept. 23, 2015).

In the April 2020 RFI, DOE recounted the analytical process to determine energy use taken for the September 2015 SPVU final rule and requested comment on using that approach in the current rulemaking, as well as input on any necessary modifications to such approach.

On that topic, AHRI suggested that after the draft AHRI Standard 390 is adopted, DOE should conduct a simulation approach that aligns more with an IEER analysis, rather than following the analysis for the September 2015 final rule (based on the EER metric). AHRI supported DOE's assumption that telecom cooling loads are constant throughout the year, and the commenter agreed that the telecom cooling loads used in the September 2015 final rule were reasonable. Regarding economizer usage in telecommunications structures, AHRI commented that economizers were assumed to be present in 50 percent of the SPVU market in the IEER analysis, but the organization pointed out that ASHRAE Standard 90.1 and California

[21] Because the projected price of standards-compliant equipment is typically higher than the price of baseline equipment, using the same markup for the incremental cost and the baseline cost would result in higher per-unit operating profit. While such an outcome is possible, DOE maintains that in markets that are reasonably competitive, it is unlikely that standards would lead to a sustainable increase in profitability in the long run.

[22] U.S. Census Bureau, *2017 Annual Wholesale Trade Report, NAICS 4236: Household Appliances and Electrical and Electronic Goods Merchant Wholesalers* (2017) (Available at: *www.census.gov/wholesale/index.html*) (Last accessed June 9, 2022).

[23] ''2005 Financial Analysis for the HVACR Contracting Industry,'' Air Conditioning Contractors of America (2005) (Last accessed June 9, 2022).

[24] ''Plumbing, Heating, and Air-Conditioning Contractors. Sector 23: 238220. Construction: Industry Series, Preliminary Detailed Statistics for Establishments, 2017,'' U.S. Census Bureau (2017) (Available at: *https://www.census.gov/data/tables/2017/econ/economic-census/naics-sector-23.html*) (Last accessed June 9, 2022).

[25] ''2017 Economic Census, Construction Industry Series and Wholesale Trade Subject Series,'' U.S. Census Bureau (Available at: *https://www.census.gov/data/tables/2017/econ/economic-census/naics-sector-23.html*) (Last accessed June 9, 2022).

[26] U.S. Census Bureau's Annual Survey of Manufacturers (Available at: *https://www.census.gov/programs-surveys/asm/data.html*) (Last accessed: June 9, 2022).

[27] Sales Tax Clearinghouse (Available at: *https://thestc.com/*) (Last accessed June 9, 2022).

[28] EnergyPlus is a whole building simulation program used to model cooling and heating loads. (Available at: *https://energyplus.net/*) (Last accessed August 15, 2022).

[29] For more information, please refer to the DOE Commercial Reference Buildings web pages for small offices (*https://www.energy.gov/eere/downloads/reference-buildings-building-type-small-office*) and primary schools (*https://www.energy.gov/eere/downloads/reference-buildings-building-type-primary-school*).

title 24 have existing and proposed economizer requirements, some by climate zone. (AHRI, No. 9 at pp. 8–9)

In response, DOE notes that it used the same building prototypes and loads that were used to establish the IEER metric when developing the annual unit energy consumption of SPVUs in this NOPR. Regarding economizers, DOE notes that the ASHRAE economizer requirements apply to systems with cooling capacities >54,000 Btu/h.[30] The representative capacity for SPVUs <65,000 Btu/h in this NOPR/NOPD is 36,000 Btu/h, and units at this capacity make up over 95 percent of SPVU shipments; therefore, DOE did not make changes to the cooling loads (the same as those used to develop AHRI 390), as it would have had little to no impact on average unit energy consumption of SPVUs. California title 24 imposes economizer requirements on covered equipment, and the 2022 amendments to that law reduce the cooling capacity of the equipment subject to those provisions to 33,000 Btu/h.[31] DOE notes that the cooling operating hours in southern California would be reduced by this new building code, leading to lower UECs. Given the already very negative LCC savings, DOE did not make adjustments to the cooling operating hours for southern California, as a reduction in the UEC would only reduce LCC savings further, and accordingly, it would not be likely to change DOE's tentative decision to proceed with a determination that more-stringent energy conservation standards for SPVUs are not warranted at this time.

NEEA commented that DOE should update its energy use analysis to include the deployment of SPVUs in other types of commercial buildings beyond modular buildings. In support of its recommendation, NEEA cites the 2019 Commercial Building Stock Assessment,[32] a regional dataset of commercial buildings in the Pacific Northwest, which shows that SPVUs are used in residential care facilities, lodging facilities, and one warehouse. (NEEA, No. 6 at p. 3) Similarly, AHRI also suggested that DOE should add multi-family and lodging buildings in the energy use analysis. (AHRI, No. 9 at p. 8)

As discussed in section III.A of this document, DOE updated the definitions of SPVUs in the November 2022 Test Procedure Final Rule to distinguish between commercial SPVUs and consumer central air conditioners. DOE notes that many of the products currently certified as SPVUs that are marketed for non-modular applications are being misclassified and should be classified as central air conditioners. Therefore, DOE did not add any further building types to the energy use analysis for SPVUs.

In the 2015 final rule, DOE used hourly energy use simulations to model the energy use of SPVUs in modular offices, modular schools, and telecommunications structures.[33] The IEER metric was developed by the AHRI–390 committee using the load profiles from DOE's 2015 final rule simulations in 15 cities, each representing an International Energy Conservation Code (IECC) climate zone. For telecommunications structures, the SPVUs were modeled both with and without economizers. As discussed previously, the IEER metric captures the cooling efficiency of SPVUs at four load conditions: A—100% load; B—75% load; C—50% load, and D—25% load. DOE calculated the percentage of full load by dividing the hourly cooling load by the design day cooling capacity of the SPVU by building type and climate zone. DOE then binned the hours into one of the four IEER load conditions based on the percentage of design day load as shown in Table V–16.

TABLE V–16—IEER LOAD BINS

IEER load condition	Percentage of design day
A—100%	97% to 100%.
B—75%	62.5% to 97%.
C—50%	37.5% to 62.5%.
D—25%	0 to 37.5%.

Cooling UECs were calculated by multiplying the hours in each bin by the estimated power and then summing the electricity use of the four bins for each building type, in each climate zone. The baseline Heating UECs for SPVHPs were taken from the September 2015 final rule, and from that baseline, heating UECs for higher efficiency levels were scaled by the change in COP.

DOE used county-level population data from the U.S. Census Bureau,[34] along with a Pacific Northwest Laboratory report,[35] that assigned a climate zone to each county in the U.S. to develop population weighting factors for each climate zone. Next, DOE used the county-level population data and climate zones to determine the weighted-average UEC for each Census Division, with Census Division 9 split into two regions: (1) California and (2) the remaining States of Census Division 9 (Washington, Oregon, Hawaii, and Alaska). The resulting UECs represent the average SPVU cooling and heating energy use, by building type and Census Division.

Chapter 7 of the NOPR/NOPD TSD provides details on DOE's energy use analysis for SPVUs.

F. Life-Cycle Cost and Payback Period Analysis

DOE conducted LCC and PBP analyses to evaluate the economic impacts on individual consumers of potential energy conservation standards for SPVUs. The effect of new or amended energy conservation standards on individual consumers usually involves a reduction in operating cost and an increase in purchase cost. DOE used the following two metrics to measure consumer impacts:

- The LCC is the total consumer expense of an appliance or product over the life of that product, consisting of total installed cost (manufacturer selling price, distribution chain markups, sales tax, and installation costs) plus operating costs (expenses for energy, maintenance, and repair). To compute the operating costs, DOE discounts future operating costs to the time of purchase (*i.e.,* the anticipated year of compliance with new or amended standards) and sums them over the lifetime of the product.
- The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost at higher efficiency levels by the change in annual operating cost for the year that amended or new standards are assumed to take effect.

For any given efficiency level, DOE measures the change in LCC relative to the LCC in the no-new-standards case, which reflects the estimated efficiency distribution of SPVUs in the absence of new or amended energy conservation standards. In contrast, the PBP for a given efficiency level is measured relative to the baseline product.

[30] ANSI/ASHRAE Standard 90.1–2019, p 99.

[31] *See https://title24stakeholders.com/measures/cycle-2022/hvac-controls/.*

[32] Available at: *https://neea.org/data/commercial-building-stock-assessments.*

[33] For more detail on the hourly energy use simulations, please refer to chapter 7 of the 2015 final rule TSD (Available at: *https://www.regulations.gov/document/EERE-2012-BT-STD-0041-0027*).

[34] Available at: *www.census.gov/data/datasets/time-series/demo/popest/2010s-counties-total.html#par_textimage_70769902* (Last accessed April 1, 2022).

[35] Available at: *www.energy.gov/sites/prod/files/2015/10/f27/ba_climate_region_guide_7.3.pdf.*

For each considered efficiency level in each SPVU equipment class, DOE calculated the LCC and PBP in modular schools, modular offices, and telecom structures and then combined to develop aggregate results. As stated previously, DOE developed a sample of SPVU users by Census Division based on simulation data that was used to develop the IEER metric. For each Census Division, DOE determined the average energy consumption for an SPVU in a modular school, modular office, and telecom structure and the appropriate electricity price. By developing a sample of UECs by building type and Census Division, the analysis captured the variability in energy consumption and energy prices associated with the use of SPVUs.

Inputs to the calculation of total installed cost include the cost of the equipment—which includes MPCs, manufacturer markups, distributor markups, contractor markups, and sales taxes—and installation costs. Inputs to the calculation of operating expenses include annual energy consumption, energy prices and price projections, repair and maintenance costs, equipment lifetimes, discount rates, and the anticipated year that compliance with new or amended standards is required. DOE created distributions of values for equipment lifetime, discount rates, and sales taxes, with probabilities attached to each value, to account for their uncertainty and variability.

The computer model DOE uses to calculate the LCC and PBP relies on a Monte Carlo simulation to incorporate uncertainty and variability into the analysis. The Monte Carlo simulations randomly sample input values from the probability distributions and SPVU user samples. The model calculated the LCC and PBP for equipment at each efficiency level for 10,000 scenarios per simulation run. The analytical results include a distribution of 10,000 data points showing the range of LCC savings for a given efficiency level relative to the no-new-standards case efficiency distribution. In performing an iteration of the Monte Carlo simulation for a given consumer, equipment efficiency is chosen based on its probability. If the chosen equipment efficiency is greater than or equal to the efficiency of the standard level under consideration, the LCC and PBP calculation reveals that an SPVU owner is not impacted by that standard level. By accounting for SPVU owners who already purchase more-efficient equipment, DOE avoids overstating the potential benefits from increasing equipment efficiency.

DOE calculated the LCC and PBP for all consumers of SPVUs as if each were to purchase a new SPVU in the expected year of required compliance with amended standards. Amended standards would apply to SPVUs manufactured on and after the date that is one year after the date of publication of any new or amended standard in the **Federal Register**. (See section VI.B.4 of this document for discussion of DOE's calculation of lead time for this rulemaking.) At this time, DOE estimates publication of a final rule for amended SPVU energy conservation standards in 2024. Therefore, for purposes of its analysis, DOE used 2025 as the first year of compliance with any amended standards for SPVUs.

Table V–17 summarizes the approach and data DOE used to derive inputs to the LCC and PBP calculations. The subsections that follow provide further related discussion. Details of the spreadsheet model, as well as all the inputs to the LCC and PBP analyses, are contained in chapter 8 of the NOPR/NOPD TSD.

TABLE V–17—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS*

Inputs	Source/method
Equipment Cost	Derived by multiplying MPCs by manufacturer, contractor, and distributor markups and sales tax, as appropriate. A constant price trend was used to project equipment costs.
Installation Costs	Typical installation costs are generally not expected to vary by efficiency level; therefore, DOE did not include installation costs in the LCC analysis. However, replacement installations at EL 2 for SPVUs <65,000 Btu/h require a conversion curb, so this cost was included at EL 2 for replacement installations.
Annual Energy Use	The binned hours in each IEER load bin are multiplied by the power consumption at each of the four IEER load conditions. Variability: Census Division and Building Type
Energy Prices	Electricity: Based on Edison Electric Institute data of average and marginal prices. Variability: Regional energy prices by census division, with census division 9 separated into California and the rest of the census division.
Energy Price Trends	Based on *AEO 2022* price projections.
Repair and Maintenance Costs	Maintenance costs do not change by efficiency level. Annualized repair costs determined using RS Means in the 2015 final rule, costs updated to 2021 dollars using GDP deflator. The materials portion of annualized repair costs scale with the increase in MPC.
Product Lifetime	Average: 15 years
Discount Rates	Commercial discount rates for schools, industrial, offices and utilities (telecom). The approach involves estimating the cost of capital of companies that purchase SPVU equipment.
Compliance Date	2025

* References for the data sources mentioned in this table are provided in the sections following the table or in chapter 8 of the NOPR/NOPD TSD.

1. Equipment Cost

To calculate consumer equipment costs, DOE multiplied the MPCs developed in the engineering analysis by the markups described previously (along with sales taxes). DOE used different markups for baseline equipment and higher-efficiency equipment, because DOE applies an incremental markup to the increase in MSP associated with higher-efficiency equipment.

In the September 2015 final rule, DOE explained its rationale for using a constant price trend to project the equipment prices in the compliance year. 80 FR 57438, 57466 (Sept. 23, 2015). DOE maintained this approach for this NOPR/NOPD and used a constant trend for equipment prices between 2021 (the year for which MPCs were developed) and 2025 (the anticipated compliance year of amended standards). The constant trend is based on a historical time series of the inflation-adjusted (deflated) Producer Price Index (PPI) for all other miscellaneous refrigeration and air conditioning equipment between 1990

and 2021.[36] The deflated PPI does not indicate a long term upward or downward trend, and, therefore, DOE maintained a constant price trend for SPVUs.

For more information on equipment costs, please refer to chapter 8 of the NOPR/NOPD TSD.

2. Installation Cost

Installation cost includes labor, overhead, and any miscellaneous materials and parts needed to install the equipment. DOE determined that the labor required for typical installation would not change by EL, and, therefore, DOE did not include typical installation costs in this analysis. However, DOE notes that replacement installation at EL 2 would require a conversion curb, so, therefore, an installation cost is included for replacement installation at EL 2 for SPVUs <65,000 Btu/h.

For more information on installation costs, please refer to chapter 8 of the NOPR/NOPD TSD.

3. Annual Energy Consumption

For each Census Division and building type, DOE determined the annual energy consumption of an SPVU at different efficiency levels using the approach described previously in section V.E of this document.

For more information on annual energy consumption, please refer to chapter 7 of the NOPR/NOPD TSD.

4. Energy Prices

Because marginal electricity price reflects the cost to a consumer of a kilowatt-hour at the highest level of consumption, it provides a better representation than average electricity prices of the value of saving electricity via more efficient equipment. Therefore, DOE applied average electricity prices for the energy use of the equipment purchased in the no-new-standards case, and marginal electricity prices for the incremental change in energy use associated with the other efficiency levels considered.

DOE derived electricity prices in 2021 using data from Edison Electric Institute (EEI) Typical Bills and Average Rates reports.[37] Based upon comprehensive, industry-wide surveys, this semi-annual report presents typical monthly electric bills and average kilowatt-hour costs to the customer as charged by investor-owned utilities. With these data, DOE calculated commercial-sector electricity prices using the methodology described in Coughlin and Beraki (2019).[38]

DOE's methodology allows electricity prices to vary by sector and region. For a given product, electricity prices are chosen to be consistent with the way the consumer economic and energy use characteristics are defined in the LCC analysis. To measure the baseline energy cost for SPVUs, DOE used the average annual electricity prices for large commercial customers for modular schools and offices, and DOE used average annual electricity prices for small commercial customers for telecommunications structures. Marginal annual electricity prices for large commercial and small commercial customers were used to measure the operating cost savings from higher-efficiency SPVUs. See chapter 8 of the NOPR/NOPD TSD for details.

To estimate energy prices in future years, DOE multiplied the 2021 energy prices by the projection of annual average price changes for each of the nine Census Divisions from the Reference Case in *AEO 2022,* which has an end year of 2050.[39] Because extended long-term price trends are more uncertain, DOE kept the energy price constant at the 2050 level for the years after 2050.

5. Maintenance and Repair Costs

Repair costs are associated with repairing or replacing equipment components that have failed in an appliance; maintenance costs are associated with maintaining the proper operation of the equipment. In the September 2015 final rule, because data were not available to indicate how maintenance costs vary with equipment efficiency, DOE assumed maintenance costs are constant across each EL by equipment class. For repairs, DOE developed an annualized repair cost estimate, using repair cost data from RS Means,[40] assuming that a repair takes place in year 10 and that the equipment lifetime is 15 years. DOE scaled the materials portion of repair costs with the increase in the average retail price to project repair costs of higher-efficiency SPVUs. 80 FR 57438, 57466–57467 (Sept. 23, 2015). DOE used average annualized repair costs of $173.50 for SPVUs <65,000 Btu/h and $212 for SPVUs >65,000 and < 135,000 Btu/h in the 2015 final rule.[41] DOE requested comment on SPVU maintenance and repair costs in the April 2020 RFI. 85 FR 22958, 22967 (April 24, 2020).

On this topic, AHRI confirmed that maintenance costs are not likely to differ between baseline and higher-efficiency products, but the commenter stated that the cost for replacement parts will be higher for higher-efficiency products. AHRI did not have any information on failure rates and said that the repair/replace decision is usually based on installation location (*e.g.,* SPVUs in telecommunications structures are more likely to be replaced, whereas SPVUs in school systems are more likely to be repaired). (AHRI, No. 9 at p. 9)

As mentioned previously, because maintenance costs do not vary by EL, DOE did not consider maintenance costs in this analysis. DOE updated the annual repair cost in the September 2015 final rule to 2021 dollars using the GDP implicit price deflator[42] and scaled the materials portion of repair costs by the increase in MPC for higher ELs in this NOPR/NOPD. The annualized repair cost was applied to all SPVUs as an annual operating cost in the LCC and PBP analysis.

For more information on repair and maintenance costs, please refer to chapter 8 of the NOPR/NOPD TSD.

6. Product Lifetime

In the September 2015 final rule, DOE used a distribution with a minimum lifetime of 10 years and a maximum of 25 years, which yielded an average SPVU life of 15 years. (DOE based these distribution estimates on a review of a range of packaged cooling equipment lifetime estimates found in published studies and online documents, because the data did not distinguish between classes of SPVU equipment.) 80 FR 57438, 57467 (Sept. 23, 2015). DOE requested comment on this approach in the April 2020 RFI. 85 FR 22958, 22968 (April 24, 2020).

In response, AHRI commented that the lifetime estimate from the September 2015 final rule is reasonable,

[36] Available at: *https://www.bls.gov/ppi/* (Last accessed March 25, 2022).

[37] Available at: *https://netforum.eei.org/eweb/DynamicPage.aspx?WebCode=COEPubSearch&pager=12* (Last accessed April 14, 2022).

[38] Coughlin, K. and B. Beraki (2019) Non-residential Electricity Prices: A Review of Data Sources and Estimation Methods. Lawrence Berkeley National Lab. Berkeley, CA. Report No. LBNL–2001203 (Available at: *ees.lbl.gov/publications/non-residential-electricity-prices*) (Last accessed Jan. 6, 2020).

[39] EIA, *Annual Energy Outlook 2022 with Projections to 2050* (Available at: *www.eia.gov/forecasts/aeo/*) (Last accessed May 9, 2022).

[40] RS Means CostWorks 2014, R.S. Means Company, Inc. (2013) (Available at: *www.meanscostworks.com/*) (Last accessed Feb. 27, 2014).

[41] Technical Support Document: Energy Efficiency Program for Commercial and Industrial Equipment: Single Package Vertical Units, chapter 8 (Available at: *https://www.regulations.gov/document/EERE-2012-BT-STD-0041-0027*).

[42] Available at: *https://fred.stlouisfed.org/series/GDPDEF* (Last accessed May 9, 2022). A price deflator of 114.2 was used to adjust the previous costs (in 2014$) to 2021$.

and the commenter stated that it does not expect SPVU lifetime to vary by equipment class, efficiency, or end use. (AHRI, No. 9 at p. 9)

In this NOPR/NOPD, DOE used assumed that 14.6 percent of SPVUs would retire per year between years 11 and 15 and afterwards 2.7 percent of SPVUs would retire through year 25.

For more information on equipment lifetime, please refer to chapter 8 of the NOPR/NOPD TSD.

7. Discount Rates

DOE's method for deriving discount rates for commercial entities views the purchase of a higher-efficiency appliance as an investment that yields a stream of energy cost savings. DOE derived the discount rates for the LCC analysis by estimating the cost of capital for companies or public entities that purchase SPVUs. For private firms, the weighted-average cost of capital (WACC) is commonly used to estimate the present value of cash flows to be derived from a typical company project or investment. Most companies use both debt and equity capital to fund investments, so their cost of capital is the weighted average of the cost to the firm of equity and debt financing, as estimated from financial data for publicly-traded firms in the sectors that purchase SPVUs.[43] As discount rates can differ across industries, DOE estimates separate discount rate distributions for a number of aggregate sectors with which elements of the LCC building sample can be associated.

In this analysis, DOE estimated the cost of capital of companies that purchase SPVU equipment. DOE used the discount rates for healthcare and industrial sectors for the modular offices, education sector discount rates for modular schools, and the utility sector discount rates for telecommunications shelters.

For more information on discount rates, please refer to chapter 8 of the NOPR/NOPD TSD.

8. Energy Efficiency Distribution in the No-New-Standards Case

To accurately estimate the share of consumers that would be affected by a potential energy conservation standard at a particular efficiency level, DOE's LCC analysis considers the projected distribution (market shares) of equipment efficiencies under the no-new-standards case (*i.e.,* the case without amended or new energy conservation standards).

In the present case, DOE estimated the current energy efficiency distribution of SPVUs <65,000 Btu/h in terms of IEER, with 62 percent at the baseline, 27 percent at EL 1, and 11 percent at EL 2. For SPVUs >65,000 and <135,000 Btu/h, DOE estimates that 53 percent of the market is at the baseline and that 47 percent is at EL 1. The estimated market shares for the no-new-standards case for SPVUs are shown in chapter 8 of the NOPR/NOPD TSD.

9. Payback Period Analysis

The payback period is the amount of time (expressed in years) it takes the consumer to recover the additional installed cost of more-efficient equipment, compared to baseline equipment, through operating cost savings. Payback periods that exceed the life of the equipment mean that the increased total installed cost is not recovered in reduced operating expenses.

The PBP calculation for each efficiency level considers the change in total installed cost of the equipment and the change in the first-year annual operating expenditures relative to the baseline equipment. DOE refers to this as a ''simple PBP'' because it does not consider changes over time in operating cost savings. The PBP calculation uses the same inputs as the LCC analysis, except that energy price trends, repair costs, and discount rates are not used.

For more information on PBP, please refer to chapter 8 of the NOPR/NOPD TSD.

VI. Analytical Results and Conclusions

The following section addresses the results from DOE's analyses with respect to the considered energy conservation standards for SPVUs. Additional details regarding DOE's analyses are contained in the NOPR/NOPD TSD supporting this document.

A. Economic Impacts on SPVU Consumers

DOE analyzed the economic impacts of potential amended standards at more-stringent levels on SPVU consumers by calculating the LCC savings and the PBP at each considered EL. Inputs used for calculating the LCC and PBP include total installed costs (*i.e.,* equipment price plus installation costs) and operating costs (calculated using annual energy use, energy prices, energy price trends, repair costs, and maintenance costs). The LCC calculation also uses product lifetime and a discount rate. Chapter 8 of the NOPR/NOPD TSD provides detailed information on the LCC and PBP analyses.

Table VI–1 through Table VI–4 show the LCC and PBP results for the ELs considered in this analysis. There are no results for SPVUs >= 135,000 Btu/h and < 240,000 Btu/h because there are no efficiency levels above the baseline. Note that the simple payback is measured relative to the baseline product. The LCC savings are measured relative to the efficiency distribution in the no-new-standards case in the compliance year (see section V.F.8 of this document). The LCC savings refer only to consumers who are affected by a standard at a given EL. Those who already purchase a product with efficiency at or above a given EL are not affected. Consumers for whom the LCC increases (negative LCC savings) at a given EL experience a net cost.

TABLE VI–1—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR SPVACS <65,000 BTU/H

Efficiency level	LCC savings (2021$)	Simple payback period (years)
EL 1	−246	12.3
EL 2	−2,179	21.6

TABLE VI–2—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR SPVHPS <65,000 BTU/H

Efficiency level	LCC savings (2021$)	Simple payback period (years)
EL 1	−608	30.1

[43] Modigliani, F. and M. H. Miller, The Cost of Capital, Corporations Finance and the Theory of Investment, American Economic Review (1958) 48(3): pp. 261–297.

TABLE VI–2—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR SPVHPS <65,000 BTU/H—Continued

Efficiency level	LCC savings (2021$)	Simple payback period (years)
EL 2	−1,939	17.8

TABLE VI–3—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR SPVACS ≥65,000 BTU/H AND <135,000 BTU/H

Efficiency level	LCC savings (2021$)	Simple payback period (years)
EL 1	92	8.3

TABLE VI–4—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR SPVHPS ≥65,000 BTU/H AND <135,000 BTU/H

Efficiency level	LCC savings (2021$)	Simple payback period (years)
EL 1	−703	20.7

B. Proposed Determination

EPCA specifies that for any commercial and industrial equipment addressed under 42 U.S.C. 6313(a)(6)(A)(i), which includes SPVUs, DOE may prescribe an energy conservation standard more stringent than the level for such equipment in ASHRAE Standard 90.1 only if ''clear and convincing evidence'' shows that a more-stringent standard would result in significant additional conservation of energy and is technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(C)(i); 42 U.S.C. 6313(a)(6)(A)(ii)(II)) The ''clear and convincing'' evidentiary threshold applies both when DOE is triggered by ASHRAE action and when DOE conducts a six-year-lookback rulemaking, with the latter being the basis for the current proceeding. In light of these statutory criteria, DOE conducted an assessment of whether the current energy conservation standards for SPVUs should be replaced with more-stringent standards. DOE's tentative conclusions are set forth in the paragraphs that follow.

1. Technological Feasibility

DOE considers technologies incorporated in commercially-available products or in working prototypes to be technologically feasible. Per the technology options discussed in section V.A.2 of this document, DOE has tentatively determined, based on clear and convincing evidence, that more-stringent energy conservation standards for SPVUs would be technologically feasible.

2. Economic Justification

In determining whether a potential energy conservation standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens by considering, to the greatest extent practicable, the seven statutory factors discussed in section II.A of this document. (42 U.S.C. 6313(a)(6)(A)(ii)(II); 42 U.S.C. 6313(a)(6)(B)(ii)(I)–(VII))

One of those seven factors is the savings in operating costs throughout the estimated average life of the product in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses of the products that are likely to result from the standard. (42 U.S.C. 6313(a)(6)(B)(ii)(II)) This factor is typically assessed using the LCC and PBP analysis.

DOE conducted an LCC analysis to estimate the net costs and benefits to users from increased efficiency in the considered SPVUs. The LCC savings are negative at nearly all ELs considered in this analysis (see Table VI–1 through Table VI–4). The one EL with positive LCC savings is EL 1 for SPVACs ≥65,000 Btu/h and <135,000 Btu/h, which represents less than 3 percent of total SPVU shipments. Given the highly negative results for all other product classes, which make up over 97 percent of SPVU shipments, the LCC savings across all SPVUs product classes would be negative on a weighted average basis. Based on these findings, DOE has tentatively determined that the economic impact of more-stringent standards on the consumers of the equipment subject to the standard, which is one the seven factors used to evaluate economic justification, would be strongly negative.

Because of the importance DOE places on the economic impact of potential standards on consumers, DOE did not explicitly analyze the other factors that it typically considers in determining economic justification, including the projected quantity of energy savings likely to result directly from amended standards.

3. Significant Additional Energy Savings

DOE has tentatively determined that quantification of energy savings from potential amended standards is not necessary if there is strong evidence that such standards would not be economically justified.

4. Summary

DOE may prescribe an energy conservation standard more stringent than the level for such equipment in ASHRAE Standard 90.1 only if ''clear and convincing evidence'' shows that a more-stringent standard would result in significant additional conservation of energy and is technologically feasible and economically justified. Based on the negative LCC savings at all but one EL for each equipment class, and weighted average negative LCC savings across all SPVUs, DOE has tentatively determined that it lacks ''clear and convincing'' evidence that more-stringent standards would be economically justified for SPVUs. Therefore, DOE is proposing to determine that more-stringent energy conservation standards for SPVUs are not warranted. DOE will consider and respond to all comments received on this proposed determination when issuing any final determination or

supplemental notice of proposed rulemaking (SNOPR).

As a separate matter, DOE is proposing to amend the energy conservation standards for SPVUs so as to be based on the IEER and COP metrics that are of equivalent stringency as the current Federal standard levels (and equivalent to the current standard levels specified in ASHRAE Standard 90.1–2019). The proposed standards are presented in Table VI–5. These proposed standards, if adopted, would apply to all SPVUs manufactured in, or imported into, the United States starting on the compliance date, as discussed in the following paragraphs.

TABLE VI–5—PROPOSED ENERGY CONSERVATION STANDARDS FOR SPVUS

Equipment class	Proposed standard level
SPVAC <65,000 Btu/h	IEER = 12.5
SPVHP <65,000 Btu/h	IEER = 12.5 COP = 3.3
SPVAC ≥65,000 Btu/h and <135,000 Btu/h.	IEER = 10.3
SPVHP ≥65,000 Btu/h and <135,000 Btu/h.	IEER = 10.3 COP = 3.0
SPVAC ≥135,000 Btu/h and <240,000 Btu/h.	IEER = 11.2
SPVHP ≥135,000 Btu/h and <240,000 Btu/h.	IEER = 11.2 COP = 3.0

In instances in which DOE adopts more-stringent standards under its 6-year-lookback review authority, EPCA states that any such standard shall apply to equipment manufactured after a date that is the latter of the date three years after publication of the final rule establishing such standard or six years after the effective date for the current standard. (42 U.S.C. 6313(a)(6)(C)(iv)) As discussed, DOE has tentatively determined that it does not have clear and convincing evidence to justify adopting more-stringent standards for SPVUs, so, therefore, the three-year and/or six-year lead time period would not apply.

Instead, the proposed energy conservation standards for SPVUs are of equivalent stringency but based on a new metric (*i.e.,* IEER), and as discussed in section III.C of this document, DOE amended the SPVU test procedure to include provisions for measuring IEER in the November 2022 Test Procedure Final Rule. As required by EPCA, beginning 360 days following the final test procedure rule, all representations of energy efficiency and energy use must be made in accordance with that amended test procedure. (42 U.S.C. 6314(d)(1)) In this case, DOE is proposing to apply a one-year lead time, similar to that provided for the test procedure update addressing IEER, such that the compliance date for the proposed amended energy conservation standards for SPVUs would be 360 days after the publication in the **Federal Register** of the final rule for amended energy conservation standards based on the IEER metric, if adopted.

VII. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Executive Order (E.O.) 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), 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 proposed 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 proposed regulatory action does not constitute a ''significant regulatory action'' under section 3(f) of E.O. 12866. Accordingly, this action was not submitted to OIRA for review under E.O. 12866.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule where the agency was first required by law to publish a proposed rule for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003 to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website: *energy.gov/gc/office-general-counsel.*

DOE reviewed this document under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. DOE has tentatively concluded that this proposed rule/proposed determination will not have a significant impact on a substantial number of small entities. The factual basis for this determination is as follows:

For manufacturers of SPVU equipment, the Small Business Administration (SBA) considers a business entity to be a ''small business'' if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. SPVU manufacturers, who produce the equipment covered by this document, are classified under NAICS code 333415, ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.'' In 13 CFR 121.201, the SBA sets a threshold of 1,250 employees or fewer for an entity to be considered as a small business for this category. This employee threshold includes all employees in a business's parent company and any other subsidiaries.

DOE identified manufacturers using DOE's Compliance Certification

Database (CCD),[44] manufacturer interviews, the California Energy Commission's Modernized Appliance Efficiency Database System (MAEDbS),[45] and information from prior DOE rulemakings. Additionally, DOE used publicly-available information and subscription-based market research tools (*e.g.,* reports from Dun & Bradstreet)[46] to determine headcount, revenue, and geographic presence of the small businesses. DOE has initially identified a total of five companies that manufacture SPVUs in the United States. DOE screened out companies that do not meet the definition of ''small business'' or are foreign-owned and operated. Of these five companies, DOE identified one as a domestic small business.

In this document, DOE proposes to adopt energy conservation standards for SPVUs based on the Integrated Energy Efficiency Ratio (IEER) metric for SPVACs and SPVHPs, and the Coefficient of Performance (COP) metric for SPVHPs. In the November 2022 Test Procedure Final Rule, DOE amended the test procedures for SPVUs to incorporate by reference AHRI 390–2021, which added a seasonal metric that includes part-load cooling performance—the IEER metric. DOE has determined that the IEER metric is more representative of the cooling efficiency for SPVUs on an annual basis than the current EER market. DOE conducted a crosswalk analysis to develop IEER levels that are of equivalent stringency to the current EER standard levels. DOE has tentatively determined that it lacks clear and convincing evidence to support adoption of amended standards for SPVUs (in terms of IEER and COP) that are more stringent than the current standards for SPVUs, because the Department has tentatively concluded that such standards would not be economically justified.

Therefore, DOE determined that manufacturers would only incur costs as result of this NOPR/NOPD if a manufacturer were not already testing to AHRI 390–2021.[47] However, in the November 2022 Test Procedure Final Rule, DOE determined that it would be unlikely for manufacturers to incur testing costs given that most SPVU manufacturers are AHRI members, and that DOE is referencing the prevailing industry test procedure that was established for use in AHRI's certification program. Furthermore, DOE notes that the sole identified small business that manufacturers SPVUs is an AHRI member.

As discussed in the 2022 Test Procedure Final Rule, DOE determined that the test procedure impacts to manufacturers would not have a significant economic impact on a substantial number of small businesses. Therefore, on the basis of limited small entities affected and the *de minimis* compliance burden, DOE certifies that this proposed rule would not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of a IRFA is not warranted. DOE will transmit a certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

Issue–6: DOE requests comment on its assessment of impacts on domestic, small manufacturers of SPVUs. Specifically, DOE requests comment on its understanding that this proposed rule/proposed determination will not have a significant economic impact on a substantial number of small businesses.

C. Review Under the Paperwork Reduction Act of 1995

DOE's regulations pertaining to certification and compliance activities ensure accurate and comprehensive information about the energy and water use characteristics of covered products and covered equipment sold in the United States. (*See generally* 10 CFR part 429.) Manufacturers of all covered products and covered equipment, including SPVUs, must submit a certification report before a basic model is distributed in commerce, annually thereafter, and if the basic model is redesigned in such a manner to increase the consumption or decrease the efficiency of the basic model such that the certified rating is no longer supported by the test data. Additionally, manufacturers must report when production of a basic model has ceased and is no longer offered for sale as part of the next annual certification report following such cessation. DOE requires the manufacturer of any covered product or covered equipment to establish, maintain, and retain the records of certification reports, of the underlying test data for all certification testing, and of any other testing conducted to satisfy the requirements of part 429, part 430, and/or part 431. Certification reports provide DOE and consumers with comprehensive, up-to date efficiency information and support effective enforcement.

The collection-of-information requirement for certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). OMB Control Number 1910–1400, Compliance Statement Energy/Water Conservation Standards for Appliances, is currently valid and assigned to the certification reporting requirements applicable to covered equipment, including SPVUs. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Revised certification data would be required for SPVU were this NOPR/NOPD to be finalized as proposed; however, DOE is not proposing amended certification or reporting requirements for SPVUs in this NOPR. Instead, DOE may consider proposals to establish certification requirements and reporting for SPVUs under a separate rulemaking regarding appliance and equipment certification. DOE will address changes to OMB Control Number 1910–1400 at that time, as necessary.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this NOPR/NOPD, DOE is proposing amended energy conservation standards for SPVUs that would utilize a new cooling efficiency metric (IEER); however, the amended standards, if adopted, would be of equivalent stringency to the current Federal standards for SPVUs. DOE is analyzing this proposed regulation in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.;* ''NEPA'') and DOE's NEPA implementing regulations at 10 CFR part 1021. DOE's regulations include a categorical exclusion for rulemakings that establish energy conservation standards for consumer products or industrial equipment. 10 CFR part 1021,

[44] DOE's Compliance Certification Database is available at: *www.regulations.doe.gov/ccms* (Last accessed May 2, 2022).

[45] California Energy Commission's MAEDbS is available at: *cacertappliances.energy.ca.gov/Pages/ApplianceSearch.aspx* (Last accessed May 2, 2022).

[46] Dun & Bradstreet reports are available at: *app.dnbhoovers.com* (Last access May 2, 2022).

[47] DOE estimated the cost for this small business to re-rate all models to be $30,200 while making use of an alternative efficiency determination method (AEDM). DOE determined this cost to represent less than 1 percent of annual revenue for the small, domestic manufacturer of SPVUs.

subpart D, appendix B5.1. DOE anticipates that this rulemaking qualifies for categorical exclusion B5.1 because it is a rulemaking that establishes energy conservation standards for consumer products or industrial equipment, none of the exceptions identified in categorical exclusion B5.1(b) apply, no extraordinary circumstances exist that require further environmental analysis, and it otherwise meets the requirements for application of a categorical exclusion. *See* 10 CFR 1021.410. DOE will complete its NEPA review before issuing the final rule.

E. Review Under Executive Order 13132

E.O. 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999), imposes certain requirements on Federal 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 has examined this proposed rule/proposed determination and has tentatively determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the equipment that are the subject of this proposed rule/proposed determination. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6316(a) and (b); 42 U.S.C. 6297(d)) Therefore, no further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 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. Regarding the review required by section 3(a), section 3(b) of E.O. 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 section 3(a) and section 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 proposed rule/proposed determination meets the relevant standards of E.O. 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, section 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.*

DOE examined this proposed rule/proposed determination according to UMRA and its statement of policy and determined that it contains neither a Federal intergovernmental mandate, nor a mandate expected to require expenditures of $100 million or more in any one year. As a result, the analytical requirements of UMRA 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 proposed rule would 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

Pursuant to E.O. 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), DOE has determined that this proposed rule/proposed determination would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the 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 Federal agencies to review most disseminations of information to the public under information quality 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 proposed rule/proposed determination 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

E.O. 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 OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates 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 proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has tentatively concluded that this regulatory action, which does not propose to increase stringency beyond the current Federal standard levels for SPVUs, is not a significant energy action because it is not a significant regulatory action under E.O. 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions.'' 70 FR 2664, 2667.

In response to OMB's Bulletin, DOE conducted formal peer reviews of the energy conservation standards development process and the analyses that are typically used and has prepared a report describing that peer review.[48] Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. Because available data, models, and technological understanding have changed since 2007, DOE has engaged with the National Academy of Sciences to review DOE's analytical methodologies to ascertain whether modifications are needed to improve the Department's analyses. DOE is in the process of evaluating the resulting report.[49]

VIII. Public Participation

A. Participation in the Public Meeting Webinar

The time and date of the webinar meeting are listed in the **DATES** section at the beginning of this document. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: *www.energy.gov/eere/buildings/public-meetings-and-comment-deadlines* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has an interest in the topics addressed in this NOPR/NOPD, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the public meeting webinar. Such persons may submit requests to speak via email to the Appliance and Equipment Standards Program at: *ApplianceStandardsQuestions@ee.doe.gov.* Persons who wish to speak should include with their request a computer file in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

DOE requests persons selected to make an oral presentation to submit an advance copy of their statements at least two weeks before the webinar. At its discretion, DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building Technologies Office. As necessary, requests to give an oral presentation should ask for such alternative arrangements.

C. Conduct of the Public Meeting Webinar

DOE will designate a DOE official to preside at the public meeting webinar and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting webinar. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the public meeting webinar and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the rulemaking.

The webinar will be conducted in an informal, conference style. DOE will present a general overview of the topics addressed in this rulemaking, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will allow, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others.

[48] The 2007 ''Energy Conservation Standards Rulemaking Peer Review Report'' is available at the following website: *energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0.*

[49] The report is available at *www.nationalacademies.org/our-work/review-of-methods-for-setting-building-and-equipment-performance-standards* (Last accessed August 5, 2022).

Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the webinar will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the procedures that may be needed for the proper conduct of the public meeting webinar.

A transcript of the public meeting webinar will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this document. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule/proposed determination before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this document. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via www.regulations.gov. The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. With this instruction followed, the cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption, and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: one copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

Issue–1: DOE requests comment on the proposed baseline IEER levels for SPVUs, as well as comment on any aspect of its crosswalk analysis. DOE continues to seek information which compares EER to IEER for the SPVUs that are representative of the market baseline efficiency level for all equipment classes.

Issue–2: DOE requests comment on the proposed technology options for SPVUs. DOE also requests data on the potential improvement in IEER and COP associated with these technology options.

Issue–3: DOE requests comment on the proposed baseline efficiency levels and the design options associated with these levels.

Issue–4: DOE requests comment on the proposed incremental higher efficiency levels for each equipment class. DOE requests data showing the range of efficiencies based on IEER and COP available for SPVUs on the market, as well as the design options associated with units at different efficiency levels for each equipment class.

Issue–5: DOE requests comment on the cost-efficiency results. In particular, DOE requests comment on the costs associated with the design options analyzed, as well as the shipping costs associated with each efficiency level.

Issue–6: DOE requests comment on its assessment of impacts on domestic, small manufacturers of SPVUs.

Specifically, DOE requests comment on its understanding that this proposed rule/proposed determination will not have a significant economic impact on a substantial number of small businesses.

Additionally, DOE welcomes comments on other issues relevant to the conduct of this proposed rulemaking that may not specifically be identified in this document.

IX. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking; notification of proposed determination.

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Laboratories, Reporting and recordkeeping requirements, Small businesses.

Signing Authority

This document of the Department of Energy was signed on November 22, 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 Monday November 23, 2022.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons set forth in the preamble, DOE proposes to amend part 431 of Chapter II, Subchapter D, of Title 10 of the Code of Federal Regulations, as set forth below:

PART 431—ENERGY EFFICIENCY CONSERVATION PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C 6291–6317; 28 U.S.C 2461 note.

■ 2. Section 431.97 is amended by revising paragraph (d) to read as follows:

§ 431.97 Energy efficiency standards and their compliance dates.

* * * * *

(d) (1) Each single package vertical air conditioner and single package vertical heat pump manufactured on and after October 9, 2015 (for models ≥65,000 Btu/h and <135,000 Btu/h) or October 9, 2016 (for models ≥135,000 Btu/h and <240,000 Btu/h), or September 23, 2019 (for models <65,000 Btu/h), but before (*compliance date of final rule*) must meet the applicable minimum energy conservation standard level(s) set forth in Table 9 of this section.

TABLE 9 TO § 431.97—MINIMUM EFFICIENCY STANDARDS FOR SINGLE PACKAGE VERTICAL AIR CONDITIONERS AND SINGLE PACKAGE VERTICAL HEAT PUMPS

Equipment type	Cooling capacity	Sub-category	Efficiency level	Compliance date: products manufactured on and after . . .
Single package vertical air conditioners and single package vertical heat pumps, single-phase and three-phase.	<65,000 Btu/h	AC	EER = 11.0	September 23, 2019.
		HP	EER = 11.0 COP = 3.3	September 23, 2019.
Single package vertical air conditioners and single package vertical heat pumps.	≥65,000 Btu/h and <135,000 Btu/h	AC	EER = 10.0	October 9, 2015.
		HP	EER = 10.0 COP = 3.0	October 9, 2015.
Single package vertical air conditioners and single package vertical heat pumps.	≥135,000 Btu/h and <240,000 Btu/h	AC	EER = 10.0	October 9, 2016.
		HP	EER = 10.0 COP = 3.0	October 9, 2016.

(2) Each single package vertical air conditioner and single package vertical heat pump manufactured on or after (*compliance date of final rule*) must meet the applicable minimum energy efficiency standard level(s) set forth in Table 10 of this section.

TABLE 10 TO § 431.97—MINIMUM EFFICIENCY STANDARDS FOR SINGLE PACKAGE VERTICAL AIR CONDITIONERS AND SINGLE PACKAGE VERTICAL HEAT PUMPS

Equipment type	Cooling capacity	Sub-category	Efficiency level	Compliance date: products manufactured on and after . . .
Single package vertical air conditioners and single package vertical heat pumps, single-phase and three-phase.	<65,000 Btu/h	AC	IEER = 12.5	(*compliance date of final rule*).
		HP	IEER = 12.5 COP = 3.3	
Single package vertical air conditioners and single package vertical heat pumps.	≥65,000 Btu/h and <135,000 Btu/h	AC	IEER = 10.3	(*compliance date of final rule*).
		HP	IEER = 10.3 COP = 3.0	
Single package vertical air conditioners and single package vertical heat pumps.	≥135,000 Btu/h and <240,000 Btu/h	AC	IEER = 11.2	(*compliance date of final rule*).
		HP	IEER = 11.2 COP = 3.0	

* * * * *

[FR Doc. 2022–26024 Filed 12–7–22; 8:45 am]

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Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 25

System Safety Assessments; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No.: FAA–2022–1544; Notice No. 23–04]

RIN 2120–AJ99

System Safety Assessments

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to amend certain airworthiness regulations to standardize the criteria for conducting safety assessments for systems, including flight controls and powerplants, installed on transport category airplanes. With this action, the FAA seeks to reduce risk associated with airplane accidents and incidents that have occurred in service, and reduce risk associated with new technology in flight control systems. The intended effect of this proposed action is to improve aviation safety by making system safety assessment (SSA) certification requirements more comprehensive and consistent.

DATES: Send comments on or before March 8, 2023.

ADDRESSES: Send comments identified by docket number FAA–2022–1544 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which you can review at *https://www.dot.gov/privacy.*

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

FOR FURTHER INFORMATION CONTACT: Suzanne Masterson, Strategic Policy Transport Section, AIR–614, Strategic Policy Management Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, WA 98198; telephone and fax (206) 231–3211; email *Suzanne.Masterson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General Requirements.'' Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing regulations and minimum standards for the design and performance of aircraft that the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority. It prescribes new safety standards for the design and operation of transport category airplanes.

Acronyms and Frequently Used Terms

TABLE 1—ACRONYMS FREQUENTLY USED IN THIS PREAMBLE

Acronym	Definition
AC	Advisory Circular.
AD	Airworthiness Directive.
AFM	Airplane Flight Manual.
ALS	Airworthiness Limitations section.
ARAC	Aviation Rulemaking Advisory Committee.
ASAWG	Airplane-Level Safety Analysis Working Group.
CAST	Commercial Aviation Safety Team.
CMR	Certification Maintenance Requirement.
CS–25	Certification Specifications for Large Aeroplanes (issued by EASA).
CSL+1	Catastrophic Single Latent Failure Plus One (a failure condition).
EASA	European Union Aviation Safety Agency.
ELOS	Equivalent Level of Safety.
EWIS	Electrical Wiring Interconnection System.
FCHWG	Flight Controls Harmonization Working Group.
ICA	Instructions for Continued Airworthiness.
LDHWG	Loads and Dynamics Harmonization Working Group.
NTSB	National Transportation Safety Board.
PPIHWG	Powerplant Installation Harmonization Working Group.
SDAHWG	System Design and Analysis Harmonization Working Group.
SLF	Significant Latent Failure.
SSA	System Safety Assessment.

TABLE 2—TERMS USED IN THIS NOTICE OF PROPOSED RULEMAKING

Term	Definition
General	
Certification maintenance requirement (CMR)*.	A required scheduled maintenance task established during the design certification of the airplane systems as an airworthiness limitation of the type certificate or supplemental type certificate.
Error	An omission or incorrect action by a crewmember or maintenance personnel, or a mistake in requirements, design, or implementation.
Event	An occurrence that has its origin distinct from the airplane, such as atmospheric conditions (*e.g.*, gusts, temperature variations, icing, and lightning strikes); runway conditions; conditions of communication, navigation, and surveillance services; bird-strike; cabin and baggage fires (not initiated by features installed on the airplane). The term does not cover sabotage or other similar intentional acts.
Failure	An occurrence that affects the operation of a component, part, or element such that it no longer functions as intended. This includes both loss of function and malfunction. *Note:* Errors and events may cause failures or influence their effects but are not considered to be failures.
Failure condition	A condition, caused or contributed to by one or more failures or errors, that has either a direct or consequential effect on the airplane, its occupants, or other persons, accounting for— • Flight phase, • Relevant adverse operational or environmental conditions, and • External events.
Latent failure	A failure that is not apparent to the flightcrew or maintenance personnel.
Single failure	Any occurrence, or set of occurrences, that cannot be shown to be independent from each other (*e.g.*, failures due to a common cause), that affect the operation of components, parts, or elements such that they no longer function as intended. (See definition of ''Failure.'')
Structural performance	The capability of the airplane to meet the structural requirements of 14 CFR part 25.
Failure conditions in order of increasing severity	
Minor failure condition	A failure condition that would not significantly reduce airplane safety and would only require flightcrew actions that are well within their capabilities. Minor failure conditions may result in— • A slight reduction in safety margins or functional capabilities, • A slight increase in flightcrew workload, such as routine flight plan changes, • Some physical discomfort to passengers or flight attendants, or • An effect of similar severity.
Major failure condition*	A failure condition that would reduce the capability of the airplane or the ability of the flightcrew to cope with adverse operating conditions, to the extent that there would be— • A significant reduction in safety margins or functional capabilities, • A significant increase in flightcrew workload or in conditions impairing the efficiency of the flightcrew, • Physical distress to passengers or flight attendants, possibly including injuries, or • An effect of similar severity.
Hazardous failure condition*	A failure condition that would reduce the capability of the airplane or the ability of the flightcrew to cope with adverse operating conditions, to the extent that there would be— • A large reduction in safety margins or functional capabilities, • Physical distress or excessive workload such that the flightcrew cannot be relied upon to perform their tasks accurately or completely, or • Serious or fatal injuries to a relatively small number of persons other than the flightcrew. *Note:* For the purpose of performing a safety assessment, a ''small number'' of fatal injuries means one such injury.
Catastrophic failure condition*	A failure condition that would result in multiple fatalities, usually with the loss of the airplane.
Terms related to latent failures	
Significant latent failure*	A latent failure that, in combination with one or more specific failures or events, would result in a hazardous or catastrophic failure condition.
Catastrophic single latent failure plus one (CSL+1).	A catastrophic failure condition that results from a combination of two failures, either of which could be latent for more than one flight.
Failure conditions in order of decreasing probability	
Probable failure condition*	A failure condition that is anticipated to occur one or more times during the entire operational life of each airplane of a given type.
Remote failure condition*	A failure condition that is not anticipated to occur to each airplane of a given type during its entire operational life, but which may occur several times during the total operational life of a number of airplanes of a given type.
Extremely remote failure condition*	A failure condition that is not anticipated to occur to each airplane of a given type during its entire operational life, but which may occur a few times during the total operational life of all airplanes of a given type.
Extremely improbable failure condition*.	A failure condition that is not anticipated to occur during the total operational life of all airplanes of a given type.

* These terms are also defined in proposed new § 25.4 Definitions.

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I. Overview of Proposed Rule

The FAA proposes to revise regulations in title 14, Code of Federal Regulations (14 CFR) part 25 (Airworthiness Standards: Transport Category Airplanes) related to the safety assessment [1] of airplane systems. The proposed changes to part 25 would affect applicants for type certification and operators of transport category airplanes. Applicants for type certification would be required to conduct their SSAs in accordance with the revised regulations. Proposed changes to the ICA would affect operators of newly certified airplanes, although the impact on those operators would not be significant.

The FAA proposes revised and new safety standards to reduce the likelihood of potentially catastrophic risks due to latent failures in critical systems. The standards would require the elimination of such risks as far as practical. When it is not practical to eliminate such a risk, the standards would require the reduction and management of any remaining risk. The proposed standards would also improve the likelihood that operators discover latent failures and address them before they become an unsafe condition, rather than discovering them after they occur and the FAA addressing them with airworthiness directives (ADs).

Because modern aircraft systems (for example, avionics and fly-by-wire systems) are much more integrated than they were when the current safety criteria in § 25.1309 and other system safety assessment rules were established in 1970,[2] the new standards proposed in this rule would be consistent for all systems of the airplane, reducing the chance of a hazard falling into a gap between the different regulatory requirements for different systems.

Consistent criteria for conducting SSAs would also provide predictability for applicants by reducing the number of issue papers and special conditions necessary for airplane certification projects.[3]

Specifically, the proposed rule would—

- Require that applicants limit the likelihood of a catastrophic failure condition that results from a combination of two failures, either of which could be latent. In this proposal, the FAA refers to this particular failure condition as a Catastrophic Single Latent Failure Plus One (CSL+1) because it consists of the catastrophic condition that results from a single latent failure plus one additional failure. See proposed § 25.1309(b)(5).
- Revise safety assessment regulations to eliminate ambiguity in, and provide consistency between, the safety assessments that applicants must conduct for different types of airplane systems. Section 25.1309 would continue to contain the safety assessment criteria applicable to most airplane systems. Sections 25.671(c) (flight control systems) and 25.901(c) (powerplant installations) would be amended to remove general system safety criteria. Instead, the systems covered in these sections would be required to comply with § 25.1309 (system safety criteria). Section 25.933(a) (thrust reversing systems) would allow compliance with § 25.1309 as an option. Sections 25.671, 25.901, and 25.933 would continue to contain criteria for safety assessments specific to flight control systems, powerplant installations, and thrust reversing systems, respectively.
- Require applicants to assess and account for any effect that the failure of a system could have on the structural performance of the airplane. See proposed § 25.302.
- Define the different types of failure of flight control systems, including jams, and define the criteria for safety assessment of those types of failures. See proposed § 25.671.
- Require applicants to include, in the Airworthiness Limitations Section (ALS) of the airplane's Instructions for Continued Airworthiness (ICA), necessary maintenance tasks that

[1] A system safety assessment is a structured process intended to systematically identify the risks pertinent to the design of aircraft systems, and to show that the systems meet safety requirements.

[2] 35 FR 5665 (Apr. 8, 1970).

[3] Special conditions are rules of particular applicability that the FAA issues to address novel or unusual design features. See 14 CFR 21.16, and section 2–4(j)(3) of FAA Order 8110.4C, *Type Certification.* The latter is available at *drs.faa.gov,* and as noted therein, the FAA uses the issue paper process to develop the terms of these special conditions. See FAA Order 8110.112A, *Standardized Procedures for Usage of Issue Papers and Development of Equivalent Levels of Safety Memorandums,* and Advisory Circular 20–166A, *Issue Paper Process,* available at *drs.faa.gov.*

applicants identify during their SSAs. See proposed § 25.1309(d).

• Remove the ''function properly when installed'' criterion in § 25.1301(a)(4) for installed equipment whose function is not needed for safe operation of the airplane.

II. Background

A. Statement of the Problem

This proposed action is necessary because airplane accidents, incidents, and service difficulties have occurred as a result of failures in airplane systems. Some of these occurrences were caused, in part, by insufficient design standards for controlling the risk of latent failures. Current FAA regulations do not prevent the unintended operation of an airplane with a latent failure that, when combined with another failure, could cause an accident. For example, in 1991, a Boeing Model 767 series airplane operated by Lauda Air took off with a contaminated thrust reverser control valve. This contamination was ''latent'' because it was undetected. The accident investigation found that a short circuit occurred, and together with the contaminated control valve, caused the thrust reverser to unintentionally deploy in flight. As a result, the airplane subsequently crashed, resulting in 223 fatalities.[4]

Also, current regulations do not require establishment of mandatory inspections for significant latent failures that may pose a risk in maintaining the airworthiness of the airplane design. Such inspections may be necessary to reduce an airplane's exposure to these latent failures, so airplanes continue to meet safety standards while in service.

Additionally, current regulations do not adequately address new technology in flight control systems and the effects these systems can have on controllability and structural capability. For example, on airplanes equipped with fly-by-wire control systems, there is no mechanical link between the flightdeck control and the control surface, so the flightcrew may not be aware of the actual control surface position. Also, on some flight control system designs, there may be submodes of operation that change or degrade the normal handling or operational characteristics of the airplane. Flightcrew awareness of both the operational mode of the airplane and the control surface positions are necessary design features to ensure safety of flight but are not required by current regulations.

This action is also necessary to address flight control systems whose failure can affect the loads imposed on the airplane structure. As an example, some airplanes are equipped with rudder limiters, which reduce the maximum deflection of the rudder at higher airspeeds, thereby reducing the maximum loads on the rudder and vertical stabilizer. Failure of the rudder limiter can result in higher loads on these surfaces in the event of a significant rudder maneuver. Excessive loads can lead to structural damage and catastrophic failure. Current regulations do not require applicants to account for these potentially higher loads in the structural design of the airplane.

Lastly, certain system safety requirements are not standardized across airplane systems. Current regulations specify different safety assessment criteria for different systems, which can lead to inconsistent standards across the airplane. Also, when systems that traditionally have been separate become integrated using new technology, applicants may be unsure which standard to apply.

The FAA proposes to address these issues by revising the system safety assessment requirements in part 25.

B. Related Actions

1. Aviation Rulemaking Advisory Committee (ARAC) Recommendations

Advances in flight controls technology, increased airplane system integration, and certain incidents, accidents, and service difficulties related to system failures prompted the FAA to task the ARAC with developing recommendations for new or revised requirements and compliance methods related to the safety assessment of airplane and powerplant systems. The ARAC accepted tasks on various airplane systems issues and assigned them to the Powerplant Installation Harmonization Working Group (PPIHWG),[5] Flight Controls Harmonization Working Group (FCHWG),[6] Loads and Dynamics Harmonization Working Group (LDHWG),[7] and System Design and Analysis Harmonization Working Group (SDAHWG).[8] The FAA also tasked the ARAC to make recommendations for harmonizing the relevant part 25 rules with the corresponding European certification specifications for large airplanes.[9] The ARAC accepted this task and assigned it to the relevant working groups.

In developing their recommendations, the PPIHWG and FCHWG reviewed the investigations of two transport category airplane accidents. In the May 1991 Lauda Air accident, discussed previously, an unintentional thrust reverser deployment on a Boeing Model 767 series airplane caused a loss of airplane controllability.[10] In the September 1994 USAir accident, the NTSB considered a malfunction of the rudder actuation system on a Boeing Model 737–300 series airplane, to have likely initiated a loss of airplane controllability that resulted in the airplane impacting the ground near Pittsburgh, Pennsylvania.[11] The investigations of these two accidents identified hazards resulting from potential CSL+1 failure conditions in safety critical systems.

The PPIHWG recommended revisions to § 25.901(c), to address failures and malfunctions of powerplant and auxiliary power unit (APU) installations, and to § 25.933, to address failures and malfunctions of thrust reversing systems. The FCHWG recommended changes to § 25.671 to address failures and jamming of flight control systems. The LDHWG recommended the addition of a new rule, § 25.302, to address systems that directly, or as a result of a failure or malfunction, would affect the structural performance of the airplane. The SDAHWG recommended revisions to §§ 25.1301 and 25.1309, and further changes to § 25.901(c). Each working group also recommended advisory material to accompany the recommended regulatory changes. The SDAHWG named their recommended

[4] Lauda Air B767 Accident Report by the Aircraft Accident Investigation Committee, Ministry of Transport and Communications, Thailand, is available in the docket and at *https://lessonslearned.faa.gov/Lauda/LaudaAccidentReport.pdf.*

[5] 57 FR 58844 (Dec. 11, 1992).

[6] 63 FR 45554 (Aug. 26, 1998).

[7] 59 FR 30081 (Jun. 10, 1994).

[8] 61 FR 26246 (May 24, 1996).

[9] As the FAA noted in the **Federal Register** in 1993: ''The FAA announced at the Joint Aviation Authorities (JAA)-Federal Aviation Administration (FAA) Harmonization Conference in Toronto, Ontario, Canada, (June 2–5, 1992) that it would consolidate within the Aviation Rulemaking Advisory Committee structure an ongoing objective to ''harmonize'' the Joint Aviation Requirements (JAR) and the Federal Aviation Regulations (FAR). Coincident with that announcement, the FAA assigned to the ARAC those projects related to JAR/FAR 25, 33 and 35 harmonization which were then in the process of being coordinated between the JAA and the FAA.'' 58 FR 13819, 13820 (Mar. 15, 1993).

[10] See footnote 4.

[11] NTSB Accident Report NTSB/AAR–09/01, *Uncontrolled Descent and Collision with Terrain, USAir Flight 427, Boeing 737–300, N513AU, Near Aliquippa, Pennsylvania, September 8, 1994,* is available in the docket and at *https://lessonslearned.faa.gov/USAir427/usair427_ntsb_report.pdf.*

revision to AC 25.1309–1A as the ''Arsenal'' version.[12]

Although the working groups each addressed the subject of managing latent failures in safety critical systems, their recommendations were not consistent when defining the criteria for latent failures. After reviewing the relevant regulations, and the recommendations from the working groups, the FAA, along with the European, Canadian, and Brazilian civil aviation authorities, identified a need to standardize SSA criteria. These authorities were concerned that the safety criteria recommended by the working groups could result in differing safety assessments across various critical systems. Differing standards could result in an inappropriately low level of safety on some critical systems, or, conversely, unnecessarily apply the most stringent standard to every system in a set of integrated systems.

Therefore, in 2006, the FAA tasked ARAC, which assigned the task to the Airplane-Level Safety Assessment Working Group (ASAWG),[13] with creating consistent SSA criteria and developing new criteria for ''specific risk.'' ''Specific risk'' is the risk on a given flight resulting from the existence of a particular condition (for example, a latent failure) on that flight. It is differentiated from ''average risk,'' which is the risk on a typical flight of all airplanes of a particular model for a typical duration.

The ASAWG completed its work in May 2010 and recommended a set of consistent requirements that would apply to all systems. Specific areas addressed in the recommendation report include latent failures, aging and wear, Master Minimum Equipment Lists, and flight and diversion time. The ASAWG recommended that the general system safety criteria for all airplane systems be governed by § 25.1309, and recommended adjustments to the regulations and advisory material addressed by the working groups mentioned previously, to implement consistent system safety criteria. All ARAC working group recommendation reports are available in the docket for this NPRM.

2. FAA Review of Service Difficulty Reports

One ASAWG recommendation responded to the need to prevent a catastrophic failure condition resulting from two failures, when either failure is latent (undetected) for more than one flight. In such a case, the first failure is latent, and thus persists undetected, and the second failure is active (detected) because its occurrence results in a catastrophic accident. In consideration of this recommendation, the FAA reviewed a number of past service difficulty reports [14] that could have led to catastrophic accidents if the latent failure had been followed by another failure. These include:

- A latent failure of a fire extinguisher control switch that, if coupled with an active failure such as an engine fire, could have resulted in an uncontrollable engine fire.[15]
- A latent failure of the high-lift system [16] brake that, if coupled with an active failure such as a high-lift system transmission driveshaft failure, could have resulted in loss of control.[17]
- A latent failure of a high-lift system proximity sensor that, if coupled with an active failure such as a high-lift drive system failure, could have resulted in loss of control.[18]

The FAA has determined that such service difficulties were, in part, a consequence of insufficient design standards for controlling the risk due to latent failures, and the FAA expects similar service difficulties in the future if the standards are not revised to manage such risks.

3. Commercial Aviation Safety Team Task Force Study Regarding Gaps in Maintenance Process

In 2009, the Commercial Aviation Safety Team (CAST) [19] chartered a task force, led by the FAA Flight Standards Service, Aircraft Maintenance Division, to conduct a study to identify and correct gaps in operators' maintenance processes. The objective of the task force was to ensure that the level of safety provided at certification would be sustained throughout the life of the airplane.

In 2011, the task force reported on the gaps it found, and recommended mitigation strategies.[20] One of the identified gaps (GAP 009) was that the current regulations do not require use of Certification Maintenance Requirements (CMRs),[21] which identify inspections of systems for significant latent failures that are necessary to preserve the airplane's reliability. The FAA has been recommending in advisory circulars (AC 25.1309–1A and AC 25–19, and AC 25–19A) to establish the need for inspections of critical systems where latent failures could exist. Since CMRs are critical to safety, the task force recommended the FAA require their use.

4. Equivalent Level of Safety Findings and Special Conditions

The FAA has applied most of the SSA criteria proposed in this NPRM to certification projects for the past 15 years, through equivalent level of safety (ELOS) findings under § 21.21. The topics of these findings include flight control systems (§ 25.671(c)) as recommended by the FCHWG; thrust reversers (§ 25.933(a)(1)) as recommended by the PPIHWG; and general SSA criteria (§§ 25.1301 and 25.1309) as recommended by the SDAHWG.

Modern transport category airplanes are equipped with systems that, directly or as a result of failure or malfunction, affect structural performance. However, current regulations do not require applicants to take into account loads on the airplane due to the effects of system failures on structural performance. Therefore, the FAA has applied special conditions that require the effects of

[12] The ''Arsenal'' version is a draft revision of AC 25.1309–1A, developed by the ARAC SDAHWG. Applicants can use it in conjunction with a request for an ELOS finding for, or exemption from, §§ 25.1301 and 25.1309, per FAA Policy PS–ANM100–00–113–1034, *Use of ARAC (Aviation Rulemaking Advisory Committee) Recommended Rulemaking not yet formally adopted by the FAA, as a basis for equivalent level of safety or exemption to Part 25,* dated January 4, 2001, available at *https://drs.faa.gov.* The ''Arsenal'' version is available in the docket as part of the SDAHWG recommendation, *Task 2—System and Analysis Harmonization and Technology Update,* pp. 61–99, and at *https://www.faa.gov/regulations_policies/rulemaking/committees/documents/media/TAEsdaT2-5241996.pdf.*

[13] 71 FR 14284 (Mar. 21, 2006).

[14] Service difficulty reports are reports of occurrences or detection of failures, malfunctions, and defects, as required by 14 CFR 91.1415, 121.703, 125.409, 135.415 and 145.221, as applicable to the type of operation of the aircraft.

[15] A report of the failure of a certain engine fire shutoff switch led to Airworthiness Directive (AD) 2005–01–13, Amendment 39–13938 (70 FR 2339, January 13, 2005).

[16] A ''high-lift'' system is a system that increases the amount of lift produced by an airplane wing.

[17] Multiple reports of failure of a certain high-lift system brake led to AD 2009–20–12, Amendment 39–16035 (74 FR 50686, October 1, 2009)

[18] Multiple reports of failure of a certain high-lift system proximity sensor led to AD 2014–03–08, Amendment 39–17745 (79 FR 9398, February 19, 2014).

[19] Founded in 1998, CAST is a cooperative government-industry initiative. CAST is co-chaired by a senior-level official of the air transport industry and by the FAA Associate Administrator for Aviation Safety.

[20] More information on CAST and the task force findings is available in the docket and on the internet at *https://www.skybrary.aero/sites/default/files/bookshelf/2553.pdf.*

[21] CMRs are defined in Advisory Circular (AC) 25.1309–1A, *System Design and Analysis,* dated June 21, 1988; and AC 25–19A, *Certification Maintenance Requirements,* dated October 3, 2011. The FAA plans to revise AC 25.1309–1 as described in this document, and the CMR definition would conform to the definition provided in Table 2 and in new § 25.4, Definitions. The CMR definition in AC 25–19A already conforms to the definition provided in Table 2. That AC is not being revised as part of this rulemaking.

system failures be taken into account in the design. The FAA based the provisions of these special conditions, titled ''Interaction of Systems and Structures,'' on the criteria developed by the ARAC working groups, and propose to codify these special conditions in proposed § 25.302.

Finally, the FAA has applied the requirements in proposed § 25.671(a), (e), and (f) for fly-by-wire control systems to recent type certificate applications through means of compliance issue papers and special conditions.

5. Harmonization With European Union Aviation Safety Agency (EASA) Certification Standards

EASA certification standards for large airplanes (CS–25) prescribes the airworthiness standards corresponding to 14 CFR part 25 for transport category airplanes certified by the European Union. Applicants for FAA type certification of transport category airplanes may also seek EASA validation of the FAA's type certificate. Where part 25 and CS–25 differ, an applicant must meet both airworthiness standards to obtain a U.S. type certificate and validation of the type certificate by foreign authorities, or obtain exemptions, ELOS findings or special conditions, or the foreign authority's equivalent to those, as necessary to meet one standard in lieu of the other. Where FAA and EASA can maintain harmonized requirements, applicants for type certification benefit by having a single set of requirements with which they must show compliance, thereby reducing the cost and complexity of certification and codifying a consistent level of safety.

EASA incorporated the SDAHWG-recommended changes to §§ 25.1301 and 25.1309, and associated guidance, in its initial issuance of CS–25 on October 17, 2003.[22] EASA incorporated the criteria regarding interaction of systems and structures recommended by the LDHWG into its regulatory framework as CS 25.302 and appendix K of CS–25 at amendment 25/1 on December 12, 2005.[23] EASA incorporated the ASAWG-recommended regulatory and advisory material implementing consistent SSA criteria, at amendment 25/24 to CS–25, on January 10, 2020.[24] This proposed NPRM would harmonize FAA requirements with EASA to the extent possible, with differences described in the Discussion of the Proposed Rule.

6. Aircraft Certification, Safety, and Accountability Act

This proposal would update the requirements and guidance for system safety assessments to support, in part, the requirements of the Aircraft Certification, Safety, and Accountability Act, Public Law 116–260 (the Act). Section 115(b)(1)(A) of the Act states that the Administrator of the FAA shall require an applicant for an amended type certificate for a transport airplane to perform a system safety assessment with respect to each proposed design change that the Administrator determines is significant, with such assessment considering the airplane-level effects of individual errors, malfunctions, or failures and realistic pilot response times to such errors, malfunctions, or failures. Currently, § 25.1309 requires this action, not just for significant design changes, but for all design changes affecting systems. Specifically, § 25.1309(b) requires applicants assess safety at the airplane level for airplane systems and associated components, considered separately and in relation to other systems. Section 25.1309(d) specifies that compliance to § 25.1309(b) must be shown by analysis and appropriate testing, and must consider possible modes of failure, including malfunctions and damage and also that the assessment consider crew warning cues, corrective action required, and the capability of detecting faults. In the context of § 25.1309, ''corrective action'' means flightcrew procedures for use after failure detection to enable continued safe flight and landing.[25] The proposed § 25.1309 would remove the current content of § 25.1309(d), and place that content in draft AC 25.1309–1B, along with expanded guidance on the safety assessment process, because (1) the proposed § 25.1309 would be a performance-based regulation for which methods of compliance are more appropriately provided in guidance, and (2) the items for consideration listed in § 25.1309(d) constitute an incomplete method of compliance to § 25.1309(b), as explained in section III.G.1 of this preamble.

Section 115(b)(1)(B) of the Act states that the system safety assessments required by section 115(b)(1)(A) of the Act be updated for each subsequent proposed design change that the Administrator determines is significant. As discussed, § 25.1309 already requires this action not just for significant design changes, but for all design changes affecting systems. This proposed rulemaking would update the analysis necessary for airplane-level effects of individual errors, malfunctions, or failures.

Section 115(b)(1)(C) of the Act states that applicants must provide to the FAA the data and assumptions underlying each assessment and amended assessment. Draft AC 25.1309–1B, which accompanies this rulemaking, states that a system safety assessment, to show compliance, should provide data such as component failure rates and their sources and applicability, and support any assumptions made. Section 7.9 of the draft AC provides detailed guidance on identification and justification of assumptions, data, and analytic techniques.

Section 115(b)(1)(D) of the Act states that applicants must provide for document traceability and clarity of explanations for changes to aircraft type designs and system safety assessment certification documents. Appendix C of Draft AC 25.1309–1B, describes the safety assessment process, and states that a system safety assessment, to show compliance, should include, among other things, a statement of the functions, boundaries, and interfaces of the system and a description that establishes correctness and completeness and traces the work leading to the conclusions of the SSA.

These updates to system safety assessment requirements, and to implementing guidance, would provide a foundation to address how human (flight crew) response is treated and validated within the context of the required analysis. As required by Section 126 of the Act, the FAA is researching pilot responses to errors, malfunctions and failures, and may use that research in the future to update guidance in this regard.

C. NTSB Recommendations

As a result of the aforementioned 1994 Pittsburgh accident, the National Transportation Safety Board (NTSB) issued two safety recommendations relevant to this rulemaking, A–99–22 and A–99–23.[26] In Safety Recommendation A–99–22, the NTSB recommends that the FAA ensure that future transport category airplanes

[22] *https://www.easa.europa.eu/en/downloads/1516/en.*

[23] *https://www.easa.europa.eu/en/document-library/certification-specifications/cs-25-amendment-1.*

[24] *https://www.easa.europa.eu/en/downloads/108354/en.*

[25] AC 25.1309–1A provides guidance on including flightcrew corrective action in showing compliance to § 25.1309. Draft AC 25.1309–1B, sections 5.3 and 5.4, would provide updated guidance.

[26] NTSB Safety Recommendations A–99–22 and A–99–23 are available in the docket and at *https://www.ntsb.gov/safety/safety-recs/recletters/A99_20_29.pdf.*

provide a reliably redundant rudder actuation system. In Safety Recommendation A–99–23, the NTSB recommends that the FAA require type certificate applicants to show that transport category airplanes are capable of continued safe flight and landing after jamming of a flight control at any deflection possible, up to and including its full deflection, unless the applicant shows that such a jam is extremely improbable. This proposed rule would implement these recommendations by revising § 25.671(c).

The NTSB issued Safety Recommendation A–02–51 [27] following an accident in January 2000, in which a McDonnell Douglas Model MD–83 airplane crashed into the Pacific Ocean off the coast of California. The NTSB determined that the probable cause of this accident was a loss of airplane pitch control resulting from the in-flight failure of the jackscrew assembly of the horizontal stabilizer trim system. This failure was related to maintenance of this critical system; specifically, the excessive and accelerated wear of a critical part as a result of insufficient lubrication. In Safety Recommendation A–02–51, the NTSB recommends that the FAA review and revise airplane certification regulations, and associated guidance applicable to the certification of transport category airplanes, to ensure that applicants fully address wear-related failures so that, to the maximum extent possible, such failures will not be catastrophic. The proposed requirement to include CMRs in the ALS would respond to this safety recommendation, as would the draft ACs accompanying this NPRM that contain guidance on assessing wear-related failures as part of the SSA.

The NTSB issued Safety Recommendation A–14–119 [28] following an incident in January 2013, in which the APU lithium-ion battery installed in a Boeing Model 787–8 airplane caught fire when the airplane was parked at a gate at Logan International Airport in Boston, Massachusetts. In Safety Recommendation A–14–119 the NTSB recommends that the FAA to provide its certification engineers with written guidance and training to ensure that assumptions, data sources, and analytical techniques are fully identified and justified in applicants' safety assessments for designs incorporating new technology. Additionally, the NTSB recommends that an appropriate level of conservatism be included in the analysis or design, consistent with the intent of the draft guidance material that the SDAHWG recommended. Draft AC 25.1309–1B, accompanying this NPRM, would contain the recommended guidance.[29]

III. Discussion of the Proposed Rule

After consideration of the issues in the Statement of Problem, the relevant NTSB recommendations, and ARAC recommendations, the FAA proposes to revise several regulations to change how applicants would conduct SSAs.

A. Consistent Safety Assessment Criteria for Airplane Systems

1. Average Risk Criteria (§ 25.1309(b)(1), (2), and (3))

Current § 25.1309(b) requires applicants to design the systems and associated components (considered both separately and in relation to each other) of their proposed transport category airplane to meet two criteria. First, these systems must be designed so that the occurrence of any failure condition which would prevent the safe flight and landing of the airplane is extremely improbable (§ 25.1309(b)(1)). Second, each system must be designed so that the likelihood of any other failure condition which would reduce the capability of the airplane, or of its flightcrew, to cope with adverse operating conditions is improbable (§ 25.1309(b)(2)).

The FAA proposes to revise § 25.1309(b) to establish risk criteria that can be used consistently across multiple airplane systems, harmonize FAA regulations with EASA Certification Specifications for Large Aeroplanes (CS) 25.1309(b), and codify commonly issued ELOS findings. The proposed revisions would require that type certificate applicants design and install airplane systems and associated components, evaluated both separately and in relation to other systems, so that—

- Each catastrophic failure condition is extremely improbable and does not result from a single failure;
- Each hazardous failure condition is extremely remote; and
- Each major failure condition is remote.

As noted previously, the current rule (§ 25.1309(b)(2)) requires any failure condition that would reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions to be ''improbable'' (on the order of $10^{-9} < p \leq 10^{-5}$, where p is probability of failure per flight hour). This condition is characterized by AC 25.1309–1A as ''major,'' and it represents a broad spectrum of probability.

As previously discussed, the FAA has issued ELOS findings for more than a decade to accept use of the ARAC-recommended revision to §§ 25.1301 and 25.1309 in lieu of §§ 25.1301 and 25.1309, and the accompanying ''Arsenal'' version of AC 25.1309–1 as the method of compliance. In the ''Arsenal'' version, the ''major'' failure condition is divided into two categories: ''hazardous'' and ''major'', with corresponding probability requirements of ''extremely remote'' (on the order of $10^{-9} < p \leq 10^{-7}$) and ''remote'' (on the order of $10^{-7} < p \leq 10^{-5}$).'' The granular assessment of failure conditions in the ''Arsenal'' version is beneficial because it allows for more accurate analysis of highly integrated systems and better differentiation of failure effects on flightcrew than the current requirements of § 25.1309(b). The ''hazardous'' category in the ''Arsenal'' version corresponds to the more severe end of the ''major'' category in current § 25.1309(b)(2), which is referred to as ''severe major'' in AC 25.1309–1A, ''System Design and Analysis,'' dated June 21, 1988.

This proposal would codify current practice by adding the ''hazardous'' failure condition category and its probability requirement, replace the probability term ''improbable'' with ''remote'' for major failure conditions, and prohibit catastrophic single failure.

a. Inclusion of Specific Failure Condition Categories and Probabilities

An objective of this proposal is to align the regulatory terms used in 14 CFR part 25 to describe failure condition categories and probabilities with the terms used in the most recent transport airplane certification projects (whose SSAs use the methods in the ''Arsenal'' version of AC 25.1309–1 and in EASA CS 25.1309 and accompanying guidance). Proposed § 25.1309(b) would use terms that are already used by the aviation industry to describe failure condition categories and probabilities. Additionally, since the FAA also uses these terms in other part 25 regulations, such as §§ 25.671, 25.981, and 25.1709, the FAA proposes to define them in a new § 25.4, ''Definitions.'' Although the terminology in § 25.1309(b) would change from the current regulations, the intent and usage of those terms would not change as a result.

[27] NTSB Safety Recommendation A–02–51 is available in the docket and at *https://www.ntsb.gov/safety/safety-recs/recletters/A02_36_51.pdf.*

[28] NTSB Safety Recommendation A–14–119 is available in the docket and *https://www.ntsb.gov/safety/safety-recs/recletters/A-14-113-127.pdf.*

[29] This advisory circular, and the other advisory circulars that accompany this proposal, are in the docket for review and comment.

b. Prohibiting Catastrophic Single Failures

Proposed § 25.1309(b)(1)(ii) would prohibit a proposed design from allowing any single failure that could result in a catastrophic failure condition (*i.e.,* a ''fail-safe'' design requirement). The requirement that applicants assume that any single failure could occur and that such failure not prevent continued safe flight and landing was codified in 1965 as § 25.1309. The FAA inadvertently removed from § 25.1309 the requirement for fail-safe design in 1970 at amendment 25–23,[30] although the agency retained guidance on fail-safe design. The purpose of the FAA's guidance on fail-safe design, has been to convey the objectives of the fail-safe design concept, and provide principles and techniques for its usage by applicants.

Amendment 25–23 also amended § 25.671(c) to prohibit catastrophic single failures in flight control systems. At that time, § 25.901(c) applied § 25.1309 to powerplant installation, requiring applicants to assume in their safety assessments that any single failure could occur. With amendment 25–40 in 1977,[31] the FAA amended § 25.901(c) to explicitly prohibit catastrophic single failures in systems associated with the powerplant installation because § 25.1309 did not prohibit catastrophic single failures.

This proposed rule would also make the requirements for safety assessments of flight control systems and powerplant installations consistent with the requirements for other systems in regard to prohibiting catastrophic single failures. Systems covered by the proposed §§ 25.671(c) and 25.901(c) would be required to comply with the § 25.1309 prohibition of catastrophic single failures under all operating and environmental conditions under which the airplane was approved to operate. Incorporation of fail-safe design requirements across all the critical systems of the airplane would ensure consistent safety objectives are implemented. Further discussion of proposed changes to §§ 25.671(c) and 25.901(c) is provided in sections III.E and III.B.2.d of this preamble, respectively.

2. Latent Failures in System Designs

a. Proposed Criteria—§ 25.1309(b)(4)

The FAA proposes to add a new paragraph (b)(4) to § 25.1309 that would require applicants to avoid SLFs whenever practical. The purpose of proposed § 25.1309(b)(4) is to reduce an airplane's exposure to SLFs by establishing the following hierarchy of safety requirements. First, the applicant must eliminate SLFs. If the elimination of the SLF is not practical, then the applicant must limit the likelihood of that SLF to 1/1000 between inspections. If the applicant proves that it is not practical to comply with the 1/1000 criterion, then the applicant must design the system to minimize the failure's latency; that is, minimize the length of time the failure is expected to be present, and remain undetected.

The FAA intends the proposed rule to minimize the latency of SLFs and achieve the safety objective of the ASAWG's recommendation to avoid SLFs whenever practical. The FCHWG, PPIHWG, and ASAWG each recommended the 1/1000 value to limit the latency period in the failure conditions specific to that working group's technical area. The FAA proposes that application of the 1/1000 criterion to every system that may contain a SLF is a necessary safety measure that an applicant can apply. This 1/1000 criterion is necessary to reduce exposure of the airplane to latent failures that leave the airplane one failure away from a hazardous or catastrophic condition. This criterion is cost effective as described in the costs and benefits section of this NPRM.

An applicant may be able to show, in rare situations, that it is not practical to meet the 1/1000 criterion. One possible example is if compliance with the 1/1000 criterion would necessitate complex or invasive maintenance tasks on the flight line, increasing the risk of incorrect maintenance. In such situations, safety may be better served if the operator inspects for latent failures at a maintenance facility or at a longer inspection interval, even though the longer inspection interval could mean the probability of the latent failure exceeds 1/1000; however, the applicant must minimize the time the failure is expected to be present. The FAA expects that an applicant would likely integrate these steps into its normal design processes. During the FAA's review of an applicant's proposed demonstration of compliance with the other provisions of § 25.1309(b), if the FAA determines that it may be practical to eliminate or further reduce exposure to a SLF, then these proposed regulations would require the applicant to either redesign the system or demonstrate the impracticality of that redesign.

b. Proposed Criteria—§ 25.1309(b)(5)

The FAA proposes a new standard for limiting the risk of a CSL+1 failure condition (a catastrophic failure combination that results from a single latent failure plus one additional failure). Under current regulations, an operator could unknowingly dispatch an airplane with a potential CSL+1 failure condition. Under this proposal, when conducting SSAs, an applicant would be required to apply additional criteria in proposed § 25.1309(b)(5) (pertaining to additional fault tolerance, residual risk, and probability of latent failures) to limit the specific risk of a CSL+1 failure condition, in addition to the requirement in § 25.1309(b)(1).[32]

i. Additional Fault Tolerance

For each potential catastrophic failure condition that results from two failures, either of which could be latent for more than one flight, the applicant would be required by § 25.1309(b)(5)(i) to show that it is impractical to design the system with additional fault tolerance. For example, if practical, the applicant could add a failure monitor, thereby eliminating the latency of the first (undetected) failure. Or, the applicant could design additional redundancy in the system, so that the second failure would not be catastrophic. In either case, the condition resulting from the failure combination would no longer create a CSL+1 failure condition.

ii. Limiting the Residual Risk to a ''Remote'' Probability

The FAA proposes § 25.1309(b)(5)(ii), which would adopt the ASAWG recommendation to limit the total probability that any single failure could lead to a catastrophe following a latent failure. This total probability could be no greater than ''remote.'' The ASAWG recommended the ''remote'' criterion based on the reliability of components typically used in systems that have a redundant means to protect against catastrophic single failures. These components have demonstrated a level of reliability, on the order of $1x10^{-5}$ per flight hour, which was consistent with the SDAHWG's recommended probability guidelines (the ''Arsenal'' version of AC 25.1309, and EASA Acceptable Means of Compliance 25.1309) for showing ''remote'' probability. The ASAWG reasoned that establishing a higher standard than ''remote'' could require redesign of systems that have an acceptable in-

[30] 35 FR 5674 (Apr. 8, 1970).

[31] 42 FR 15042 (Mar. 17, 1977).

[32] The draft Regulatory Impact Analysis in the docket for this rulemaking refers to this part of the proposal as the ''specific risk rule.''

service safety record, and the FAA agrees with this rationale.

Therefore, the FAA proposes that this ''remote'' criterion, in combination with the criterion to limit latency to a maximum probability of 1/1000, would establish an acceptable level of safety for potential CSL+1 failure conditions. Also, if a system has multiple potential failure combinations that lead to the same CSL+1 failure condition, each combination of which contains the same latent failure, the applicant would be required to sum the probabilities of the non-latent failures. The resulting sum of probabilities would also have to meet the ''remote'' criterion.

iii. Limiting the Probability of Latent Failures to 1/1000

Proposed § 25.1309(b)(5)(iii) would limit the probability of occurrence of a latent failure in a CSL+1 combination to 1/1000. The 1/1000 value would be the proposed maximum allowable probability of a latent failure. To comply, the applicant would multiply the maximum time the latent failure is allowed to be present by the component failure rate, and show that the resultant value is less than or equal to 1/1000. The maximum time is typically the time between inspections. The ASAWG recommended limiting the probability of occurrence of a latent failure in a CSL+1 combination to be ''on the order of'' 1/1000 or less. The FAA and Transport Canada submitted dissenting opinions, documented in the ASAWG final report, that the phrase ''on the order of'' would defeat the purpose of establishing a clear criterion for limiting the likelihood of a latent failure; therefore, this proposal omits that phrase. Instead, the 1/1000 value would be the maximum allowable probability of a latent failure occurring between inspections.

To determine this 1/1000 limit, the ASAWG drew on the knowledge of the FCHWG and PPIHWG, both of which determined that 1/1000 was a practical limit on the probability of a latent failure in the flight control and thrust reversing systems. The ASAWG evaluated safety analysis data and found that the probability of a latent failure between inspections very rarely exceeded 1/1000.[33] The FAA has accepted this numerical value in the certification of these particular systems through ELOS findings and determined that applicants can apply it across all systems.

[33] The ASAWG recommendation report is available in the docket for this NPRM.

B. Consistent Application and Interpretation of Requirements for Equipment, Systems, and Installations

1. Applicability of § 25.1309

Applicants have raised numerous questions regarding the applicability of § 25.1309. The FAA therefore proposes to revise § 25.1309 as follows:

a. Introductory Paragraph of § 25.1309

The FAA proposes to add an introductory paragraph to § 25.1309, which specifies that the rule applies to all systems and equipment on the airplane. Section 25.1309(a) currently requires that applicants design and show that only the equipment, systems, and installations whose functioning is required by Subchapter C—Aircraft will perform their intended functions under any foreseeable operating condition (amendment 25–123, dated December 10, 2007). This proposed rule would adopt the SDAHWG's recommendation to remove the limitation to Subchapter C, which would broaden the applicability of § 25.1309 to any system or equipment as installed on the airplane, regardless of whether it is required for type certification or by operating rules.

b. Section 25.1309(a)—Criteria for Two Classes of Installed Equipment and Systems

The FAA proposes to remove § 25.1301(a)(4), which requires that installed equipment function properly when installed, and address that requirement through proposed § 25.1309(a), which would contain requirements for two different classes of equipment and systems installed in the airplane: (1) equipment and systems that are required for type certification or by operating rules, or whose improper functioning would reduce safety; and (2) all other systems.

c. Section 25.1309(a)(1)—Airplane Equipment and Systems Whose Improper Functioning Would Reduce Safety

Proposed § 25.1309(a)(1) would apply to all installed airplane equipment and systems whose improper functioning would reduce safety, regardless of whether the equipment or system is required by type certification rules or operating rules. Such equipment and systems would be required to perform as intended under the airplane operating and environmental conditions. A failure or malfunction of equipment or systems reduces safety if the failure or malfunction results in a minor or more severe failure condition. The FAA recognizes, however, that failures may occur throughout the operational life of the airplane, and that a failed system may no longer perform as intended. The acceptability of failures and their associated risks are covered by the fail-safe regulations, such as §§ 25.901(c), 25.1309(b), 25.671(c), 25.735(b)(1), 25.810(a)(1)(v), 25.812, 25.903(d)(1), and 25.1316.

The FAA further proposes new § 25.1309(a)(1) to require that equipment and systems perform as intended not just under airplane operating conditions as required by current § 25.1309(a), but under environmental conditions as well. This change is needed to remove an ambiguity in the current regulations, and ensure that an applicant's safety assessment is complete.

Current § 25.1309(a) requires that each such item perform its intended functions under ''any foreseeable operating condition,'' but does not mention ''environmental conditions.'' The method of compliance to the rule in AC 25.1309–1A discusses both types of conditions. To perform the safety assessment using the method in that AC, the applicant must account for the airplane operating conditions (such as weight, center of gravity, altitudes, flap positions) and the environmental conditions that the airplane is reasonably expected to encounter (such as atmospheric turbulence, lightning, or precipitation).

The FAA has not required that systems and components perform as intended in foreseeable but easily avoidable environmental conditions, such as volcanic ash clouds. Thus, the FAA proposes to remove ''any foreseeable'' from § 25.1309(a)(1). This change would also harmonize with CS 25.1309(a)(1).

The intent of this change is to ensure that the applicant evaluates the continued function of equipment and systems—

- Throughout the airplane's normal operating envelope, as defined by the airplane flight manual (AFM), together with any modification to that envelope associated with abnormal or emergency procedures, and any anticipated crew action; and
- Under the anticipated external and internal airplane environmental conditions in which the equipment and systems must perform as intended.

The proposed language in § 25.1309(a)(1) is consistent with existing FAA guidance [34] regarding environmental conditions because it

[34] AC 25.1309–1A, section 8.e. provides guidance on incorporation of environmental conditions in SSA.

would allow that, even if certain environmental conditions are foreseeable, performing as intended in those conditions is not always possible. For example, ash clouds from volcanic eruptions are foreseeable, but an applicant does not have to show that the airplane can safely operate in such clouds, relying instead on forecasting and air traffic control means to avoid such conditions.

d. Section 25.1309(a)(2—Equipment and Systems With No Effect on the Safety of the Airplane or Its Occupants

Current § 25.1309(a) requires that all equipment, systems, and installations function properly when installed. However, the proper functioning of non-essential equipment is typically not necessary for safe operation of the airplane. These non-essential systems include passenger amenities such as entertainment displays, audio systems, in-flight telephones, non-emergency lighting, and food storage and preparation.

Proposed § 25.1309(a)(2) would require all equipment and systems not subject to proposed § 25.1309(a)(1) to not have an adverse effect on the safety of the airplane or its occupants, and would allow such equipment to be approved even if that equipment may not perform as intended. Consequently, this proposal would reduce the testing needed for those equipment and systems installations, because they would not need to meet the operational and environmental condition requirements of proposed § 25.1309(a)(1). The proposed § 25.1309(a)(2) would, however, require applicants to test such systems, equipment, and installations to show that their normal or abnormal functioning does not adversely affect the proper functioning of the equipment, systems, and installations covered by proposed § 25.1309(a)(1); and does not otherwise adversely affect the safety of the airplane or its occupants.

No safety benefit is derived from demonstrating that equipment performs as intended, if failing to perform as intended would not impact safety. Instead, the FAA would expect that an applicant perform a qualitative evaluation of the design and installation of such equipment and systems installed in the airplane to determine that neither their normal operation nor their failure would adversely affect crew workload, operation of other systems, or the safety of persons.

The FAA expects normal installation practices to result in sufficiently obvious isolation of the impacts of such equipment on safety that compliance can be based on a relatively simple qualitative installation evaluation. If the possible impacts, including failure modes or effects, are uncertain, or isolation between systems is provided by complex means, then more formal structured evaluation methods or a design change may be necessary. Guidance on performing qualitative evaluations is provided in draft AC 25.1309–1B.

This proposed change would reduce the cost of certification to airplane and equipment manufacturers and modifiers without reducing the level of safety provided by part 25.

e. Applicability of § 25.1309 to In-Service and Out-of-Service Conditions

Applicants have questioned whether, when showing compliance with § 25.1309, they must consider out-of-service conditions or risks to persons other than the occupants of the airplane. Compliance with § 25.1309 applies to flight operating conditions as well as ground operating conditions, consistent with current practice. Draft AC 25.1309–1B, specifies that compliance is applicable to ground operating conditions when the airplane is in service. An airplane is in service from the time the airplane arrives at a gate or other location for pre-flight preparations, until it is removed from service. While ground operating conditions include conditions associated with line maintenance and refueling, dispatch determinations, embarkation and disembarkation, and taxi, they do not include periods of shop maintenance, storage, or other out-of-service activities. Applicants should also account for threats to people on the ground or adjacent to the airplane during ground operations, electric shock threats to mechanics, and other similar situations.

f. Applicability of § 25.1309 to High Intensity Radiated Fields and Lightning Exposure

The ASAWG recommended that a future committee address how applicants should account for systems' exposure to high intensity radiated fields (HIRF) and lightning when showing compliance with § 25.1309(b). The FAA acknowledges that follow-on regulatory or policy action may be necessary to ensure this topic is addressed in a manner that is both effective and practical. This proposed rule and the associated advisory material are not intended to change how type certificate applicants account for systems' exposure to HIRF and lightning when demonstrating compliance with § 25.1309. Historically, considerations of lightning and HIRF in determining failure effects have been limited to specific potential failures of concern, such as failure of protection features, including critical isolation features, that are dedicated to protecting the airplane from the effects of lightning. Under the proposed changes to § 25.1309, applicants would continue to apply § 25.1309 in addressing the effects of HIRF and lightning as described in the prior sentence. Testing and qualitative evaluations may still be used as a means of compliance. Use of lightning and HIRF probabilities in quantitative analyses is also still allowed but not required. The proposed revision to § 25.1309 would not supersede the more specific requirements of §§ 25.1316 and 25.1317.

2. Exceptions From Applicability of § 25.1309

a. Flight Control Jams Addressed by § 25.671

Proposed § 25.1309(e) would exclude the flight control jams governed by § 25.671 from the proposed single-failure requirement in § 25.1309(b)(1)(ii). The FAA has historically used § 25.671(c) rather than § 25.1309 to regulate the risk of flight control jams. Proposed § 25.671(c) would continue this approach because flight control jams are an unusual failure condition in which the control position is critical to the outcome of the condition. Therefore, specifying a flight control jam as a ''single failure'' does not fully define the failure condition because the control position is not defined. The current and proposed § 25.671(c) specify that the applicant must evaluate flight control jams at ''normally encountered'' positions. Additionally, proposed § 25.671(c) would not require evaluation of flight control jams immediately before touchdown if the applicant shows that such jams are extremely improbable, as explained later in this preamble in the section entitled, ''Changes to § 25.671(c)(3).'' Therefore, this type of failure would be excluded from the prohibition on a single failure being the cause of a catastrophic failure condition under § 25.1309(b)(1)(ii).

b. Brakes and Braking Systems, Addressed by § 25.735

Proposed § 25.1309(b) would not apply to single failures in the brake system. Those failures are adequately addressed by § 25.735(b)(1) at amendment 25–107, which limits the effect of a single failure of the brake system to doubling the stopping distance of the brake roll. The diverse

circumstances under which such a failure could occur make any structured determination of its outcome or frequency indeterminate. The proposed § 25.1309 would apply to all other failures in the brake system.

c. Emergency Egress Assist Means and Escape Routes, Addressed by § 25.810, and Emergency Lighting, Addressed by § 25.812

Proposed § 25.1309(f) would also exclude the failure effects addressed by §§ 25.810(a)(1)(v) and 25.812 from § 25.1309(b). The failure conditions relevant to the cabin safety equipment installations addressed by §§ 25.810(a)(1)(v) (escape slides) and 25.812 (emergency lighting) are associated with varied evacuation scenarios for which the probability of occurrence cannot be determined due to the multitude of factors that can lead to an evacuation. For these types of equipment, the FAA has not been able to define appropriate scenarios under which an applicant could demonstrate compliance with § 25.1309(b). The FAA considers it acceptable in terms of safety, to require particular design features or specific reliability demonstrations for these types of equipment and, therefore, the FAA proposes to exclude them from the requirements of § 25.1309(b).

d. Powerplant—Installation, Addressed by § 25.901(c)

The FAA proposes to revise § 25.901(c) to state that the requirements of § 25.1309 apply to powerplant and APU installations and to list the failures that do not need to comply with § 25.1309(b). Those exceptions, which would be consistent with existing requirements, are engine case burn-through or rupture, uncontained engine rotor failure, and propeller debris release. The FAA specifies those exceptions in proposed §§ 25.901(c) and 25.1309(f). Excepting these failures from § 25.1309(b) would not degrade the level of safety from that required by current regulations. An applicant must already minimize the effects and occurrence rates of these failures when complying with:

- Part 33, ''Airworthiness Standards: Aircraft Engines.''
- Part 35, ''Airworthiness Standards: Propellers.''
- Paragraph (d)(1) of § 25.903, ''Engines.''
- Paragraph (d) of § 25.905, ''Propellers.''
- Section 25.1193, ''Cowling and nacelle skin.''

This proposed revision would also harmonize § 25.901(c) with CS 25.901(c).

3. Flightcrew Alerting and Errors

a. Categorization of Required Flightcrew Information

Section 25.1309(c) currently requires that warning information must be provided to the flightcrew to alert them to unsafe system operating conditions, and to enable them to take appropriate corrective action. The FAA proposes to revise § 25.1309(c) to require information be provided to the flightcrew concerning unsafe system operating conditions, rather than requiring only warnings. The proposed revisions to § 25.1309(c) would make the provision compatible with the requirements of current § 25.1322 (''Warning, caution, and advisory lights''), which details requirements for the presentation of warning, caution, and advisory alerts installed on the flight deck. For example, § 25.1322 requires a warning indication if immediate action by a flightcrew member were necessary; however, the particular method of indication would depend on the urgency and need for flightcrew awareness or action that is necessary for the particular failure. The proposed revision to § 25.1309(c) (to remove the requirement for ''alert'') would remove an incompatibility with § 25.1322, which allows other sensory and tactile feedback from the airplane caused by inherent airplane characteristics to be used in lieu of dedicated indications and annunciations if the applicant can show such feedback is sufficiently timely and effective to allow the crew to take corrective action.[35]

b. Minimization of Crew Errors

Proposed § 25.1309(c) would require that applicants design ''systems and controls, including indications and annunciations'' to minimize crew errors that could create additional hazards. The proposed change would remove a reference to ''warnings,'' which are addressed in § 25.1322, and instead use the broader phrase ''indications and annunciations.'' The additional hazards that an applicant's proposed design must minimize, under this proposal, are those that could occur after a failure and those caused by inappropriate actions made by a crewmember in response to the failure. As specified in § 25.1585, any flightcrew procedures necessary to ensure continued safe flight and landing after the occurrence of a failure indication or annunciation must be described in the approved AFM, AFM revision, or AFM supplement, unless the FAA evaluates the procedures and accepts that the procedures are part of normal aviation abilities.

C. Interaction of Systems and Structures (New § 25.302)

The FAA proposes a new section, § 25.302, that would require an applicant to account for systems, and their possible failure, when assessing the structural performance of its proposed design.

As a result of advances in flight control technology, the structure requirements in part 25 do not provide an adequate regulatory basis to establish an acceptable level of safety for airplanes equipped with systems that affect structural performance such as the electronic flight control system. Earlier automatic control systems usually had two failure states: loss of function and malfunction. Flightcrews could readily detect these conditions. The new electronic flight control systems are more sophisticated and offer advantages that include load limiting and load alleviation.[36] Failures in these systems, however, may allow the system to function in degraded modes that flightcrews may not readily detect, and in which load alleviation may be lost or reduced.

The LDHWG developed recommendations for design standards for airplanes equipped with systems that, directly or as a result of failure, affect the structural performance of the airplane. Structural performance is the capability of the airplane to meet the structural requirements of part 25.

While the FAA has applied the LDHWG recommendations for design standards to airplane certification programs since 1999 via special conditions, on December 12, 2005, EASA incorporated the design standards developed by the LDHWG into its regulatory framework as CS 25.302 and appendix K of CS–25 at amendment 25/1.[37] Similarly, the FAA now proposes to adopt these criteria, with some modifications, as new § 25.302. The codification of these requirements in

[35] See draft AC 25.1309–1B, sections 5.3.1.6 and 5.4.1.

[36] ''Load limiting and load alleviation'' refer to the reduction of structural loads by automatic control surface limits or movements. For example, vertical tail loads may be reduced by a rudder limiter that automatically reduces the rudder deflection upper limit as speed increases. Wing load alleviation may be accomplished by automatic upward movements of the outboard ailerons during a pitch up maneuver, thereby reducing the loads on the outboard portion of the wing.

[37] *https://www.easa.europa.eu/en/document-library/certification-specifications/cs-25-amendment-1.*

part 25 will eliminate the need for the FAA to issue special conditions on future certification projects. This will result in increased efficiency for both the FAA and the industry in certification programs, without impacting the level of safety.

1. Applicability of New § 25.302

Proposed § 25.302 would apply to all systems that affect structural performance of the airplane. A system affects structural performance if it can induce loads on the airframe, or change the response of the airplane to inputs such as gusts or pilot actions, either when operating normally or as a result of failure. Examples of systems that can affect structural performance are load alleviation systems, modal suppression systems, stability augmentation systems, and fuel management systems, as well as hydraulic, electrical, and mechanical systems.

2. Normal Operation

Proposed § 25.302 would require that an applicant account for the influence of systems, operating normally, when showing compliance with subparts C and D of part 25. The proposed rule would require an applicant to derive limit loads for the conditions specified in subpart C and to account for any behavior or effect of the system on the structural performance of the airplane. This means that the applicant would need to account for any significant nonlinearity, including the rate of displacement of control surfaces, thresholds, or any other system nonlinearities, when deriving limit loads.

Proposed § 25.302 would also require that an applicant shows that the airplane meets the strength requirements of part 25 for static and residual strength, using specified factors to derive ultimate loads from the limit loads. The proposed rule would require the applicant to investigate the effect of nonlinearities beyond limit conditions to ensure that the behavior of the system presents no anomaly compared to the system's behavior below limit conditions.

3. Failure Condition Effect on Structural Performance

Proposed § 25.302(a) through (e) would require an applicant to assess the effect of failure conditions on the airplane's structural performance. Proposed § 25.302 would require assessment of all failure conditions not shown to be extremely improbable, or that result from a single failure, as typically determined by the applicant's system safety assessment.

Proposed § 25.302(a) would require that the airplane's design be able to withstand the loads, including control system loads, resulting from failure conditions, at speeds up to V_C/M_C, the design cruising speed. Such loads are limit loads as described in § 25.301, and an applicant then applies a safety factor [38] of 1.5 to determine the airplane's ultimate loads. Proposed § 25.302(a) would require the applicant to determine the loads assuming ''realistic scenarios, including pilot corrective actions.'' Draft AC 25.1309—1B and AC 25.671–X, ''Control Systems—General,'' would provide guidance for applicants on means of determining these effects of failure conditions, including realistic effects. Under the proposed rule, the applicant would be responsible for developing scenarios that describe the response of the airplane and the response of the pilots following a failure condition, using the guidance in those ACs or another acceptable method.

Proposed § 25.302(b) would require that, in the system-failed state (*i.e.,* after a particular system has failed), the airplane be able to withstand the limit flight and ground load conditions specified in subpart C. The applicant would only be required to assess flight conditions at speeds up to V_C/M_C or the speed limitation prescribed by the AFM for the remainder of the flight. An applicant must apply a safety factor of 1.5 to determine ultimate loads, with two exceptions.

The first proposed exception to § 25.302(b) would allow a safety factor of 1.0, rather than 1.5, if the failure condition would be immediately annunciated or otherwise obvious to the flightcrew. The proposed rule would also allow the applicant to take into account any relevant reconfiguration and flight limitations specified in the AFM. The FAA proposes a safety factor of 1.0 in this case because the probability is very low that a design load condition would occur after a system failure on the same flight. The probability of an extreme maneuver (*i.e.,* a maneuver that would result in load levels approaching design limit loads) is further reduced because the pilot would be aware that a failure condition had occurred. If relying on annunciation as the method of informing the flightcrew, the applicant should show that the relevant annunciation system is reliable per § 25.1309(b).

The second proposed exception to § 25.302(b) would allow a safety factor of 1.25 if the failure condition would not be annunciated but the probability is extremely remote. The FAA proposes a safety factor of 1.25 in this case because the probability is very low that an extremely remote failure condition and a design load condition would occur on the same airplane, even if the failure condition would not be annunciated.

The FAA does not intend for proposed § 25.302 to require an applicant to evaluate every subpart C load condition under every possible failure condition and at each speed, altitude, and payload configuration for which the airplane is designed. Instead, the FAA anticipates that the applicant would first identify those failure conditions that could impact the loads analysis required by subpart C. The applicant would then select load conditions that the applicant presumes could be affected by those failure conditions. Given the appropriate safety factor (1.0, 1.25, or 1.5), the applicant would then determine whether any of these load conditions, when affected by a failure condition, would yield higher loads than the load conditions without the effects of the failure condition. If so, the applicant would expand its analysis, as necessary, to ensure that the requirement of proposed § 25.302 would be met.

Proposed § 25.302(c) would require that, when conducting the damage tolerance evaluation required by § 25.571, the applicant take into account the fatigue loads induced by any failure condition. The rule would require that these fatigue loads be included as part of the typical loading spectra [39] at a rate commensurate with the probability of their occurrence.

If a failure condition could affect the airplane's residual strength loads, proposed § 25.302(d) would require the applicant to conduct a residual strength evaluation as specified in § 25.571(b) under the assumption that the failure condition had occurred. The proposed rule would allow an applicant to calculate these loads using at least two-thirds of each of the safety factors specified for the static strength assessment. The applicant would conduct this residual strength evaluation, which assumes a system failure condition has occurred, separately from the normal residual strength evaluation required by § 25.571(b), which does not assume a

[38] A safety factor is a design factor used, in this instance, to provide for the possibility of loads greater than those anticipated in normal operating conditions, and for uncertainties in design.

[39] ''Typical loading spectra'' is described in AC 25.571–1D, *Damage Tolerance and Fatigue Evaluation of Structure.*

system failure condition has occurred. The two-thirds factor in proposed § 25.302(d) is consistent with the method of determining residual strength loads in § 25.571(b).[40]

Proposed § 25.302 would not apply to the flight control jam conditions covered by proposed § 25.671(c), or the discrete source events already covered by § 25.571(e). Proposed § 25.671(c) and current § 25.571(e) establish criteria to address these specific failures, and the respective ACs, draft AC 25.671–X and current AC 25.571–1D, *Damage Tolerance and Fatigue Evaluation of Structure,* would describe methods of compliance. Proposed § 25.302 would also not apply to any failure or event that is external to (not part of) the system being evaluated and that would itself cause structural damage. These conditions are already addressed by other rules, such as §§ 25.365, 25.571, 25.841, and 25.901.

4. Dispatch in a System-Failed State

Proposed § 25.302(e) would provide structural requirements for dispatch under the master minimum equipment list developed by the applicant. If the list would allow dispatch in a system-failed state, the airplane would need to continue to meet the design load requirements of subpart C in that system-failed state, without any reduction in safety factor. The applicant would be allowed to take into account any relevant operating limitations, including configuration changes, specified for the dispatched configuration. In addition, the airplane would also need to meet § 25.302(a) and (b), accounting for any subsequent single failure, and separately, any combination of failures not shown to be extremely remote.

5. Differences Between Proposed § 25.302 and EASA CS 25.302

As noted previously, EASA has incorporated the criteria regarding interaction of systems and structures criteria recommended by the LDHWG into its regulatory framework as CS 25.302 and appendix K of CS–25. Proposed § 25.302 differs from CS 25.302 and appendix K in a number of ways.

i. Determination of Safety Factor

The most significant difference between the proposed § 25.302 and CS 25.302 is that the latter defines structural factors of safety and the flutter speed margin on a sliding scale based on probability, while the proposed § 25.302 specifies discrete safety factors and does not change the flutter speed margin currently specified in § 25.629, as described below.

ii. Flutter Speed Margin

Proposed § 25.302 does not include any aeroelastic stability requirements and would only address the effect of systems on loads requirements. Section 25.629 and CS 25.302 both specify flutter speed margins for failure conditions. The margins in CS 25.302 are based on the probability of the condition's occurrence, while § 25.629 defines a single speed margin for every failure condition regardless of its probability. The FAA believes the current speed margin specified in § 25.629 is adequate, and there is no need to propose more specific failure criteria based on probability of occurrence. The current speed margin specified in § 25.629, which has been in place since Amendment 25–0 of 14 CFR part 25, has proven effective in service.

iii. Regulatory Structure Differences

The FAA's proposal is contained entirely within § 25.302 and does not add a new appendix to part 25. Also, the FAA's proposal would not include the two paragraphs in appendix K of CS–25 that are general in nature and do not contain any specific requirements. These paragraphs, K25.1(a) and (b) of CS–25, discuss application of the requirements in the appendix.

iv. Fully Operative Condition

Appendix K of CS–25 includes several paragraphs that require evaluation of the airplane in a system-fully-operative condition. The FAA's proposal would replace those paragraphs with a simpler requirement that the applicant account for the effects of systems when showing compliance with the requirements of subparts C and D. The FAA does not regard this as a substantive difference in the criteria.

v. Safety Factor at the Time of Failure

For the applicant's assessment of the failure condition at the time the failure occurs, CS 25.302 allows a reduced safety factor, ranging from 1.5 to 1.25, based on the probability of the failure. The FAA's proposal would require a safety factor of 1.5, regardless of the probability of the failure. The FAA determined it's better to define structural strength capability using discrete factors of safety rather than a sliding scale based on probability because probability estimates are not that precise. The FAA also determined the proposed 1.5 safety factor requirement would be easily met by applicants for type certification because systems that affect structural performance are typically passive systems, which alleviate loads rather than initiate loads.

vi. Safety Factor for Continued Flight After Initial Failure

For the assessment of continued flight, after the initial failure condition occurs, CS 25.302 requires the applicant to determine loads for several subpart C load conditions. In contrast, the FAA's proposal would require the applicant to determine loads for any subpart C load condition that would be affected by the failure condition. In addition, CS 25.302 allows a reduced safety factor, ranging from 1.5 to 1.0, based on the probability of the failure condition's occurrence. In contrast, the FAA's proposal would specify a safety factor of 1.5, unless the failure condition would be annunciated, in which case the rule would allow a safety factor of 1.0; or, if the failure condition was extremely remote, the rule would allow a safety factor of 1.25. As noted above, the FAA proposes to use discrete factors of safety rather than a sliding scale based on probability because probability estimates are not that precise. The FAA proposed rule would be simpler to apply than EASA's method because an applicant would use discrete safety factors, rather than sliding scales. For failures that are annunciated, this proposal would be less stringent than CS 25.302, since proposed § 25.302 would allow a safety factor of 1.0 regardless of the probability of failure. However, the FAA's proposal recognizes that annunciation of the failure would limit exposure to a subsequent design load condition to the remainder of the flight. Because of the very low probability of a system failure condition followed by a design load condition occurring on the same flight, the FAA believes a safety factor of 1.0 is appropriate.

vii. Fatigue and Damage Tolerance

Both § 25.571 and CS 25.571 require a ''residual strength evaluation'' of the airplane that demonstrates structural strength capability in the presence of fatigue cracks and any other anticipated environmental or accidental damage. The residual strength loads used for those evaluations are limit loads (safety factor of 1.0). Proposed § 25.302 would mimic the requirement in CS 25.302 for an additional assessment of residual strength using two-thirds of the loads specified for the continuation of flight. However, these loads would vary between § 25.302 and CS 25.302, as described in the previous paragraph.

[40] In § 25.571(b), residual strength loads are determined using a safety factor of 1.0, which is two-thirds of the typical safety factor of 1.5 required by § 25.303.

Proposed § 25.302 would also echo CS 25.302's requirement that the applicant evaluate the fatigue loads induced by any failure condition. However, the FAA proposal is more specific than CS 25.302 in how that evaluation would be accomplished.

viii. Failure Annunciation

CS 25.302 outlines various failure annunciation criteria for affected system failure conditions. The FAA's proposal does not specify annunciation criteria, but instead determines the allowable safety factor based upon whether the failure condition would be annunciated.

ix. Dispatch Configuration

CS 25.302 requires that anticipated dispatch configurations meet the strength and flutter aspects of CS 25.302, while accounting for the probability of the airplane being in that configuration. The FAA's proposal would require that the structural strength criteria in the proposed rule—§ 25.302(a) through (b)—be met for the airplane in the dispatch configuration while accounting for any subsequent single failure or any subsequent combination of failures not shown to be extremely remote.

D. Turbojet Thrust Reversing Systems

The current regulation for thrust reversals in flight, § 25.933(a)(1), requires that, during any reversal in flight, the engine will produce no more than flight-idle thrust. Additionally, current § 25.933(a)(1) requires an applicant to show that each operable reverser can be restored to the forward thrust position, and that the airplane is capable of continued safe flight and landing under any possible position of the thrust reverser. Proposed § 25.933(a)(1)(ii) would allow an applicant to demonstrate compliance with § 25.1309(b) for these thrust reversing systems.

The application of the current standards has not precluded the loss of airplane control following the unwanted in-flight deployment of the thrust reverser. The investigation of the 1991 Lauda Air accident involving a Boeing Model 767 airplane revealed that an unwanted in-flight thrust reversal at high speeds and high power conditions on an airplane with wing-mounted, high-bypass turbofan engines can result in disruption of air flow over the wing and the loss of lift and controllability. Until this accident, the service history of in-flight thrust reverser deployment incidents indicated that an in-flight thrust reverser deployment at high power would not result in a catastrophic event. However, engine installations on modern transport category airplanes include high—bypass turbofan engines mounted close to the wing, and forward of the wing leading edge, to reduce aerodynamic drag and provide sufficient ground clearance. As a result, these airplanes do not have a sufficient control margin in the event of an unwanted in-flight thrust reversal and, therefore, cannot comply with the rule during all phases of flight.

To allow applicants for type certification flexibility in their design and achieve the intended level of safety, the FAA proposes to allow an applicant to demonstrate using a system safety assessment, per the proposed 14 CFR 25.1309(b), that unwanted deployment of the thrust reverser will not occur in flight. The FAA derived this option, known as the ''reliability option,'' from the PPIHWG's recommendations.[41]

The PPIHWG evaluated methods used by applicants to assure reliability of other critical systems to determine if applicants could effectively apply the same requirements to thrust reverser systems. The PPIHWG concluded that design features such as redundant locking mechanisms (eliminating catastrophic single failures) in conjunction with more rigorous design and maintenance assessments (reducing exposure to latent failures) can provide a level of safety equivalent to the current rule. The FAA agrees.

Allowing an applicant to develop thrust reversing systems in compliance with § 25.1309, especially by reducing those systems' exposure to SLFs, would improve the level of safety because unwanted in-flight thrust reverser deployments would not be expected to occur during the entire operational life of all airplanes of one type, and eliminate the need for flightcrew procedures in response to an in-flight thrust reversal. Proposed § 25.1309 would provide a level of safety at least equivalent to current § 25.933(a)(1)(ii). This reliability option would allow an applicant to use a more practical approach to show compliance in all phases of flight for all known engine installations.

This proposal is consistent with the FAA's current practice because the FAA has been implementing the PPIHWG's recommendations through ELOS findings on specific projects since 1994. The FAA has accepted SSAs that show that in-flight thrust reverser deployment is extremely improbable as an alternative to flight tests that show full controllability across the entire flight envelope. The FAA has also accepted a combination of these two methods to allow applicants for type certification more flexibility when demonstrating an ELOS. For example, within that portion of the flight envelope where controllability cannot be shown, applicants have shown that the probability of an unwanted in-flight thrust reversal is extremely improbable. Conversely, applicants who have shown compliance primarily using the reliability option have shown that there are portions of the flight envelope where the airplane is controllable, and an unwanted in-flight deployment can be classified as less severe than catastrophic. This mixed approach has allowed applicants more flexibility in the thrust reverser system design and maintenance intervals than under the traditional rule. Under current ELOS determinations, applicants select either option, or combine them, to achieve the level of safety intended by the rule. With this proposal, the FAA regulations would continue to allow such combinations, but without the need for an ELOS. This will result in increased efficiency for both the FAA and the industry in certification programs, without impacting the level of safety established by § 25.933(a)(1).

Based on the PPIHWG's recommendations, the FAA also proposes that the current requirements in § 25.933(a)(1)—that each operable reverser can be restored to the forward thrust position, and that during any reversal in flight the engine will produce no more than flight-idle thrust—would no longer be necessary given the other proposed changes to this section. If a design can meet § 25.1309(b) without these features, then they need not be mandatory. Further, in accordance with proposed § 25.1309(a), any properly functioning thrust reverser would be required to respond appropriately to all anticipated flightcrew commands.

E. Flight Control Systems Safety Assessment Criteria

1. Changes to § 25.671(c) Failure Criteria

a. Changes to § 25.671(c), (c)(1), and (c)(2)

The current design and failure criteria for flight control systems, in § 25.671(c), were largely derived from Civil Air Regulations 4b.320, which preceded the current 14 CFR part 25 standards established in 1965. The FAA updated those requirements in amendment 25–23 (35 FR 5674, April 8, 1970) to account for automatic and powered flight control technology improvements and to consolidate the failure criteria

[41] For more information about the PPIHWG's recommendations, see the PPIHWG report in the docket for this rulemaking.

and make them applicable to the entire control system.

Section 25.671(c) requires that the airplane be capable of continued safe flight and landing following the failure conditions listed in § 25.671(c)(1) and (2) and the jamming conditions in § 25.671(c)(3).

Paragraph (c)(1) of § 25.671 requires an applicant to show continued safe flight and landing following any single failure.

Paragraph (c)(2) requires the applicant to show continued safe flight and landing following any combination of failures not shown to be extremely improbable. Paragraph (c)(2) also includes examples of failures that must be evaluated.

The FAA proposes to remove the flight control system failure criteria in § 25.671(c)(1) and (2), including the examples of specific failures that must be evaluated, and instead require safety assessment of flight control systems to be regulated by § 25.1309. Section 25.1309 would be used to address the flight control SSA, except with regard to jamming. The FAA also proposes to retain the examples in § 25.671(c)(2) as failures, that must be considered in showing compliance with § 25.629 as discussed later in this preamble (section I.A.2).

Finally, current § 25.671(c) requires that probable failures have only minor effects and be capable of being readily counteracted by the pilot. The FAA proposes to remove this requirement because its effect on safety would be covered by proposed § 25.1309. Proposed § 25.1309 would require that each major failure condition be remote, which means that probable failures (more likely than remote) must have only minor effects (must not be major).

b. Changes to § 25.671(c)(3)

Section 25.671(c)(3) requires that an applicant evaluate any jam in a control position normally encountered, as well as runaway [42] of a flight control to an adverse position and subsequent jam. The FAA proposes to consolidate the current § 25.671(c)(3) flight control jams requirement under § 25.671(c) and revise as described below.

The flight control jams requirement in § 25.671(c)(3) has generated debate about the meaning of a ''normally encountered'' control position. This phrase came under scrutiny after two Boeing Model 737 accidents, and the FAA and NTSB investigations that followed.[43] [44] The issue was whether ''normally encountered'' should be interpreted as a small control surface deflection, which occurs routinely, or as a large or even full control surface deflection, which occurs much less frequently. Demonstrating compliance assuming a fully deflected and jammed control surface is much more difficult than doing so with a small control surface deflection. In May 1995, the FAA issued a policy letter specifying what ''normally encountered'' control positions (which included large deflections) should be used for compliance with § 25.671(c)(3).[45] In October 1996, the NTSB issued Safety Recommendation A–96–108, later superseded by Safety Recommendation A–99–23, which recommended that applicants evaluate control jams at fully-deflected control positions. The FCHWG considered the NTSB safety recommendation in developing its recommendation. The FCHWG recommended that the phrase ''normally encountered'' be retained in the rule, and that an FAA AC define the ''normally encountered'' control positions. The FAA proposes to adopt the FCHWG recommendation.

Draft AC 25.671–X would explain that the FAA considers ''normally encountered'' positions as the range of control surface deflections, from neutral to the largest deflection expected to occur in 1,000 random operational flights, without considering other failures. The AC would also provide guidance for performance based criteria that define environmental and operational maneuver conditions, and the resulting deflections that could be considered normally encountered positions.

A second compliance issue related to § 25.671(c)(3) stems from an applicant's use of probability analysis to show that a jam, or a runaway and jam, is ''extremely improbable.'' Section 25.671(c)(3) requires the airplane to be capable of continued safe flight and landing after experiencing jamming conditions, including runaway of a flight control surface and subsequent jam, unless the jamming condition is shown to be extremely improbable or the jam can be alleviated. While current § 25.671(c)(3) allows the use of probability analysis, applicants have generally been unable to demonstrate that jamming conditions are ''extremely improbable,'' except for conditions that occur during a very limited time just prior to landing. Therefore, the FAA proposes to revise § 25.671(c) to require that the applicant's safety assessments assume that the specified jamming conditions will occur, regardless of those conditions' probability. The FAA also proposes to exclude jamming conditions that occur immediately before touchdown if these can be shown to be extremely improbable. For jams that occur just before landing, some amount of time and altitude is necessary in order to recover, and there is no practical means by which a recovery can be demonstrated. Therefore, the applicant would be allowed to show such a jamming condition is extremely improbable based on the limited time exposure.

The FAA also proposes to revise § 25.671(c) to define the types of jams that must be evaluated as those that result in a flight control surface or pilot control that is fixed in position due to a physical interference.

Proposed § 25.671(c) would also require that, in the presence of a jam evaluated under that paragraph, any additional failure conditions that could prevent continued safe flight and landing must have a combined probability of less than 1/1000. This is to ensure adequate reliability of any system necessary to alleviate the jam when it occurs.

Lastly, the FAA proposes to remove the requirement to account for a runaway of a flight control surface and subsequent jam. The FAA does not believe it is necessary to include this requirement in § 25.671 because the SSA required by § 25.1309 would account for any failure condition that leads to a runaway of a flight control surface. Runaways of flight control surfaces will be evaluated under § 25.1309 regardless of whether they are due to an external source, such as a foreign object or control system icing, or due to failures that are internal to the flight control system.

2. Other Changes to § 25.671

The FAA proposes to revise § 25.671(a) to add a requirement that the flight control system continue to operate and respond as designed to commands, and not hinder airplane recovery, when the airplane experiences any pitch, roll, or yaw rate, or vertical load factor that could occur due to operating or environmental conditions, or when the airplane is in any attitude. This would ensure there are no features or unique

[42] A runaway of a flight control occurs when the control surface moves to its fully extended position without pilot input and as the result of some type of failure.

[43] NTSB Aircraft Accident Report NTSB/AAR–01/01 is available in the docket and at *https://www.ntsb.gov/investigations/AccidentReports/Reports/AAR0101.pdf.*

[44] NTSB Aircraft Accident Report NTSB/AAR–99/01 is available in the docket and at *https://www.ntsb.gov/investigations/AccidentReports/Reports/AAR9901.pdf.*

[45] Policy Statement PS–ANM100–1995–00020 is available in the docket and at *https://www.faa.gov/regulations_policies/policy_guidance/.*

characteristics (including, for example, computer errors that might occur at certain airplane bank angles) of the control system design that would restrict the pilot's ability to recover from any attitude, rate of rotation, or vertical load factor expected to occur due to operating or environmental conditions. The phrase ''operating or environmental conditions'' would have the same meaning as in proposed § 25.1309(a)(1): the full normal operating envelope of the airplane, as defined by the AFM, together with any modification to that envelope associated with abnormal or emergency procedures, and any anticipated crew action. That envelope includes other external environmental conditions that the airplane is reasonably expected to encounter, such as atmospheric turbulence.

The FAA proposes to revise § 25.671(b) to require that the system be designed or marked to avoid incorrect assembly that could result in ''failure of the system to perform its intended function,'' rather than in the ''malfunctioning of the system.'' The FAA also proposes to revise § 25.671(b) to restrict the use of such marking to cases in which compliance by design means is impractical. The objective of these proposed changes is to ensure that the system performs its intended function.[46]

Section 25.671(d) requires that the airplane remain controllable if all engines fail. The FAA proposes to revise this section to require that not only must the airplane be controllable following failure of all engines, but that an approach and flare to a landing and controlled stop must also be possible, assuming that a suitable runway is available. The proposed rule would also apply the requirement to the failure of all engines at any point in the flight. The FAA also proposes to make the last sentence of § 25.671(d) active voice by changing it from ''Compliance with this requirement may be shown by analysis where that method has been shown to be reliable,'' to ''The applicant may show compliance with this requirement by analysis where the applicant has shown that analysis to be reliable.'' This revision would not change the substance of the requirement.

The FAA also proposes to add a new paragraph (e) to § 25.671, which would require that the flight control system indicate to the flightcrew whenever the primary control means are near the limit of control authority. On airplanes equipped with fly-by-wire control systems, there is no direct tactile link between the flightdeck control and the control surface, and the flightcrew may not be aware of the actual control surface position. If the control surface is near the limit of control authority, and the flightcrew is unaware of that position, it could negatively affect the flightcrew's ability to control the airplane in the event of an emergency. The flight control system could meet this requirement through natural or artificial control feel forces, by cockpit control movement if shown to be effective, or by flightcrew alerting that complies with §§ 25.1309(c) and 25.1322.

The FAA also proposes to add a new paragraph (f) to § 25.671, which would require that the flight control system alert the flightcrew whenever the airplane enters any mode that significantly changes or degrades the normal handling or operational characteristics of the airplane. On some flight control system designs, there may be submodes of operation that change or degrade the normal handling or operational characteristics of the airplane. Similar to control surface awareness, the flightcrew should be made aware if the airplane is operating in such a submode.

The FAA derived the requirements of proposed § 25.671(e) and (f) from its experience certifying applications for fly-by-wire systems. The proposed requirements summarized in this section for revision to § 25.671 have been applied on numerous programs through ELOS findings. Codifying these requirements in part 25 would result in increased efficiency for both the FAA and the industry in certification programs, without impacting the level of safety.

F. Certification Maintenance Requirements

Section H25.4(a) of appendix H to part 25 requires that airworthiness limitations within the ICA reside in a segregated and clearly distinguishable section titled ''Airworthiness Limitations section.'' The ALS is required to include mandatory maintenance actions approved by § 25.571 for damage tolerant structures, by § 25.981 for fuel tank systems, and by § 25.1701 for the electrical wiring interconnection system (EWIS). However, section H25.4 does not include the maintenance actions typically established during the certification process as CMRs, using the guidance in AC 25–19A, *Certification Maintenance Requirements.* As a result, the current regulations are not consistent in how they address system-related maintenance requirements.

AC 25.1309–1A provides guidance for an applicant to include maintenance actions when it shows compliance with § 25.1309, and AC 25–19A provides guidance on the selection, documentation, and control of CMR to implement such maintenance actions. CMRs, when properly implemented, are required tasks to detect safety significant failures that would, in combination with one or more other failures, result in a hazardous or catastrophic failure condition. CMRs are developed to show compliance to § 25.1309, and other regulations requiring safety analyses such as §§ 25.671, 25.783, 25.901, and 25.933. As described in AC 25–19A, establishing CMRs is not always necessary if there is another suitable method to identify the needed maintenance task to prevent a failure condition from developing.

In practice, industry and the other certification authorities have treated CMRs as equivalent to airworthiness limitations. CMRs are currently considered by operators as the systems counterpart to the airworthiness limitations for primary structures, fuel tank systems, and EWIS. However, unlike these airworthiness limitation items, the CMRs do not have a regulatory basis upon which to standardize their development. Airworthiness limitations for systems that have hazardous and catastrophic failure effects are just as relevant to the safety of the airplane as the airworthiness limitations currently required for fuel tank systems, EWIS, and damage tolerant primary structures. Many applicants have been voluntarily including CMRs in the ALS of the ICA.

Based on the forgoing, the FAA proposes to revise § 25.1309(d) to require the applicant to establish CMRs to prevent development of the failure conditions described in § 25.1309(b). Section 25.1309(d) would require these maintenance requirements to be included in the ALS of the ICA required by § 25.1529. This proposal would codify current industry practice the FAA has accepted as a means of compliance with § 25.1309 and other system safety regulations, for many years.

In addition, the type certification process often results in the establishment of CMRs for systems that are not regulated by § 25.1309 (for example, a CMR may be established for flutter prevention under § 25.629). To provide a common regulatory basis for such CMRs, including those established

[46] Draft AC 25.671–X will note that by ''assembled'' in § 25.671(b), the FAA means not only the connection of physical parts, but also the installation of software that will be part of the approved design. This reflects current practice and echoes the installation requirements of § 25.1301.

under § 25.1309, the FAA proposes a new section, H25.4(a)(6). This proposed rule would require an applicant to include any CMR in the ALS of the ICA, if the CMR was established to comply with any applicable provisions of part 25.

G. Miscellaneous Amendments

1. Method of Compliance With § 25.1309(b)

The FAA proposes to remove current § 25.1309(d). Section 25.1309(d) currently requires an applicant to show that a design complies with § 25.1309(b) by using analysis, and where necessary, ground, flight, or simulator testing. Section 25.1309(d) also describes the features that the applicant's analysis must consider.

The FAA reconsidered the requirement in § 25.1309(d) and concluded that this requirement is no longer needed within the regulatory text, since it specifies a particular, yet incomplete, process for compliance with § 25.1309(b). This conclusion is consistent with the SDAHWG recommendation to remove § 25.1309(d) and place the process for compliance with § 25.1309(b) into non-mandatory guidance material. Removing these steps from the regulation is not intended to alter the evaluations required by § 25.1309(b). Instead, it is intended to reflect that § 25.1309(b) provides performance-based requirements for which the methods of compliance should be appropriate to the particular system. In addition, the current § 25.1309(d) provides an incomplete list of considerations, and other, equally important factors may need to be included in the applicant's proposed assessments. These factors can include environmental conditions, complexity of the design, common cause of multiple failures, flightcrew capability and workload, and safety margin after a failure, all of which will vary for each application and which the FAA will discuss in the accompanying draft guidance.

Because § 25.1309(d) would no longer prescribe specific methods for demonstrating compliance with § 25.1309(b), the FAA also proposes to remove the reference to § 25.1309(d) from § 25.1365(a). This change would not affect the level of safety provided by the current rule, because § 25.1365(a) would continue to reference the requirements of § 25.1309(b). This proposal would harmonize § 25.1365(a) with CS 25.1365(a).

2. Failure Examples Related To Flutter

This proposal would relocate several specific failures from § 25.671(c)(2) to the aeroelastic stability requirements of § 25.629. Section 25.671(c)(2) specifies examples of failure combinations that must be evaluated, including dual electrical and dual hydraulic system failures, and any single failure combined with any probable hydraulic or electrical failure. Section 25.629(d)(9) currently requires that the airplane be shown to be free from flutter considering various failure conditions considered under § 25.671, which includes those failure conditions specified in § 25.671(c)(2). The FAA is proposing to remove those examples from § 25.671(c)(2) in conjunction with related changes to § 25.1309 described in section III.E of this preamble. However, the specific failure conditions identified in § 25.671(c)(2) have provided an important design standard for dual actuators on flight control surfaces that rely on retention of restraint stiffness or damping for flutter prevention. Therefore, this proposal relocates these failure conditions from § 25.671(c)(2) to the aeroelastic stability requirements of § 25.629(d). This change would not affect the level of safety provided in current §§ 25.671(c)(2) and 25.629(d).

3. Other Changes to § 25.629

Section 25.629(b) requires the airplane to be free from aeroelastic instability for ''all configurations and design conditions'' within the speed and altitude envelopes specified in § 25.629(b)(1) and (2). Such design conditions include the range of load factors within the normal flight envelope. The normal flight envelope is defined in § 25.333. Therefore, this proposal would specify that the aeroelastic stability envelope includes the range of load factors specified in § 25.333.

4. EWIS Requirements

The FAA proposes to remove paragraph (b) from § 25.1301 and to remove paragraph (f) from § 25.1309. Section 25.1301(b) requires that a proposed airplane's EWIS meet the requirements of subpart H of part 25. Subpart H was created (at amendment 25–123, in 2007) as the single place for the majority of wiring certification requirements. The references in §§ 25.1301(b) and 25.1309(f) are redundant and unnecessary because subpart H specifies its applicability. The FAA has determined that such redundancy is not needed because the subpart H requirements can stand alone.

5. Removal of Redundant Requirements

The FAA proposes to remove paragraph (e) from § 25.1309. The requirements of paragraph (e) concern compliance with § 25.1309(a) and (b) for electrical system and equipment design. The requirements of paragraph (e) are unnecessary because they are redundant to the general risk assessment of § 25.1309 and to §§ 25.1351 through 25.1365 specifically related to electrical systems.

H. Petitions for Rulemaking

During the development of this proposed rule, the FAA considered two relevant petitions for rulemaking submitted in 1986. Summaries of these petitions were published in the **Federal Register**.[47] The petitions and a disposition of the petitions are included in the docket for this NPRM. This NPRM proposes some changes that were suggested in those petitions, including adding definitions of probability terms[48] and revising the methods for accounting for failure effects.[49] See proposed §§ 25.4 and 25.1309.

I. Advisory Material

The FAA has drafted three new ACs and revisions to two existing ACs to provide guidance material for acceptable means, but not the only means, of showing compliance with the regulations proposed for revision by this NPRM. The FAA will post the draft ACs in the docket and on the ''Aviation Safety Draft Documents Open for Comment'' web page at *http://www.faa.gov/aircraft/draft_docs/*.[50] The FAA requests that you submit comments on the draft AC through either the docket or through that web page. The draft ACs are as follows:

- AC 25.671–X, *Control Systems—General.*
- AC 25.901–X, *Safety Assessment of Powerplant Installations.*
- AC 25.933–X, *Unwanted In-Flight Thrust Reversal of Turbojet Thrust Reversers.*
- AC 25.629–1C, *Aeroelastic Stability Substantiation of Transport Category Airplanes.*
- AC 25.1309–1B, *System Design and Analysis.*

[47] 51 FR 33061 (Sept. 18, 1986) and 52 FR 1924 (Jan. 16, 1987).

[48] Including ''extremely improbable'' and ''probable'' with regard to failure conditions.

[49] Including the ''fail-safe'' requirement, and specifying exceptions in § 25.1309 for certain failure effects specified in other sections and subparts of part 25.

[50] To submit comments via the ''Aviation Safety Draft Documents Open for Comment'' web page, *https://www.faa.gov/aircraft/draft_docs/*, please follow the instructions found on that web page.

IV. Regulatory Notices and Analyses

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

In conducting these analyses, the FAA determined that this proposed rule (1) has benefits that justify its costs; (2) is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866; (3) would not have a significant economic impact on a substantial number of small entities; (4) would not create unnecessary obstacles to the foreign commerce of the United States; and (5) would not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

A. Regulatory Evaluation

1. Costs and Benefits of This Proposed Rule

The predominant cost impact of this proposed rule results from proposed requirements addressing catastrophic dual failures (CSL+1), where the first failure is latent (unknown until discovered by crew or maintenance personnel), which, in combination with a second active failure, results in a catastrophic accident. Without the rule, unsafe conditions in service associated with potential CSL+1 failure conditions would continue to be addressed, after certification, by airworthiness directives (ADs).[51] Accordingly, the costs of ADs avoided because of the rule would be benefits of the rule in the form of cost savings. ADs resulting from potential CSL+1 failure conditions are occurring at such a high rate that the benefits of avoiding these ADs, by themselves, exceed the costs of the specific risk rule, § 25.1309(b)(5). At a 7 percent discount rate, the FAA finds that the cost savings resulting from the proposed specific risk rule to be $24.6 million, exceeding the $15.5 million cost of the rule, and resulting in $9.1 million in net cost savings. At a 3 percent discount rate, the FAA finds that the cost savings are $46.79 million, exceeding a $24.65 million cost, and resulting in $22.14 million in net benefits.

The FAA finds all other provisions of this proposed rule to be cost beneficial or to have zero or minimal cost.

2. Who is potentially affected by this proposed rule?

Applicants for type certification, and operators, of part 25 airplanes are potentially affected by this proposed rule.

3. Assumptions and Sources of Information

- The FAA uses three percent and seven percent discount rates to estimate present value and annualized costs and cost savings based on OMB guidance.[52]
- Source: Airplane certification costs, *https://www.faa.gov/,* Regulations & Policies, Rulemaking, Committees—Advisory and Rulemaking Committees, Topics—Transport Airplane and Engines (TAE) Subcommittee (Active), Airplane-level Safety Analysis Complete File, ARAC ASAWG Report, Specific Risk Tasking, appendix A, p. 104. Source: ASAWG Recommendation Report, ''SPECIFIC RISK TASKING,'' April 2010 (pp. 64, 104). These costs are updated to 2021 dollars by the ratio of the 2021 GDP implicit price deflator to the 2010 GDP implicit price deflator, viz. 118.490/96.164 = 1.232. U.S. Bureau of Economic Analysis. ''Table 1.1.4. Price Indexes for GDP.'' Click ''Modify'' icon and refresh table with first and last years of period.
- *For manufacturers of large part 25 airplanes (large transports):* 2 U.S. airplane certifications in next 10-year period, with 24 annual U.S. deliveries per U.S. certification; 1 foreign airplane certification in next 10-year period, with 16 annual U.S. deliveries per foreign certification; 23-year airplane production run, and 28-year retirement age. *For manufacturers of business jets (small part 25 airplanes):* 2 U.S. airplane certifications in next 10-year period, 21 annual U.S. deliveries per U.S. certification and 28-year production run; 3 foreign airplane certifications in next 10-year period, 11 annual U.S. deliveries per foreign certification and; 16-year airplane production run, 30-year retirement age. *For benefits of avoided ADs (6):* Average number of certifications for U.S.-manufactured airplanes. See the Regulatory Impact Analysis available in the docket for more details.
- The period of analysis for large airplanes is 23 + 28 = 51 years to account for a product life cycle determined by a 23-year production period and a 28-year service period. The period of analysis for business jets is 28 + 30 = 58 years to account for a product life cycle determined by a 28-year production period and a 30-year service period.
- Average flight hours per year: Large part 25 airplanes—3,000, Source: FlightGlobal's FlightFleets Analyzer, *www.ascendworldwide.com.* (Average annual flight hours = 3,040 for all narrowbody, widebody, and regional jets, at least one year old, operated by U.S. airlines as of August 28, 2018.)

4. Costs of the Proposed Specific Risk Rule

To calculate the compliance costs for new U.S. certifications, the FAA assumes that all new certifications will be approved one year after the effective date of the rule, with production beginning one year later. Using an airplane life cycle model detailed in the Regulatory Impact Analysis available in the docket, for large part 25 airplanes (large transports) the FAA bases compliance costs on 2 new certificates, delivery of 24 airplanes per certificate per year to U.S. operators, production runs of 23 years, and an airplane retirement age of 28 years. The costs of compliance for large transports are calculated over an airplane life cycle of 51 years (the period from first delivery to last retirement), beginning in year 1 and ending in year 51. The small part 25 airplane category is a business jet category. For part 25 business jets, the FAA bases compliance costs on 2 new certificates, delivery of 21 airplanes per

[51] ADs are rules issued by the FAA that require specific actions to address an unsafe condition on an aircraft or other aviation product.

[52] OMB Circular A–4, Regulatory Analysis (2003), *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf.*

certificate per year to U.S. operators, production runs of 28 years, and an airplane retirement age of 30 years. The costs of compliance for part 25 business jets are calculated over an airplane life cycle of 45 years, beginning in year 1 and ending in year 47.

Unit industry cost estimates for the specific risk rule, § 25.1309(b)(5), were provided by the ASAWG in its report, ''Specific Risk Tasking.'' [53] High costs were reported by Boeing and Cessna in contrast to the zero or near-zero costs reported by the other manufacturers. This was the result of (1) Boeing and Cessna using the existing § 25.1309 amendment as a baseline and not taking into account voluntary ELOS actions they have taken; and (2) high hardware and operating costs reported by Cessna that were 20 to 30 times the comparable costs reported by Boeing. The FAA was unable to verify these high costs. The FAA's rationale and procedure to adjust for these costs follows.

The FAA adjusted Boeing's engineering cost estimate by taking into account the extent to which voluntary ELOS actions for the Boeing Model 787 already address the problems of potential CSL+1 dual catastrophic failures. This adjustment allows the FAA to reduce Boeing's estimate to 13.3 percent of its reported value. This large adjustment reflects the importance of two factors: (1) the ELOS action for flight control systems—the FAA estimates that flight control systems constitute 60 percent of existing potential CSL+1 failure conditions, and (2) that 25 percent of potential CSL+1 failure conditions have already been addressed.

Moreover, for the few CSL+1 combinations not already meeting the proposed rule, no hardware change would be necessary as only the inspection intervals would be affected. Accordingly, expected hardware costs and fuel burn costs are reduced to zero, leaving only non-recurring engineering costs and maintenance costs.

Large transports and business jets have similar system safety architectures because they both meet the ''no single failure'' and ''extremely improbable'' (10^{-9}) average risk criteria. Accordingly, the FAA has determined that the Boeing Model 787 cost analysis also applies to Cessna, so that Cessna's engineering cost estimate should also be reduced to 13.3 percent of reported value, and its hardware and fuel burn cost should be reduced to zero.

With these adjustments, industry unit cost estimates are shown in table 3 below, along with a summary of the production life cycle data. See the Regulatory Impact Analysis available in the docket for more detail on the industry unit cost estimates.

TABLE 3—INDUSTRY PRODUCTION AND UNIT COST DATA FOR ESTIMATING COSTS OF PROPOSED SPECIFIC RISK RULE

[Cost values—$2021]

	Part 25 large transports	Part 25 business jet airplanes
Production Estimates:		
Number of Certifications (10 years)	2	2
Production Life (Years)	23	30
U.S. Deliveries to U.S. Operators per Certification per Year	24	21
Retirement Age (Years)	28	30
Foreign Deliveries to U.S. Operators per Year	16	33
Engineering & Production Costs:		
Non-Recurring Engineering Costs per Model	$1,353,982	$453,734
Recurring Costs (Hardware & Installation) per Airplane	0	0
Operating Costs	$1,231	$164
Incremental Maintenance Costs per Airplane per Year	$1,231	$164
Incremental Fuel Burn per Airplane per Year	0	0

Note: Details may not add up to totals due to rounding.

Employing these unit cost estimates in the airplane life cycle model referred to above, the FAA estimates the costs of the specific risk rule over the large transport and business jet life cycles and show the results by major cost component in table 4 below.

TABLE 4—SUMMARY OF COSTS OF PROPOSED SPECIFIC RISK RULE

[$2021]

Cost category	Cost ($ mil.)			Present value cost ($ mil.)		
	Part 25 large transports	Part 25 business jets	All part 25 airplanes	Part 25 large transports	Part 25 business jets	All part 25 airplanes
Non-Recurring Engineering Costs	2.74	0.9	3.6	2.5	0.8	3.4
Hardware & Installation Costs	0.0	0.0	0.0	0.0	0.0	0.0
Operating Costs (Maintenance)	50.7	8.4	59.1	10.8	1.7	12.5

[53] See *https://www.faa.gov/*, Regulations & Policies, Rulemaking, Committees—Advisory and Rulemaking Committees, Topics—Transport Airplane and Engines (TAE) Subcommittee (Active), Airplane-level Safety Analysis Complete File, ARAC ASAWG Report, Specific Risk Tasking (April 2010), appendix A, p. 104.

TABLE 4—SUMMARY OF COSTS OF PROPOSED SPECIFIC RISK RULE—Continued

[$2021]

Cost category	Cost ($ mil.)			Present value cost ($ mil.)		
	Part 25 large transports	Part 25 business jets	All part 25 airplanes	Part 25 large transports	Part 25 business jets	All part 25 airplanes
Total	53.4	9.3	62.7	13.3	2.5	15.8

Note 1: Present Value Cost is calculated using a 7 percent discount rate. The FAA presents estimates using a 3 percent discount rate in the Regulatory Impact Analysis available in the docket for this proposed rule.
Note 2: Details may not add up to totals due to rounding.

5. Benefits of the Proposed Specific Risk Rule

As discussed more fully in the Regulatory Impact Analysis available in the docket for this proposed rule, the proposed specific risk rule would (1) eliminate the risk of CSL+1 failure conditions by requiring additional redundancy, or (2) limit the risk of CSL+1 failure conditions by limiting the probabilities of the dual latent and active failures. CSL+1 failure conditions probably caused three accidents, which resulted in the destruction of the airplane and the fatalities of all passengers and crew. These accidents were Lauda Air Flight 004 (Boeing Model 767) in 1991, resulting in the fatalities of 233 passengers and crew; USAir Flight 427 (Boeing Model 737) in 1994, resulting in the fatalities of 132 passengers and crew; and the earlier United Airlines Flight 585 (Boeing Model 737) in 1991, resulting in the fatalities of 25 passengers and crew.

For the Lauda Air accident, the Thai investigating committee found the probable cause to be an uncommanded in-flight deployment of the airplane's left engine thrust reverser, resulting in loss of airplane control. The airplane was equipped with a double lock thrust reverser system that operated as follows. If a pilot wanted to deploy the thrust reversers, he or she raised the thrust reverser lever, which set the directional control valve (DCV) (1st lock) to the deploy position and opened the hydraulic isolation valve (HIV) (2nd lock), allowing hydraulic pressure to open the thrust reverser door. The investigating committee found that one likely cause of uncommanded deployment was contamination of the DCV that made it susceptible to increased pressure on its deploy side (latent failure). When the HIV inadvertently opened due to a short circuit (active failure), hydraulic pressure became available to the susceptible DCV causing a change in the valve position from ''stow'' to ''deploy'' with consequent deployment and the catastrophic accident. Once discovered, this potential CSL+1 failure condition was eliminated by an AD action mandating an additional valve (3rd lock). (Please see the Regulatory Impact Analysis available in the docket for discussion of the CSL+1 failure conditions that the NTSB concluded to be the probable cause of the USAir Flight 427 and United Airlines Flight 585 accidents.)

The FAA finds that, if the specific risk rule had been in effect, the likelihood of these accidents occurring would have been reduced. Since the FAA has already issued ADs to prevent reoccurrence of these CSL+1 accidents, the FAA does not use them in estimating benefits from this rule. However, without the rule, unsafe conditions in service associated with potential CSL+1 failure conditions would continue to be addressed by ADs. Accordingly, the costs of the ADs avoided because of the rule would be benefits of the rule in the form of cost savings. The FAA first provides an overview of the benefits estimation, and then provides the details.

a. Overview of Avoided AD Benefits

For the ten-year period of 2008 to 2017, the FAA searched for all new (including superseding) ADs that were associated with potential CSL+1 failure conditions and found 15 such ADs. In order to simplify the analysis, the cost of an AD was estimated based only on the basic wage and cost of materials data provided in the AD (or referenced service bulletins) for required inspections or repairs/replacements, for all airplanes that were affected by the AD. As in the cost section above, the FAA updated cost to 2021 dollars. Since labor costs were given in hours as well as in current dollars, labor costs were particularly easy to update since the FAA could simply use labor hours and the 2021 AD wage rate of $85 per hour.[54] In one or two cases, the costs of an AD were adjusted based on information obtained from the safety engineer referenced in the AD. ''On-condition'' costs were not included in calculated AD costs because such costs depend on an unknown number of airplanes identified on inspection as requiring repair or parts replacement. AD costs often occurred several months or years following the AD effective date because of time allowed for compliance and because of ongoing inspection costs. For 4 of the 15 ADs, there is no terminating action so the affected airplanes are required to be periodically inspected over their entire service lives. Present value AD costs in issuance-year dollars were calculated by discounting these future year costs to the year of AD issuance at the rate of 7 percent. These present value AD costs were adjusted to 2021 dollars using the GDP implicit price deflator. The total cost of the 15 ADs in 2021 dollars is then summed from the individual AD costs.

b. Details of Avoided AD Benefits

Table 5 shows cost of each of the 15 ADs that were associated with potential CSL+1 failure conditions. For each AD, the table provides the following information:

- AD No.;
- Effective date of the AD;
- Airplane Model;
- PV AD Cost ($2021);
- The potential CSL+1 failure condition; and
- Required AD Actions.

Airworthiness Directive No. 8 is split into two results because, after an initial AD was issued and complied with, it was later determined that a wider range of part numbers should have been checked, which meant re-inspection for a large number of airplanes that had already been inspected. So No. 8a shows the costs for the number of airplanes the FAA estimates have already been checked in the initial AD, while No. 8b

[54] See the Regulatory Impact Analysis available in the docket for more details on the labor rate and hours used in this analysis.

shows the new costs in the superseding AD for the airplanes already checked as well as for the newly affected airplanes. AD No. 15 is also shown in two parts, with No. 15a showing the results for the main recurring action and No. 15b showing the results for a concurrent nonrecurring action for a subset of affected airplanes, required in order to ensure the effectiveness of the test required by the main recurring action.

Airworthiness Directives Nos. 1, 2, 4 and 15a are the four ADs with recurring actions lasting the lifetime of the airplanes. The total present value costs for these ADs were calculated using AD unit cost data and individual airplane data from the Aircraft section of FlightGlobal's FlightFleets Analyzer. For each airplane already in the affected fleet at the AD's effective date, costs were calculated for the remaining years of an assumed 28-year life, with yearly costs discounted back to the AD's effective date but valued in 2021 dollars. For each airplane entering the affected fleet after the AD's effective date, costs were calculated for its entire assumed 28-year life with an additional discount factor for time between the AD's effective date and the in-service date of the airplane. Actual life was used instead of a 28-year life if airplanes were retired (or written off) early. Data for August 2018 was used for AD Nos. 1, 2 and 15a. But for AD No. 4, data as of the AD's effective date, September 26, 2012, was used in order to simplify the calculations. The affected model—Boeing Model 757—ended production in 2004, so few, if any, additional airplanes would be entering the affected fleet after the AD's 2012 effective date, and fewer of the affected airplanes would have to be retrieved from the ''Retired/Written Off'' file than if a more recent date was used.

The FAA notes that all 15 ADs apply to large transport airplanes and none apply to business jets. This result is not surprising, since part 25 business jets account for a small percentage of the total flight hours for part 25 airplanes. Given the FAA's assumptions, the life cycle airplane model estimates that part 25 business jets account for just 10.3 percent of all part 25 flight hours. This particular result does not mean that CSL+1 failure conditions cannot occur on part 25 business jets. In fact, while this regulatory evaluation was being written, an immediate final rule AD was published [55] for a potential CSL+1 failure condition in a Gulfstream Model GVI business jet. Since this AD occurs outside the 10-year 2008–2017 sampling window, the FAA did not include it in its analysis.

As table 5 below shows, total AD costs sum to $64,195,574. The avoidance of these costs are benefits that the FAA used to estimate benefits of the proposed specific risk rule. Over the period of AD selection, 2008 to 2017, however, there were, on average, approximately six new airplane models brought to the market by U.S. manufacturers. Since the FAA estimated the costs of the proposed rule assuming two new model certifications, in order to make the estimate of the value of avoided ADs comparable, the FAA divided these costs by three. The FAA then divided the adjusted costs by 10 to estimate the average annual AD costs over the 10-year sample period. Finally, recognizing that no rule is perfectly effective, the FAA estimated that the proposed rule would be 90 percent effective and, accordingly, reduce the annual estimates by 10 percent. These reduced annual estimates are then used in the life cycle airplane model to estimate the benefits of the proposed rule in a manner analogous to the estimate of the costs of the proposed rule. Dividing $64,195,574 by $3 \times 10 = 30$ and multiplying by 90 percent, the FAA obtained an estimate of average annual benefits of $2,139,852. This then is the estimate of the average annual value of the ADs that will be avoided over the 51-year life cycle of our two airplane models as a result of the proposed specific risk rule. The present value of $2,139,852 for 51 years can be calculated with the present value annuity formula, $PVA = C\,[1-1/(1+r)^n]/r = \$2{,}139{,}852 \times [1-1/(1.07)^{47}]/.07 = \$26.4$ million, where $C = \$2{,}139{,}852$ is the average annual ''cash flow'' benefit, $r = 0.07$ is the discount rate, and $n = 51$ years is the annuity length in years. However, to make benefits compatible with the cost of the rule analysis, the FAA must discount for an additional year to account for our assumed year for certification of the airplane models. Therefore, the present value of the AD cost savings is $24.5/1.07 = $24.6 million.

TABLE 5—SSA CSL+1 COSTS SAVINGS BY AD

No.	AD No.	Effective date of AD	Airplane model	PV AD cost ($2021)	Potential CSL+1 failure condition	Required AD actions
1	2008–06–06	April 16, 2008	All Boeing 767 airplanes.	$1,168,710	Extensive corrosion was found on the outside rod of a ballscrew in the drive mechanism of the horizontal stabilizer trim actuator (HSTA) of a Boeing Model 757 airplane (AD for which is No. 4 below). The HSTA drive mechanisms on Boeing airplanes are designed similarly, in that they are of the rod-within-a-rod configuration. The corrosion was on the outside rod, which functions as a screw that drives the stabilizer and is the primary load path. If the outside rod fails, load is transferred to the secondary load path—the inner rod—whose job is to hold the horizontal stabilizer in place so it does not run away causing loss of airplane control. In such a case, the flightcrew would typically be instructed to land at a suitable airport as soon as possible. Since corrosion of the outer rod could imply corrosion of the inner rod also, this AD reveals a potential CSL+1 catastrophic accident where active failure of the outer rod occurs in conjunction with an already failed inner rod.	Repetitive inspections, lubrication, freeplay measurement, and corrective action, as specified in Boeing Alert Service Bulletins 767–27A0194 or 767–27A0195, both Revision 1, dated July 21, 2005; or both Revision 2, dated July 13, 2006; as applicable.
2	2009–14–06	August 12, 2009	All Boeing 777 airplanes.	853,970	See AD No. 1 above	Maintenance record check and same actions as AD No. 1.

[55] 83 FR 48918 (Sept. 28, 2018).

TABLE 5—SSA CSL+1 COSTS SAVINGS BY AD—Continued

No.	AD No.	Effective date of AD	Airplane model	PV AD cost ($2021)	Potential CSL+1 failure condition	Required AD actions
3	2011–27–03	February 10, 2012	All Boeing 737 airplanes.	3,709,424	See AD No. 1 above	Modification as specified in Boeing Alert Service Bulletin 737–27A1278, Revision 1, dated January 7, 2010; or Boeing Alert Service Bulletin 737–27A1277, Revision 2, dated January 8, 2010; as applicable.
4	2012–16–16	September 26, 2012 ..	All Boeing 757 airplanes.	3,052,050	See AD No. 1 above	See AD No. 1 above.
5	2009–20–12	November 5, 2009	Certain Boeing 747 airplanes, as identified in Boeing Special Attention Service Bulletin 747–27–2422, dated October 30, 2008.	16,353,670	The FAA received several reports that the inboard trailing edge flaps on Boeing Model 747 airplanes were partially retracted from the commanded position due to failure of transmission carbon disk ''no-back'' brakes. This AD highlights a potential CSL+1 failure condition in which the no-back brake fails to hold the flap in its commanded position (latent failure) and the flap system transmission driveshaft breaks (active failure), causing the flap to ''freewheel.'' The no-back brake failure is latent because when it occurs, there is no means to check it in place without disconnecting the driveshaft and removing the gearbox in which it resides from the airplane. The dual failure would create unbalanced aerodynamic forces between wings that could cause the airplane to roll into a severe attitude, resulting in catastrophic loss of control.	Replace trailing edge (TE) no-back brakes with skewed roller no-back brakes.
6	2013–17–03	October 4, 2013	Airbus A330–200 and –300; A340–200 and –300; and A340–541 and –642 series airplanes.	3,048,381	See AD No. 5 above	Assume immediate terminating action: Replacement of all 4 JURID wing tip brakes (WTBs) with MIBA WTBs.
7	2011–22–02	November 29, 2011 ...	All Airbus A310 and A300 B4–600 and –600R, F4–600R (collectively called A300–600) series airplanes.	526,557	This AD results from mandatory continuing airworthiness information (MCAI) originated by EASA. An operator reported several cases of wire damage at the pylon/wing interface. Analysis revealed that the wire damage was due to deficient information in installation drawings and job cards. The CSL+1 problem here stems from the fact that Low Pressure Valve (LPV) wires were not segregated by design. The function of the LPV is to control the fuel supply at the engine-to-pylon interface. In case of fire, the fuel supply to the engines (or APU) is shut off by the LPVs, which are electrically actuated by operation of the engine (or APU) fire handle. The wire chafing could induce dormant failure of the LPV, preventing its closure and leading to an uncontrolled engine (or APU) fire.	Modification of the electrical installation in the pylon/wing interface to avoid wire damage.
8a	2014–03–08	March 26, 2014	All Airbus A318, A319, A320, and A321 series airplanes.	535,501	This AD was prompted by an investigation finding that when target and proximity sensors with certain combinations of serial numbers are installed on a flap interconnecting strut, the target signal may not be detected. Between the trailing edge flaps (inboard and outboard) of an Airbus Model A320 wing, there is an interconnecting strut, whose function is to temporarily hold a flap if the flap's drive system disconnects in flight at the gearbox (which is connected to the wing). The interconnecting strut has a proximity sensor that reads the relative movement between the flaps. The proximity sensor operates on the same principle as sensors used in a house alarm system. When a window is opened, the target mounted in the window moves away from the sensor installed in the windowsill. The alarm system knows the window is open. Similarly, if a flap drive system disconnects, there would be relative movement between the flaps observed by the sensor causing the flap control computer to shut down the flap system, thus preventing asymmetric flap movement between the wings. Given latent failure of an interconnecting strut sensor, a flap drive system disconnect could result in asymmetric flap panel movement and consequent loss of airplane control.	Inspect to determine part numbers of the interconnecting struts installed on the wings and the serial numbers of the associated target and proximity sensors, and replace the interconnecting strut if applicable.

TABLE 5—SSA CSL+1 COSTS SAVINGS BY AD—Continued

No.	AD No.	Effective date of AD	Airplane model	PV AD cost ($2021)	Potential CSL+1 failure condition	Required AD actions
8b	2017–24–07	January 5, 2018	All Airbus A318, A319, A320, and A321 series airplanes.	1,512,126	Same as above. This superseding AD was issued because EASA determined that a wider range of part numbers of affected interconnecting struts should be checked.	Because of the nearly 4-year difference in the AD dates, in addition to inspection of new airplanes, all of the airplanes that had been already inspected under the AD 2014–03–08 requirements have to be re-inspected under 2017–24–07.
9	2014–11–10	August 19, 2014	Bombardier CL–600–2B19 (Regional Jet Series 100 & 440), S/Ns 7003–8110 inclusive.	1,881,761	This AD was prompted by reports that the shear pin in the input lever of several PFS (Pitch Feel Simulator) units failed due to fatigue, and by the development of a re-designed PFS unit, eliminating the need for repetitive functional tests. With latent failure of a PFS unit due to a failed shear pin, the failure of the second PFS unit would result in loss of pitch feel forces and consequent reduced control of the airplane. Loss of tactile feedback typically causes the pilot to overshoot commands to the control system. As an analogy, consider an automobile steering wheel. At low speeds, the feel is soft (requiring large turns to steer the front wheels a given amount). At high speeds, the feel is designed to be harder (requiring more force to steer the wheels a given amount). If the feel unit fails, we can still steer, but because the forces are the same at low and high speeds, we could lose control of the car at high speeds.	Replace pitch feel simulator (PFS) units with redesigned PFS units. This action would terminate the currently required repetitive function tests.
10	2015–19–01	October 21, 2015	Boeing 777 airplanes, Line Nos. 1 through 1104 inclusive.	16,150	This AD was prompted by reports of latently-failed fuel shutoff valves caused by a design error that affects both valve control and indication of the valve's position. As a result, the failure can lead to a large number of flights with the fuel shutoff valve failed in the open position without the operator being aware of the failure. Latent failures of the fuel shutoff valve to the engine (or APU) could result in an inability to shut off fuel to the engine (or APU) and an uncontrollable fire that could lead to catastrophic wing failure.	Revise maintenance or inspection program, as applicable, to require a new airworthiness limitation—a daily operational check of the fuel shutoff valve position indication.
11	2015–19–04	October 21, 2015	All Boeing 757 airplanes.	50,150	See AD No. 10 above	See AD No. 10 above.
12	2015–19–09	November 3, 2015	All Boeing 787–8 airplanes.	111,421	See AD No. 10 above	1. Revise maintenance or inspection program. 2. Replace engine and APU shutoff valve actuators with new actuators.
13	2015–21–09	October 28, 2015	All Boeing 767 airplanes.	38,250	See AD No. 10 above	See AD No. 10 above.
14	2015–21–10	October 28, 2015	All Boeing 737–600, –700, –700C, –800, and –900 airplanes.	105,740	See AD No. 10 above	See AD No. 10 above.
15a ..	2016–04–06	April 1, 2016	All Boeing 737–600, –700, –700C, –800, and –900 airplanes.	2,455,178	During a simulated fire test in the forward cargo compartment on 737–800 airplanes, smoke penetrated into the passenger cabin and flightdeck when in the fire suppression configuration. The smoke was observed entering the passenger cabin, during steady state cruise and descent conditions, in quantities significantly higher than amounts found acceptable during previous certification tests. Small amounts of smoke were observed in the flightdeck. A subsequent Boeing review found that there was no maintenance procedure available to inspect the components used to reconfigure the air distribution system. Latent failure of the equipment cooling system or low pressure environmental control system, in combination with a cargo fire, could result in smoke in the main cabin and flightdeck and possible loss of airplane control. The maintenance procedure could reduce the likelihood of such latent failures.	*Recurring test:* Repetitive Smoke Clearance—Operational Test for correct operation of the equipment cooling and low pressure environmental control systems.

TABLE 5—SSA CSL+1 COSTS SAVINGS BY AD—Continued

No.	AD No.	Effective date of AD	Airplane model	PV AD cost ($2021)	Potential CSL+1 failure condition	Required AD actions
15b ..	2016–04–06	April 1, 2016	Certain Boeing 737–600, –700, –700C, –800,. –900, and ..... –900ER series airplanes.	28,776,535	Incorporation of this non-recurring action (required by Boeing Special Attention Service Bulletin 737–26A1137, Revision 1, dated August 13, 2009) is necessary to ensure that the Smoke Clearance Mode-Operational Test result of the recurring action is satisfactory.	*Concurrent non-recurring action:* Install new relays and do wiring changes to the environmental control system
Total = $64,195,524						

Sources: The **Federal Register** reference for each AD is noted in ''Appendix Table 6'' of the ''Regulatory Evaluation'' in the docket.
Note 1: Information in the ADs was in some cases supplemented and corrected by the FAA safety engineers assigned to the ADs or by the Systems Policy Branch (AIR-630), Safety Risk Management Section (AIR–633).
Note 2: For non-recurring actions, we assume compliance times to be at, or close to, the midpoint of the compliance period specified in the AD (or associated service bulletin). For recurring actions, we assume compliance times to be at the end of a compliance period, or somewhat earlier. See ''Appendix Table 6'' in the ''Regulatory Evaluation'' for details on data assumptions and calculations.

6. Summary of Costs and Benefits of Specific Risk Rule

In table 6 below, the FAA summarizes the costs and benefits of the proposed specific risk rule. As the table shows, the proposed rule is cost-beneficial with present value cost savings of $24.6 million far exceeding present value costs of $15.8 million. Net cost savings are $8.8 million in present value. A similar analysis at a 3 percent discount rate finds present value cost savings to be $43.6 million, exceeding $31.7 million in present value costs, and resulting in $11.9 million in net cost savings.

TABLE 6—SUMMARY OF COST-BENEFIT ANALYSIS FOR SPECIFIC RISK RULE

[Present value $2021 millions]

Cost category	Part 25 large transports	Part 25 business jets	Part 25 airplanes
Non-Recurring Engineering Costs	$2.5	$0.8	$3.4
Hardware & Installation Costs per Airplane	0.0	0.0	0.0
Operating Costs per Airplane per Year	10.8	1.7	12.5
Total PV Costs	13.3	2.5	15.8
Cost Savings (Value of Avoided ADs)	.....	.....	24.6
Net Cost Savings	.....	.....	8.8

Note 1: Cost savings reflect assumption of 90 percent rule effectiveness.
Note 2: Numbers may not add to totals due to rounding. Present values are calculated using a discount rate of seven percent. Present values using a three percent discount rate are provided in the Regulatory Impact Analysis available in the docket.

7. Section 25.1309: Equipment, Systems, and Installations

In section I.A.5 above, the FAA undertook the cost benefit analysis of the proposed specific risk rule, § 25.1309(b)(5). This section discusses the remaining paragraphs of § 25.1309.

a. Section 25.1309(a)

The proposed rule would revise § 25.1309(a) into two paragraphs. Proposed § 25.1309(a)(1) would revise the applicability of the § 25.1309(a) requirement that equipment and systems perform their functions as intended. Proposed § 25.1309(a)(1) clarifies that it applies to any equipment or system installed in the airplane, and whose improper functioning would reduce safety, regardless of whether it is required for type certification, operating approval, or is optional equipment. As this requirement merely harmonizes with EASA's corresponding requirement, with which part 25 manufacturers are already in compliance, there is no additional cost. However, the requirement has the minimal benefits of the reduced cost of joint harmonization and, therefore, would be cost beneficial.

Along with an associated change to § 25.1301, *Function and Installation,* proposed § 25.1309(a)(2) would allow equipment associated with passenger amenities (*e.g.,* entertainment displays and audio systems) not to function as intended as long as the failure of such systems would not affect airplane safety. No safety benefit is derived from demonstrating that such equipment performs as intended, if failing to perform as intended would not affect safety. Accordingly, this proposed change would reduce the certification cost of passenger amenities for airplane manufacturers without affecting safety, and, therefore, this proposed change would be cost-beneficial.

b. Section 25.1309(b)(1), (2), and (3): Average Risk and Fail Safe Criteria

The current rule requires airplane systems and associated components be designed so that any failure condition that would prevent the continued safe flight and landing of the airplane (catastrophic failure condition) is ''extremely improbable,'' a condition specified in current AC 25.1309–1A as having a probability on the order of $\leq 10^{-9}$ per flight hour. However, as recommended by the SDAHWG, the proposed text of § 25.1309(b) would explicitly require that single failures must not result in catastrophic failures—the ''no single failure'' fail-safe requirement. As it harmonizes with the equivalent EASA requirement and is already current industry practice (see the ''Arsenal'' version of AC 25.1309), this proposed ''no single failure'' requirement would be cost beneficial as it entails no additional cost but has

benefits from the reduced costs of joint harmonization.[56]

The current rule requires any failure condition that would reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions to be ''improbable'' (on the order of $10^{-9} < p \leq 10^{-5}$, where p is probability), a condition specified under current AC 25.1309–1A as ''major.'' Current practice, however, is the ''Arsenal'' version of AC 25.1309, under which the old ''major'' failure condition has been divided into two categories: ''hazardous'' (on the order of $10^{-9} < p \leq 10^{-7}$) and ''major'' (on the order of $10^{-7} < p \leq 10^{-5}$). These categories have been incorporated into the proposed rule. As it harmonizes with corresponding EASA major and hazardous categories and is current industry practice, this proposed rule change would be cost beneficial as it entails no additional costs but has benefits from the reduced costs of joint harmonization.

c. Section 25.1309(b)(4): Limit Latency Criteria

Proposed § 25.1309(b)(4) specifies criteria that would apply to any SLF. The purpose of proposed § 25.1309(b)(4) is to limit SLFs whenever practical so as to limit conditions where the airplane is one failure away from a hazardous or catastrophic accident.

It is already industry practice to eliminate SLFs when practical, as required by proposed § 25.1309(b)(4)(i); therefore, the proposal would entail no additional cost. In any case, proposed § 25.1309(b)(4) is cost beneficial because proposed paragraph (4)(i) is limited by paragraph (4)(ii) and, further, under § 25.1309(b)(4)(iii), both paragraphs (4)(i) and (b)(4)(ii) are not required when impractical.

d. Section 25.1309(c): Flightcrew Alerting

Section 25.1309(c) would continue to require that the flightcrew be provided with information concerning unsafe system operating conditions. Section 25.1322 would continue to require that alerting be provided. The only proposed change in this rule is to remove the conflict with § 25.1322, *Flightcrew Alerting.* Accordingly, there is no cost (or benefit) entailed by the proposed rule change.

e. Section 25.1309(d) and H25.4: Certification Maintenance Requirements

Proposed § 25.1309(d) would be a new rule requiring that CMRs be established, as necessary, to prevent catastrophic and hazardous failure conditions described in proposed § 25.1309(b). The proposed rule also would require these CMRs to be contained in the ALS of the ICA required by § 25.1529. This latter requirement is an industry recommendation via the SE–172 Taskforce to CAST[57], and it addresses the taskforce's recognition that CMRs are critical to safety and should be treated similarly to other airworthiness limitations.

Both of these proposed requirements would codify industry practice and would harmonize with EASA's changes to CS 25.1309 and H25.4, and so would entail no additional costs. However, the requirements would have the benefits of reduced joint harmonization costs and, therefore, would be cost beneficial.

8. Section 25.671: General Control Systems

a. Section 25.671(a), (d), (e), and (f)

Since industry has been meeting the proposed criteria in paragraphs (a), (e), and (f) under special conditions since the early 1980s, the FAA believes that these proposed criteria are now met at minimal cost. The modification to § 25.671(d) clarifies that controllability includes the capability to flare to a landing and controlled stop. The FAA believes that if the airplane is controllable, the manufacturer will be able to meet the requirement for flare and braking capability at minimal cost. The FAA requests comments on these findings.

b. Section 25.671(b): Minimize Probability of Incorrect Assembly

Section 25.671(b) would be revised to allow distinctive and permanent marking to minimize the probability of incorrect assembly only when design means are impractical. This revision was recommended by the FCHWG. It is expert consensus that the physical prevention of misassembly by design is safer than reliance on marking, which can be overlooked or ignored. Since distinctive and permanent marking to minimize the probability of incorrect assembly is disallowed only when design means are practical, the expected gain in safety benefits from the reduced probability of incorrect assembly would be greater than the costs of the proposed revision. The FAA requests comments on its finding that this provision is cost-beneficial.

c. Section 25.671(c)

The FAA proposes to revise § 25.671(c). Current § 25.671(c)(1) and (c)(2) would be removed, because the applicability of § 25.1309 would be clarified to be any equipment or system as installed on the airplane, so it would apply to flight control systems and would accomplish the safety objective of § 25.671(c)(1) and (c)(2). Proposed 25.671(c) differs from the current rule as follows:

- Proposed § 25.671(c) addresses only jams that are due to a physical interference, for example, foreign or loose object, system icing, corroded bearings, etc. (Jams due to other reasons are covered by § 25.1309.)
- Proposed § 25.671(c) does not allow jams to be considered extremely improbable, except those jams that occur just before landing.
- Proposed § 25.671(c)(3) specifies that, given a jam due to a physical interference, the combined probability is less than 1/1000 that any additional failure conditions could prevent continued safe flight and landing. As the main intent of § 25.671(c)(3) is to limit the probability of a latent failure of any jam alleviation device (such as a breakout device), § 25.671(c)(3) is largely redundant to the proposed § 25.1309(b)(5) latent risk requirement.
- Proposed § 25.671(c) would no longer address a runaway of a flight control surface and subsequent jam as such jams would be adequately addressed by proposed § 25.1309.

As proposed § 25.671(c) has been used by many manufacturers as an ELOS, the FAA believes its use is current practice. Accordingly, there are no additional costs (or benefits) from § 25.671(c)(1). The FAA requests comments on this conclusion.

9. Section 25.901: Installation Engines

Proposed § 25.901 would specify that § 25.1309 applies to powerplant installations, as it does for all airplane systems. Accordingly, the current provision in § 25.901(c) prohibiting catastrophic single failures or probable combinations of failures would be removed. Applicant requirements would not change as a result of this revised rule. The proposed revision would harmonize § 25.901(c) with EASA's corresponding CS 25.901(c). Accordingly, the proposed revision would be cost-beneficial as it entails no additional cost but has benefits from the reduced costs of joint harmonization.

[56] The no single failure requirement was inadvertently removed in 1970 but remained industry practice. At the same time, the no single failure requirement was made explicit for flight controls and, in 1977, was made explicit for powerplants.

[57] More information on CAST and the task force findings is available in the docket and on the internet at *https://www.skybrary.aero/bookshelf/views/bookDetails.php?bookId=2553.*

The FAA requests comments on this conclusion.

10. Section 25.933: Reversing Systems

Proposed § 25.933(a)(1)(i) retains, as an option, the ''controllability'' standard of the current rule. Proposed § 25.933(a)(1)(ii) is an additional, ''reliability,'' option. The service history of airplanes certified under the current rule—most prominently, the Lauda Air accident—demonstrates that the fail-safe intent of the controllability requirement had not been achieved.

The PPIHWG recommended adding the reliability option, concluding that applicants should be allowed to select the most suitable option for their particular type designs or failure conditions addressed. This option is especially valuable given its improvement implied by the proposed revision to § 25.1309.[58] This proposed change allows additional flexibility in design development, thus reducing costs by allowing manufacturers to achieve the intended level of safety in the most cost-effective manner. As this proposed rule would be cost relieving, it would be cost beneficial. The FAA requests comments on this conclusion.

11. Section 25.302: Interaction of Systems and Structures

Proposed § 25.302 would be a new rule that would incorporate, with some modifications, the criteria the LDHWG recommended in December 2000, and the FCHWG in September 2002. EASA has already incorporated the criteria developed by the LDHWG into CS 25.302 and appendix K of CS–25.

The proposed rule would specifically address any system failure condition considered under § 25.1309 that can affect the structural performance of the airplane. Systems affect structural performance if they induce loads on the airframe or if they change the response of the airplane to inputs such as gusts or pilot actions, either directly or as a result of failure. Systems that affect structural performance are flight control computers, autopilots, stability augmentation systems, load alleviations systems, and fuel management systems. The proposed rule would also apply to hydraulic systems, electrical systems, and mechanical systems.

U.S. part 25 manufacturers already comply with EASA's CS 25.302, which went into effect in November 2004. Accordingly, the costs of compliance with the FAA's proposed § 25.302 depends on the extent to which it harmonizes with CS 25.302. If the provisions of proposed § 25.302 are identical with, less onerous than, or, more generally, satisfied by, the provisions of CS 25.302, then compliance with CS 25.302 would also mean compliance with proposed § 25.302. This harmonization means U.S. part 25 manufacturers would incur no incremental compliance costs. If the provisions of proposed § 25.302 are more onerous than, or, more generally, not satisfied by, the provisions of CS 25.302, then manufacturers would incur incremental compliance costs.

The FAA now assesses the benefits and costs of proposed § 25.302 by section:

a. Section 25.302(a): At the Time of Failure Occurrence

For the assessment of the initial failure condition, EASA's CS 25.302 allows the safety factor to decline linearly from 1.5 to 1.25 as the probability of failure declines from 10^{-5} to 10^{-9} per flight hour but proposed § 25.302(a) keeps the factor at 1.5. The FAA proposal, therefore, would be more conservative in this regard, but, after two decades of special conditions, this more conservative factor is now easily met by manufacturers. Therefore, the cost effect would be minimal. As safety would be higher compared to CS 25.302, this proposed requirement would be cost beneficial. The FAA requests comments on this finding.

b. Section 25.302(b): Continuation of Flight After Failure

CS 25.302 requires that loads be determined for several CS–25 design load conditions, whereas the FAA proposal would require that loads be determined for any design load condition that would be affected. CS 25.302 requires a safety factor of 1.5 for a failure condition with a failure rate above 10^{-5}, but which declines linearly to 1.0 as probability declines from 10^{-5} to 10^{-9}.

The FAA proposal specifies a safety factor of 1.5 but would reduce the safety factor to 1.0 if the failure condition is annunciated, because the probability of an extreme maneuver would be reduced as the pilot would be aware that a failure condition had occurred. The FAA would reduce the safety factor to 1.25 if the failure condition is extremely remote (probability of the order of $\leq 10^{-7}$ per flight hour). The probability is very low that a design load condition would occur subsequent to a system failure on the same flight. The FAA proposal, therefore, is less conservative than the EASA requirement in requiring lower safety factors, particularly for annunciated failures; and most failures that affect structures would be annunciated.

The FAA proposal is more conservative, however, in applying to all load conditions specified in subpart C, with the possible result of higher engineering, hardware, and operating compliance costs relative to EASA requirements. Nevertheless, the FAA believes that the safety benefits would continue to outweigh the costs. The FAA requests comments on this conclusion.

c. Section 25.302(d)

This proposed rule would require the residual strength evaluation be conducted according to § 25.571—the fatigue and damage tolerance rule—and it, therefore, assesses the residual strength load conditions in § 25.571, rather than the load conditions listed in CS 25.302. This proposed change would result in little or no increase in workload and, consequently, would have minimal cost because manufacturers already use the § 25.571 process and because the differences in load conditions between the two provisions are not significant. The FAA requests comments on this finding.

d. Section 25.302(e): Dispatch Requirements

CS 25.302 requires that anticipated dispatch configurations be addressed by meeting the strength and flutter aspects of CS 25.302 taking into account the probability of being in that configuration. CS 25.302 includes: ''Flight limitations and expected operational limitations may be taken into account in establishing . . . the combined probability of being in the dispatched failure condition and the subsequent failure condition for the safety margins . . . . ''[59] This means that the applicant must combine the probability of being in the dispatched state with the probability of subsequent failures to determine safety margins. This analysis obviously involves a fair amount of probability work. Moreover, for the dispatched configuration, CS 25.302 would consider any failure condition not shown to be extremely improbable (on the order of $\leq 10^{-9}$ per flight hour). Several applicants have specifically objected to the CS dispatch rule because of this latter requirement.

In contrast, the FAA proposal is simpler, less onerous, and involves less

[58] It should be noted that the controllability option would still require compliance with § 25.1309. But when an applicant demonstrates compliance using the controllability option, an unwanted thrust reversal in flight will be classified at worst as a ''major'' failure, thereby making compliance with § 25.1309(b) much easier.

[59] EASA CS–25, amendment 11, dated July 4, 2011.

probability work. First, the proposal does not include flutter criteria. Second, the proposal assumes a probability of one for the dispatched configuration, and subsequent failures would be considered only if they were single failures or if they are not extremely remote (of the order of $\leq 10^{-7}$ per flight hour). The FAA believes that the incremental cost of the simpler and less onerous FAA proposal is so low that the safety benefits of the proposal would continue to outweigh the costs. The FAA requests comments on this finding.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

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

All U.S. manufacturers (applicants for type certification) of large transports or part 25 business jets are large companies with more than 1,500 employees or are subsidiaries of large companies so-defined and, therefore, are not classified as small entities by the Small Business Administration.[60] Operators of part 25 airplanes will be directly affected by the $1,102 annual incremental operating cost (maintenance) per large transport and the $147 annual incremental operating cost per part 25 business jet. These costs are minimal, especially compared to the high annual operating cost of part 25 airplanes.

If an agency determines that a rulemaking will not result in a significant economic impact on a substantial number of small entities, the head of the agency may so certify under section 605(b) of the RFA. Therefore, as provided in section 605(b), the head of the FAA proposes that this proposed rulemaking would not result in a significant economic impact on a substantial number of small entities. The FAA requests comments on this determination.

C. International Trade Impact Assessment

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

The FAA has assessed the effect of this proposed rule and determined that its purpose is to ensure the safety of U.S. civil aviation. Therefore, this proposed rule is in compliance with the Trade Agreements Act.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $155.0 million in lieu of $100 million. This proposed rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

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

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

In January of 2020, EASA published CS 25 amendment 24, which bore many similarities to this proposal, including added criteria for latent failures in CS 25.1309.

G. Environmental Analysis

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

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, ''Federalism'' (64 FR 43255, August 10, 1999). The agency has determined that this action would not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have federalism implications.

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

The FAA analyzed this proposed rule under Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May

[60] The Small Business Administration criterion for small aircraft manufacturers is 1,500 employees or less.

18, 2001). The agency has determined that it would not be a ''significant energy action'' under the Executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, International Cooperation

Executive Order 13609, ''Promoting International Regulatory Cooperation,'' (77 FR 26413, May 4, 2012) promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609 and has determined that this action would have no effect on international regulatory cooperation.

VI. Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this proposal in light of the comments it receives.

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Suzanne Masterson, Strategic Policy Transport Section, AIR–614, Strategic Policy Management Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, WA 98198; email *Suzanne.Masterson@faa.gov*. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the internet by—

1. Searching the Federal eRulemaking Portal at *www.regulations.gov*;

2. Visiting the FAA's Regulations and Policies web page at *www.faa.gov/regulations_policies*; or

3. Accessing the Government Printing Office's web page at *www.GovInfo.gov*.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9680. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the internet through the Federal eRulemaking Portal referenced in item (1) above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

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

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

■ 1. The authority citation for part 25 continues to read as follows:

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

■ 2. Add § 25.4 to read as follows:

§ 25.4 Definitions.

(a) For the purposes of this part, the following general definitions apply:

(1) *Certification maintenance requirement* means a required scheduled maintenance task established during the design certification of the airplane systems as an airworthiness limitation of the type certificate or supplemental type certificate.

(2) *Significant latent failure* is a latent failure that, in combination with one or more specific failures or events, would result in a hazardous or catastrophic failure condition.

(b) For purposes of this part, the following failure conditions, in order of increasing severity, apply:

(1) *Major failure condition* means a failure condition that would reduce the capability of the airplane or the ability of the flightcrew to cope with adverse operating conditions, to the extent that there would be—

(i) A significant reduction in safety margins or functional capabilities,

(ii) A significant increase in flightcrew workload or in conditions impairing the efficiency of the flightcrew,

(iii) Physical distress to passengers or flight attendants, possibly including injuries, or

(iv) An effect of similar severity.

(2) *Hazardous failure condition* means a failure condition that would reduce the capability of the airplane or the ability of the flightcrew to cope with adverse operating conditions, to the extent that there would be—

(i) A large reduction in safety margins or functional capabilities,

(ii) Physical distress or excessive workload such that the flightcrew cannot be relied upon to perform their tasks accurately or completely, or

(iii) Serious or fatal injuries to a relatively small number of persons other than the flightcrew.

(3) *Catastrophic failure condition* means a failure condition that would result in multiple fatalities, usually with the loss of the airplane.

(c) For purposes of this part, the following failure conditions in order of decreasing probability apply:

(1) *Probable failure condition* means a failure condition that is anticipated to

occur one or more times during the entire operational life of each airplane of a given type.

(2) *Remote failure condition* means a failure condition that is not anticipated to occur to each airplane of a given type during its entire operational life, but which may occur several times during the total operational life of all airplanes of a given type.

(3) *Extremely remote failure condition* means a failure condition that is not anticipated to occur to each airplane of a given type during its entire operational life, but which may occur a few times during the total operational life of all airplanes of a given type.

(4) *Extremely improbable failure condition* means a failure condition that is not anticipated to occur during the total operational life of all airplanes of a given type.

■ 3. Add § 25.302 to subpart C to read as follows:

§ 25.302 Interaction of systems and structures.

This section applies to systems that affect the structural performance of the airplane. The applicant must include the effects of systems when conducting the analyses and tests necessary to show compliance with subparts C and D of this part. For any system failure condition that either results from a single failure or is not extremely improbable, paragraphs (a) through (e) of this section apply. This section does not apply to the flight control jam conditions prescribed in § 25.671(c) or the discrete source events prescribed in § 25.571(e).

(a) *Loads occurring at the time of failure and immediately after failure.* The airplane must be able to withstand the loads occurring at the time of failure and immediately after failure. The applicant must determine these loads at speeds up to V_C/M_C, starting from 1-g level flight conditions, and assuming realistic scenarios, including pilot corrective actions. These are limit loads, and the applicant must apply a safety factor of 1.5 to determine ultimate loads.

(b) *Limit flight and ground loads following the system failure.* In the system-failed state, the airplane must be able to withstand the limit flight and ground loads specified in subpart C of this part at speeds up to V_C/M_C or the speed limitation specified for the remainder of the flight. The applicant must apply a safety factor of 1.5 to determine ultimate loads, except as provided in paragraphs (b)(1) or (2) of this section.

(1) If the failure would be immediately annunciated or otherwise obvious to the flightcrew, then the applicant may use a safety factor of 1.0. The applicant may also take into account any resulting configuration changes or operating limitations specified in the Airplane Flight Manual.

(2) If the failure would not be immediately annunciated or otherwise obvious to the flightcrew, but the failure condition is extremely remote, then the applicant may use a safety factor of 1.25.

(c) *Damage tolerance evaluation.* When conducting the damage tolerance evaluation required by § 25.571, the applicant must take into account the fatigue loads induced by any failure condition. These fatigue loads must be included as part of the typical loading spectra at a rate commensurate with the probability of their occurrence.

(d) *Residual strength loads.* For any probable failure condition that would affect the residual strength loads prescribed in § 25.571(b), the applicant must conduct a residual strength evaluation as prescribed in that paragraph under the assumption that the failure condition has occurred. The applicant must calculate these residual strength loads using at least two-thirds of the applicable safety factor specified in paragraph (b) of this section.

(e) *Master Minimum Equipment List.* If the applicant submits for approval a Master Minimum Equipment List that allows dispatch in a system-failed state that can affect structural performance, the following requirements apply:

(1) In the dispatched configuration, the airplane must meet the design load requirements of subpart C of this part, assuming any operating limitations, including configuration changes, that apply to the dispatched airplane; and

(2) In the dispatched configuration, the airplane must meet the requirements of paragraphs (a) and (b) of this section, taking into account any subsequent single failure, and separately, any combination of failures that are not extremely remote.

■ 4. Amend § 25.629 by revising the introductory text of paragraphs (b) and (d), redesignating paragraph (d)(10) as paragraph (d)(11), and adding paragraph (d)(10) to read as follows:

§ 25.629 Aeroelastic stability requirements.

* * * * *

(b) *Aeroelastic stability envelopes.* The airplane must be free from aeroelastic instability within the aeroelastic stability envelopes described in this paragraph for all configurations and design conditions, and for the load factors specified in § 25.333.

* * * * *

(d) *Failures, malfunctions, and adverse conditions.* The failures, malfunctions, and adverse conditions that must be considered in showing compliance with this section are:

* * * * *

(10) Each of the following failure combinations:

(i) Any dual hydraulic system failure.

(ii) Any dual electrical system failure.

(iii) Any single failure in combination with any probable hydraulic or electrical failure.

* * * * *

■ 5. Revise § 25.671 to read as follows:

§ 25.671 General.

(a) Each flight control and flight control system must operate with the ease, smoothness, and positiveness appropriate to its function. The flight control system must continue to operate and respond appropriately to commands, and must not hinder airplane recovery, when the airplane is experiencing any pitch, roll, or yaw rate, or vertical load factor that could occur due to operating or environmental conditions, or when the airplane is in any attitude.

(b) Each element of each flight control system must be designed, or distinctively and permanently marked, to minimize the probability of incorrect assembly that could result in failure of the system to perform its intended function. The applicant may use distinctive and permanent marking only where design means are impractical.

(c) The applicant must show by analysis, test, or both that the airplane is capable of continued safe flight and landing after any failure or event that results in a jam of a flight control surface or pilot control due to a physical interference.

(1) The applicant must assume the jam evaluated under this paragraph occurs at any normally encountered position of the flight control surface or pilot control.

(2) The applicant must assume the jam evaluated under this paragraph occurs anywhere within the normal flight envelope, except that the applicant need not account for flight control jams that occur immediately before touchdown if the applicant shows that such jams are extremely improbable.

(3) In the presence of a jam evaluated under this paragraph, any additional failure conditions that could prevent continued safe flight and landing must have a combined probability of less than 1/1000.

(d) If all engines fail at any point in the flight, the airplane must be controllable, and an approach and flare to a landing and controlled stop must be

possible without requiring exceptional piloting skill or strength. The applicant may show compliance with this requirement by analysis where the applicant has shown that analysis to be reliable.

(e) The flight control system must indicate to the flightcrew whenever the primary control means is near the limit of control authority.

(f) If the flight control system has multiple modes of operation, the system must alert the flightcrew whenever the airplane enters any mode that significantly changes or degrades the normal handling or operational characteristics of the airplane.

■ 6. Amend § 25.901 by revising paragraph (c) to read as follows:

§ 25.901 Installation.

* * * * *

(c) For each powerplant and auxiliary power unit installation, the applicant must comply with the requirements of § 25.1309, except that the effects of the following failures need not comply with § 25.1309(b)—

(1) Engine case burn-through or rupture,

(2) Uncontained engine rotor failure, and

(3) Propeller debris release.

* * * * *

■ 7. Amend § 25.933 by revising paragraph (a)(1) to read as follows:

§ 25.933 Reversing systems.

(a) * * *

(1) For each system intended for ground operation only, the applicant must show—

(i) The airplane is capable of continued safe flight and landing during and after any thrust reversal in flight; or

(ii) The system complies with § 25.1309(b).

* * * * *

■ 8. Revise § 25.1301 to read as follows:

§ 25.1301 Function and installation.

Each item of installed equipment must—

(a) Be of a kind and design appropriate to its intended function;

(b) Be labeled as to its identification, function, or operating limitations, or any applicable combination of these factors; and

(c) Be installed according to limitations specified for that equipment.

■ 9. Revise § 25.1309 to read as follows:

§ 25.1309 Equipment, systems, and installations.

Except as provided in paragraphs (e) and (f) of this section, this section applies to any equipment or system as installed on the airplane. The applicant need not account for this section when showing compliance with the performance and flight characteristic requirements of subpart B of this part and the structural requirements of subparts C and D of this part, except that this section applies to any system on which compliance with any of those requirements is dependent.

(a) The airplane's equipment and systems, as installed, must meet the following requirements:

(1) The equipment and systems required for type certification or by operating rules, or whose improper functioning would reduce safety, must perform as intended under the airplane operating and environmental conditions; and

(2) Other equipment and systems functioning normally or abnormally must not adversely affect the safety of the airplane or its occupants, or the proper functioning of the equipment and systems addressed by paragraph (a)(1) of this section.

(b) Each of the airplane's systems and associated components, as installed, and evaluated both separately and in relation to other systems, must meet all of the following requirements:

(1) Each catastrophic failure condition—

(i) Must be extremely improbable; and

(ii) Must not result from a single failure.

(2) Each hazardous failure condition must be extremely remote.

(3) Each major failure condition must be remote.

(4) Each significant latent failure must be eliminated except—

(i) If the Administrator finds it would be impractical for the applicant to comply with paragraph (b)(4) of this section, the product of the maximum time the failure is expected to be present and its average failure rate must not exceed 1/1000; or

(ii) If the Administrator finds it would be impractical for the applicant to comply with paragraph (b)(4)(i) of this section, the applicant must minimize the time the failure is expected to be present.

(5) For each catastrophic failure condition that results from two failures, either of which could be latent for more than one flight, the applicant must show that—

(i) It is impractical to provide additional fault tolerance;

(ii) Given the occurrence of any single latent failure, the probability of the catastrophic failure condition occurring due to all subsequent single failures is remote; and

(iii) The product of the maximum time the latent failure is expected to be present and its average failure rate does not exceed 1/1000.

(c) The applicant must provide information concerning unsafe system operating conditions in order to enable the flightcrew to take corrective action. The applicant must show that the design of systems and controls, including indications and annunciations, minimizes crew errors that could create additional hazards.

(d) The applicant must establish certification maintenance requirements to prevent development of the failure conditions described in paragraph (b) of this section. These requirements must be included in the Airworthiness Limitations section of the Instructions for Continued Airworthiness required by § 25.1529.

(e) Section 25.1309(b)(1)(ii) does not apply to the flight control jam conditions addressed by § 25.671(c).

(f) Section 25.1309(b) does not apply to—

(1) Single failures in the brake system addressed by § 25.735(b)(1);

(2) Failure effects addressed by §§ 25.810(a)(1)(v) and 25.812;

(3) Uncontained engine rotor failure, engine case rupture, or engine case burn-through failures addressed by §§ 25.903(d)(1) and 25.1193 and part 33 of this chapter; and

(4) Propeller debris release failures addressed by § 25.905(d) and part 35 of this chapter.

■ 10. Amend § 25.1365 by revising paragraph (a) to read as follows:

§ 25.1365 Electrical appliances, motors, and transformers.

(a) An applicant must show that, in the event of a failure of the electrical supply or control system, the design and installation of domestic appliances meet the requirements of § 25.1309(b) and (c). Domestic appliances are items such as cooktops, ovens, coffee makers, water heaters, refrigerators, and toilet flush systems that are placed on the airplane to provide service amenities to passengers.

* * * * *

■ 11. In appendix H to part 25, under the heading H25.4, add paragraph (a)(6) to read as follows:

Appendix H to Part 25—Instructions for Continued Airworthiness

* * * * *

H25.4 Airworthiness Limitations Section

* * * * *

(a) * * *

(6) Each certification maintenance requirement established to comply with any of the applicable provisions of part 25.

* * * * *

Issued in Washington, DC, on November 30, 2022.

Lirio Liu,

Executive Director, Aircraft Certification Service.

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