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U.S. GOVERNMENT
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FEDERAL REGISTER

Vol. 87 Friday

No. 236 December 9, 2022

Pages 75455–75890

OFFICE OF THE FEDERAL REGISTER

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Presidential Documents

Title 3—

The President

Proclamation 10504 of December 6, 2022

National Pearl Harbor Remembrance Day, 2022

By the President of the United States of America

A Proclamation

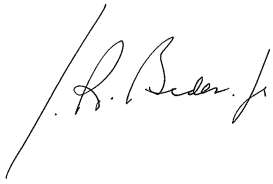
On National Pearl Harbor Remembrance Day, we honor the memories of the 2,403 service members and civilians whose lives were cut short on that tragic December morning. We reflect on the resilience of America's Armed Forces, who withstood the attack and built the most capable fighting force the world has ever known. In the wake of tragedy, these brave women and men—the Greatest Generation—answered the call to defend freedom, justice, and democracy across the Pacific, throughout Europe, and around the globe. Today, we carry forward their spirit of unity and their enduring resolve to protect the United States against those who seek to do us harm.

This commemoration is also a solemn reminder that our country is capable of achieving great triumphs coming out of dark moments. From the death and destruction at Pearl Harbor came victory over the forces of fascism. Fierce battles with the Axis powers gave way to diplomatic partnerships with strong allies. And from the darkness of World War II came the light of liberty and the establishment of a rules-based international order. Today and every day, we remember that the great and defining truth about our Nation and our people is that there is nothing beyond our capacity—we do not break, we never give in, and we never back down.

The Congress, by Public Law 103–308, as amended, has designated December 7 of each year as ''National Pearl Harbor Remembrance Day.'' Today, let us commemorate the patriots who were wounded and who perished on December 7, 1941, and continue to fulfill our sacred obligation to care for our service members and veterans and their families, caregivers, and survivors.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, do hereby proclaim December 7, 2022, as National Pearl Harbor Remembrance Day. I encourage all Americans to reflect on the courage shown by our brave service members that day and remember their sacrifices. I ask us all to give sincere thanks and appreciation to the survivors of that unthinkable day. I urge all Federal agencies, interested organizations, groups, and individuals to fly the flag of the United States at half-staff on December 7, 2022, in honor of those American patriots who died as a result of their service at Pearl Harbor.

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



[FR Doc. 2022–26934
Filed 12–8–22; 8:45 am]
Billing code 3395–F3–P

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DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3560

[Docket No. RHS–22–MFH–0020]

Multi-Family Housing Simple Transfer Pilot Program

AGENCY: Rural Housing Service, USDA.

ACTION: Notification of pilot program.

SUMMARY: The Rural Housing Service (RHS or the Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), is announcing the implementation of a pilot program for simple transfers of USDA Section 515 Rural Rental Housing properties. The Agency's intention is to evaluate the existing regulations and remove regulatory barriers to reduce application requirements for certain types of transfers, resulting in lower transaction-related costs for applicants and improved processing times.

DATES: The effective date of the Simple Transfer Pilot Program is December 9, 2022. The duration of the pilot program is anticipated to continue until December 9, 2024, at which time the RHS may extend the pilot program (with or without modifications) or terminate it depending on the workload and resources needed to administer the program, feedback from the public, and the effectiveness of the program. If the pilot program is extended or terminated, the RHS will notify the public.

FOR FURTHER INFORMATION CONTACT: For general information about the pilot program, contact Stephanie Vergin, MFH Production and Preservation Division at *stephanie.vergin@usda.gov* or David Willis, Asset Management Division at *david.willis2@usda.gov.* Owners that are interested in participating in the pilot program should contact the project's assigned servicing specialist in the Field Operations Division. The assigned specialist can be found on the Agency's website at *https://www.sc.egov.usda.gov/data/MFH.html.* Select the file under the heading Multifamily Housing 514 & 515 Property Assignments. The servicing specialist is listed in the column labeled ''Assigned To'' and their email is in the column ''Assigned To Email.''

SUPPLEMENTARY INFORMATION:

Authority

Title V, Section 506(b) of the Housing Act of 1949, as amended; 42 U.S.C. Section 1476(b).

Background

RHS is committed to helping improve the economy and quality of life in rural areas by offering a variety of programs such as loans, grants, and loan guarantees to help create jobs, expand economic development, and provide critical infrastructure investments. RHS also provides technical assistance, loans, and grants by partnering with agricultural producers, cooperatives, Indian tribes, non-profits, and other local, state, and federal agencies.

The Multi-family Housing Program (MFH), an RHS program, assists rural property owners through loans, loan guarantees, and grants that enable owners to develop and rehabilitate properties for low-income, elderly, and disabled individuals and families as well as domestic farm laborers. MFH works with the owners of its direct and farm labor housing loan properties to subsidize rents for low-income tenants who cannot afford to pay their full rent. These programs assist qualified applicants that cannot obtain commercial credit on terms that will allow them to charge rents that are affordable to low-income tenants.

Transfer Types: Simple and Standard Transfers

MFH utilizes a variety of tools to revitalize and preserve the physical and financial health of more than 13,000 properties currently in USDA's rural rental portfolio. The Agency may authorize limited demonstration programs to test new approaches to offering housing under the statutory authority granted to the Secretary, as set forth in 42 U.S.C. 1476(b) and 7 CFR 3560.53(t). Such demonstration programs may authorize procedures and requirements that differ from those set forth in statute or regulation. However, any program requirements that are not expressly waived, whether statutory or regulatory, remain in effect.

There are two primary types of ownership changes that require approval by MFH which are (1) a change in the borrower entity's organizational structure or (2) a transfer of ownership to a new entity. Organizational changes that include changes in a borrower's current ownership entity structure are addressed in 42 U.S.C. 1485(h) and 7 CFR 3560.405. Transfers, which are sales of projects to new owners that continue to operate the projects in the 515 program, are detailed in 42 U.S.C. 1485(h) and 7 CFR 3560.406.

MFH has identified the need to simplify the transfer of ownership for certain types of transactions. The current process places the same submission requirements on applicants regardless of the complexity of the transaction, resulting in undue burdens for relatively uncomplicated transfers, thereby reducing potential transfer and preservation activity in the portfolio. To address this issue, MFH is implementing the Simple Transfer Pilot Program which will offer three additional transfer options as a way to encourage preservation and revitalize its portfolio. MFH expects that by reducing application requirements for certain types of transfers, the result will be lower transaction-related costs for applicants and improved processing times. At the end of the pilot program, MFH will evaluate the findings with consideration towards, if successful, future regulatory changes that could be codified into 7 CFR part 3560 and applied program wide.

Discussion of the New Transfer Pilot Program

(1) *Simple Transfer Pilot Program:* For a simple transfer, under certain conditions the Agency will process an application for an ownership change without requiring full rehabilitation financing and/or reserve account funding typically needed to approve a standard transfer. Simple transfers include restrictions on new debt, equity payouts, and other limitations that are not included for standard transfers.

The Agency must determine that the new owner can operate the property successfully and that the ownership change will benefit the government and tenants even if there are remaining rehabilitation needs post-transfer. The

property must meet the required conditions to be processed as a simple transfer. The Asset Management Division (AMD) will process simple transfers.

(2) *Standard Transfer:* All transfers that do not meet the requirements for a simple transfer are considered standard transfers. Standard transfers often include third-party financing, such as Low-Income Housing Tax Credits (LIHTC), and may include one property or multiple properties in a portfolio. Standard transfers follow the guidance in 7 CFR 3560.406. The Production and Preservation Division (P2) will continue to process standard transfers.

Implementation of the Simple Transfer Pilot Program

Eligibility for the pilot program will be based on property conditions and the ability and willingness of the buyer and seller to meet required simple transfer conditions. Buyers must meet the eligibility criteria in 7 CFR 3560.406. Applicants must be able to clearly demonstrate that the property can operate successfully under new ownership. Applicants must abide by the regulatory requirements set forth in 7 CFR part 3560 and the requirements set forth in applicable statutes, except for the exceptions made available through this pilot program, as detailed in this Notice.

Under the pilot program, three simple transfer options are available to address different property circumstances, which are outlined below:

Option 1: Simple Transfer With Expedited Ownership Change Required

Option 1 is the most streamlined transfer process. It is available in circumstances where the Agency determines that an expedited ownership change is in the best interest of the Government, property, and tenants.

(1) Requirements:

(i) Property is in acceptable physical condition as determined by the Agency based on information submitted by the applicant, available in Agency files, or available from third parties, AND

(ii) Conditions exist that require an expedited transfer, including but not limited to: deceased borrower or general partner, hardship, insolvency, receivership, imminent loan maturity, or sale to nonprofit under prepayment, AND

(iii) No additional debt will be incurred by the Buyer or secured by the property as part of the transfer, AND

(iv) New owner (nonprofit or for-profit) will provide a plan for the long-term viability of the property, which may include recapitalization/rehabilitation or resetting of reserves. The Agency must determine that the proposed viability plan demonstrates the continued physical and financial viability of the property.

(2) Pilot Program Modification to Current Standard Transfer Requirements in 7 CFR 3560:

(i) No Capital Needs Assessment (CNA) is required with the transfer application (the CNA requirement in 7 CFR 3560.406(d)(5) is waived for transfers qualifying for Option 1).

(ii) No new valuation of the property is required with the transfer application (the requirement in 7 CFR 3560.406(d)(3)(i) and (ii) that the security value of the housing project be determined at the time of transfer is waived for transfers qualifying for Option 1).

(iii) The maturity date and amortization period of the loan will not be changed or extended.

(iv) No equity payout can be included as part of the transaction. Equity payout to transferor shall not be paid for by project funds and shall not be secured by the property. If agreed to by both parties, equity may be paid outside of the transaction.

(v) The project must meet minimum reserve account requirements as determined by the Agency. The Agency may require a post-transfer analysis to reset annual reserve deposits as a condition of the approved viability plan, which could include completion of a property conditions survey, a CNA, or another analysis acceptable to the Agency.

Option 2: Simple Transfer With Rehabilitation

Option 2 is designed for properties that require rehabilitation and/or resetting of the annual deposit to the reserve account.

(1) Requirements:

(i) Property is or will be fully subsidized post-transfer OR rents can be increased without adversely impacting occupancy and without a term extension, AND

(ii) No additional amortizing debt will be incurred by the Buyer or secured by the property as part of the transfer, AND

(iii) One of the following conditions applies:

(a) Based on a CNA, rehabilitation is needed now that cannot be funded by the current reserve account, OR

(b) Property is in acceptable condition, with only minor upfront rehabilitation or repairs needed, as determined by the Agency based on information submitted by the applicant, available in Agency files, or available from third parties. Reserves are sufficient to meet any upfront rehabilitation needs but are inadequate to address future rehabilitation needs, OR

(c) Property requires upfront rehabilitation that cannot be funded by the current reserve account, as well as resetting of reserve balances to adequately address future rehabilitation needs.

(2) Pilot Program Modification to Current Standard Transfer Requirements in 7 CFR 3560:

(i) No new valuation of the property is required with the transfer application (the requirement in 7 CFR 3560.406(d)(3)(i) and (ii) that the security value of the housing project be determined at the time of transfer is waived for transfers qualifying for Option 2).

(ii) The Agency may approve a junior lien for deferred financing as provided in 3560.409, except that: (a) deferred financing must at a minimum be coterminous with the Agency's loan(s), and (b) the Agency may set a maximum per unit limit on rehabilitation that can be approved under Option 2.

(iii) The maturity date and amortization period of the loan will not be changed or extended, except that a term extension may be permitted in accordance with 7 CFR 3560.409(j) if required by the deferred lender to preserve affordability for a longer period.

(iv) No equity payout can be included as part of the transaction. Equity payout to transferor shall not be paid for by project funds and shall not be secured by the property. If agreed to by both parties, equity may be paid outside of the transaction.

Option 3: Simple Transfer With Future Rehabilitation/Recapitalization Plan

Option 3 provides flexibility to nonprofits and government agencies to complete an acquisition of a preservation-worthy property even if resources for rehabilitation of the property are not available at the time of the transfer. An appraisal and CNA are required as part of the transfer application.

(1) Requirements:

(i) Based on a CNA, rehabilitation is needed that cannot be fully funded by the current reserve account or resetting of the existing reserve deposits, AND

(ii) The purchaser is a nonprofit organization or government agency, AND

(iii) The new nonprofit or government agency owner will pursue a strategy to rehabilitate/recapitalize the property with Agency and/or third-party funds within two years of the transfer closing

date. The Agency must determine that the recapitalization plan will meet the physical and financial needs of the property the new owner is likely to obtain the Agency and/or third-party funds, and the property can function successfully until rehabilitation/recapitalization is complete.

(2) Pilot Program Modification to Current Standard Transfer Requirements in 7 CFR 3560:

(i) The Agency will waive the necessary reserve requirement adjustment under 7 CFR 3560.406(d)(5). The new owner must address the rehabilitation needs identified in the CNA over a period not to exceed two years after the closing date of the transfer. RD must approve the new owner's proposed rehabilitation plan and the new owner's plan to obtain funding for the rehabilitation prior to approval of the transfer.

(ii) The Agency will monitor the progress and implementation of the approved plan as part of routine project servicing. The new owner may propose changes to the approved plan; however, RD must authorize in writing any changes before they are implemented.

For all simple transfer options, health, safety, environmental, civil rights, and applicable accessibility requirements must be resolved at the time of transfer. The property must be rated ''performing'' in the internal risk rating tool unless an exception is approved by the Agency.

In cases where MFH determines that none of the simple transfer options are viable for a project, the property owner should follow the standard transfer requirements in 7 CFR 3560.406. The Agency may also determine that other servicing actions are more appropriate based on the property's circumstances.

Standard transfer requirements have not changed and are outlined in 7 CFR 3560.406 (*https://ecfr.federalregister.gov/current/title-7/subtitle-B/chapter-XXXV/part-3560/subpart-I/section-3560.406*) and are available on the Agency's website at: *https://www.rd.usda.gov/sites/default/files/3560-3chapter07.pdf.*

For simple transfers, a checklist and other information have been developed and are available by: (1) going to the MFH website at *https://www.rd.usda.gov/programs-services/multifamily-housing-programs/multifamily-housing-direct-loans* (click on the To Apply tab), (2) contacting the assigned servicing specialist, which can be found at USDA Service Center Agencies Online Services; or (3) refer to the **FOR FURTHER INFORMATION CONTACT** section in this Notice.

Transfer Processing Steps

A property owner should contact the assigned Field Operations Division (FOD) servicing specialist if interested in a transfer under the pilot program. The FOD servicing specialist will meet with the owner to discuss their goals for the transfer, timelines, prospective buyer(s), possible funding sources, etc. The specialist will review options with the borrower, including prepayment (if applicable), and determine if other servicing actions are needed. If a simple transfer appears possible and the owner is interested, FOD will refer the customer to the Servicing Support Branch in AMD for a consultation. AMD will review simple transfer options with the prospective buyer and seller, along with the streamlined revised checklist. If a standard transfer appears to be the best option, FOD will refer the owner to the appropriate Processing and Report Review Branch in P2 for a consultation.

Paperwork Reduction Act

The regulatory waivers for this pilot contain no new reporting or recordkeeping burdens under OMB control number 0575–0179 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Non-Discrimination Statement

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

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

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

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

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

(3) *Email: Program.Intake@usda.gov.*

Joaquin Altoro,

Administrator, Rural Housing Service.

[FR Doc. 2022–26726 Filed 12–8–22; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1235; Project Identifier MCAI–2022–00475–T; Amendment 39–22273; AD 2022–25–17]

RIN 2120–AA64

Airworthiness Directives; AIRBUS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2022–07–10, which applied to all Airbus SAS Model A350–941 and –1041 airplanes. AD 2022–07–10 required revising the operator's existing FAA-approved minimum equipment list (MEL) to include dispatch restrictions. AD 2022–07–10 allowed operators to inspect affected parts for discrepancies, and do applicable replacements, in order to terminate the revision of the operator's existing MEL. AD 2022–07–10 also prohibited the installation of affected parts. This AD was prompted by a determination that the optional inspection and applicable replacements should be required. This AD continues to require the actions in AD 2022–07–10, and mandates the inspection of affected parts and applicable replacements, as specified in a

European Union Aviation Safety Agency (EASA) AD, which was incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 13, 2023.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 20, 2022 (87 FR 19622, April 5, 2022).

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1235; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For EASA AD 2022–0031, dated February 25, 2022, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*
- For Kidde Aerospace & Defense service information, contact Kidde Aerospace & Defense, 4200 Airport Drive NW, Building B, Wilson, NC 27896; telephone 319–295–5000; website *kiddetechnologies.com/aviation.com.*
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* under Docket No. FAA–2022–1235.

FOR FURTHER INFORMATION CONTACT: Dat Le, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 516–228–7317; email *dat.v.le@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2022–07–10, Amendment 39–21998 (87 FR 19622, April 5, 2022) (AD 2022–07–10). AD 2022–07–10 applied to all Airbus SAS Model A350–941 and –1041 airplanes. AD 2022–07–10 required revising the operator's existing FAA-approved MEL to include dispatch restrictions. AD 2022–07–10 allowed operators to inspect affected parts for discrepancies, and do applicable replacements, in order to terminate the revision of the operator's existing MEL. AD 2022–07–10 also prohibited the installation of affected parts. The FAA issued AD 2022–07–10 to address undetected thermal bleed leak events that might not be isolated during flight, possibly resulting in localized areas of the wing structure being exposed to high temperatures and consequent reduced structural integrity of the airplane.

The NPRM published in the **Federal Register** on September 27, 2022 (87 FR 58460). The NPRM was prompted by AD 2022–0031, dated February 25, 2022, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2022–0031) (referred to after this as the MCAI). The MCAI states that certain overheat detection system sensing (OHDS) elements may not properly detect thermal bleed leak events due to a quality escape during the manufacturing process. This condition, if not addressed, could lead to undetected thermal bleed leak events that might not be isolated during flight, possibly resulting in localized areas of the wing structure being exposed to high temperatures and consequent reduced structural integrity of the airplane.

In the NPRM, the FAA proposed to continue to require the actions in AD 2022–07–10, and mandate the inspection of affected parts and applicable replacements, as specified in EASA AD 2022–0031. The NPRM also proposed to prohibit the installation of affected parts.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1235.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from the Air Line Pilots Association, International (ALPA) and two individual commenters who supported the NPRM without change.

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered the comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. This AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

This AD requires EASA AD 2022–0031, which the Director of the Federal Register approved for incorporation by reference as of April 20, 2022 (87 FR 19622, April 5, 2022).

This AD also requires Kidde Aerospace & Defense Service Bulletin CFD–26–3, dated January 13, 2022, which the Director of the Federal Register approved for incorporation by reference as of April 20, 2022 (87 FR 19622, April 5, 2022).

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

Costs of Compliance

The FAA estimates that this AD affects 29 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2022–07–10	1 work-hour × $85 per hour = $85	$0	$85	$2,465
New actions	13 work-hours × $85 per hour = $1,105	0	1,105	32,045

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
1 work-hour × $85 per hour = $85	$795	$880

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2022–07–10, Amendment 39–21998 (87 FR 19622, April 5, 2022); and

■ b. Adding the following new airworthiness directive:

2022–25–17 Airbus SAS: Amendment 39–22273; Docket No. FAA–2022–1235; Project Identifier MCAI–2022–00475–T.

(a) Effective Date

This airworthiness directive (AD) is effective January 13, 2023.

(b) Affected ADs

This AD replaces AD 2022–07–10, Amendment 39–21998 (87 FR 19622, April 5, 2022) (AD 2022–07–10).

(c) Applicability

This AD applies to all Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 36, Pneumatic.

(e) Unsafe Condition

This AD was prompted by a report that certain overheat detection system (OHDS) sensing elements may not properly detect thermal bleed leak events due to a quality escape during the manufacturing process, and by a determination that an optional inspection and applicable replacements should be required. The FAA is issuing this AD to address undetected thermal bleed leak events that might not be isolated during flight, possibly resulting in localized areas of the wing structure being exposed to high temperatures and consequent reduced structural integrity of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0031, dated February 25, 2022 (EASA AD 2022–0031).

(h) Exceptions to EASA AD 2022–0031

(1) Where paragraphs (1) and (4) of EASA AD 2022–0031 refer to its effective date, this AD requires using April 20, 2022 (the effective date of AD 2022–07–10).

(2) Where paragraph (2) of EASA AD 2022–0031 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where EASA AD 2022–0031 has a definition for ''Affected part'' and refers to ''the VSB [vendor service bulletin]'' for the part numbers and date codes, for this AD, use Kidde Aerospace & Defense Service Bulletin CFD–26–3, dated January 13, 2022, as ''the VSB'' for the part numbers and date codes.

(4) Where EASA AD 2022–0031 has a definition for ''Groups'' and identifies certain airplanes as Group 2 airplanes, replace the text, ''An aeroplane having an MSN [manufacturer serial number] not listed in the Section 1.A of the SB is Group 2, provided it is determined that no affected part has been installed on any affected position of that aeroplane since Airbus date of manufacture'' with ''An aeroplane having an MSN not listed in the Section 1.A of Airbus Service Bulletin A350–36–P032, dated December 3, 2021, is Group 2, provided it is determined that no affected part has been installed on any affected position of that aeroplane since Airbus date of manufacture.''

(5) Where paragraph (1) of EASA AD 2022–0031 specifies to ''inform all flight crews, and, thereafter, operate the aeroplane accordingly,'' this AD does not require those actions as those actions are already required by existing FAA operating regulations (see 14 CFR 121.628(a)(2) and 14 CFR 121.628(a)(5)).

(6) Where paragraph (3) of EASA AD 2022–0031 specifies action if ''any discrepancy as defined in the SB is detected,'' for this AD a discrepancy is when the related electronic centralized aircraft monitoring (ECAM) warning is not displayed after a heat gun test is done.

(7) This AD does not adopt the ''Remarks'' section of EASA AD 2022–0031.

(i) No Reporting Requirement and No Return of Parts

(1) Although the service information referenced in EASA AD 2022–0031 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(2) Although the service information referenced in EASA AD 2022–0031 specifies to return certain parts to the manufacturer, this AD does not include that requirement.

(j) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the International Validation Branch, send it to the attention of the person identified in paragraph (k) of this AD. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

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

(k) Additional Information

For more information about this AD, contact Dat Le, Aerospace Engineer, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 516–228–7317; email *dat.v.le@faa.gov.*

(l) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on April 20, 2022 (87 FR 19622, April 5, 2022).

(i) European Union Aviation Safety Agency (EASA) AD 2022–0031, dated February 25, 2022.

(ii) Kidde Aerospace & Defense Service Bulletin CFD–26–3, dated January 13, 2022.

(4) For EASA AD 2022–0031, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

(5) For Kidde Aerospace & Defense service information, contact Kidde Aerospace & Defense, 4200 Airport Drive NW, Building B, Wilson, NC 27896; telephone 319–295–5000; website *kiddetechnologies.com/aviation.com.*

(6) You may view this service information at 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.

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

Issued on December 1, 2022.

Christina Underwood,

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

[FR Doc. 2022–26598 Filed 12–8–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0995; Project Identifier MCAI–2021–01365–T; Amendment 39–22269; AD 2022–25–13]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes. This AD was prompted by reports of the passenger door failing to dampen during opening at regularly scheduled maintenance checks, causing the door to open more rapidly than normal. An investigation found that a contributing factor was erroneous aircraft maintenance manual (AMM) procedures. This AD prohibits using certain versions of certain AMM tasks for the passenger door. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 13, 2023.

ADDRESSES: *AD Docket:* You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–0995; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Chirayu Gupta, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes. The NPRM published in the **Federal Register** on August 12, 2022 (87 FR 49799). The NPRM was prompted by AD CF–2021–41, dated November 24, 2021, issued by Transport Canada, which is the aviation authority for Canada (referred to after this as the MCAI). The MCAI states that there have been reports of the passenger door failing to dampen during opening at regularly scheduled maintenance checks, causing the door to open more rapidly than normal. An investigation found that a contributing factor was erroneous AMM procedures.

In the NPRM, the FAA proposed to prohibit using certain versions of certain AMM tasks for the passenger door. The FAA is issuing this AD to prevent rapid opening of the passenger door, which can result in damage to the door and consequent injury to maintenance personnel.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–0995.

Discussion of Final Airworthiness Directive Comments

The FAA received one comment from an individual. The following presents the comment received on the NPRM and the FAA's response.

Request for Earlier Date of Compliance

The commenter asked that the compliance time in the proposed AD be changed to state that within 30 days, check to confirm that all the tasks in figure 1 to paragraph (g) of this AD were not issued prior to May 19, 2021, and make a logbook entry accordingly. The commenter stated that the current compliance method seems rather odd. The commenter asked if the compliance method means waiting until one of the tasks in figure 1 is accomplished, and then making an aircraft logbook entry that the task was not issued prior to May 19, 2021.

The FAA agrees to clarify. The AMM tasks related to passenger door maintenance have been corrected, and only versions of these tasks dated May 19, 2021, or later have the correct procedures. Therefore, this AD requires that maintenance tasks identified in figure 1 to paragraph (g) of this AD must be done using versions issued on or after May 19, 2021. This requirement remains in effect following the compliance time (30 days after the effective date of this AD), and compliance must be shown for each occurrence. The FAA has not changed this AD in this regard.

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered the comment received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Costs of Compliance

The FAA estimates that this AD affects 408 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	$34,680

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 *[Amended]*

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

2022–25–13 Bombardier Inc.: Amendment 39–22269; Docket No. FAA–2022–0995; Project Identifier MCAI–2021–01365–T.

(a) Effective Date

This airworthiness directive (AD) is effective January 13, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes, certificated in any category, serial numbers (S/Ns) 9002 through 9998 inclusive, and S/Ns 60001 through 60045 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 52, Doors.

(e) Reason

This AD was prompted by reports of the passenger door failing to dampen during opening at regularly scheduled maintenance checks, causing the door to open more rapidly than normal. An investigation found that a contributing factor was erroneous aircraft maintenance manual (AMM) procedures. The FAA is issuing this AD to prevent rapid opening of the passenger door, which can result in damage to the door and consequent injury to maintenance personnel.

(f) Compliance

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

(g) Maintenance or Inspection Program Task Restrictions

As of 30 days after the effective date of this AD, when performing the maintenance tasks identified in figure 1 to paragraph (g) of this AD, do not use any version of any task identified in figure 1 to paragraph (g) of this AD that was issued prior to May 19, 2021.

Figure 1 to paragraph (g)—*AMM Tasks*

AMM Task Number	Task Title
52-11-00-280-801	Rigging Check of the Passenger Door
52-11-00-400-801	Installation of the Passenger Door
52-11-00-710-801	Operational Test of the Passenger Door
52-11-00-820-801	Rigging of the Passenger Door
52-11-25-000-801	Removal of the Passenger Door Actuator
52-11-25-400-801	Installation of the Passenger Door Actuator
52-11-25-820-801	Rigging of the Passenger Door Actuator
52-11-33-000-801	Removal of the Passenger Door Chain
52-11-33-400-801	Installation of the Passenger Door Chain
52-11-41-000-801	Removal of the Passenger Door Tensator-Springs

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(i) Additional Information

(1) Refer to Transport Canada AD CF–2021–41, dated November 24, 2021; for related information. This Transport Canada AD may be found in the AD docket at regulations.gov under Docket No. FAA–2022–0995.

(2) For more information about this AD, contact Chirayu Gupta, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

(j) Material Incorporated by Reference

None.

Issued on November 30, 2022.

Christina Underwood,

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

[FR Doc. 2022–26649 Filed 12–8–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0376; Airspace Docket No. 22–ANE–4]

RIN 2120–AA66

Amendment of Class E Airspace; Montpelier, VT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: A final rule was published in the **Federal Register** on December 5, 2022, amending Class E surface airspace and Class E airspace extending upward from 700 feet above the surface for Edward F. Knapp State Park Airport, Montpelier, VT, by creating a cutout of the airspace around Warren-Sugarbush Airport. This action corrects the Class E airspace extending upward from 700 feet above the surface description by adding Warren-Sugarbush Airport to the Class E description header.

DATES: Effective 0901 UTC, February 23, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Ave., College Park, GA 30337; Telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

History

The FAA published a final rule correction in the **Federal Register** (87 FR 74302, December 5, 2022) for Doc. No. FAA–2022–0376, adding a cutout of the Class E airspace of Edward F. Knapp

State Park Airport for Warren-Sugarbush Airport. Warren-Sugarbush Airport was inadvertently omitted from the airspace description header. This action corrects this error.

Class E airspace designations are published in Paragraph 6005 of FAA Order JO 7400.11G dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will subsequently be published in FAA Order JO 7400.11G.

Correction to Final Rule

This action amends (14 CFR) part 71 by adding Warren-Sugarbush Airport to the Class E airspace extending upward from 700 feet above the surface description header for Edward F. Knapp State Park Airport.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraphs 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances warrant the preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Correction to the Final Rule

Accordingly, pursuant to the authority delegated to me, the amendment of Class E surface airspace and Class E airspace extending upward from 700 feet above the surface for Edward F. Knapp State Park Airport, Montpelier, VT, in Docket No. FAA–2022–0376, as published in the **Federal Register** of December 5, 2022 (87 FR 74302), FR Doc. 2022–26285, in 14 CFR part 71, is corrected as follows:

§ 71.1 [Corrected]

■ 1. On page 74303, in the second column, correct the description for ANE VT E5 Montpelier, VT [Amended] to read:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANE VT E5 Montpelier, VT [Amended]

Edward F. Knapp State Airport, VT
(Lat. 44°12′13″ N, long. 72°33′44″ W)
Warren-Sugarbush Airport
(Lat. 44°07′03″ N, long. 72°49′37″ W)

That airspace extending upward from 700 feet above the surface within a 13-mile radius of Edward F. Knapp State Airport, excluding that airspace within a 1¾-mile radius of Warren-Sugarbush Airport.

Issued in College Park, Georgia, on December 5, 2022.

Lisa Burrows,

Manager, Airspace & Procedures Team North, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2022–26719 Filed 12–8–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0571; Airspace Docket No. 22–ANM–46]

RIN 2120–AA66

Establishment of Class E Airspace; Christmas Valley Airport, OR

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

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet above the surface at Christmas Valley Airport, OR. These actions will support the airport's transition from visual flight rules (VFR) to instrument flight rules (IFR) at the airport.

DATES: Effective 0901 UTC, February 23, 2023. The Director of the Federal Register approves this incorporation by reference under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11, Airspace Designations and Reporting Points, and publication of conforming amendments.

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

FOR FURTHER INFORMATION CONTACT: Nathan A. Chaffman, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3460.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it would establish Class E airspace at Christmas Valley Airport, OR to support IFR operations at the airport.

History

The FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** for FAA–2022–0571 (87 FR 38309; June 28, 2022) to establish Class E airspace beginning at 700 feet above the surface at Christmas Valley Airport, OR. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. Two comments were received. One comment was received in favor of the proposal, and one comment was against the proposal. The comment against argues that, ''A 14 mile radius 700′ [sic] transition area is grossly excessive for one proposed standard instrument approach procedure. This proposed transition area should be no larger than required for flight below 1,200 feet, above ground level.'' The above comment does not make a valid argument against the FAA's actions, as the airspace is appropriately sized. Class E5 airspace areas with a base of 700 feet

above the surface must be designated to accommodate departing IFR operations until they reach 1,200 feet above the surface. Additionally, a climb gradient of 200 feet per nautical mile (NM) must be applied to determine the size of all Class E airspace for departures. Christmas Valley Airport allows for diverse departures, as it does not have a published departure procedure. Due to rising terrain south and west of the airport, a Class E5 airspace area encircling the airport with a 14-mile radius is necessary to accommodate IFR departures until reaching 1,200 feet above the surface.

Class E5 airspace designations is published in paragraph 6005 of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

The FAA is amending 14 CFR part 71 by establishing Class E airspace beginning at 700 feet above the surface at Christmas Valley Airport to contain departing aircraft until reaching 1,200 feet above the surface, and arriving aircraft below 1,500 feet above the surface. The airspace is centered on the Christmas Valley Airport reference point, with a 14-mile radius to account for rising terrain in the vicinity of the airport.

The Class E5 airspace designation is published in paragraph 6005 of FAA Order JO 7400.11G, dated August 19, 2022, and became effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in FAA Order JO 7400.11.

FAA Order JO 7400.11 is published annually and becomes effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial, and unlikely to result in adverse or negative comments. It therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant the preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the FAA amends 14 CFR part 71 as follows:

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANM OR E Christmas Valley, OR [New]

Christmas Valley Airport, OR
(Lat. 43°14′11″ N, long. 120°39′53″ W)

That airspace extending upward from 700 feet above the surface within a 14-mile radius of the Christmas Valley Airport.

Issued in Des Moines, Washington, on November 14, 2022.

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2022–26646 Filed 12–8–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31458; Amdt. No. 4035]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective December 9, 2022. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 9, 2022.

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

For Examination

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

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

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

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fr.inspection@nara.gov* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Availability

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

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

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

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

Availability and Summary of Material Incorporated by Reference

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

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

The Rule

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

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

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

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

Lists of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on November 11, 2022.

Thomas J Nichols,

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

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

Effective 29 December 2022

Tucson, AZ, KTUS, ILS OR LOC RWY 11L, Amdt 14E
Tucson, AZ, KTUS, VOR OR TACAN RWY 11L, Amdt 1D
Truckee, CA, KTRK, Takeoff Minimums and Obstacle DP, Amdt 6
Truckee, CA, KTRK, TRUCK FIVE, Graphic DP
Granby, CO, KGNB, JANKE ONE, Graphic DP
Granby, CO, KGNB, Takeoff Minimums and Obstacle DP, Orig
Dalton, GA, KDNN, ILS OR LOC RWY 14, Amdt 2
Ellsworth, KS, 9K7, RNAV (GPS) RWY 17, Orig
Ellsworth, KS, 9K7, RNAV (GPS) RWY 35, Orig
Ellsworth, KS, 9K7, Takeoff Minimums and Obstacle DP, Orig
Pittsfield, MA, KPSF, LOC RWY 26, Amdt 10A
Pittsfield, MA, KPSF, RNAV (GPS) RWY 8, Amdt 1C
Pittsfield, MA, KPSF, RNAV (GPS) RWY 26, Amdt 2A

Pellston, MI, KPLN, Takeoff Minimums and Obstacle DP, Amdt 5
Duluth, MN, KDYT, RNAV (GPS) RWY 32, Orig
Duluth, MN, Sky Harbor, Takeoff Minimums and Obstacle DP, Orig
Farmington, MO, KFAM, RNAV (GPS) RWY 2, Amdt 1
Farmington, MO, KFAM, RNAV (GPS) RWY 20, Amdt 1
Farmington, MO, KFAM, Takeoff Minimums and Obstacle DP, Amdt 6
Bozeman, MT, KBZN, RNAV (GPS) Y RWY 30, Orig
Helena, MT, KHLN, COPTER VOR 258, Orig-A
Helena, MT, KHLN, DIVIDE TWO, Graphic DP
Helena, MT, KHLN, ILS Y OR LOC Y RWY 27, Amdt 4
Helena, MT, KHLN, ILS Z OR LOC Z RWY 27, Amdt 3
Helena, MT, KHLN, LOC BC–C, Amdt 6
Helena, MT, KHLN, Takeoff Minimums and Obstacle DP, Amdt 10A
Helena, MT, KHLN, VOR–A, Amdt 16
Helena, MT, KHLN, VOR–B, Amdt 8
Sunriver, OR, S21, Takeoff Minimums and Obstacle DP, Orig-A
Myrtle Beach, SC, KMYR, ILS OR LOC RWY 18, ILS RWY 18 (SA CAT I), ILS RWY 18 (SA CAT II), Amdt 6
Watertown, SD, KATY, ILS OR LOC RWY 35, Amdt 12
Watertown, SD, KATY, LOC BC RWY 17, Amdt 11A, CANCELED
Watertown, SD, KATY, RNAV (GPS) RWY12, Orig-B
Watertown, SD, KATY, RNAV (GPS) RWY 17, Orig-B
Watertown, SD, KATY, RNAV (GPS) RWY 30, Amdt 1B
Watertown, SD, KATY, RNAV (GPS) RWY 35, Amdt 1A
Watertown, SD, KATY, VOR OR TACAN RWY 17, Amdt 17B, CANCELED
Dallas, TX, KDAL, ILS OR LOC RWY 31L, Amdt 23
Dallas, TX, KDAL, ILS OR LOC RWY 31R, ILS RWY 31R (SA CAT I), ILS RWY 31R (SA CAT II), Amdt 7B
Seattle, WA, KBFI, ILS OR LOC RWY 14R, Amdt 32
Seattle, WA, KBFI, ILS OR LOC RWY 32L, Amdt 2
Torrington, WY, KTOR, NDB RWY 10, Amdt 3
Torrington, WY, KTOR, NDB RWY 28, Amdt 2D
Torrington, WY, KTOR, RNAV (GPS) RWY 10, Amdt 1
Torrington, WY, KTOR, RNAV (GPS) RWY 28, Amdt 1
Torrington, WY, KTOR, Takeoff Minimums and Obstacle DP, Orig-A

[FR Doc. 2022–26724 Filed 12–8–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31459; Amdt. No. 4036]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective December 9, 2022. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 9, 2022.

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

For Examination

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

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

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

4. The National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, email *fr.inspection@nara.gov* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Availability

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

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

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary. This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section. The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for Part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums

and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

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

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

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

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on November 11, 2022.

Thomas J Nichols,

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

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

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

* * * Effective Upon Publication

AIRAC Date	State	City	Airport	FDC No.	FDC date	Subject
29–Dec–22	DE	Georgetown	Delaware Coastal	2/0337	10/24/22	VOR RWY 22, Amdt 7B.
29–Dec–22	DE	Georgetown	Delaware Coastal	2/0339	10/24/22	RNAV (GPS) RWY 4, Amdt 3.
29–Dec–22	KS	Pittsburg	Atkinson Muni	2/1086	10/12/22	RNAV (GPS) RWY 22, Amdt 1C.
29–Dec–22	CO	Fort Collins/ Loveland.	Northern Colorado Rgnl	2/1196	11/7/22	VOR–A, Amdt 7B.
29–Dec–22	FL	Orlando	Orlando Sanford Intl	2/2414	10/17/22	ILS OR LOC RWY 9L, Amdt 4B.
29–Dec–22	GA	Cartersville	Cartersville	2/2710	11/2/22	RNAV (GPS) RWY 1, Amdt 1C.
29–Dec–22	CA	San Diego/El Cajon	Gillespie Fld	2/2738	11/4/22	RNAV (GPS) RWY 9L, Orig-A.
29–Dec–22	FL	Immokalee	Immokalee Rgnl	2/2739	11/4/22	RNAV (GPS) RWY 18, Amdt 1A.
29–Dec–22	FL	Immokalee	Immokalee Rgnl	2/2740	11/4/22	RNAV (GPS) RWY 36, Amdt 1B.
29–Dec–22	MI	Caro	Tuscola Area	2/3222	11/2/22	RNAV (GPS) RWY 6, Amdt 2.
29–Dec–22	LA	Rayville	John H Hooks Jr Meml	2/3525	10/20/22	RNAV (GPS) RWY 18, Amdt 1B.
29–Dec–22	TX	Yoakum	Yoakum Muni	2/3689	10/3/22	RNAV (GPS) RWY 31, Orig-C.
29–Dec–22	MS	Bay St Louis	Stennis Intl	2/3838	10/14/22	ILS Y OR LOC Y RWY 18, Orig.
29–Dec–22	MS	Bay St Louis	Stennis Intl	2/3839	10/14/22	ILS Z OR LOC Z RWY 18, Amdt 3.
29–Dec–22	MT	Great Falls	Great Falls Intl	2/4000	11/7/22	ILS OR LOC RWY 3, Amdt 5C.
29–Dec–22	TX	El Paso	El Paso Intl	2/5651	10/21/22	RNAV (GPS) X RWY 4, Orig-D.
29–Dec–22	TX	El Paso	El Paso Intl	2/5652	10/21/22	RNAV (GPS) RWY 26R, Amdt 1.
29–Dec–22	TX	El Paso	El Paso Intl	2/5680	10/21/22	VOR RWY 26L, Amdt 32B.
29–Dec–22	TX	El Paso	El Paso Intl	2/5683	10/21/22	RADAR 1, Amdt 15C.
29–Dec–22	TX	El Paso	El Paso Intl	2/5685	10/21/22	LOC/DME RWY 4, Amdt 3B.
29–Dec–22	AL	Dothan	Dothan Rgnl	2/5798	10/24/22	ILS OR LOC RWY 14, Amdt 2.
29–Dec–22	MN	Austin	Austin Muni	2/6036	10/3/22	ILS OR LOC RWY 35, Amdt 1C.
29–Dec–22	MN	Detroit Lakes	Detroit Lakes/Wething Fld	2/6146	10/20/22	RNAV (GPS) RWY 14, Amdt 2.
29–Dec–22	TX	Corpus Christi	Corpus Christi Intl	2/6245	10/19/22	ILS OR LOC RWY 13, Amdt 28.
29–Dec–22	VT	Morrisville	Morrisville-Stowe State	2/6396	10/24/22	RNAV (GPS) Z RWY 19, Amdt 2.
29–Dec–22	MN	Olivia	Olivia Rgnl	2/6414	10/19/22	RNAV (GPS) RWY 29, Orig-B.
29–Dec–22	TN	Shelbyville	Bomar Fld/Shelbyville Muni	2/6417	10/24/22	VOR RWY 18, Amdt 5C.
29–Dec–22	MS	Greenwood	Greenwood-Leflore	2/6475	8/15/22	RNAV (GPS) RWY 5, Amdt 2B.
29–Dec–22	MS	Greenwood	Greenwood-Leflore	2/6476	8/15/22	RNAV (GPS) RWY 18, Amdt 2B.
29–Dec–22	MS	Greenwood	Greenwood-Leflore	2/6478	8/15/22	RNAV (GPS) RWY 36, Amdt 1A.
29–Dec–22	MS	Greenwood	Greenwood-Leflore	2/6481	8/15/22	ILS OR LOC RWY 18, Amdt 8B.

AIRAC Date	State	City	Airport	FDC No.	FDC date	Subject
29–Dec–22 ...	MS	Greenwood	Greenwood-Leflore	2/6483	8/15/22	VOR RWY 5, Amdt 13B.
29–Dec–22 ...	MS	Corinth	Roscoe Turner	2/7401	10/24/22	RNAV (GPS) RWY 36, Amdt 1C.
29–Dec–22 ...	MS	Corinth	Roscoe Turner	2/7406	10/24/22	ILS OR LOC RWY 18, Amdt 4.
29–Dec–22 ...	MS	Corinth	Roscoe Turner	2/7420	10/24/22	RNAV (GPS) RWY 18, Amdt 1A.
29–Dec–22 ...	IN	Logansport	Logansport/Cass County	2/7662	9/23/22	RNAV (GPS) RWY 9, Amdt 1B.
29–Dec–22 ...	OH	Millersburg	Holmes County	2/8082	10/24/22	RNAV (GPS) RWY 9, Orig-B.
29–Dec–22 ...	OH	Millersburg	Holmes County	2/8083	10/24/22	RNAV (GPS) RWY 27, Orig-B.
29–Dec–22 ...	IA	Vinton	Vinton Veterans Meml Airpark	2/9284	10/26/22	RNAV (GPS) RWY 9, Orig.
29–Dec–22 ...	AL	Troy	Troy Muni At N Kenneth Campbell Fld.	2/9433	9/7/22	RNAV (GPS) RWY 32, Amdt 1C.
29–Dec–22 ...	AL	Troy	Troy Muni At N Kenneth Campbell Fld.	2/9434	9/7/22	ILS OR LOC RWY 7, Amdt 11A.

[FR Doc. 2022–26721 Filed 12–8–22; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–737]

Schedules of Controlled Substances: Placement of Methiopropamine in Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: With the issuance of this final rule, the Drug Enforcement Administration places *N*-methyl-1-(thiophen-2-yl)propan-2-amine (methiopropamine), including its salts, isomers, and salts of isomers in schedule I of the Controlled Substances Act. This action is being taken to enable the United States to meet its obligations under the 1971 Convention on Psychotropic Substances. This action imposes the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis with, or possess) or propose to handle methiopropamine.

DATES: *Effective date:* January 9, 2023.

FOR FURTHER INFORMATION CONTACT: Dr. Terrence L. Boos, Drug and Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration; Telephone: (571) 362–3249.

SUPPLEMENTARY INFORMATION:

Legal Authority

The United States is a party to the 1971 United Nations Convention on Psychotropic Substances (1971 Convention), February 21, 1971, 32 U.S.T. 543, 1019 U.N.T.S. 175, as amended. Procedures respecting changes in drug schedules under the 1971 Convention are governed domestically by 21 U.S.C. 811(d)(2)–(4). When the United States receives notification of a scheduling decision pursuant to Article 2 of the 1971 Convention adding a drug or other substance to a specific schedule, the Secretary of the Department of Health and Human Services (HHS),[1] after consultation with the Attorney General, shall first determine whether existing legal controls under subchapter I of the Controlled Substances Act (CSA) and the Federal Food, Drug, and Cosmetic Act meet the requirements of the schedule specified in the notification with respect to the specific drug or substance. 21 U.S.C. 811(d)(3). In the event that the Secretary of HHS (Secretary) did not so consult with the Attorney General, and the Attorney General did not issue a temporary order, as provided under 21 U.S.C. 811(d)(4), the procedures for permanent scheduling are set forth in 21 U.S.C. 811(a) and (b). Pursuant to 21 U.S.C. 811(a)(1), the Attorney General, by rule, may add to such a schedule any drug or other substance, if he finds that such drug or other substance has a potential for abuse, and makes with respect to such drug or other substance the findings prescribed by 21 U.S.C. 812(b) for the schedule in which such drug is to be placed. The Attorney General has delegated this scheduling authority to the Administrator of the Drug Enforcement Administration (DEA Administrator or Administrator). 28 CFR 0.100.

[1] As discussed in a memorandum of understanding entered into by the Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA), FDA acts as the lead agency within HHS in carrying out the Secretary's scheduling responsibilities under the Controlled Substances Act, with the concurrence of NIDA. 50 FR 9518 (March 8, 1985). The Secretary of HHS has delegated to the Assistant Secretary for Health of HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460 (July 1, 1993).

Background

Methiopropamine is a central nervous system (CNS) stimulant and is structurally related to the schedule II stimulants methamphetamine and amphetamine. Methiopropamine is not approved by the Food and Drug Administration for use in the United States. On March 16, 2017, the Commission on Narcotic Drugs voted to place *N*-methyl-1-(thiophen-2-yl)propan-2-amine (methiopropamine) in Schedule II of the 1971 Convention (CND Dec/60/8) during its 60th session.

DEA and HHS Eight Factor Analyses

On August 27, 2020, in accordance with 21 U.S.C. 811(b), and in response to DEA's November 20, 2018, request, HHS provided to DEA a scientific and medical evaluation and scheduling recommendation for methiopropamine. DEA reviewed HHS's evaluation and recommendation for schedule I placement, and all other relevant data, and conducted its own eight-factor analysis stipulated in 21 U.S.C. 811(c). DEA found, under 21 U.S.C. 812(b)(1), that this substance warrants control in schedule I. Both DEA and HHS eight-factor analyses are available in their entirety under the tab ''Supporting Documents'' of the public docket of this rulemaking action at *https://www.regulations.gov,* under docket number ''DEA–737.''

Notice of Proposed Rulemaking To Schedule Methiopropamine

On September 2, 2021 (86 FR 49267), DEA published a notice of proposed rulemaking (NPRM) to permanently control methiopropamine in schedule I. Specifically, DEA proposed to add methiopropamine to 21 CFR 1308.11(f) (the stimulants category of schedule I). The NPRM provided an opportunity for interested persons to file a request for hearing in accordance with DEA regulations on or before October 4, 2021. No requests for such a hearing were

received by DEA. The NPRM also provided an opportunity for interested persons to submit comments on or before October 4, 2021.

Comments Received

In response to the NPRM, DEA received four comments. Three of the submissions were from individuals or anonymous commenters. Of these three, two commenters provided support for the NPRM, and one opposed the NPRM. A fourth comment was either submitted or posted to the wrong docket as it involved a different DEA rulemaking. As such, the fourth comment is outside the scope of this current scheduling action.

Support for NPRM

Two commenters were in support of this rulemaking. One stated that methiopropamine is a stimulant and a user can get high from it, so it should be a controlled substance. The second commenter stated that if there is not an accepted medical use, then it should be a schedule I substance.

DEA Response: DEA appreciates the comments in support of this rulemaking.

Opposition to NPRM

One commenter opposed the NPRM to control methiopropamine as a schedule I drug. The commenter stated that scheduling methiopropamine will only expand the number of people in the United States who can be captured in the mass incarceration net. The commenter thought the approach should not be a criminal issue but a public health issue.

DEA Response: Substances are scheduled to protect the public health and provide safety for individuals. Thus, pursuant to 21 U.S.C. 811(a), the CSA authorizes DEA's Administrator, under authority delegated by the Attorney General, to control any drug or other substance if the Administrator finds that the drug or other substance has a potential for abuse, and makes with respect to such drug or other substance the findings prescribed by 21 U.S.C. 812(b).

Scheduling Conclusion

After consideration of the public comments, scientific and medical evaluation and accompanying recommendation of HHS, and after its own eight-factor evaluation, DEA finds that these facts and all other relevant data constitute substantial evidence of the potential for abuse of methiopropamine. DEA is permanently scheduling methiopropamine as a controlled substance under the CSA.

Determination of Appropriate Schedule

The CSA establishes five schedules of controlled substances known as schedules I, II, III, IV, and V. The CSA also outlines the findings required to place a drug or other substance in any particular schedule. 21 U.S.C. 812(b). After consideration of the analysis and recommendation of the Assistant Secretary for Health of HHS and review of all other available data, the Administrator, pursuant to 21 U.S.C. 811(a) and 812(b)(1), finds that:

1. *Methiopropamine has a high potential for abuse.*

Methiopropamine, similar to the schedule II stimulants amphetamine and methamphetamine, is a CNS stimulant with a high potential for abuse. Data from animal behavioral locomotor studies show that methiopropamine produces stimulation similar to that of methamphetamine. As HHS mentions, methiopropamine abuse in humans has been reported in at least 16 countries, including some countries in North America and Europe. Additionally, typical stimulant effects such as euphoria, psychomotor stimulation, and anxiety have been described from self-reports of methiopropamine abusers. These effects are similar to those of schedule II stimulants such as methamphetamine and amphetamine. These data collectively indicate that methiopropamine has a high potential for abuse similar to other schedule II stimulants such as amphetamine and methamphetamine.

2. *Methiopropamine currently has no accepted medical use in treatment in the United States.*

According to HHS, FDA has not approved a marketing application for a drug product containing methiopropamine for any therapeutic indication. As HHS states, there are also no clinical studies or petitioners that claim an accepted medical use in the United States. Thus, methiopropamine has no currently accepted medical use in treatment in the United States.[2]

[2] Although there is no evidence suggesting that methiopropamine has a currently accepted medical use in treatment in the United States, it bears noting that a drug cannot be found to have such medical use unless DEA concludes that it satisfies a five-part test. Specifically, with respect to a drug that has not been approved by FDA, to have a currently accepted medical use in treatment in the United States, all of the following must be demonstrated: i. The drug's chemistry must be known and reproducible; ii. there must be adequate safety studies; iii. there must be adequate and well-controlled studies proving efficacy; iv. The drug must be accepted by qualified experts; and v. the scientific evidence must be widely available. 57 FR 10499 (1992), pet. for rev. denied, *Alliance for Cannabis Therapeutics* v. *DEA*, 15 F.3d 1131, 1135 (D.C. Cir. 1994).

3. *There is a lack of accepted safety for use of methiopropamine under medical supervision.*

The safety of methiopropamine or use under medical supervision has not been determined because it has no approved medical use in treatment in the United States and has not been investigated as a new drug. Therefore, there is a lack of accepted safety for use of methiopropamine under medical supervision.

Based on these findings, the Administrator concludes that methiopropamine (chemical name: *N*-methyl-1-(thiophen-2-yl)propan-2-amine), including its salts, isomers, and salts of isomers, warrants control in schedule I of the CSA. 21 U.S.C. 812(b)(1).

Requirements for Handling Methiopropamine

Methiopropamine is subject to the CSA's schedule I regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, importation, exportation, engagement in research, and conduct of instructional activities or chemical analysis with, and possession of schedule I controlled substances, including the following:

1. *Registration.* Any person who handles (manufactures, distributes, reverse distributes, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses) methiopropamine, or who desires to handle methiopropamine must be registered with DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312. Any person who currently handles methiopropamine and is not registered with DEA must submit an application for registration and may not continue to handle methiopropamine, unless DEA has approved that application for registration pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312.

2. *Disposal of Stocks.* Any person unwilling or unable to obtain a schedule I registration must surrender or transfer all quantities of currently held methiopropamine to a person registered with DEA before the effective date of a final scheduling action in accordance with all applicable Federal, State, local, and tribal laws. Methiopropamine must be disposed of in accordance with 21 CFR part 1317, in addition to all other applicable Federal, State, local, and tribal laws.

3. *Security.* Methiopropamine is subject to schedule I security

requirements and must be handled and stored pursuant to 21 U.S.C. 823 and in accordance with 21 CFR 1301.71–1301.76, as of the effective date of this final scheduling action. Non-practitioners handling methiopropamine must also comply with the employee screening requirements of 21 CFR 1301.90–1301.93.

4. *Labeling and Packaging.* All labels, labeling, and packaging for commercial containers of methiopropamine must comply with 21 U.S.C. 825, and be in accordance with 21 CFR part 1302.

5. *Quota.* Only registered manufacturers are permitted to manufacture methiopropamine in accordance with a quota assigned pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303.

6. *Inventory.* Every DEA registrant who possesses any quantity of methiopropamine must take an inventory of methiopropamine on hand at that time, pursuant to 21 U.S.C. 827 and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11(a) and (d).

Any person who registers with DEA must take an initial inventory of all stocks of controlled substances (including methiopropamine) on hand on the date the registrant first engages in the handling of controlled substances pursuant to 21 U.S.C. 827 and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11(a) and (b).

After the initial inventory, every DEA registrant must take an inventory of all controlled substances (including methiopropamine) on hand every two years, pursuant to 21 U.S.C. 827 and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

7. *Records and Reports.* Every DEA registrant must maintain records and submit reports for methiopropamine, or products containing methiopropamine, pursuant to 21 U.S.C. 827 and in accordance with 21 CFR 1301.74(b) and (c) and 1301.76(b) and parts 1304, 1312, and 1317. Manufacturers and distributors must submit reports regarding methiopropamine to the Automation of Reports and Consolidated Order System pursuant to 21 U.S.C. 827 and in accordance with 21 CFR parts 1304 and 1312.

8. *Order Forms.* Every DEA registrant who distributes methiopropamine must comply with the order form requirements, pursuant to 21 U.S.C. 828 and in accordance with 21 CFR part 1305.

9. *Importation and Exportation.* All importation and exportation of methiopropamine must comply with 21 U.S.C. 952, 953, 957, and 958, and be in accordance with 21 CFR part 1312.

10. *Liability.* Any activity involving methiopropamine not authorized by, or in violation of, the CSA or its implementing regulations is unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Analyses

Executive Orders 12866 and 13563 (Regulatory Planning and Review; Improving Regulation and Regulatory Review)

In accordance with 21 U.S.C. 811(a), this final scheduling action is subject to formal rulemaking procedures performed ''on the record after opportunity for a hearing,'' which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the procedures and criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget pursuant to section 3(d)(1) of Executive Order (E.O.) 12866 and the principles reaffirmed in E.O. 13563.

Executive Order 12988, Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132, Federalism

This rulemaking does not have federalism implications warranting the application of E.O. 13132. The rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This rule does not have tribal implications warranting the application of E.O. 13175. It does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information requirement under the Paperwork Reduction Act of 1995. 44 U.S.C. 3501–3521.

Regulatory Flexibility Act

The Administrator, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601–612, has reviewed this final rule, and by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities.

DEA is placing the substance methiopropamine (chemical name: *N*-methyl-1-(thiophen-2-yl)propan-2-amine), including its salts, isomers, and salts of isomers, in schedule I of the CSA. This action is being taken to enable the United States to meet its obligations under the 1971 Convention on Psychotropic Substances. This action imposes the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis with, or possess), or propose to handle methiopropamine.

According to HHS, methiopropamine has a high potential for abuse, has no currently accepted medical use in treatment in the United States, and lacks accepted safety for use under medical supervision. DEA's research confirms that there is no legitimate commercial market for methiopropamine in the United States. Therefore, DEA estimates that no United States entity currently handles methiopropamine and does not expect any United States entity to handle methiopropamine in the foreseeable future. DEA concludes that no legitimate United States entity would be affected by this rule. As such, this rule will not have a significant effect on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

On the basis of information contained in the ''Regulatory Flexibility Act'' section above, DEA has determined pursuant to the Unfunded Mandates Reform Act (UMRA) of 1995 (2 U.S.C. 1501 *et seq.*) that this final rule would not result in any Federal mandate that may result ''in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year * * *.'' Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

Congressional Review Act

This rule is not a major rule as defined by the Congressional Review Act (CRA), 5 U.S.C. 804. However, pursuant to the CRA, DEA is submitting

a copy of the final rule to the Government Accountability Office, the House, and the Senate.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, 21 CFR part 1308 is amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. Amend § 1308.11 by:

■ a. Redesignating paragraphs (f)(9) through (11) as (f)(10) through (12); and

■ b. Adding a new paragraph (f)(9).

The addition reads as follows:

§ 1308.11 Schedule I.

* * * * *

(f) * * *

(9) Methiopropamine (*N*-methyl-1-(thiophen-2-yl)propan-2-amine) 1478

* * * * *

Signing Authority

This document of the Drug Enforcement Administration was signed on November 14, 2022, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Scott Brinks,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2022–26805 Filed 12–8–22; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9969]

RIN 1545–BP01

Treatment of Special Enforcement Matters

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that except certain partnership-related items from the centralized partnership audit regime created by the Bipartisan Budget Act of 2015, and sets forth alternative rules that will apply to the examination of excepted items by the IRS. The centralized partnership audit regime does not apply to a partnership-related item if the item involves a special enforcement matter described in these regulations. Additionally, these regulations make changes to the existing centralized partnership audit regime regulations to account for changes to the Internal Revenue Code (Code) as well as changes that clarify those regulations. The regulations affect partnerships and partners to whom special enforcement matters apply.

DATES:

Effective date: These regulations are effective on December 9, 2022.

Applicability date: For dates of applicability, see §§ 301.6221(b)–1(f); 301.6225–1(i)(1); 301.6225–2(g)(1); 301.6225–3(e)(1); 301.6226–2(h)(1); 301.6241–3(g); 301.6241–7(j)

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SUPPLEMENTARY INFORMATION:

Background

This document contains final amendments to the Procedure and Administration Regulations (26 CFR part 301) regarding special enforcement matters under section 6241(11) of the Code and the collection of amounts due under the centralized partnership audit regime pursuant to section 6241(7) of the Code. Section 6241(11) was enacted by section 206 of the Tax Technical Corrections Act of 2018, contained in Title II of Division U of the Consolidated Appropriations Act of 2018, Public Law 115–141 (TTCA). This document also contains several amendments to the final regulations on the centralized partnership audit regime published in TD 9844 (84 FR 6468) on February 27, 2019.

Section 1101(a) of the Bipartisan Budget Act of 2015, Public Law 114–74 (BBA) amended chapter 63 of the Code (chapter 63) by removing former subchapter C of chapter 63 effective for partnership taxable years beginning after December 31, 2017. Former subchapter C of chapter 63 contained the unified partnership audit and litigation rules enacted by the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97–248 (TEFRA) that were commonly referred to as the TEFRA partnership procedures, or simply TEFRA. Section 1101(b) of the BBA removed subchapter D of chapter 63 and amended chapter 1 of the Code (chapter 1) by removing part IV of subchapter K of chapter 1, rules applicable to electing large partnerships, effective for partnership taxable years beginning after December 31, 2017. Section 1101(c) of the BBA replaced the TEFRA partnership procedures and the rules applicable to electing large partnerships with a centralized partnership audit regime that determines adjustments and, in general, determines, assesses, and collects tax at the partnership level. Section 1101(g) of the BBA set forth the effective dates for these statutory amendments, which are effective generally for returns filed for partnership taxable years beginning after December 31, 2017. On December 18, 2015, section 1101 of the BBA was amended by the Protecting Americans from Tax Hikes Act of 2015, Public Law 114–113 (PATH Act). The amendments under the PATH Act are effective as if included in section 1101 of the BBA, and therefore, subject to the effective dates in section 1101(g) of the BBA.

Enacted on March 23, 2018, the TTCA made a number of technical corrections to the centralized partnership audit regime, including adding sections 6241(11) (regarding the treatment of special enforcement matters) and 6232(f) (regarding the collection of the imputed underpayment and other amounts due from partners of the partnership in the event the amounts are not paid by the partnership) to the Code. The amendments to subchapter C of chapter 63 included in the TTCA are effective as if included in section 1101 of the BBA, and therefore, subject to the effective dates in section 1101(g) of the BBA.

On January 2, 2018, the Department of the Treasury (Treasury Department) and the IRS published in the **Federal Register** (82 FR 28398) final regulations under section 6221(b) providing rules

for electing out of the centralized partnership audit regime (TD 9829).

On August 9, 2018, the Treasury Department and the IRS published in the **Federal Register** (83 FR 39331) final regulations under section 6223 providing rules relating to partnership representatives and final regulations under § 301.9100–22 providing rules for electing into the centralized partnership audit regime for taxable years beginning on or after November 2, 2015, and before January 1, 2018.

On February 27, 2019, the Treasury Department and the IRS published in the **Federal Register** (84 FR 6468) final regulations implementing sections 6221(a), 6222, and 6225 through 6241 of the centralized partnership audit regime (TD 9844).

On November 24, 2020, the Treasury Department and the IRS published in the **Federal Register** (85 FR 74940) a notice of proposed rulemaking (REG–123652–18) (November 2020 NPRM) proposing rules to implement section 6241(11) dealing with special enforcement matters and to make changes to the regulations under the centralized partnership audit regime. The Treasury Department and the IRS received written public comments in response to the regulations proposed in the November 2020 NPRM, and a public hearing regarding the proposed regulations was held on March 25, 2021.

After careful consideration of all written public comments received in response to the November 2020 NPRM as well as statements made during the public hearing, the November 2020 NPRM is adopted with the revisions described in the preamble to this Treasury Decision in response to those comments and statements.

Summary of Comments and Explanation of Revisions

Three written comments were received in response to the November 2020 NPRM. Two statements were made at the public hearing held on March 25, 2021. All of these comments (both written and provided orally at the public hearings) have been considered, and revisions to the regulations were made in response to the comments. The written comments received are available for public inspection at *www.regulations.gov* or upon request.

In addition to changes in response to the comments, editorial revisions were made to correct typographical errors and grammatical mistakes. Revisions were also made to clarify language in the proposed regulations that was potentially unclear. Unless specifically described in this Summary of Comments and Explanation of Revisions, such revisions were not intended to change the meaning of the language that was revised. Finally, the Treasury Department and the IRS have decided not to finalize the proposed changes to § 301.6241–3(d) and plan to withdraw the proposed changes.

1. Applicability Date

Two comments were received regarding the applicability date of clarifications that were made to the rules regarding elections out of the centralized partnership audit regime. Proposed § 301.6221(b)–1(f) provided that all proposed adjustments to § 301.6221(b)–1 would be applicable as of November 20, 2020, the date the November 2020 NPRM was filed for public inspection with the **Federal Register**. The November 2020 NPRM proposed the addition of qualified subchapter S subsidiaries (QSubs) as an additional example of partner to be added to the list of ineligible partners under § 301.6221(b)–1(b)(3)(ii). One comment noted that while this additional example of ineligible partner was included in Notice 2019–06, 2019–03 IRB 353 (January 14, 2019) announcing forthcoming proposed regulations, Notice 2019–06 also included a rule for partnerships with QSub partners similar to the rule for partnerships with S corporation partners under section 6221(b)(2)(A), but the proposed rule in the November 2020 NPRM did not propose the rule previously described in Notice 2019–06. Both comments recommended that the applicability date for this additional example of ineligible partner should therefore not be November 20, 2020, but should be applicable for partnership tax years ending after the date the final rule is finalized and published in the **Federal Register** to allow partnerships with QSub partners time to restructure if desired.

These comments are not adopted. The November 2020 NPRM did propose rules that were not identical to the rules previously described in Notice 2019–06, which is one reason the November 2020 NPRM did not propose, pursuant to section 7805(b)(1)(C) of the Code, an applicability date of January 14, 2019, the day that Notice 2019–06 was issued. However, pursuant to section 7805(b)(1)(B) the November 2020 NPRM proposed an applicability date of November 20, 2020, the date that the November 2020 NPRM was filed with the **Federal Register**. The originally proposed applicability date of November 20, 2020, would have little or no effect on taxpayers, whereas changing the proposed applicability date to the date that this Treasury decision is published in the **Federal Register** creates an administrative burden for the IRS. The only possible effect on taxpayers is that they may be subject to the centralized partnership audit procedures if they are selected for examination by the IRS and it may require them to file an administrative adjustment request (AAR) under section 6227 of the Code in lieu of an amended Form 1065. For the IRS, absent this rule being applicable on the proposed applicability date of November 20, 2020, there would be uncertainty regarding whether the centralized partnership audit regime applies to any partnership that has a QSub as a partner during the period beginning on November 20, 2020, and ending on the date of publication of this Treasury decision in the **Federal Register**. This uncertainty could cause significant delays that hinder the IRS's ability to examine these partnerships in a timely and efficient fashion. By retaining the earlier proposed applicability date of November 20, 2020, the final regulations provide certainty for both the IRS and taxpayers.

One comment was received regarding the applicability dates for the proposed regulations under §§ 301.6225–1, 301.6225–2, 301.6226–2, 301.6241–3, and 301.6241–7 in the November 2020 NPRM. The proposed regulations proposed that the majority of the proposed rules would be applicable on November 20, 2020, the date the November 2020 NPRM was filed with the **Federal Register**. In contrast, proposed § 301.6241–7(b) would be applicable for partnership taxable years beginning on or after December 20, 2018, the date Notice 2019–06 was published. Although the comment noted that, under section 7805(b)(1), the final regulations could be applicable to partnership taxable years ending on or after November 20, 2020, or on or after December 20, 2018, for § 301.6241–7(b), the comment recommended that all of the final regulations be applicable to partnership taxable years ending after the date the final rules are published in the **Federal Register**. The comment suggests that this delay would give partnerships sufficient time after the rules are finalized to adjust their internal tax compliance and reporting procedures as well as review their existing partnership agreements to account for the final rules.

The comment recommended that the majority of the final regulations that were proposed in the November 2020 NPRM be applicable on the date the final regulations are published in the **Federal Register**, but the comment also recommended more specific changes to

some of the applicability dates. Under proposed § 301.6241–3(g), the changes to § 301.6241–3 were proposed to be applicable to any determinations made on or after November 20, 2020. The comment stated that the rules under proposed § 301.6241–3 could not, under section 7805(b)(1), be applicable for determinations on or after November 20, 2020, because then the rule would apply to taxable years ending prior to November 20, 2020, which the comment said was not consistent with section 7805(b)(1) as it provides that, except as otherwise provided, ''no temporary, proposed, or final regulation relating to the internal revenue laws shall apply to any taxable period ending before the earliest of'' certain dates, in this case the date on which the proposed regulations were filed with the **Federal Register**.

The final rules under § 301.6241–7, except for § 301.6241–7(b), were proposed to be applicable for taxable years beginning on or after November 20, 2020, but also to any examinations or investigations beginning after November 20, 2020. Similar to the comment regarding the applicability of proposed § 301.6241–3, the comment recommended that the applicability date provision be removed as the comment noted that this would allow the final regulations to be applicable to taxable years ending before November 20, 2020, including taxable years beginning prior to the applicability date of the centralized partnership audit regime. The comment noted that although section 7805(b)(1)(C) permitted the final regulations to be applicable to taxable years ending no earlier than the date Notice 2019–06 was published, as it substantially described the expected contents of the final regulations, the commenter felt as if this would not be within the ''spirit'' of section 7805(b) given that over two years have passed since Notice 2019–06 was published and could result in the provisions being applied to examinations already in progress.

As the comment acknowledged, section 7805(b) provides that ''no temporary, proposed, or final regulation relating to the internal revenue laws shall apply to any taxable period ending before the earliest of the following dates'': the date on which the final regulations are filed with the **Federal Register**, the date on which the proposed regulations were filed with the **Federal Register**, or the date on which a notice substantially describing the expected contents of the final regulations was issued to the public. As with the amendments to the rules under § 301.6221(b)–1, delaying the applicability date of proposed §§ 301.6225–1, 301.6225–2, 301.6226–2, 301.6241–3, and 301.6241–7 could hinder the IRS's ability to conduct examinations in a timely and efficient manner and to utilize the assessment rules of section 6232(f) for partnerships that fail to pay imputed underpayments. It also could cause uncertainty for partnerships who may have chapter 1 liabilities, adjustments to non-income items that do not result in an imputed underpayment, or for partnerships that have arranged their affairs to be consistent with Notice 2019–06 and the proposed regulations.

Partnerships were notified of these proposed regulations on November 20, 2020, and on December 20, 2018, for the rules in proposed § 301.6241–7(b). As the comment correctly noted, for the provisions in proposed § 301.6241–7(b), partnerships have had well over two years to adjust their affairs in anticipation of the final regulations. For the other regulations, partnerships have had since November 20, 2020, to arrange their affairs to account for the final regulations. The Treasury Department and the IRS have determined that the administrative burden placed on the IRS in not being able to utilize final procedural rules (that is, rules not affecting the determination of underlying tax liabilities) as soon as possible far outweighs giving partnerships additional time to implement changes to account for procedural rules the general substance of which they have been aware of since November 20, 2020. Therefore, the suggestion to make the regulations applicable as of the date the final regulations are published in the **Federal Register** is not adopted.

In addition, although the comment expressed concerns that the final regulations could apply to taxable years beginning before the applicability date of the centralized partnership audit regime, this concern is unfounded. The centralized partnership audit regime does not apply to taxable years beginning prior to January 1, 2018, for which an election under § 301.9100–22 was not made. If the centralized partnership audit regime does not apply to a partnership for a particular taxable year, then these regulations, which clarify the application of the centralized partnership audit regime, are irrelevant to the examination of that particular partnership's taxable year.

As previously noted, the comment also expressed concern that the applicability of the regulations could apply to taxable years prior to the date the November 2020 NPRM was filed with the **Federal Register** as the regulations were proposed to be applicable to any examinations or investigations beginning after November 20, 2020, the date the November 2020 NPRM was filed with the **Federal Register**. This Treasury decision adopts this comment. Accordingly, the applicability dates have been modified to remove the provision that applied the regulations to examinations or investigations beginning after November 20, 2020, and to clarify that the final regulations apply to taxable years ending on or after November 20, 2020, or taxable years beginning after December 20, 2018, in the case of the final regulations in § 301.6241–7(b).

In the November 2020 NPRM, the applicability date in proposed § 301.6241–7(j)(1) provided that the IRS and a partner under examination could agree to apply any provision (except § 301.6241–7(b)) to taxable years prior to the general applicability date. The Treasury Department and the IRS have decided that partnerships should also have the flexibility to agree to apply § 301.6241–7(g) (chapter 1 taxes and penalties that are the liability of the partnership) prior to the general applicability date as well. This may be especially beneficial for partnerships in situations where the IRS proposes to reduce a chapter 1 tax or penalty reported by the partnership. Accordingly, § 301.6241–7(j)(1) is updated to provide that the IRS and the partnership may agree to apply § 301.6241–7(g) for taxable years ending prior to November 20, 2020, provided that taxable year is otherwise subject to the centralized partnership audit regime.

2. Adjustments to Non-Income Items

A. Taking Into Account Adjustments to Non-Income Items That Are Adjustments That Do Not Result in an Imputed Underpayment

Under section 6241(2)(B) and § 301.6241–1(a)(6)(ii), the term ''partnership-related item'' includes items or amounts ''relating to any transaction with, basis in, or liability of the partnership.'' Accordingly, the definition of ''partnership-related item'' includes items that are not items of income, gain, loss, deduction, or credit (non-income items). As defined in § 301.6225–1(d)(2)(iii) prior to the November 2020 NPRM, a positive adjustment is any adjustment that is not a negative adjustment as defined in § 301.6225–1(d)(2)(ii). A negative adjustment is any adjustment that is a decrease in an item of income (or treated as a decrease in an item of income), or an increase to an item of credit. An adjustment to an item that is

a non-income item is not a decrease in an item of income. Therefore, adjustments to a partnership's non-income items are always positive adjustments, are never negative adjustments, and are not netted against any adjustments to a partnership's items of income, gain, loss, deduction, or credit under section 702(a). Therefore, adjustments to a partnership's non-income items are adjustments that do not result in an imputed underpayment in situations where a net negative adjustment to a credit, or an item treated as a credit, reduces the imputed underpayment to zero or less than zero. Under proposed § 301.6225–3(b)(8), if an adjustment to a non-income item is an adjustment that does not result in an imputed underpayment, the partnership takes this adjustment into account on its adjustment-year return by adjusting the non-income item consistently with the adjustment, to the extent the non-income item appears on the adjustment-year return without regard to the adjustment.

Two comments were received regarding the rules for taking into account adjustments to non-income items in the partnership's adjustment year in situations where the adjustments to non-income items are adjustments that do not result in an imputed underpayment under proposed § 301.6225–3(b)(8). Both comments expressed concern that including an adjustment to a non-income item, such as an asset, in the imputed underpayment could result in recognition of gain, in the form of the imputed underpayment on the adjustment, prior to the disposition of the asset. One comment also expressed concern that it could result in double tax in situations where a non-income item is adjusted at the partnership level under the centralized partnership audit regime and at the partner level in situations where a special enforcement provision is utilized. According to the comment, the double tax would occur because the partner would pay tax on the adjustment in the partner-level proceeding and the partnership would pay an imputed underpayment on the same adjustment in a partnership examination. The comment noted that it was unclear whether the partnership must also recognize gain on that adjustment in addition to adjusting the non-income item on the partnership's adjustment year return. One of the comments recommended removing proposed § 301.6225–3(b)(8) in its entirety. However, the comment seemed to focus primarily on the inclusion of non-income items in the calculation of the imputed underpayment, which is not something that is the subject of proposed § 301.6225–3(b)(8). Therefore, that comment's concerns on that issue are addressed more fully in section 2.B of this preamble.

One of the comments also requested that the rule be clarified to note that the partnership would not recognize gain in the adjustment year as a result of taking into account the adjustment to the non-income item that was an adjustment that did not result in an imputed underpayment. Finally, one comment requested that cross-references in the example be changed to refer to §§ 301.6225–1(d) and (f) in their entirety and requested additional examples illustrating how other adjustments to non-income items are taken into account on the adjustment year return.

With regard to the comment's concern about the potential for double tax, if an item is adjusted both in an examination of the partnership and of a partner, § 301.6241–7(i) provides that an item will not be adjusted at the partner level if the partner can demonstrate that the adjustment was previously taken into account by the person in an examination under the centralized partnership audit regime (for example, by filing an amended return as part of a request to modify the imputed underpayment). Also, an item will not be adjusted at the partner level if the partner demonstrates that the adjustment was included in an imputed underpayment paid by the partnership or pass-through partner for a taxable year in which the partner was a reviewed year partner but only to the extent the adjustment exceeds the original amount reported by the partnership to the partner (that is, the partner needs to have reported the original amounts from the partnership first). In addition, if the partner-level proceeding concludes prior to the partnership-level proceeding, the partnership may request modification of the imputed underpayment for any adjustment previously taken into account at the partner level. Accordingly, in situations where an item is adjusted both in a partner-level examination and a partnership-level examination, the adjustments will not result in double tax because these rules provide for the exclusion of any potential double tax in the examination that concludes later.

The comments also had concerns about gain recognition as a result of adjusting the non-income item in the adjustment year when the adjustment is an adjustment that does not result in an imputed underpayment. There is nothing in the centralized partnership audit regime that would require the partnership to recognize gain in the adjustment year when the partnership adjusts a non-income item as a result of taking into account adjustments that do not result in an imputed underpayment.

Proposed § 301.6225–3(b)(8) provides that the partnership takes an adjustment to a non-income item into account by adjusting the non-income item on its adjustment year return. As the example in proposed § 301.6225–3(d)(3) demonstrated, in the case of an adjustment to the basis of an asset, the partnership would adjust its basis in the asset in the adjustment year. To avoid confusion, the example has been modified to clarify that the reduction in the basis of the asset only requires the partnership to recognize income or gain in situations where income and gain would be recognized. One comment also requested additional examples demonstrating how adjustments to other items such as liabilities and capital account adjustments are taken into account. In response to the comment, Example 4 is added to § 301.6225–3(d) to demonstrate how adjustments to liabilities are taken into account when they are adjustments that do not result in an imputed underpayment. Another example, Example 5, is also added to § 301.6225–3(d) in response to the public comment to demonstrate how filing an amended return as part of modification applies when there are adjustments to non-income items. In addition, the recommendation that the cross-references in the example be modified is also adopted and the cross-references are changed where they appear in the example.

One comment expressed concern about how partnerships would be able to comply with proposed § 301.6225–3(b)(8) when filing their adjustment year returns. The comment noted that partnerships have different software, advisors, and levels of sophistication and, therefore, the rule might not be consistently applied among partnerships. The comment expressed a concern that proposed § 301.6225–3(b)(8) does not provide a clear and administrable standard as to when to include a non-income item adjustment on the partnership's adjustment year return. The comment expressed concern that taking into account adjustments to non-income items on the partnership's adjustment year return could preclude items that otherwise could never be reported and provided examples of items under section 199A.

Proposed § 301.6225–3(b)(8) endeavors to provide clear, bright-line rules on how to account for adjustments to non-income items that must be taken

into account on the partnership's adjustment year return because they did not result in an imputed underpayment. Proposed § 301.6225–3(b)(8) provides rules on what to do if the non-income item is still included on the partnership's adjustment year return and rules for what happens if it is not included, as well as an example of how the rule works. The nature of non-income items precludes a regulation that could individually account for all types of non-income items because non-income items by their definition vary widely. To encompass all the types of non-income items that could be adjusted in the centralized partnership audit regime, it is necessary for the rule to be broad and apply to numerous types of non-income items. Although the Treasury Department and the IRS take seriously concerns regarding inconsistent application of provisions, varying levels of sophistication, and differences in interpretation of statutes or regulations by software or advisors, proposed § 301.6225–3(b)(8) provides necessary guidance to taxpayers while appropriately balancing administrability concerns.

The comment about whether proposed § 301.6225–3(b)(8) would preclude the reporting of some items is unclear. If an adjustment is an adjustment that does not result in an imputed underpayment, it is required to be taken into account on the partnership's adjustment year return under section 6225(a)(2). Therefore, those adjustments are accounted for on the adjustment year return.

As non-income items are required to be included in the calculation of the imputed underpayment, there must be rules regarding how to take those adjustments into account on the adjustment year return if they are adjustments that do not result in an imputed underpayment. Without the rule contained in proposed § 301.6225–3(b)(8), partnerships would be left with no guidance as to how or when to take those adjustments into account. For this reason and for all the previous reasons, the recommendation to remove proposed § 301.6225–3(b)(8) is not adopted.

One comment requested an example demonstrating how adjustments to capital accounts are taken into account if they are adjustments that do not result in an imputed underpayment. These regulations do not address any effect on partner basis and capital accounts. As a result, the comment is beyond the scope of these regulations.

B. Adjustments to Non-Income Items in the Calculation of the Imputed Underpayment

Section 6225 provides specific rules on how to compute the imputed underpayment, which is a liability of the partnership. Under section 6225(b), if adjustments are made to a partnership-related item, those adjustments are appropriately netted, and the highest rate under section 1 or 11 is applied as part of the calculation of the imputed underpayment. Non-income items are included in the definition of ''partnership-related item.'' See section 6241(2)(B)(i) (noting that a partnership-related item includes any item or amount relating to liabilities of the partnership); § 301.6241–1(a)(6)(v)(C), (D), and (E). Accordingly, as non-income items are partnership-related items, adjustments to non-income items are appropriately included in the calculation of the imputed underpayment as section 6225 does not limit which adjustments to partnership-related items are included in the calculation.

The November 2020 NPRM did not propose any changes to the definition of positive adjustments in § 301.6225–1(d)(2)(iii), to the formula for calculating the imputed underpayment under § 301.6225–1(b), or to § 301.6225–1(a)(1), which provides that all adjustments to partnership-related items are included in the calculation of the imputed underpayment. In addition, no changes were proposed to the definition of partnership-related item in § 301.6241–1(a)(6)(ii), which includes examples of non-income items as partnership-related items. Accordingly, comments regarding whether a non-income item should be included in the calculation of the imputed underpayment are outside the scope of this regulation and any changes to those provisions would need to be proposed in a separate NPRM. However, the Treasury Department and the IRS have attempted to respond to the comments on this issue within the scope of the November 2020 NPRM.

Two comments were received on the inclusion of non-income items in the calculation of the imputed underpayment. Both comments recommended that all adjustments to non-income items should not be taken into account in determining whether there is an imputed underpayment or that the adjustment to the non-income items should be treated as zero in the computation.

One comment expressed a concern that including adjustments to non-income items in the calculation of the imputed underpayment would fail to reflect accurately the tax impacts of the adjustments and that the imputed underpayment could be far greater than the partners' aggregate chapter 1 tax liability, which the comment said the imputed underpayment is intended to approximate. The comment said this discrepancy would discourage partnerships from filing administrative adjustment requests (AARs) especially given that more and more items are being reported by partnerships. The comment expressed concern that the ability to push out the adjustments under section 6226 does not mitigate or alleviate these concerns.

Both comments expressed concern that an adjustment to a non-income item, such as an adjustment to the basis of an asset, could give rise to a taxable adjustment without a corresponding disposition, realization, or recognition event upon which gain or loss would be determined. One comment also had concerns that including an adjustment to a non-income item in the imputed underpayment would effectively require the partnership to recognize gain prior to when the partnership would otherwise be required to recognize gain under the Code. One comment stated that there is nothing in the Code or in the legislative history of the centralized partnership audit regime that would indicate Congress intended that the IRS could cause a recognition event where one had not occurred. The Treasury Department and the IRS note that there is no legislative history of subchapter C of chapter 63 but agree that there is nothing in subchapter C of chapter 63 that specifically mentions recognition events. However, as discussed later, under the centralized partnership audit regime, the inclusion of an adjustment to a non-income item in an imputed underpayment is not, and does not require, a recognition event.

With regard to the comment that the tax is paid early on non-income items, the comment is correct that, by paying an imputed underpayment on an adjustment to a non-income item, in some circumstances the partnership will effectively pay a tax on the change in the non-income item in situations where the partnership would not yet have recognized income aside from the partnership examination. Under section 6225, the partnership is liable for an imputed underpayment on any adjustments to partnership-related items, which is defined under section 6241 as any item with respect to the partnership that is relevant to determining the tax liability of any person under chapter 1 of the Code, including a liability of the partnership.

Accordingly, the imputed underpayment under the centralized partnership audit regime is not designed to be the exact amount of the tax liability that would have been paid by the partners, nor is it a substitute for partner tax liability. Rather, it is an entity-level liability of the partnership alone computed by reference to any adjustments made to partnership-related items, regardless of whether those adjustments would have actually resulted in a tax liability to any particular partner. Therefore, given that adjustments are made to a specific taxable year, the adjustments could result in an imputed underpayment in situations where no income would have been recognized if the item had been correctly reported originally. But the adjustments and the imputed underpayment are not themselves realization or recognition events; they are adjustments to partnership-related items that are taken into account in calculating an imputed underpayment under the centralized partnership audit regime.

To provide the partnership with an opportunity to mitigate any inconsistency that may result with the computation of the imputed underpayment, the partnership can request to modify the imputed underpayment or may elect to push out the adjustments to its reviewed year partners. When taking into account an adjustment to a non-income item as part of filing of an amended return or calculating the additional reporting year tax under section 6226, an adjustment to a non-income item would only result in additional tax if that adjustment would have resulted in additional tax on the partner's original tax return had the item been correctly reported by the partnership on its original return for the reviewed year or any intervening year. For example, assume the basis in an asset was adjusted and, subsequent to the reviewed year but prior to the adjustment year, a partner received that asset in a distribution and disposed of that asset. In that case, an adjustment to the partnership's basis in an asset may affect the amount of tax the partner would have paid if the item had been correctly reported. As a result, in this example, the additional reporting year tax for that partner likely would be affected by the basis adjustment.

As mentioned previously, two comments requested that adjustments to non-income items be excluded from the calculation of the imputed underpayment or that those adjustments be treated as zero. As previously discussed, the imputed underpayment is an entity-level liability calculated on all of the adjustments to partnership-related items, and the highest rate is applied regardless of what the tax consequences would have been had the partners correctly taken into account the adjustments in the reviewed year. As a result, in some instances the centralized partnership audit regime shifts an adjustment, and its tax consequences, into a different year than the year to which the adjustment relates. For example, adjustments that do not result in an imputed underpayment are taken into account in the adjustment year instead of the reviewed year. In other words, there are many aspects of the centralized partnership audit regime enacted by Congress that result in income, gain, loss, deduction, or credit, and any taxes on those items, being recognized or taken into account in taxable years other than in the taxable year where the item would have been reported if the centralized partnership audit regime did not apply.

To alleviate this difference, the centralized partnership audit regime offers partnerships choices that would modify or eliminate the imputed underpayment and would make the underpayment amount closer to the amount of tax that would have been paid if the partners had reported the proper amounts of items in the correct taxable year. For example, the partnership may request modification of the imputed underpayment, including modification of any adjustments that do not result in an imputed underpayment, or may elect to push out the adjustments to its reviewed year partners under section 6226. In addition, § 301.6225–1(b)(4) provides that the IRS and partnerships may treat an adjustment as zero solely for purposes of calculating the imputed underpayment in situations where multiple positive adjustments are related to, or result from, one another. Therefore, the recommendation to remove adjustments of non-income items from the calculation of the imputed underpayment or to treat those adjustments as zero in calculating the imputed underpayment in all situations is not adopted.

In addition to the comments on the inclusion of non-income items in the calculation of the imputed underpayment, one comment was received on proposed § 301.6225–1(b)(4), which provides the rules for treating an adjustment as zero solely for purposes of computing the imputed underpayment in certain situations. The comment recommended extending the rule in proposed § 301.6225–1(b)(4), that allows one adjustment to be treated as zero solely for purposes of calculating the imputed underpayment, if the adjustment is related to or results from an adjustment to an item of income, gain, loss, deduction, or credit to persons other than the IRS. As stated in the preamble to the November 2020 NPRM, the sentence added to § 301.6225–1(b)(4) that provides that a partnership may treat an adjustment to a non-income item as zero for purposes of computing the imputed underpayment was proposed to be expanded to provide for a broader application, including to allow partnerships to utilize this rule.

In response to the comment that the language is unclear, the language of proposed § 301.6225–1(b)(4) is modified to clarify that this provision applies to both the IRS and partnerships, and the rule has been broadened further. As modified, § 301.6225–1(b)(4) as set forth in this Treasury decision provides that if any positive adjustment is related to, or results from, a second positive adjustment, a partnership may treat one of the positive adjustments as zero solely for purposes of computing the imputed underpayment unless the IRS determines that the adjustment should not be treated as zero. With this change, a partnership may treat an adjustment to a non-income item as zero if the adjustment to the non-income item is related to, or results from, another adjustment to a non-income item. However, this rule does not allow the partnership to treat an adjustment as zero if one adjustment is positive and one is negative. For example, if a partnership changes an ordinary loss to a capital loss, which results in a positive adjustment to ordinary income and a negative adjustment to capital loss, the partnership could not treat the negative adjustment to capital loss as zero for purposes of calculating the imputed underpayment. This change provides more relief to partnerships and more closely aligns with the intended purpose of this rule.

One comment recommended that the phrase ''unless the IRS determines that the adjustment should be included in the imputed underpayment'' be removed from § 301.6225–1(b)(4). It is unclear whether this recommendation was made to provide clarity that the provision also applied to determinations made by partnerships or if this recommendation was in addition to that comment. To the extent the comment was about clarifying that § 301.6225–1(b)(4) applied to determinations made by partnerships as well as the IRS, as discussed previously, additional language has been added to the provision to make this clear. To the extent that this comment is an additional recommendation, the

comment is not adopted. Because partnerships may treat an adjustment as zero for purposes of calculating the imputed underpayment, there may be times when the partnership should not have treated the adjustment as zero. Accordingly, the IRS needs to be able to determine that the partnership's calculation is accurate.

The comment also requested that a cross-reference to § 301.6225–1(b)(4) be added to the regulations under section 6227 to clarify that the provision may be used in AARs. Section 301.6227–2(a)(1) provides that the calculation of an imputed underpayment as part of the filing of an AAR is done in accordance with § 301.6225–1, which would include § 301.6225–1(b)(4). Therefore, additional clarification is not needed and adding a cross-reference to one portion of the entire regulation that is cited may cause confusion regarding whether the other provisions in § 301.6225–1 are applicable.

One comment recommended that if the partnership did not include any adjustments to non-income items in calculating an imputed underpayment as part of an AAR, the rule should provide that the partnership will not be subject to penalty. Nothing in the centralized partnership audit regime prohibits a partnership from raising a defense (such as reasonable cause) to an asserted penalty if that penalty is subject to such a defense. However, if partnerships would never be subject to a penalty for failing to include adjustments to non-income items in the calculation of the imputed underpayment, this would discourage partnerships from including non-income items in the calculation as there would not be a penalty for the IRS to utilize to enforce correct reporting of partnership-related items. The penalty incentivizes proper reporting and removing the penalty's application here would negatively affect tax compliance. Therefore, this comment is not adopted.

In addition, one comment also recommended that any adjustment to a non-income item that affects the basis of partnership assets should be included under the rules of proposed § 301.6225–4 and not under the provisions of computing the imputed underpayment on adjustments to partnership-related items. This comment is not adopted. Section 301.6225–1 provides rules for the calculation of the imputed underpayment. Adjustments to a partnership's reporting of its non-income items on its return are included within the calculation of the imputed underpayment as are all adjustments to partnership-related items. Accordingly, § 301.6225–1, and not proposed § 301.6225–4, is the proper location for rules governing the calculation of the imputed underpayment.

Finally, one comment recommended removing § 301.6225–1(d)(2)(iii)(B), which provides that an adjustment that cannot be allocated under section 704(b) is treated as a positive adjustment or a credit, as appropriate, if the adjustment could result in an increase in an item of income, gain, loss, deduction, or credit. The comment stated that this rule also addresses the same issue as § 301.6225–1(b)(4), which provides that an adjustment may be treated as zero for purposes of calculating the imputed underpayment if that adjustment is included within another adjustment and it would not be appropriate to include both adjustments in the calculation. The comment stated that both address adjustments to non-income items that are taken into account in calculating the imputed underpayment and, therefore, § 301.6225–1(d)(2)(iii)(B) is duplicative. Although the comment noted that it is duplicative, the comment recommended that this provision be amended to provide that items that cannot be allocated under section 704(b) are not taken into account in computing the imputed underpayment.

As previously mentioned, comments requesting that non-income items be excluded completely (or always treated as zero) from the calculation of the imputed underpayment are not adopted. Section 301.6225–1(d)(2)(iii)(B) does not serve the same purpose as § 301.6225–1(b)(4). Section 301.6225–1(d)(2)(iii)(B) provides that adjustments to items that are not allocated under section 704(b) are treated as positive adjustments or credits, whichever is appropriate. Section 301.6225–1(b)(4) provides that adjustments may be treated as zero solely for purposes of calculating the imputed underpayment if that adjustment is related to, or results from, another adjustment. Section 301.6225–1(b)(4) does not apply to adjustments that are not related to, or result from, another adjustment and, after amendment, it applies to all positive adjustments, not just those that are not allocated under section 704(b). Therefore, § 301.6225–1(d)(2)(iii)(B) and § 301.6225–1(b)(4) are not duplicative. Even though those provisions are not duplicative, the Treasury Department and the IRS agree that § 301.6225–1(d)(2)(iii)(B) is duplicative of concepts in other provisions, such as the definition of positive adjustment. Accordingly, the comment recommending removing § 301.6225–1(d)(2)(iii)(B) is adopted. Because § 301.6225–1(d)(2)(iii)(B) is removed in these regulations, former § 301.6225–1(d)(2)(iii)(A) is renumbered to be § 301.6225–1(d)(2)(iii). No changes were made to the content of the paragraph.

3. Cease To Exist

One comment was received on the proposed changes to § 301.6241–3. That section provides rules implementing section 6241(7), which authorizes the Secretary of the Treasury or her delegate (Secretary) to prescribe rules for situations where a partnership (or partnership-partner) has ceased to exist prior to a partnership adjustment taking effect.

A. Guidance Under Section 6232(f)

The comment recommended not finalizing any of the proposed changes to § 301.6241–3 until the IRS issues guidance under section 6232(f), which provides rules for the IRS to assess amounts due to failure to pay imputed underpayments. The comment reasoned that guidance under section 6232(f) will provide insight into how the provisions under § 301.6241–3 should be coordinated with section 6232(f). As an alternative, the comment recommended not finalizing the proposed changes to § 301.6241–3(c), which provides when partnership adjustments take effect. The comment is not clear as to why the proposed changes to when partnership adjustments take effect causes concern. The comment noted that if the proposed changes were finalized, partnerships would be subject to the discretion of the IRS not only as to whether the partnership has ceased to exist but also when the adjustments take effect.

As stated in the preamble to the November 2020 NPRM, some of the proposed changes to § 301.6241–3 are needed so that the rules implementing section 6241(7) do not prevent the IRS from using its assessment power under section 6232(f). Unlike some other provisions in the centralized partnership audit regime that require regulations or other guidance to be effective, section 6232(f) is self-executing and does not require the IRS to issue guidance before the provision may be used. Section 6241(7) provides that if a partnership ceases to exist prior to the partnership adjustments taking effect, then the former partners are to take into account the adjustments under regulations prescribed by the Secretary.

Accordingly, as written, section 6241(7) requires its application if its conditions are met. Prior to proposed amendment, § 301.6241–3 provided that adjustments did not take effect until the partnership fully paid all amounts due under the centralized partnership audit regime but no later than the expiration of the collections period of limitations.

Therefore, if the IRS determined that a partnership ceased to exist, section 6241(7) would be the only provision that could be used, precluding the use of section 6232(f). There is no reason why the IRS should be prevented from using the self-executing rules of section 6232(f) prior to the issuance of guidance under section 6232(f). Therefore, this comment is not adopted.

B. When Adjustments Take Effect

As previously mentioned, the comment recommended that the proposed changes to when partnership adjustments take effect not be finalized. The proposed change is needed to allow the IRS to utilize section 6232(f) and not be foreclosed from doing so by section 6241(7) in situations where the partnership has ceased to exist.

The comment seemed to express concern that the revised definition would give the IRS greater discretion over which provision would apply and that, as a result, the changes should not be finalized. As stated earlier, the November 2020 NPRM proposed to change when partnership adjustments take effect from when the partnership has fully paid any amounts due under the centralized partnership audit regime to when the IRS and the partnership enter into a settlement agreement, when an AAR is filed, or if the adjustments become finally determined under § 301.6226–2(b)(1), which is when a court decision becomes final or when the notice of final partnership adjustment (FPA) is mailed if no petition is filed under section 6234.

This change does not provide the IRS with more discretion as the IRS has limited control over when the adjustments take effect. Although the comment seems to presume that a partnership has complete control over when it pays all of the amounts due, if the IRS is utilizing collection tools such as a levy, the balance due could become fully paid outside of the partnership's control. Likewise, although the IRS has some control over when it mails an FPA (influenced in part by whether a partnership agrees to an extension of the period of limitations under section 6235), the IRS has no control over whether the partnership files a petition in response to the FPA, when a court decision becomes final, when the partnership files an AAR, or if the partnership enters into a settlement with the IRS. Therefore, because § 301.6241–3 of the final regulations should not create a situation where it precludes the IRS from utilizing section 6232(f) by providing that adjustments do not take effect until the amount due from those adjustments is paid, the comment is not adopted.

C. Currently Not Collectible

Under proposed § 301.6241–3(b), a partnership ceases to exist if the IRS determines that the partnership terminates under section 708(b)(1) or the partnership does not have the ability to pay, in full, any amount that may be due under the centralized partnership audit regime. It further provides that if a partnership's account is ''currently not collectible'' according to IRS records, then it is deemed to not have the ability to pay in full. Previously a partnership was considered to have ceased to exist if the IRS determined that the partnership terminated under section 708(b)(1) or the partnership does not have the ability to pay in full under the centralized partnership audit regime. If a partnership is ''currently not collectible,'' it does not have the ability to pay in full, which is why the amendment to § 301.6241–3(b) was proposed.

The comment recommended that a definition of ''currently not collectible,'' which is used as part of the definition of when a partnership may cease to exist, be added to § 301.6241–7 so that partnerships will have clear notice of when the IRS would make a determination that the partnership has ceased to exist under this provision. The comment noted that ''currently not collectible'' is a term of art used by the IRS and that the Internal Revenue Manual (IRM) sets forth procedures to determine if a taxpayer is ''currently not collectible.''

As an initial matter, the Treasury Department and the IRS note that, under § 301.6241–3(b), a partnership may not have the ability to pay in full but not be ''currently not collectible.'' As provided in § 301.6241–3(b), if the IRS has determined a partnership is ''currently not collectible'' then it will be deemed not to have the ability to pay in full. The comment is correct that the term ''currently not collectible'' is a term of art used by the IRS. The proposed change to the definition of cease to exist under § 301.6241–3(b)(1) to use the term ''currently not collectible'' is intended to be the same as ''currently not collectible'' already in use by the IRS in other contexts. The centralized partnership audit regime concerns the making of adjustments to partnership-related items and is, therefore, not the proper place for new rules regarding collectability generally. As the comment correctly noted, there is an entire section in the IRM that provides standards and procedures for determining whether a taxpayer is ''currently not collectible.'' These procedures have been in place for several years and provide a familiar and well-known standard for both the IRS and taxpayers. Having multiple standards or definitions for whether a taxpayer is ''currently not collectible'' would result in uncertainty for the IRS and taxpayers. Therefore, this comment is not adopted.

D. Coordination With Elections Under Section 6226, Requests for Modification, and Payment of the Imputed Underpayment

As previously stated, section 6241(7) provides that if a partnership ceases to exist prior to when any adjustments take effect, the former partners of the partnership must take into account the adjustments under regulations prescribed by the Secretary. One comment expressed concern that it was unclear whether a partnership that has ceased to exist may make an election to push out the adjustments under section 6226, request modification of the imputed underpayment under section 6225(c), or pay the imputed underpayment instead of the former partners taking the adjustments into account using the rules in § 301.6241–3. The comment expressed concern that the IRS could determine a partnership ceased to exist prior to the partnership having an opportunity to utilize any of these provisions and that may prevent the partnership from utilizing any provisions. The comment recommended that the rule be clarified to provide that a partnership may make an election to push out the adjustments under section 6226, request modification of the imputed underpayment under section 6225(c), or pay the imputed underpayment even if the partnership has ceased to exist. This comment is adopted for the following reasons.

The rules implementing section 6241(7) were never intended to prevent a partnership from making an election to push out the adjustments under section 6226, requesting modification of the imputed underpayment under section 6225(c), or paying the imputed underpayment. Section 6241(7) is a tool the IRS may use in situations where it is unclear whether the partnership will be able to pay any amounts due resulting from the partnership adjustments to protect the ability to collect tax due as a result of the partnership adjustments. Therefore, it is not intended to prevent a partnership from reducing or fully paying its liability or shifting the liability to its former partners as it could if it had not ceased to exist. In addition, one of the two criteria for determining whether a

partnership has ceased to exist is that the partnership does not have the ability to fully pay any amounts due under the centralized partnership audit regime. If the partnership has the ability to fully pay all amounts due, the partnership would not have ceased to exist under that criteria.

In response to the comment, a sentence is added to the end of § 301.6241–3(a)(1), which provides that a determination that a partnership has ceased to exist does not prohibit the partnership from requesting to modify the imputed underpayment under section 6225(c). The ability to request modification of the imputed underpayment is not dependent on whether the partnership is paying the imputed underpayment or will elect to push out the adjustments to its partners and, therefore, is not dependent on whether the former partners must take into account the adjustments.

In addition, in response to the comment, a sentence is added to the end of § 301.6241–3(b)(3), which provides for limitations on the IRS's ability to determine that a partnership has ceased to exist. The new sentence provides that a determination that a partnership has ceased to exist is not effective if the partnership has made a valid election under section 6226 to push out the adjustments or has fully paid all amounts due under the centralized partnership audit regime within ten days of notice and demand for payment. This addition protects the IRS's ability to utilize the rules under section 6241(7) while still clarifying that a partnership may make an election under section 6226 or pay the imputed underpayment and any applicable penalties and interest.

E. Former Partners

Under proposed § 301.6241–3(d), the former partners of a partnership are the partners from the last taxable year for which the partnership filed a return under section 6031, the partners from any AAR filed by the partnership, or the partners from a final determination that is binding on the partnership. Prior to the proposed changes, the former partners of the partnership were the partners during the adjustment year or, if there are no adjustment year partners, the partners of the partnership during the last taxable year for which the partnership filed a return under section 6031.

The comment recommended that the proposed changes to the definition of ''former partners'' under § 301.6241–3(d) should not be made as the proposed change to the definition was related to the change to the determination of when the adjustments take effect, which the comment previously recommended not be made. Although, as stated in section 3.B of this preamble, the comment to retain the existing definition of when partnership adjustments take effect is not adopted, the Treasury Department and the IRS have decided not to finalize the proposed changes to § 301.6241–3(d).

4. Comments on the Special Enforcement Provisions

Three comments were received on several of the provisions proposed under § 301.6241–7 that implement section 6241(11) regarding the treatment of special enforcement matters. A comment was made regarding whether these rules were consistent with the purpose of the centralized partnership audit regime's clear directive that adjustments to partnership-related items be adjusted at the partnership level, not in a partner examination, and that any departure from that directive should be narrow and only exist where there is clear justification for the departure. Two comments suggested that the centralized partnership audit regime, including section 6235, does not suggest that the period of limitations at the partner level impacts the ability of the IRS to make adjustments to partnership-related items and that no extensions of the period of limitations should be made outside of those expressly provided by Congress in section 6235.

Under section 6241(11), Congress prescribed that in the case of partnership-related items that involve special enforcement matters, the Secretary may prescribe regulations providing that the centralized partnership audit regime does not apply to those partnership-related items and that those items are subject to special rules for assessment and collection as the Secretary determines to be necessary for the effective and efficient enforcement of the Code. Integral to the concept that the Secretary can determine that the centralized partnership audit regime (or portions of it) does not apply to certain partnership-related items is the ability to adjust those partnership-related items outside of the centralized partnership audit regime.

Additionally, inherent in the ability to subject items to special rules for assessment and collection is the ability to prescribe rules for assessment that differ from existing rules, including section 6235. If the centralized partnership audit regime does not apply to an item then that item may only be adjusted using the rules that apply to partnerships that have made an election out of the centralized partnership audit regime and not using any of the rules contained in subchapter C of chapter 63. For example, if the centralized partnership audit regime does not apply to an item, the item could be adjusted on the return of the partner and the section 6235 period of limitations would not apply to that item. Instead, as for partnerships that have elected out of the centralized partnership audit regime, the operative period of limitations is the partners' period of limitations on making assessments. Because section 6241(11) provides that the IRS may provide that the centralized partnership audit regime does not apply to certain items and that there are special rules for assessment and collection, the IRS may prescribe special rules that impact or rely upon the partners' periods of limitations on assessment.

Therefore, although the centralized partnership audit regime provides that adjustments are made at the partnership level based on the partnership's period of limitations, Congress, by enacting section 6241(11), contemplated that there would be times when the centralized partnership audit rules did not apply. Accordingly, any special enforcement provision that adjusts partnership-related items outside of the centralized partnership audit regime or provides special rules governing the period of limitations on assessment when items are adjusted outside of the centralized partnership audit regime is not inconsistent with Congress's intent. Rather, it is consistent with the intent of Congress as expressly provided in section 6241(11).

A. Partnership-Related Items That Underlie Adjustments to Items That Are Not Partnership-Related Items

Three comments were received on the proposed special enforcement rule under § 301.6241–7(b) that would allow the IRS to make determinations regarding partnership-related items as part of an adjustment to an item that is not a partnership-related item in situations where the treatment of the partnership-related item on the partnership return is based, in whole or in part, on information provided by the person under examination. The rule in proposed § 301.6241–7(b) was previewed in Notice 2019–06, which was made available to the public on December 20, 2018. Although Notice 2019–06 requested comments, no comments were received on this rule.

All comments recommended that proposed § 301.6241–7(b) be removed in its entirety. Two comments expressed concern that adjustments made in a

partner examination could affect the other partners in the partnership and the partnership itself. One comment stated that the proposed rule appears to be inconsistent with Congress's intent that adjustments to partnership-related items be determined at the partnership level. Two comments stated that the proposed rule could be interpreted broadly to encompass partners involved in the preparation of the return.

One comment stated that other provisions in the centralized partnership audit regime already address the same issue as proposed § 301.6241–7(b). That comment stated that the ability for partners to file an amended return during the modification process, the ability for the partnership to elect to push out the adjustments, and the ability to create a specific imputed underpayment for a single or small group of partners makes proposed § 301.6241–7(b) redundant and unnecessary and, therefore, should be withdrawn. The comment stated that these provisions already allow the IRS to make a partnership adjustment that involves a single or limited number of partners. The comment also stated that proposed § 301.6241–7(b) is inconsistent with the foundational principles of the centralized partnership audit regime that provides the default rule that the partnership is liable for any tax resulting from a partnership adjustment.

Under proposed § 301.6241–7(b), the IRS may make determinations regarding partnership-related items as part of an adjustment to an item that is not a partnership-related item. Pursuant to this rule, the IRS is making an adjustment to an item that is not a partnership-related item. As part of making an adjustment to that item that is not a partnership-related item, the IRS may make determinations about a component of that item that is not a partnership-related item when that component happens to be a partnership-related item. But the item actually being adjusted on the partner's return is an item that is not a partnership-related item. For example, this situation may arise when a partner contributes an asset to the partnership in exchange for an interest in the partnership and the partner then sells its interest in the partnership. If the IRS disagrees with the amount of the partner's contribution to the partnership, the adjustment the IRS actually makes is to the partner's outside basis in its partnership interest and the gain the partner reported on the sale of its partnership interest that is reported on the partner's return. The IRS is not adjusting the contribution to the partnership or the partnership's basis in the contributed asset so, therefore, nothing on the partnership's return or anything maintained in its books and records changes as a result of the adjustment made to the partner's return.

Because the IRS is adjusting an item that is not a partnership-related item during an examination of the partner, rules regarding the creation of a specific imputed underpayment, a partner's filing of an amended return during modification, or the partnership making an election under section 6226 do not address the special enforcement matter underlying proposed § 301.6241–7(b). To utilize these provisions, the IRS would have to remove the item that is not a partnership-related item that is affected by partnership-related items from the partner examination it currently has open. Then, the IRS would have to open a separate examination of the partnership just to make an adjustment to a partnership-related item (or portion thereof) the reporting of which is based in whole or in part on information provided by a specific partner or small group of partners who were already under examination by the IRS. This is the exact inefficiency proposed § 301.6241–7(b) was designed to alleviate.

As previously stated, section 6241(11) by its express terms provides that rules may be created where the centralized partnership audit regime (or portions of it) would not apply to partnership-related items. Therefore, while there are foundational principles in the centralized partnership audit regime, such as the default rule that a partnership pays tax on partnership adjustments, section 6241(11) expressly allows those foundational principles to be inapplicable for special enforcement matters.

Although all comments recommended that the provision be removed in its entirety, one recommended that if it is retained, the rule should be limited to adjustments that would not impact the other partners at all and another recommended that the applicability date of the rule not be the date that Notice 2019–06 was issued and that the accompanying example be modified.

Under proposed § 301.6241–7(h)(2), determinations about partnership-related items that are made outside of the centralized partnership audit regime are not binding on any person who was not a party to the proceeding. Accordingly, if none of the other partners or the partnership become parties to the proceeding, no determination from that proceeding is binding on them or would otherwise affect them. This is similar in result to an examination of a partner in a partnership that elected out of the centralized partnership audit regime. Although the IRS may not make corresponding adjustments to the partnership's items or to items of other partners not parties to the proceeding without opening another proceeding, nothing prevents the partnership or the other partners from taking any action to adjust those items.

To provide clarity in response to the comment, § 301.6241–7(h)(2) has been modified to clarify that the partnership and the other partners are not bound to any determination regarding a partnership-related item resulting from the partner-level examination and nothing in § 301.6241–7 requires the partnership or other partners to adjust their returns. Section 301.6241–7(h)(2) has also been modified to provide further explanation of how determinations regarding partnership-related items outside of the centralized partnership audit regime affect others who are not parties to the proceeding. Section 301.6241–7(h)(2) has been modified to provide an example illustrating that if the partnership or any other partner does not become a party to a partner level proceeding conducted due to the application of any of the special enforcement rules (not just under § 301.6241–7(b)) the partnership and the other partners are not bound to any determinations made in the partner-level proceeding. The example in § 301.6241–7(b)(2) has been updated accordingly and has also been modified to provide clarity as to the items being adjusted in the example as a result of comments made at the public hearing.

The Treasury Department and the IRS also note that § 301.6241–7(b) is very similar to § 301.6222–1(c)(4), which provides rules for conducting a partner-level proceeding if the partner notifies the IRS of the partner's inconsistent treatment of partnership-related items. Like § 301.6241–7(b), § 301.6221–1(c)(4)(ii) provides rules for adjusting or determining partnership-related items in a partner-level proceeding and provides that the IRS may adjust the partnership-related item to be the correct treatment, even if that treatment is different than the partnership's treatment of the partnership-related item. As with § 301.6241–7(b), § 301.6222–1(c)(4)(ii) provides that any final decision in that partner-level proceeding is not binding on the partnership if the partnership was not a party to the proceeding. The rule under § 301.6241–7(b) is not unique in the centralized partnership audit regime.

Accordingly, the comments have been adopted to the extent they expressed

concern about the effect on the partnership and the other partners as a result of determining partnership-related items as part of an adjustment to an item that is not a partnership-related item at the partner level. Nothing in these rules precludes the other partners or the partnership from taking any action they deem necessary, including requiring a partner to notify the partnership or the other partners of any examination involving any of the special enforcement provisions.

As mentioned previously, the comments expressed concern that the rule allowing the IRS to adjust partnership-related items outside of the centralized partnership audit regime as part of an adjustment to an item that is not a partnership-related item could be interpreted very broadly and could apply to a wide variety of partnership-related items and even to partners involved in the preparation of the partnership return. It is unclear from the comments how the rule could be interpreted broadly to apply to a wide variety of partnership-related items and a wide variety of persons.

For this rule to apply, all of the following conditions must be met: (1) a person other than the partnership must be under examination; (2) the IRS must propose an adjustment to an item that is not a partnership-related item; (3) a partnership-related item must be a component of that item that is not a partnership-related item; (4) determinations about that partnership-related item must be needed in order to adjust the item that is not a partnership-related item; and (5) the treatment on the partnership's return of the partnership-related item that is the component of the item that is not a partnership-related item being adjusted must be based, in whole or in part, on information provided by the person under examination. The information provided by the person under examination is that person's information, not the partnership's information (that is, it is not something maintained in the partnership's books and records). A partner who prepares the partnership return would only be covered by this provision if that partner were under examination based on the partner's own tax return filings that required such adjustments, not based on the fact that the partner prepared the return. A partner that provides all of the information needed to prepare the partnership's return that is the partnership's information (for example, its transactions) would not be covered by the rule as the treatment on the partnership's return is not based on information provided by the partner but is based on the partnership's information. To avoid any confusion, in response to this comment, § 301.6241–7(b)(1)(iii) is modified to clarify that the information provided by the partner that forms the basis of the reporting by the partnership must come from the partner's own books and records, not the books and records of the partnership.

Another comment recommended that if the rule is retained that the provision be clarified. Specifically, the comment recommended that the rule be clarified to provide: (1) when a determination regarding a partnership-related item is ''part of'' or ''underlying'' an adjustment to an item that is not a partnership-related item; (2) whether the person described in proposed § 301.6241–7(b)(1)(i) is the same person as in proposed § 301.6241–7(b)(1)(ii) and (iii); (3) whether the determination regarding a partnership-related item occurs before or after the IRS determines that the centralized partnership audit regime does not apply to that partnership-related item; (4) a definition of ''non-partnership-related item''; and (5) in the example, whether some of the facts are determinative of the outcome.

Regarding the comments about clarifying the meaning of ''part of'' and ''underlying,'' these terms do not have a special meaning for purposes of the centralized partnership audit regime and should be read using the ordinary meaning of those words. As these words do not have a special meaning for purposes of the centralized partnership audit regime, this comment is not adopted. With regard to defining ''non-partnership-related item,'' the comment is adopted by removing the term ''non-partnership-related item.'' Instead, the final rules refer to ''items that are not partnership-related items'' when referring to items that do not meet the definition of a partnership-related item.

Proposed § 301.6241–7(b)(1)(i) provides that there must be an examination of a person who is not the partnership. Proposed § 301.6241–7(b)(1)(ii) and (iii) refer to ''the'' person whose return is under examination and not ''a'' person who is under examination. No other persons, other than the partnership, are referred to in proposed § 301.6241–7(b)(1). As there is only one person who is under examination mentioned in proposed § 301.6241–7(b)(1), it is the same person in subparagraphs (i), (ii), and (iii) of proposed § 301.6241–7(b)(1). As there is only one person under examination that is mentioned, the provision has been clarified to prevent any confusion by clarifying that the person described in § 301.6241–7(b)(1)(ii) and (iii) is the same person referred to in § 301.6241–7(b)(1)(i). Accordingly, the comment to clarify whether the person referred to in proposed § 301.6241–7(b)(1)(ii) is the same as the person referred to in proposed § 301.6241–7(b)(1)(iii), is adopted.

It is unclear what the concern is regarding the comment requesting clarity about whether the determination regarding a partnership-related item is made by the IRS before or after the IRS chooses to make other determinations regarding that partnership-related item outside of the centralized partnership audit regime. Before the IRS makes a determination that a partnership-related item may be adjusted or determined outside of the centralized partnership audit regime under § 301.6241–7, the general rule of section 6221 applies and adjustments to partnership-related items must be made under the centralized partnership audit regime. Therefore, a partnership-related item cannot be adjusted or determined outside the centralized partnership audit regime until after the IRS makes a determination under § 301.6241–7.

A decision to apply § 301.6241–7 is in itself the determination regarding whether adjustments to a partnership-related item may be made outside of the centralized partnership audit regime. The decision under § 301.6241–7 does not itself make a determination regarding a partnership-related item. If the IRS decides that a determination should be made outside of the centralized partnership audit regime in accordance with § 301.6241–7, the IRS then makes the determination as part of the partner's examination. Because additional clarification is unnecessary the comment is not adopted.

With regard to whether some of the facts in the example are determinative of the outcome, the facts that the comment mentions (no liability or activity) are there to prevent confusion over whether the partner's outside basis would have changed after the partner made the initial contribution to the partnership in exchange for an interest in the partnership. Accordingly, the facts are determinative not of the rule being illustrated in the example but of the amounts used in the example. Without those facts it could be unclear why the partner's basis on June 9, 2019, is the same as it was on June 1, 2018.

The comment also asserts that ''the adjustment to the non-partnership-related item results in the adjustment to the partnership-related item.'' It is unclear what the comment is referring to. The adjustment being made in the example is to an item that is not a partnership-related item, which

therefore does not result in an adjustment to a partnership-related item at the partnership level. The adjustment is being made at the partner level during an examination of the partner and it is not binding on the partnership in the same way that an adjustment to the return of a partner in a partnership that was not subject to the centralized partnership audit procedures would not be binding on that partnership. However, the IRS is not precluded from commencing a partnership examination to effect a consistent adjustment. As explained previously in the preamble, no adjustment to a partnership-related item on the partnership's return or in the partnership's books and records is made when the IRS makes a determination regarding a partnership-related item as part of an adjustment to an item that is not a partnership-related item, including in a partner examination. In proposed § 301.6241–7(b), only adjustments to items that are not partnership-related items are made. Nothing on the partnership's return is changed when an adjustment in a partner examination to an item that is not a partnership-related item is made under proposed § 301.6241–7(b) even if the IRS adjusts the item that is not a partnership-related item as if items on the partnership's return were incorrect. Proposed § 301.6241–7(b) applies only to situations where the IRS is adjusting in a partner examination an item that is not a partnership-related item and needs to determine a partnership-related item to effectuate the overall adjustment to the item that is not a partnership-related item. No other example in the regulations implementing the centralized partnership audit regime states whether each fact is determinative of the outcome, and it would cause more confusion to note determinative facts only in this one example. Therefore, the comment is not adopted. However, the term ''adjusted'' in proposed § 301.6241–7(b) has been removed to alleviate any confusion.

Finally, as mentioned previously, one comment recommended that the effective date of § 301.6241–7(b) should be the same as the other special enforcement matters in the November 2020 NPRM and not be applicable to tax years beginning after December 20, 2018, the date the rule was previewed in Notice 2019–06. The comment noted that the period of limitations on making adjustments to partnerships subject to the centralized partnership audit regime has not yet expired for taxable years beginning after December 20, 2018, and, therefore, ''retroactivity'' is unnecessary. As mentioned earlier, this rule was previewed in Notice 2019–06 and no comments were received. Notice 2019–06 stated that the Treasury Department and the IRS intended that the rule, when proposed, would be applied with respect to taxable years ending after December 20, 2018. Section 301.6241–7(b) is substantially similar to the rule contained in Notice 2019–06. Therefore, this recommendation is not adopted. In addition, whether the period of limitations on making adjustments to partnerships subject to the centralized partnership audit regime has not yet expired for taxable years beginning after December 20, 2018, is not relevant to the application of this rule. Under § 301.6241–7(b), the IRS may determine that the centralized partnership audit regime does not apply to any determinations regarding partnership-related items in situations described in § 301.6241–7(b). Accordingly, as the IRS would be determining that the centralized partnership audit regime does not apply, it would be the partner's period of limitations on assessment that would apply and not the partnership's period of limitations on making adjustments.

B. Special Relationships and Extensions of the Partner's Period of Limitations

Three comments were received on proposed § 301.6241–7(f). Proposed § 301.6241–7(f) permits the IRS to determine that the centralized partnership audit regime does not apply to adjustments to partnership-related items in situations where the period of limitations on making adjustments at the partnership level has expired but a partner's period of limitations on assessment has not expired and that partner has a relationship with the partnership that is described in section 267(b) or 707(b). The proposed rule also applies if the partner has expressly agreed, in writing, to extend the time to adjust and assess any tax attributable to partnership-related items for the taxable year.

The comments recommended removing proposed § 301.6241–7(f) in its entirety. One of the comments expressed concern about adjusting one partner without considering how those adjustments would affect the other partners in the partnership and noted that the rule unreasonably overlaps with proposed § 301.6241–7(b) as it would also apply to managers and general partners who provide information to a partnership. However, as noted in section 4.A of the preamble (discussing partnership-related items that are components of adjustments to items that are not partnership-related items), under § 301.6241–7(h)(2), an adjustment to a partnership-related item that occurs in a partner-level proceeding is not binding on the partnership or the other partners in the partnership unless they are also parties to the proceeding and § 301.6241–7(b) does not apply to situations involving the partnership's own records. Accordingly, any adjustments made under proposed § 301.6241–7(f) would not bind the partnership or the other partners.

That comment also expressed concern that proposed § 301.6241–7(f) does not define control as it does not state under what conditions a partner could be considered to have control because sections 267(b) and 707(b) do not use concepts of control through voting or management rights. The comment concludes that control must be better defined to be administrable for the IRS and predictable to taxpayers. Finally, the comment noted that the concept of control is only referenced in proposed § 301.6241–7(f)(1). Therefore, the comment concludes, proposed § 301.6241–7(f) could be used to adjust any partnership-related item of any direct or indirect partner that has an open period of limitations or who agrees to extend their period of limitations.

Proposed § 301.6241–7(f) provides that the IRS may adjust partnership-related items outside of the centralized partnership audit regime (that is, during a partner examination) if the period of limitations on making partnership adjustments has expired for the taxable year and one of two tests is met—(1) the partner meets the requirements under section 707(b) or is related to the partnership under section 267(b); or (2) the partner expressly agrees to extend the time to adjust and assess tax attributable to partnership-related items. While the comment stated that the applicability of the rule is unclear because sections 267(b) and 707(b) do not use concepts of control through voting or management rights, the comment does not explain why voting or management rights should be the applicable test. However, because of the confusion expressed by this comment, the non-operative text of the heading of § 301.6241–7(f)(1) has been changed from ''controlled partnerships'' to ''special relationships'' to clarify that the provision is not about actual control of the partnership but instead is solely focused on whether the partner is related to the partnership under the generally applicable rules of section 267(b) or 707(b). Under proposed § 301.6241–7(f)(1), a partner is covered by the rule if the partner bears a relationship to the partnership described under section 267(b) or 707(b) without regard to whether the partner

has control based on voting or management rights. This provision has been slightly reworded for clarity in the final regulations, but the rule has not changed. In addition, it is unclear how § 301.6241–7(f)(1) could be used to adjust any partnership-related item for any direct or indirect partner. As stated previously, for the rule to apply the partner must either be related to the partnership under section 267(b) or 707(b) or have expressly agreed to extend the time to adjust and assess tax attributable to partnership-related items. Accordingly, if a partner is not related to the partnership as described in section 267(b) or 707(b), the only way § 301.6241–7(f) will apply to the partner is if the partner expressly agrees in writing to the extension.

Two comments state that proposed § 301.6241–7(f) appears to be inconsistent with Congress's clear directive in the centralized partnership audit regime to adjust partnership-related items and to determine the period of limitations for partnership adjustments exclusively at the partnership level and that the IRS should not extend the period of limitations beyond what Congress has prescribed in section 6235. However, as discussed more fully in the introduction to section 4 of this preamble, Congress expressly provided that the Secretary could prescribe rules under which the centralized partnership audit regime (or any portion of it) would not apply to partnership-related items. If the centralized partnership audit regime does not apply to a partnership-related item, then the item or amount is not adjusted or determined at the partnership level and the period of limitations on making adjustments at the partnership level does not apply to that adjustment or determination. Accordingly, Congress expressly provided a means to make adjustments to or determinations regarding partnership-related items and determine periods of limitations at the partner level, and, therefore, § 301.6241–7(f) is consistent with congressional intent.

Two comments also expressly stated that the rationale for proposed § 301.6241–7(f) contained in the preamble to the November 2020 NPRM is not that strong and does not warrant determining or extending the period of limitations by regulation as the rule applies to all partners, not merely those in tiered structures and is inconsistent with congressional intent. As stated previously, the special enforcement rules contained in § 301.6241–7 are consistent with congressional intent as they implement the express rules provided by Congress in section 6241(11) of the Code. While it is correct that § 301.6241–7(f) may apply outside of tiered structures and that the situation contemplated in the preamble to the November 2020 NPRM is more likely to apply in tiered structures as they may be more complex, the special enforcement considerations provided in the preamble to the November 2020 NPRM may also apply in non-tiered structures. In addition, § 301.6241–7(f) does not extend the period of limitations. Section 301.6241–7(f) only applies if the partner's period of limitations has not expired and nothing in § 301.6241–7(f) extends the partner's period of limitations. Although the period of limitations on making adjustments at the partnership level under section 6235 will have expired, as noted previously, if the centralized partnership audit regime does not apply to an item or amount, then the partner's period of limitations on making assessments applies to that item or amount and not the period of limitations on making adjustments under section 6235. Accordingly, § 301.6241–7(f), if applicable, merely changes what period of limitations applies but does not extend any period of limitations.

For these reasons, the recommendation to remove § 301.6241–7(f) in its entirety is not adopted.

C. Chapter 1 Taxes and Penalties

Two comments were received on proposed § 301.6241–7(g), which allows the IRS to adjust partnership-related items that are taxes, penalties, additions to tax, or additional amounts (including making any determinations necessary to make those adjustments) imposed on the partnership under chapter 1 outside of the centralized partnership audit regime. One comment recommended that § 301.6241–7(g) be withdrawn because the rule is not necessary within the construct of the centralized partnership audit regime as the commenter does not believe a partnership-partner would owe an imputed underpayment as a result of the audited partnership electing to push out the adjustments. The comment noted that there should not be a second proceeding to make adjustments at the partner level. This comment seems to misunderstand the application of proposed § 301.6241–7(g). The comment seems to be based on language in the preamble of the November 2020 NPRM that was discussing proposed changes to § 301.6225–1 and not proposed § 301.6241–7(g). As proposed § 301.6241–7(g) does not apply in any of the situations the comment expresses concern about, the comment is not adopted. A comment noted that items under chapter 1 are imposed on partners, not partnerships, and that § 301.6241–6 already addresses taxes outside of chapter 1. That comment recommended that proposed § 301.6241–7(g) be amended to clarify its scope and purpose, and both comments requested that examples be added. This recommendation has been adopted.

Under chapter 1 of the Code, a partnership may, in certain circumstances, be directly liable for taxes, penalties, additions to tax, or additional amounts. In these circumstances, the amount is assessed and collected from the partnership and not its partners. For example, a real estate mortgage investment conduit may have a liability under §§ 860F or 860G. As another example, a partnership that has self-certified as a qualified opportunity fund under § 1400Z–2(d)(1) may have a liability under § 1400Z–2. Although chapter 1 liability for partnerships is rare, it does exist and more circumstances could be added by Congress in the future. These amounts are the ones covered by § 301.6241–7(g). Section 301.6241–7(g) does not apply to any taxes outside of chapter 1, and it does not apply to any taxes, penalties, additions to tax, or additional amounts which, under the Code, would be assessed and collected from the partners of the partnership. Because § 301.6241–7(g) does not apply to taxes outside of chapter 1, it does not apply to any adjustments to an imputed underpayment as an imputed underpayment is a tax imposed by subchapter C of chapter 63 and not chapter 1. Although under section 6232(a) an imputed underpayment is assessed and collected as if it were a tax imposed by subtitle A (which includes chapter 1), an imputed underpayment is determined under the provisions of subchapter C of chapter 63, and the partnership's liability for any imputed underpayment is created under subchapter C of chapter 63. This includes any imputed underpayment of the audited partnership as well as any imputed underpayment a pass-through partner is liable for under section 6226(b)(4)(A)(ii)(II) when the pass-through partner fails to furnish statements to its partners when the pass-through partner receives a push out statement from another pass-through entity. Proposed § 301.6241–7(g) does not create a second partner-level proceeding to make adjustments as proposed § 301.6241–7(g) only applies to any chapter 1 taxes and penalties that are the liability of the audited

partnership and, therefore, does not apply to any partners.

Also, an example is added to § 301.6225–1(h)(15) to illustrate how adjustments to partnership-related items that are taxes, penalties, additions to tax, or additional amounts under chapter 1 are made under these regulations.

Another comment recommended creating a new grouping for adjustments to chapter 1 taxes and penalties that are the liability of the partnership and adjustments to an imputed underpayment calculated by the partnership. The comment noted that the new grouping would act just like the credit grouping, however, the comment recommended not using the existing credit grouping as this may cause confusion because these items are not credits. Although the Treasury Department and the IRS agree that chapter 1 liabilities of the partnership and the imputed underpayment are not credits, adding an additional grouping would create an administrative burden on the IRS as it would require amending all forms, instructions, worksheets, computer programs, and internal processes that involve groupings. The administrative burden that would be imposed on the IRS far outweighs any confusion that may occur in the rare situation where the imputed underpayment or chapter 1 taxes or penalties are adjusted and placed into the credit grouping. In addition, although these items are not technically credits, the items easily operate like credits for purposes of the calculation of the imputed underpayment, and thus it is logical to include them with the credit grouping and treat them similarly. Accordingly, this comment is not adopted.

D. Adjustments to Imputed Underpayments

One comment was received on the provisions for situations where the IRS makes an adjustment to an imputed underpayment calculated by the partnership (for example, as part of the filing of an AAR). These provisions were proposed amendments to § 301.6225–1(c)(3), (e)(3)(ii), (f)(1)(ii), (f)(3), and § 301.6226–2(g)(4).

The comment stated that proposed § 301.6226–2(g)(4) limits the partnership's ability to push out an imputed underpayment that arises from the adjustment to a previously calculated imputed underpayment and stated that nothing in the Code or legislative history implies that there is a limitation on the push out election. The comment recommended that a partnership that has filed an AAR be permitted to push out any adjustments made to the imputed underpayment included on the AAR. As previously noted, there is no legislative history of the centralized partnership audit regime, but the Treasury Department and the IRS agree that section 6226 does not limit the ability of a partnership to elect to push out to each partner from the reviewed year that partner's share of any adjustment to a partnership-related item.

Under section 6241(2)(B)(i), the imputed underpayment is included within the definition of ''partnership-related item.'' Accordingly, any adjustment to an imputed underpayment must be made under the centralized partnership audit regime. The comment stated that any adjustment to an imputed underpayment should not result in a second imputed underpayment. The comment stated that the IRS could merely adjust the incorrect imputed underpayment, assess the difference against the partnership, and issue notice and demand to the partnership. The comment did not provide the source of the authority for the IRS to assess a change in an imputed underpayment without making an adjustment to the imputed underpayment under the centralized partnership audit regime.

Under section 6221, any adjustment to a partnership-related item, including an imputed underpayment, must be determined at the partnership level under subchapter C of chapter 63. Under section 6232(b), the IRS may not assess an imputed underpayment if the IRS does not issue an FPA to the partnership it is assessing. As the comment correctly noted, there are several instances in which a partnership (or other pass-through partner) can be liable for an imputed underpayment that is calculated by the partnership—when the partnership files an AAR and does not elect to push out the adjustments to its reviewed year partners, when a pass-through partner pays an imputed underpayment as part of an amended return modification, and where a pass-through partner fails to timely issue statements to its partners when it receives a statement under section 6226 and is, therefore, liable for an imputed underpayment. In all of these circumstances, the partnership has chosen to be liable for an imputed underpayment and has not chosen to pass the adjustments out to its partners. In all of these circumstances, the IRS has not issued an FPA to the partnerships at issue. Because these examples are not examples in which the partnership is self-reporting the amount of the imputed underpayment and no FPA has been issued, section 6232(b) prohibits the IRS from assessing an imputed underpayment calculated on an adjustment the IRS makes to a partnership-related item (in this case, an imputed underpayment).

As previously mentioned, in all cases where the IRS is making an adjustment to an imputed underpayment previously calculated by a partnership, the partnership is liable for the imputed underpayment, and the time to forego that liability by pushing out the adjustments to its partners has passed. In cases where the adjustment is solely to the previously calculated imputed underpayment, § 301.6226–2(g)(4) provides that the partnership cannot push out the imputed underpayment to its partners from the reviewed year. Although section 6226 does not contain a limitation on the ability to elect to push out the adjustments, there are key differences here.

First, the partnership has already chosen to be liable for the imputed underpayment that has been adjusted. The imputed underpayment is only ever the liability of the partnership and not the partners because the deadline to push out the adjustments that resulted in the imputed underpayment has passed. Therefore, if the partnership could make a push out election of this portion of the imputed underpayment that adjustment would be allocable to the partnership. See generally § 301.6226–2(f)(1)(ii) and (iii) (unless adjusted, a partner's share of the adjustments is the same as it was allocated originally or how they would be allocated if the item was included on the partnership return). An imputed underpayment is not an item that is allocable to partners on a Schedule K–1; rather it is an entity-level liability of the partnership. Accordingly, there would be no practical difference between pushing out the imputed underpayment adjustment to itself and paying the imputed underpayment at the time it pushes out any unrelated adjustments to its partners. Practically, in both situations the partnership would be liable for the change in the imputed underpayment in the adjustment year.

Second, allowing the partnership to push out an adjustment to an imputed underpayment to its partners would frustrate the intent of the centralized partnership audit regime by allowing a partnership to circumvent sections 6225 and 6226 in situations where these provisions have already determined that the partnership is liable for the underlying imputed underpayment that is being adjusted. There is nothing under sections 6226 or 6227 that allows a partnership to push out the

adjustments that resulted in an imputed underpayment to its reviewed year partners after the deadline for making that election or furnishing the statements has passed. Once the deadline has passed, the partnership is liable for the imputed underpayment.

Finally, allowing the partnership to push out portions of an imputed underpayment to its partners for them to pay might prevent the assessment and collection of the imputed underpayment, which would frustrate the purpose of the centralized partnership audit regime. Under section 6226(b), a partner takes the pushed-out adjustments into account by calculating the amount by which the partner's chapter 1 tax would have changed in the first affected year and any intervening year. This change in chapter 1 tax is referred to in § 301.6226–3 as the additional reporting year tax, and it is a tax for the year in which the statement was furnished by the audited partnership and not the prior years. However, an imputed underpayment is not a tax under chapter 1. An imputed underpayment is imposed by subchapter C of chapter 63. Therefore, if a partnership was allowed to push out portions of the imputed underpayment to be paid by its partners, section 6226(b) would arguably exclude that imputed underpayment portion from the calculation of the additional reporting year tax. No other provision in the Code would allow the IRS to assess an imputed underpayment on a partner in situations where the partnership has made an election under section 6226, leaving the IRS without a method to assess. Therefore, the recommendation to allow a partnership to push out an adjustment to an imputed underpayment is not adopted.

E. Indirect Methods of Proof of Income

One comment was received on proposed § 301.6241–7(e), which implements section 6241(11)(B)(iv). Under proposed § 301.6241–7(e) the IRS may adjust any partnership-related item as part of a determination of a partner's liability if that determination is based on an indirect method of proof of income. The comment recommended that § 301.6241–7(e) be revised to include a definition of ''indirect method of proof of income'' so that taxpayers understand precisely when the rule could apply given the extraordinary power of the special enforcement rules. The comment also recommended that the definition be proposed in a notice of proposed rulemaking so it will be open to notice and comment.

Under TEFRA, section 6231(c) provided that, for special enforcement matters, the IRS may, through regulations, treat partnership items that interfere with the effective and efficient enforcement of subchapter C of chapter 63 as nonpartnership items. One of those special enforcement matters is indirect methods of proof of income. Section 6231(c)(1)(C). Section 301.6231(c)–6 provides rules for the determination of a partner's liability that is based on an indirect method of proof of income. Both § 301.6241–7(e) and § 301.6231(c)–6 use the phrase ''indirect methods of proof of income.'' Additionally, both section 6241(11)(B)(iv) and section 6231(c)(1)(C) use the phrase ''indirect methods of proof of income.'' The term ''indirect methods of proof of income'' is not a term of art under either TEFRA or the centralized partnership audit regime. The meaning of the term in TEFRA and the centralized partnership audit regime is the same as the term is used in other areas of tax law. Indirect methods of proof of income are well-established methods under case law for situations where a taxpayer's income is determined using indirect evidence. Having different definitions of ''indirect methods of proof of income'' for partnership proceedings would result in confusion to both the IRS and taxpayers. For the reasons stated, the comment is not adopted.

F. General Comments

One comment recommended changes to the phrasing of the special enforcement provisions. The comment recommended that the regulations under § 301.6241–7 be modified to be more like the regulations implementing section 6231(c) under TEFRA which, as previously mentioned, is also about special enforcement matters. The regulations that implement section 6231(c) are §§ 301.6231(c)–3 through 301.6241(c)–8 (TEFRA special enforcement regulations). The comment also made recommendations about the terms used in proposed § 301.6241–7.

i. Discretion of the IRS in Utilizing the Special Enforcement Rules

All of the provisions under proposed § 301.6241–7 provide that the IRS may make adjustments or determinations about partnership-related items outside of the centralized partnership audit regime. The IRS has discretion regarding whether to utilize these rules if the conditions prescribed for each special enforcement matter are met. Under TEFRA, there are five special enforcement matters contained in the TEFRA special enforcement regulations—termination and jeopardy assessments; criminal investigations; indirect methods of proof of income; bankruptcy and receivership; and prompt assessment. For all of these special enforcement considerations, if the specified event occurs, the TEFRA special enforcement provision automatically applies, and the partnership items of the partner to whom the special enforcement matter applies become nonpartnership items.

The comment stated that, under the TEFRA special enforcement regulations, the IRS has no discretion not to apply the special enforcement rules if the ''triggering event'' occurs. The comment contrasts the TEFRA rule with proposed § 301.6241–7, which provides the IRS may utilize the special enforcement rules if the triggering events occur. The comment recommended that § 301.6241–7(c) (termination or jeopardy assessments), (d) (criminal investigations), and (e) (indirect methods of proof of income) be modified to provide, if the triggering event occurs, that the IRS has no discretion to apply the special enforcement rules due to the extraordinary consequences of special enforcement.

The comment is correct that under the TEFRA special enforcement regulations if the specified triggering event occurs the special enforcement rules automatically apply. However, the automatic triggering of the rules does not mean that the IRS lacks discretion regarding whether the special enforcement rules apply. Except for the rules on bankruptcy and receivership and prompt assessment, each special enforcement rule in TEFRA is triggered by an affirmative exercise of discretion by the IRS. For example, under § 301.6231(c)–5, which provides rules for criminal investigations, for this provision to apply, the partner must be under criminal investigation and the IRS must also send the partner a letter expressly telling the partner that his or her partnership items will be treated as nonpartnership items. The IRS has discretion whether to send such a letter. Similarly, the IRS has discretion regarding whether to take the affirmative action that would trigger the application of the TEFRA special enforcement regulations such as deciding whether to make a termination or jeopardy assessment or issue a statutory notice of deficiency based on an indirect method of proof. §§ 301.6231(c)–4; 301.6231(c)–6.

Under the TEFRA special enforcement regulations, only two rules have a triggering event that is not an action of the IRS. Under § 301.6231(c)–7, generally, the partnership items of a partner are treated as nonpartnership

items if the partner has filed for bankruptcy or is in a receivership proceeding. Section 301.6241(c)–7 does not require the IRS to be notified or know about the bankruptcy or receivership. In many situations the IRS does not learn that a specific partner has been in bankruptcy or receivership until well into the TEFRA proceeding at a time when the partner's period of limitations on assessment would have expired if it was not for the minimum period described in section 6229. This has caused substantial administrative problems for the IRS because the IRS may be properly obtaining extensions under section 6229(b) but those would be inapplicable to a specific partner based on facts not known to the IRS.

In addition, there are fundamental differences between TEFRA and the centralized partnership audit regime that affect whether the special enforcement rules should automatically apply if the triggering event occurs. Under TEFRA, any adjustments made during a TEFRA proceeding are ultimately passed to the partners who are liable for any taxes on those adjustments. In contrast, in the centralized partnership audit regime the proceeding is one of the partnership and not the partners, and the examination is determining the liability of the partnership and not the partners. Therefore, there may be situations where utilizing the special enforcement rules under § 301.6241–7 are not appropriate, even if the provision would apply because there is a liability being determined in a proceeding under the centralized partnership audit regime. For example, the IRS may already have the partnership under examination or the partnership may have already filed a petition in response to an FPA. In those cases, it may be more efficient to include those adjustments with the other adjustments being made rather than make adjustments in two parallel proceedings, especially if the partnership proceeding is close to resolution. Therefore, for the reasons discussed previously, the comment is not adopted.

The comment also noted that, unlike TEFRA, § 301.6241–7 does not address a situation where a partner and the partnership have different taxable years, although the comment noted that one of the TEFRA special enforcement provisions also does not address this situation. The comment recommended that the proposed rules in § 301.6241–7 be revised to adopt the language from the TEFRA special enforcement regulations to provide that the special enforcement rules under § 301.6241–7 apply to partnership-related items arising in any partnership taxable year ending on or before the last day of the taxable year of the partner.

Although the TEFRA special enforcement regulations (except one), provide specific rules regarding which taxable year or years the provision applies to, as the comment correctly noted, the TEFRA special enforcement regulations automatically apply if the specified triggering event occurs. In addition, the TEFRA special enforcement regulations apply to all partnership items of a partner, not specified ones as in § 301.6241–7, so it is clear which items are treated as nonpartnership items and for which years without any notification from the IRS. As discussed previously, the rules under proposed § 301.6241–7 do not automatically apply if the specific triggering event occurs, and the partner will not have to determine whether the rule applies and to which items or years. Under § 301.6241–7(h), the IRS will notify, in writing, the taxpayer who is being adjusted that the rule will apply. As the partner will have specific information directly from the IRS as to his or her specific facts and circumstances, the comment is not adopted.

ii. Items and Adjustments

One comment was received regarding the use of the term ''adjustment'' in proposed § 301.6241–7. Under 6241(11), the Treasury Department and the IRS may prescribe regulations for special enforcement matters under which the centralized partnership audit regime (or any portion thereof) does not apply to such items. Under proposed § 301.6241–7, which implements section 6241(11), the IRS may adjust partnership-related items outside of the centralized partnership audit regime in the specified special enforcement matters.

The comment recommended that proposed § 301.6241–7 be revised to state that a partnership-related item (and any related penalties) that the IRS determines is not subject to the centralized partnership audit regime is subject to deficiency procedures under subchapter B of chapter 63. The comment stated that the use of the term ''adjustments'' is inconsistent with the authority under section 6241(11), which expressly provides that section 6241(11) applies to partnership-related ''items.''

As an initial matter, it is unclear from the comment whether the comment has interpreted proposed § 301.6241–7 to apply to an entire partnership-related item, or just a partner's portion of a partnership-related item such that if the IRS utilizes the special enforcement rules the entire partnership-related item may not be adjusted under the centralized partnership audit regime. If the IRS utilized the special enforcement rules, only the portion of the partnership-related item(s) to which the special enforcement provision applies may be adjusted or determined outside of the centralized partnership audit regime.

In addition, utilizing the special enforcement rules to adjust partnership-related items as part of an adjustment being made at the partner level where a special enforcement matter exists does not prohibit the IRS from adjusting the entire partnership-related item under the centralized partnership audit regime. The partnership is not bound by any determinations in a partner-level proceeding to which it is not a party. Proposed § 301.6241–7(i) contains rules for coordinating adjustments made to partnership-related items at the partnership level so that the same partnership-related item is not taxed twice. In addition, a partnership may request to modify the imputed underpayment based on adjustments previously taken into account by a partner.

The special enforcement rules only apply if there is a special enforcement matter. In a partnership not all partners have the same facts and circumstances. Therefore, there may be a special enforcement matter for one partner but not another. The IRS may not adjust partnership-related items outside of the centralized partnership audit regime that would be allocable to a partner who does not have a special enforcement matter. This rule is similar to the rule under TEFRA. Under section 6231(c)(2) partnership items are treated as nonpartnership items if a special enforcement matter exists, to the extent provided in regulations. Under the TEFRA special enforcement regulations, only the partnership items of the specific partner who has the special enforcement matter are treated as nonpartnership items. In order to alleviate any confusion, in response to this comment, § 301.6241–7(a) is modified to clarify that only the portion of the partnership-related item that is subject to the special enforcement rules may be adjusted outside of the centralized partnership audit regime and that § 301.6241–7 does not prohibit the IRS from adjusting the entire partnership-related item under the centralized partnership audit regime.

With regard to the use of the term ''adjustments'' instead of ''items,'' section 6241(11) applies to partnership-related items. The term ''partnership-related item'' is a term of art under the centralized partnership audit regime

and is defined in section 6241(2)(B). As a term of art, ''partnership-related'' is not separate from ''item.'' Under the centralized partnership audit regime, adjustments are made to partnership-related items. The rules under § 301.6241–7 apply to partnership-related items and provide rules for adjusting those partnership-related items in situations where there is a special enforcement matter. Accordingly, the special enforcement rules already apply to ''items.'' In addition, the Treasury Department and the IRS are unaware of any situation where no adjustment is being made to an item and yet the application of the centralized partnership audit regime would matter. For the reasons stated, this comment is not adopted.

In addition, if an adjustment is made outside of the centralized partnership audit regime, that adjustment would be subject to the rules that would apply if the centralized partnership audit regime did not exist. Accordingly, deficiency procedures would apply to the adjustment if the adjustment would be subject to deficiency procedures for a taxpayer not subject to the centralized partnership audit regime. To the extent the comment is recommending extending deficiency procedures to adjustments that would not normally be subject to deficiency procedures, the comment is not adopted. The comment provides no rationale for why an adjustment made outside of the centralized partnership audit regime using the special enforcement rules should be different than an adjustment that is made to an item that is not subject to the centralized partnership audit regime.

5. Comments Outside the Scope of the November 2020 NPRM

One comment included several recommendations that are outside the scope of the November 2020 NPRM. Accordingly, no response is provided for those recommendations, which include a recommendation to amend § 301.6225–1(e)(3)(ii) to provide that net negative adjustments to credits can always be used to reduce the imputed underpayment. Although the November 2020 NPRM proposed adding a sentence to § 301.6225–1(e)(3)(ii), the proposed change was limited to adding a sentence about net negative adjustments to taxes and penalties for which the partnership is liable for under chapter 1; it did not repropose the entire paragraph. The recommendation in the comment would require modifying the portion of § 301.6225–1(e)(3)(ii) that was not proposed to be amended in the November 2020 NPRM. The addition to § 301.6225–1(e)(3)(ii) in the November 2020 NPRM is unrelated to the provision about netting credits contained in other portions of § 301.6225–1(e)(3)(ii). Therefore, this comment is outside the scope of the November 2020 NPRM.

The comment also included some recommendations on modifications to forms and instructions. The November 2020 NPRM does not propose any rules regarding forms and instructions. Accordingly, this comment is outside of the scope of the November 2020 NPRM.

Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) it is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities.

The final rules directly affect any partnership subject to the centralized partnership audit regime under subchapter C of chapter 63. As all partnerships are subject to the centralized partnership audit regime unless they make a valid election out of the regime, the final rules are expected to affect a substantial number of small entities. However, the IRS has determined that the economic impact on small entities affected by the final rule would not be significant.

The final rules under § 301.6241–7 implement section 6241(11) and allow the IRS, for partnership-related items that involve special enforcement matters, to provide that the centralized partnership audit regime (or a portion thereof) does not apply to such partnership-related items and that such items are subject to special rules as is necessary for the efficient and effective enforcement of the Code. As such, the rules provide for certain situations where partnership-related items may be adjusted outside of the centralized partnership audit regime. In all but one of these situations (involving chapter 1 taxes and penalties that are the liability of the partnership), if the rules in § 301.6241–7 were utilized, then the adjustments would be made to partners of the partnership, rather than the partnership itself and, thus, utilizing the final rules would not have an impact on small entities. Additionally, many small entities may be eligible to elect out of the centralized partnership audit regime under section 6221(b). Accordingly, if a small entity is eligible to elect out, they may choose to elect out of the regime at which point the rules contained in § 301.6241–7 would be inapplicable to those entities.

Finally, the final rules under § 301.6241–7 address the process for conducting an examination and do not have a significant economic impact on small entities as the rules do not affect entities' substantive tax, such as the requirement to include items in income or the deductibility of items. The final rules promulgated under other Code sections simply clarify sections of regulations previously published.

The Secretary hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, Notices, and other guidance cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *www.irs.gov.*

Drafting Information

The principal author of these regulations is Jennifer M. Black of the Associate Chief Counsel (Procedure and Administration). However, other personnel from the Treasury Department and the IRS participated in the development of the regulations.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 is amended by adding entries in numerical order for §§ 301.6221(b)–1 and 301.6241–7 to read in part as follows:

Authority: 26 U.S.C. 7805.

* * * * *

Section 301.6221(b)–1 also issued under sections 6221 and 6241.

* * * * *

Section 301.6241–7 also issued under section 6241.

* * * * *

■ **Par. 2.** Section 301.6221(b)–1 is amended by revising paragraphs (b)(3)(ii)(D) and (F), adding paragraph (b)(3)(ii)(G), and adding a sentence to the end of paragraph (f) to read as follows:

§ 301.6221(b)–1 Election out for certain partnerships with 100 or fewer partners.

* * * * *

(b) * * *

(3) * * *

(ii) * * *

(D) A wholly owned entity disregarded as separate from its owner for Federal income tax purposes,

* * * * *

(F) Any person who holds an interest in the partnership on behalf of another person, or

(G) A qualified subchapter S subsidiary, as defined in section 1361(b)(3)(B).

* * * * *

(f) * * * Notwithstanding the preceding sentence, paragraphs (b)(3)(ii)(D), (F), and (G) of this section apply to taxable years ending on or after November 20, 2020.

§ 301.6223–1 [Amended]

■ **Par. 3.** Section 301.6223–1 is amended in paragraph (e)(8) by

■ a. Removing the language ''B'' and ''B's'' and adding ''PR'' and ''PR's'' in their place, respectively, in *Example 1;* and

■ b. Removing ''B's'' and adding ''PR's'' in its place in *Example* 2.

■ **Par. 4.** Section 301.6225–1 is amended:

■ a. By revising the paragraph (b)(3) subject heading;

■ b. By adding two sentences to the end of paragraph (b)(4);

■ c. By adding a sentence to the end of paragraph (c)(3);

■ d. By revising paragraphs (d)(2)(ii) and (iii);

■ e. By removing reserved paragraph (d)(3)(iii)(C);

■ f. By adding a sentence to the end of paragraph (e)(3)(ii);

■ g. By revising paragraph (f)(1)(ii);

■ h. By adding paragraph (f)(3);

■ i. By adding paragraphs (h)(13), (14), and (15); and

■ j. By adding a sentence to the end of paragraph (i)(1).

The revisions and additions read as follows:

§ 301.6225–1 Partnership adjustment by the Internal Revenue Service.

* * * * *

(b) * * *

(3) *Adjustments to items for which tax has been collected under chapters 3 and 4 of the Internal Revenue Code (Code).*

* * *

(4) * * * In addition, if a positive adjustment to an item is related to, or results from, a positive adjustment to another item, one of the positive adjustments will generally be treated as zero solely for purposes of calculating any imputed underpayment unless the IRS determines that an adjustment should not be treated as zero in the calculation of the imputed underpayment. This paragraph applies to the calculation of any imputed underpayment, including imputed underpayments calculated by a partnership or pass-through partner (for example, as part of the filing of an administrative adjustment request (AAR) under section 6227).

(c) * * *

(3) * * * Each adjustment to any tax, penalty, addition to tax, or additional amount for the taxable year for which the partnership is liable under chapter 1 of the Code (chapter 1) and each adjustment to an imputed underpayment calculated by the partnership is placed in the credit grouping.

* * * * *

(d) * * *

(2) * * *

(ii) *Negative adjustment.* A *negative adjustment* is any adjustment that is a decrease in an item of income; a partnership adjustment treated under paragraph (d)(2)(i) of this section as a decrease in an item of income; an increase in an item of credit; a decrease in an item of tax, penalty, addition to tax, or additional amount for which the partnership is liable under chapter 1; or a decrease to an imputed underpayment calculated by the partnership for the taxable year.

(iii) *Positive adjustment.* A positive adjustment is any adjustment that is not a negative adjustment as defined in paragraph (d)(2)(ii) of this section.

* * * * *

(e) * * *

(3) * * *

(ii) * * * A net negative adjustment to a tax, penalty, addition to tax, or additional amount for which the partnership is liable under chapter 1 or an adjustment to any imputed underpayment calculated by the partnership for the taxable year is not an adjustment described in paragraph (f) of this section (adjustments that do not result in an imputed underpayment).

* * * * *

(f) * * *

(1) * * *

(ii) The calculation under paragraph (b)(1) of this section results in an amount that is zero or less than zero, unless paragraph (f)(3) of this section applies.

* * * * *

(3) *Exception to treatment as an adjustment that does not result in an imputed underpayment*—(i) *Application of this paragraph (f)(3).* If the calculation under paragraph (b)(1) of this section results in an amount that is zero or less than zero due to the inclusion of a net negative adjustment to a tax, penalty, addition to tax, or additional amount for which the partnership is liable under chapter 1 or an adjustment to any imputed underpayment calculated by the partnership for the taxable year, this paragraph (f)(3) applies, and paragraph (f)(1) of this section does not apply except as provided in paragraph (f)(3)(ii)(C) of this section.

(ii) *Recalculation if paragraph (f)(3) of this section applies*—(A) *In general.* If this paragraph (f)(3) applies, the imputed underpayment is recalculated under paragraph (b)(1) of this section without regard to a net negative adjustment to a tax, penalty, addition to tax, or additional amount for which the partnership is liable under chapter 1 or an adjustment to any imputed underpayment calculated by the partnership for the taxable year. The net negative adjustment that was excluded from the imputed underpayment recalculation is then treated in one of two ways under paragraphs (f)(3)(ii)(B) and (C) of this section depending on the results of the recalculation.

(B) *Recalculation is greater than zero.* If the result of the recalculation under paragraph (f)(3)(ii) of this section is greater than zero, the IRS may apply the portion of the net negative adjustment(s) that was excluded from the recalculation to reduce the imputed underpayment to zero, but not below zero. In this case, the imputed underpayment is zero, but the adjustments included in the recalculation and the remaining net negative adjustment(s) excluded from the recalculation under paragraph (f)(3)(ii)(A) of this section are not adjustments that do not result in an imputed underpayment subject to treatment as described in paragraph (f)(2) of this section. See paragraph (h)(13) of this section (*Example 13*).

(C) *Recalculation is zero or less than zero.* If the result of the recalculation under paragraph (f)(3)(ii) of this section is zero or less than zero, the adjustments included in the recalculation are treated as adjustments that do not result in an imputed underpayment under paragraph (f)(1)(ii) of this section. The net negative adjustment(s) that was excluded from the recalculation is not an adjustment that does not result in an imputed underpayment subject to treatment as described in paragraph (f)(2) of this section. See paragraph (h)(14) of this section (*Example 14*).

* * * * *

(h) * * *

(13) *Example 13.* The IRS initiates an administrative proceeding with respect to Partnership's 2019 partnership return and makes adjustments as follows: net positive adjustment of $100 ordinary income, net negative adjustment of $20 in credits, and a net negative adjustment of $25 to a chapter 1 tax liability of the partnership. The IRS determines that the net negative adjustment in credits should be taken into account in the calculation of the imputed underpayment in accordance with paragraph (b)(1)(v) of this section. Pursuant to paragraph (b)(1) of this section, the $100 net positive adjustment to ordinary income is multiplied by 40 percent (highest tax rate in effect), which results in a $40 imputed underpayment. The adjustments in the credits grouping are then applied, which include the adjustment to credits and the adjustment to the chapter 1 tax liability. Applying the credits results in an amount less than zero as described in paragraph (f)(3)(i) of this section ($40 − $20 − $25 = −$5). Pursuant to paragraph (f)(3)(ii) of this section, the imputed underpayment is recalculated without regard to the adjustment to the chapter 1 tax liability, resulting in a recalculation amount greater than zero as described in paragraph (f)(3)(ii)(B) of this section ($40 − $20 = $20). Pursuant to paragraph (f)(3)(ii)(B) of this section, the IRS may apply a portion of the adjustment to chapter 1 tax liability to reduce the recalculation to zero but not below zero. In this case, the recalculation amount would be reduced to zero using $20 of the $25 adjustment to chapter 1 tax liability. Because the imputed underpayment was reduced to zero, pursuant to paragraph (f)(3)(ii)(B) of this section, the adjustments that went into the recalculation are not adjustments that do not result in an imputed underpayment. These adjustments are the $100 adjustment to ordinary income and the $20 adjustment to credits. The remaining $5 adjustment to the chapter 1 tax liability of the partnership is an adjustment that is treated as described in paragraph (e)(3)(ii) of this section and is therefore not taken into account on the partnership's adjustment year return.

(14) *Example 14.* The facts are the same as in paragraph (h)(13) of this section (*Example 13*), but the negative adjustment to credits is $50 instead of $20. Applying the credits results in an amount less than zero as described in paragraph (f)(3)(i) of this section ($40 − $50 − $25 = −$35). Pursuant to paragraph (f)(3)(ii) of this section, the imputed underpayment is recalculated without regard to the adjustment to the chapter 1 tax liability, resulting in a recalculation amount less than zero as described in paragraph (f)(3)(ii)(C) of this section ($40 − $50 = −$10). Pursuant to paragraph (f)(3)(ii)(C) of this section, the partnership adjustments resulting in the −$10 recalculation amount are adjustments that do not result in an imputed underpayment treated in accordance with paragraph (f)(1)(ii) of this section, and the $25 adjustment to chapter 1 tax liability is not treated as such an adjustment and is therefore not taken into account on the partnership's adjustment year return.

(15) *Example 15.* On its timely filed return for the 2022 taxable year, Partnership reports that it self-certified as a qualified opportunity fund, as defined in section 1400Z–2(d). Partnership also reports that it has not satisfied the 90-percent investment standard, as defined in § 1.1400Z2(a)–1(b)(4) of this chapter, and reports an amount due under section 1400Z–2(f) of $100. The IRS does not utilize § 301.6241–7(g) to determine adjustments to these partnership-related items without regard to subchapter C of chapter 63. In an administrative proceeding involving Partnership's 2022 taxable year, the IRS, in examining the amount due under section 1400Z–2(f), determines that Partnership incorrectly reported its qualified opportunity zone property for one month and that there should be one $40 adjustment to reduce the assets Partnership reported as qualified opportunity zone property. The IRS also determines that the basis of one of Partnership's qualified opportunity zone properties should be reduced by $30. Under paragraph (d) of this section, the adjustments to the basis and character of an asset are not adjustments to an item of income. Therefore, the $30 adjustment to the basis of the asset and the $40 recharacterization of an asset are treated as positive adjustments. As a result of the determinations, the IRS determines that the amount due for Partnership failing the section 1400Z–2(d)(1) investment standard should be increased. This results in a $4 adjustment to Partnership's liability under section 1400Z–2(f) which, under paragraph (d)(2) of this section is a positive adjustment because it is an increase in an amount Partnership is liable for under chapter 1. The total netted partnership adjustment for the 2022 taxable year is $70 ($30 basis adjustment + $40 recharacterization adjustment). Under paragraph (c)(3) of this section, the $4 adjustment to Partnership's liability under chapter 1 is treated as an adjustment to a credit. Assuming the highest rate under section 1 or 11 is 40% this results in an imputed underpayment of $32 (($70 × 40%) + $4 section 1400Z–2(f) adjustment). The IRS issues a notice of final partnership adjustment to Partnership for its 2022 taxable year and Partnership makes a timely election under section 6226 with regard to the $32 imputed underpayment. Under § 301.6226–2(g)(1), when Partnership furnishes statements to its reviewed year partners, Partnership must pay the $4 section 1400Z–2(f) amount because it is the liability of Partnership and may not include that adjustment in the statements.

(i) * * *

(1) * * * Notwithstanding the preceding sentence, paragraphs (b)(4), (c)(3), (d)(2)(ii), (d)(3)(iii)(C), (e)(3)(ii), (e)(3)(iii)(B), (f)(1)(ii), (f)(3), and (h)(13), (14), and (15) of this section apply to taxable years ending on or after November 20, 2020.

* * * * *

■ **Par. 5.** Section 301.6225–2 is amended:

■ a. In paragraph (d)(2)(vi)(A), by removing the period and the end of the paragraph and adding in its place ‘‘, by treating any approved modifications and partnership adjustments allocable to the pass-through partner as items reflected on the statement furnished to the pass-through partner.’’;

■ b. By revising paragraph (d)(2)(vi)(B); and

■ c. By adding a sentence to the end of the paragraph (g)(1).

The revision and addition read as follows:

§ 301.6225–2 Modification of imputed underpayment.

* * * * *

(d) * * *

(2) * * *

(vi) * * *

(B) *Adjustments that do not result in an imputed underpayment.* If a pass-

through partner takes into account its share of the adjustments by paying an amount described in paragraph (d)(2)(vi)(A) of this section and there are any adjustments that do not result in an imputed underpayment (as defined in § 301.6225–1(f)), those adjustments are taken into account by the pass-through partner in accordance with § 301.6225–3 in the taxable year of the pass-through partner that includes the date the payment described in paragraph (d)(2)(vi)(A) of this section is paid. This paragraph (d)(2)(vi)(B) does not apply if, after making the calculation described in paragraph (d)(2)(vi)(A) of this section, no amount exists and therefore no payment is required under paragraph (d)(2)(vi)(A).

* * * * *

(g) * * *

(1) * * * Notwithstanding the preceding sentence, paragraph (d)(2)(vi)(B) of this section applies to taxable years ending on or after November 20, 2020.

* * * * *

■ **Par. 6.** Section 301.6225–3 is amended:

■ a. In paragraph (b)(1) by removing ''a reduction in non-separately stated income or as an increase in non-separately stated loss'' and adding in its place ''part of non-separately stated income or loss'';

■ b. By adding paragraphs (b)(8) and (d)(3) through (5); and

■ c. By adding a sentence to the end of paragraph (e)(1).

The additions read as follows:

§ 301.6225–3 Treatment of partnership adjustments that do not result in an imputed underpayment.

* * * * *

(b) * * *

(8) *Adjustments to items that are not items of income, gain, loss, deduction, or credit.* The partnership takes into account an adjustment that does not result in an imputed underpayment that resulted from an adjustment to an item that is not an item of income, gain, loss, deduction, or credit by adjusting the item on its adjustment year return but only to the extent the item would appear on the adjustment year return without regard to the adjustment. If the item is already reflected on the partnership's adjustment year return as an item that is not an item of income, gain, loss, deduction, or credit, or in any year between the reviewed year and the adjustment year, a partnership should not create a new item in the amount of the adjustment on the partnership's adjustment year return.

* * * * *

(d) * * *

(3) *Example 3.* On its partnership return for the 2020 taxable year, Partnership placed Asset into service, reporting that Asset, a non-depreciable asset, had a basis of $100. During an administrative proceeding with respect to Partnership's 2020 taxable year, the IRS determines that Asset has a basis of $90 instead of $100. The IRS also determines that Partnership has a negative adjustment to credits of $4. There are no other adjustments for Partnership's 2020 taxable year. Under § 301.6225–1(d)(2)(iii), the adjustment to the basis of an asset is not an adjustment that is a decrease in an item of income, a partnership adjustment treated under paragraph § 301.6225–1(d)(2)(i) as a decrease in an item of income, or an increase in an item of credit. Therefore, the $10 adjustment to the basis of Asset is treated as a $10 positive adjustment. The IRS determines that the net negative adjustment to credits should be taken into account as part of the calculation of the imputed underpayment. The total netted partnership adjustment is $10, which, after applying the highest rate and decreasing the product by the $4 adjustment to credits results in an imputed underpayment of $0. Accordingly, both adjustments are adjustments that do not result in an imputed underpayment under § 301.6225–1(f). The adjustment year is 2022 and Partnership still owns Asset. Under paragraph (b)(8) of this section, Partnership takes into account the $10 adjustment to Asset on its 2022 return by reducing its basis in Asset by $10. The reduction in the basis of Asset does not require Partnership to recognize income or gain in situations where income or gain is not otherwise recognized.

(4) *Example 4.* On its partnership return for the 2020 taxable year, Partnership reports a recourse liability of $1,000. During an administrative proceeding with respect to Partnership's 2020 taxable year, the IRS determines that the liability is a nonrecourse liability instead of a recourse liability. The IRS also determines that Partnership has a negative adjustment to credits of $400. There are no other adjustments for Partnership's 2020 taxable year. Under § 301.6225–1(d), the adjustment to the liability is not an adjustment to an item of income. Therefore, the $1,000 change to the liability is treated as two $1,000 positive adjustments (a $1,000 decrease to nonrecourse liabilities and a $1,000 increase to recourse liabilities). The IRS determines that the adjustment to nonrecourse liabilities should be treated as zero for purposes of calculating the imputed underpayment under § 301.6225–1(b)(4). The IRS also determines that the net negative adjustment to credits should be taken into account as part of the calculation of the imputed underpayment. The total netted partnership adjustment is $1,000, which, after applying the highest rate and decreasing the product by the $400 adjustment to credits results in an imputed underpayment of $0. Accordingly, both adjustments are adjustments that do not result in an imputed underpayment under § 301.6225–1(f). Partnership pays off the entire liability in 2021. The adjustment year is 2022. Under paragraph (b)(8) of this section, the liability no longer appears on the return due to the satisfaction of the liability in the 2021 taxable year. Accordingly, no adjustment is made to Partnership's 2022 return as a result of the adjustment to the liability. If, instead of satisfying the entire $1,000 liability in 2021, Partnership made a payment of $500 towards the liability, on its 2022 return, Partnership would change the character of the $500 liability on its 2022 return to be a nonrecourse liability.

(5) *Example 5.* The facts are the same facts as the facts in paragraph (d)(3) (*Example 3*) except that Partnership has two equal partners—A and B—both of whom are individuals. After Partnership receives a notice of proposed partnership adjustment containing the $4 negative adjustment to credits and the $10 adjustment to Asset, Partnership requests modification under § 301.6225–2(d)(2) and (e) based on A filing an amended return. On her amended return, A takes into account her share of the adjustments which is a $2 negative adjustment to credits and a $5 adjustment to Asset. Based on A's facts and circumstances, A does not have any tax impact as a result of the adjustment to Asset so her amended return only reflects a tax impact from the additional $2 in credits. Because A filed an amended return, the imputed underpayment is recalculated without the portion of the adjustments allocable to A. In this case, the total netted partnership adjustment is $5, which, after applying the highest rate and decreasing the product by the $2 adjustment to credits results in an imputed underpayment of $0. Accordingly, both adjustments (the $10 adjustment to Asset and the $4 adjustment to credits) are adjustments that do not result in an imputed underpayment under paragraph (f) of this section. The adjustment year is 2022 and Partnership still owns Asset.

Under paragraph (b)(8) of this section, Partnership takes into account the $10 adjustment to Asset on its 2022 return by reducing its basis in Asset by $10. The reduction in the basis of Asset does not require Partnership to recognize income or gain in situations where income or gain is not otherwise recognized.

(e) * * *

(1) * * * Notwithstanding the preceding sentence, paragraphs (b)(8) and (d)(3) through (d)(5) of this section apply to taxable years ending on or after November 20, 2020.

* * * * *

■ **Par. 7.** Section 301.6226–2 is amended by:

■ a. Revising the paragraph (g)(3) subject heading.

■ b. Adding paragraph (g)(4).

■ c. Adding a sentence to the end of paragraph (h)(1).

The revision and additions read as follows:

§ 301.6226–2 Statements furnished to partners and filed with the IRS.

* * * * *

(g) * * *

(3) *Adjustments subject to chapters 3 and 4 of the Code.* * * *

(4) *Liability for chapter 1 taxes and penalties.* A partnership that makes an election under § 301.6226–1 with respect to an imputed underpayment must pay any taxes, penalties, additions to tax, additional amounts, or the amount of any adjustments to any imputed underpayment calculated by the partnership that is determined under subchapter C of chapter 63 for which the partnership is liable under chapter 1 of the Code or subchapter C of chapter 63 at the time the partnership furnishes statements to its partners in accordance with paragraph (b) of this section. Any adjustments to such items are not included in the statements the partnership furnishes to its partners or files with the IRS under this section.

(h) * * *

(1) * * * Notwithstanding the prior sentence, paragraph (g)(4) of this section applies to taxable years ending on or after November 20, 2020.

* * * * *

■ **Par. 8.** Section 301.6241–3 is amended:

■ a. By adding a sentence to the end of paragraph (a)(1);

■ b. By revising paragraph (b)(1)(ii);

■ c. By removing paragraph (b)(2);

■ d. By redesignating paragraphs (b)(3) and (4) as paragraphs (b)(2) and (3) respectively;

■ e. By adding a sentence to the end of newly redesignated paragraph (b)(3); and

■ f. By revising paragraphs (c), (e)(2)(ii), (f)(1) and (2), and (g).

The addition and revisions read as follows:

§ 301.6241–3 Treatment where a partnership ceases to exist.

(a) * * *

(1) * * * A determination under this section that a partnership has ceased to exist does not prohibit the partnership from requesting modification of the imputed underpayment under section 6225(c).

* * * * *

(b) * * *

(1) * * *

(ii) The partnership does not have the ability to pay, in full, any amount that may be due under the provisions of subchapter C of chapter 63 for which the partnership is or may become liable. For purposes of this section, a partnership does not have the ability to pay if the IRS determines that the partnership's account is currently not collectible based on the information the IRS has at the time of such determination.

* * * * *

(3) * * * A determination under this section that a partnership has ceased to exist is not effective if the partnership has made a valid election under § 301.6226–1 in response to a notice of final partnership adjustment or has paid all amounts due by the partnership under subchapter C of chapter 63 within 10 days of notice and demand for payment.

(c) *Partnership adjustment takes effect.* For purposes of this section, a partnership adjustment under subchapter C of chapter 63 takes effect when the adjustment becomes finally determined as described in § 301.6226–2(b)(1); when the partnership and the IRS enter into a settlement agreement regarding the adjustment; or, for adjustments appearing on an administrative adjustment request (AAR), when the request is filed.

* * * * *

(e) * * *

(2) * * *

(ii) The partnership must furnish statements to the former partners and file the statements with the IRS no later than 60 days after the later of the date of the notification to the partnership that the IRS has determined that the partnership has ceased to exist or the date the adjustment takes effect, as described in paragraph (c) of this section.

* * * * *

(f) * * *

(1) *Example 1.* The IRS initiates a proceeding under subchapter C of chapter 63 with respect to the 2020 partnership taxable year of Partnership. During 2023, in accordance with section 6235(b), Partnership extends the period of limitations on adjustments under section 6235(a) until December 31, 2025. However, on July 31, 2024, Partnership terminates within the meaning of section 708(b)(1). Based on the prior termination under section 708(b)(1), the IRS determines that Partnership ceased to exist, as defined in paragraph (b) of this section, on September 16, 2024. On February 1, 2025, the IRS mails Partnership a notice of final partnership adjustment (FPA) that determines partnership adjustments that result in a single imputed underpayment. Partnership does not timely file a petition under section 6234 and does not make a valid election under section 6226. Partnership files its final return of partnership income on October 15, 2024, listing A and B, both individuals, as the partners for its final taxable year ending July 31, 2024. Accordingly, under paragraph (d) of this section, A and B are former partners. Therefore, A and B are required to take their share of the partnership adjustments determined in the FPA into account under paragraph (e) of this section.

(2) *Example 2.* The IRS initiates a proceeding under subchapter C of chapter 63 with respect to the 2020 partnership taxable year of P, a partnership. G, a partnership that has an election under section 6221(b) in effect for the 2020 taxable year, is a partner of P during 2020 and for every year thereafter. On February 3, 2025, the IRS mails P an FPA that determines partnership adjustments that result in a single imputed underpayment. P does not timely file a petition under section 6234 and does not make a timely election under section 6226. On March 21, 2025, the IRS determines that P has ceased to exist because P did not make an election under section 6226, P's account is currently not collectible, and the IRS does not expect P will be able to pay the imputed underpayment. G terminated under section 708(b)(1) on December 31, 2024. On March 3, 2025, the IRS determines that G ceased to exist in 2024 for purposes of this section in accordance with paragraph (b) of this section. J and K, individuals, were the only partners of G during 2024. Therefore, under paragraph (d)(1)(ii) of this section, J and K, the partners of G during G's 2024 partnership taxable year, are the former partners of G for purposes of this section. Therefore, J and K are required to take into account their share of the adjustments contained

in the statement furnished by P to G in accordance with paragraph (e) of this section.

(g) *Applicability date.* This section applies to any determinations made with respect to taxable years ending on or after November 20, 2020.

■ **Par. 9.** Section 301.6241–7 is added to read as follows:

§ 301.6241–7 Treatment of special enforcement matters.

(a) *Items that involve special enforcement matters.* In accordance with section 6241(11)(B) of the Internal Revenue Code (Code), the partnership-related items (as defined in § 301.6241–1(a)(6)(ii)) described in this section have been determined to involve special enforcement matters. If the rules in this section apply, only the portion of the partnership-related item to which the special enforcement matter applies may be adjusted without regard to subchapter C of chapter 63. Nothing in this section prohibits the Internal Revenue Service (IRS) from adjusting the entire partnership-related item under subchapter C of chapter 63. See paragraph (i) of this section for rules coordinating adjustments made under subchapter C of chapter 63 with adjustments made without regard to subchapter C of chapter 63.

(b) *Partnership-related items underlying items that are not partnership-related items*—(1) *In general.* The IRS may determine that the rules of subchapter C of chapter 63 of the Code (subchapter C of chapter 63) do not apply to an adjustment to a partnership-related item of a partnership if—

(i) An examination is being conducted of a person other than the partnership;

(ii) A determination regarding a partnership-related item is made, as part of, or underlying, an adjustment to an item that is not a partnership-related item of the person described in paragraph (b)(1)(i) of this section; and

(iii) The treatment of the partnership-related item on the return of the partnership under section 6031(a) or in the partnership's books and records is based in whole or in part on information provided by the person described in paragraph (b)(1)(i) of this section from that person's books and records.

(2) *Example.* The following example illustrates the provisions of paragraph (b)(1) of this section. For purposes of this example, the partnership has no liabilities, is subject to subchapter C of chapter 63, and the partnership and partner each has a calendar taxable year. On June 1, 2018, A acquires an interest in Partnership by contributing Asset to Partnership in a section 721 contribution (Contribution). Under section 722, A claims a basis in its interest in Partnership of $50 equal to A's purported adjusted basis in Asset at the time of the Contribution. Partnership claims a basis in Asset of $50 under section 723 equal to A's purported adjusted basis in Asset as of June 1, 2018, based on information A provided to Partnership as part of the Contribution. There is no activity in Partnership that gives rise to any other partnership-related items between June 1, 2018, and June 2, 2019. On June 2, 2019, A sells A's interest in Partnership to B for $100 in cash and reports a gain of $50 based on A's purported adjusted basis in its interest in Partnership of $50. The IRS opens an examination of A and determines that A's adjusted basis in its interest in Partnership should be $30 instead of the $50 claimed by A because A's Contribution to Partnership should have been $30 instead of $50. Under paragraph (b) of this section, the IRS may determine that the rules of subchapter C of chapter 63 do not apply to the Contribution and make a determination about the Contribution (which is a partnership-related item under § 301.6241–1(a)(6)(v)(C)) as part of an adjustment to A's adjusted basis in its interest in Partnership (which is not a partnership-related item). The IRS may make this determination because Partnership's reported basis in Asset was based on the information provided by A. Because A's adjusted basis in A's interest in Partnership is reduced to $30, the total gain from the sale of A's interest in Partnership is increased to $70 ($50 as originally reported plus $20 as adjusted by the IRS). In accordance with paragraph (h)(2) of this section, if A's basis in its interest in Partnership is adjusted based on a determination about the Contribution, Partnership and the other partners of Partnership are not bound by any determination regarding the Contribution resulting from the examination of A and no adjustment is required to be made to their returns under this section.

(c) *Termination and jeopardy assessment.* For any taxable year of a partner or indirect partner for which an assessment of income tax under section 6851 or section 6861 is made, the IRS may adjust any partnership-related item with respect to such partner or indirect partner as part of making an assessment of income tax under section 6851 or section 6861 without regard to subchapter C of chapter 63.

(d) *Criminal investigations.* For any taxable year of a partner or indirect partner for which the partner or indirect partner is under criminal investigation, the IRS may adjust any partnership-related item with respect to such partner or indirect partner without regard to subchapter C of chapter 63.

(e) *Indirect methods of proof of income.* The IRS may adjust any partnership-related item as part of a determination of any deficiency (or portion thereof) of the partner or indirect partner that is based on an indirect method of proof of income without regard to subchapter C of chapter 63.

(f) *Special relationships and extensions of the partner's period of limitations.* If the period of limitations under section 6235 on making partnership adjustments has expired for a taxable year, the IRS may adjust any partnership-related item that relates to any item or amount for which the partner's period of limitations on assessment of tax imposed by chapter 1 of the Code (chapter 1) has not expired for the taxable year of the partner or indirect partner, without regard to subchapter C of chapter 63 if—

(1) The direct or indirect partner is related to the partnership under section 267(b) or 707(b); or

(2) Under section 6501(c)(4), the direct or indirect partner agrees, in writing, to extend the partner's section 6501 period of limitations on assessment for the taxable year but only if the agreement expressly provides that the partner is extending the time to adjust and assess any tax attributable to partnership-related items for the taxable year.

(g) *Penalties and taxes imposed on the partnership under chapter 1.* The IRS may adjust any tax, penalties, additions to tax, or additional amounts imposed on, and which are the liability of the partnership under chapter 1 without regard to subchapter C of chapter 63. The IRS may also make determinations about any partnership-related item, without regard to subchapter C of chapter 63, as part of any adjustment made to the amount and applicability of the tax, penalty, addition to tax, or additional amount imposed on the partnership being determined without regard to subchapter C of chapter 63. Any determinations under this paragraph (g) will be treated as a determination under a chapter of the Code other than chapter 1 for purposes of § 301.6241–6.

(h) *Determination that subchapter C of chapter 63 does not apply*—(1) *Notification.* If the IRS determines, in accordance with paragraph (b), (c), (d), (e), (f), or (g) of this section, that some or all of the rules under subchapter C of chapter 63 do not apply to any partnership-related item (or portion

thereof), then the IRS will notify, in writing, the taxpayer to whom the adjustments are being made.

(2) *Effect of adjustments not made under subchapter C of chapter 63.* Any final decision with respect to any partnership-related item adjusted in a proceeding not under subchapter C of chapter 63 is not binding on any person that is not a party to the proceeding. For example, if the partnership or any other partner does not become a party to a partner-level proceeding conducted as a result of the application of this section, the partnership and those other partners are not bound to the adjustments determined in the partner-level proceeding.

(i) *Coordination with adjustments made at the partnership level.* This section will not apply to the extent the partner can demonstrate adjustments to partnership-related items included in the deficiency or an adjustment by the IRS were—

(1) Previously taken into account under subchapter C of chapter 63 by the person being examined; or

(2) Included in an imputed underpayment paid by a partnership (or pass-through partner) for any taxable year in which the partner was a reviewed year partner or indirect partner but only if the amount included in the deficiency or adjustment exceeds the amount reported by the partnership to the partner that was either reported by the partner or indirect partner or is otherwise included in the deficiency or adjustment determined by the IRS.

(j) *Applicability date*—(1) *In general.* Except for paragraph (b) of this section, this section applies to partnership taxable years ending on or after November 20, 2020. Notwithstanding the preceding sentence, upon agreement between the partner under examination and the IRS, any provision of this section except for paragraph (b) of this section may apply to any taxable year of a partner that relates to a partnership taxable year subject to subchapter C of chapter 63 (as amended) that ended before November 20, 2020. In addition, a partnership and the IRS may agree to apply paragraph (g) to any partnership taxable year ended before November 20, 2020, that is subject to subchapter C of chapter 63, as amended.

(2) *Partnership-related items underlying items that are not partnership-related items.* Paragraph (b) of this section applies to partnership taxable years beginning after December 20, 2018. Notwithstanding the preceding sentence, upon agreement between the partner under examination and the IRS, paragraph (b) of this section may apply to any taxable year of a partner that relates to a partnership taxable year subject to subchapter C of chapter 63, as amended, that ended on or before December 20, 2018.

Melanie R. Krause,

Acting Deputy Commissioner for Services and Enforcement.

Approved: November 15, 2022.

Lily Batchelder,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2022–26783 Filed 12–8–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 296

[Docket ID FEMA–2022–0037]

RIN 1660–AB14

Notification of Public Meetings on Hermit's Peak/Calf Canyon Fire Assistance

AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security (DHS).

ACTION: Announcement of additional in-person public meetings.

SUMMARY: FEMA will hold additional in-person public meetings to solicit public feedback about the Hermit's Peak/Calf Canyon Fire Assistance interim final rule. FEMA is issuing this public meeting notification to inform the public that FEMA is seeking input on the procedures for claimants to seek compensation for injury or loss of property resulting from the Hermit's Peak/Calf Canyon Fire.

DATES: Written comments in response to these public meetings may be submitted until 11:59 p.m. Eastern Time (ET) on January 13, 2023. Late-filed comments will be considered to the extent practicable. FEMA will hold additional meetings on:

January 4, 2023, 5:30–7:00 p.m. MDT, Peñasco, New Mexico

January 9, 2023, 5:30–7:00 p.m. MDT, Angel Fire, New Mexico

Depending on the number of speakers, the meetings may end before the time indicated, following the last call for comments.

ADDRESSES: The additional public meetings will be held at the following locations:

January 4, 2023 meeting at 13 School Road, Peñasco, NM 87553

January 9, 2023 meeting at 1 First National Place, Angel Fire, NM 87710

Reasonable accommodations are available for people with disabilities. To request a reasonable accommodation, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section below as soon as possible. Last minute requests will be accepted but may not be possible to fulfill. Written comments related to these public meetings must be submitted through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Search for FEMA–2022–0037 and follow the instructions for submitting comments. All written comments received, including any personal information provided, may be posted without alteration at *https://www.regulations.gov.* All comments on the request for information made during the meetings will be posted to *https://www.regulations.gov,* Docket ID FEMA–2022–0037.

FOR FURTHER INFORMATION CONTACT: Angela Gladwell, Office of Response and Recovery, 202–646–3642, *FEMA-Hermits-Peak@fema.dhs.gov.* Persons with hearing or speech challenges may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: On September 30, 2022, President Biden signed into law the Hermit's Peak/Calf Canyon Fire Assistance Act (''Act'') as part of the Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023, Public Law 117–180, 136 Stat. 2114 (2022). The Act provides compensation to injured persons impacted by the Hermit's Peak/Calf Canyon Fire (Fire). It requires FEMA to design and administer a claims program to compensate victims, for injuries resulting from the fire and to provide for the expeditious consideration and settlement for those claims and injuries. The Act further directs FEMA to establish an arbitration process for disputes regarding claims.

On November 14, 2022, FEMA published an interim final rule (IFR) establishing the procedures for the processing and payment of claims to those injured by the Fire sustaining property, business, and/or financial losses.[1] The IFR requested public comment on these procedures through January 13, 2022. FEMA's procedures in this IFR are generally consistent with prior processes established for claims associated with the Cerro Grande Fire Assistance Act.[2] The first step in the

[1] 87 FR 68085.

[2] The Cerro Grande Fire Assistance Act (Pub. L. 106–246 (2001)) required FEMA to design and

Continued

claims process under this IFR (see, 44 CFR part 296) is for the claimant to file a Notice of Loss with the Office of Hermit's Peak/Calf Canyon Fire Claims (''Claims Office''). After receipt and acknowledgement by the Claims Office, a Claims Reviewer will contact the claimant to review the claim and help the claimant formulate a strategy for obtaining any necessary supporting documentation to complete the Proof of Loss. After discussion of the claim with the Claims Reviewer, the claimant will review and sign a Proof of Loss and submit it to the Claims Office. The Claims Reviewer will submit a report to the Authorized Official for review to determine whether compensation is due to the claimant. Once that review is completed, the Authorized Official's written decision will be provided to the claimant. If satisfied with the decision, the claimant will receive payment after returning a completed Release and Certification Form. If the claimant is not satisfied with the decision, they may file an Administrative Appeal with the Director of the Claims Office. If the claimant is not satisfied after appeal, the dispute may be resolved through binding arbitration or heard in the United States District Court for the District of New Mexico.

The IFR also announced that FEMA would hold four in-person public meetings to seek feedback on the procedures for processing and payment of claims to those injured by the Fire sustaining property, business, and/or financial loss. This document announces that FEMA will hold two additional public meetings. FEMA is holding these additional public meetings to ensure that all interested parties have sufficient opportunity to provide comments on the IFR during the comment period. FEMA received a request to provide video conferencing at upcoming public meetings. As these meetings are not held in FEMA facilities, the Agency is unable to offer video conferencing. Transcripts of the meetings will be posted to the public docket and FEMA will also post transcripts of the meetings to *https://www.fema.gov/hermits-peak.* FEMA will carefully consider all relevant comments received during the public meetings and during the IFR comment period closing on January 13, 2023. All comments or remarks provided on the request for information during the meeting will be transcribed and posted to the rulemaking docket on *https://www.regulations.gov.*

Erik A. Hooks,

Deputy Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–26814 Filed 12–8–22; 8:45 am]

BILLING CODE 9111–68–P

administer a program for fully compensating those who suffered injuries resulting from the Cerro Grande Fire. The Cerro Grande fire resulted from a prescribed fire ignited on May 4, 2000, by National Park Service fire personnel at the Bandelier National Monument, New Mexico under an approved prescribed fire plan. That fire burned approximately 47,750 acres and destroyed over 200 residential structures. The Cerro Grande Fire Assistance Act process is detailed in an interim final rule (65 FR 52259 (Aug. 27, 2000)) and a final rule (66 FR 15847 (Mar. 21, 2001)) that is now codified at 44 CFR part 295.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket No. 12–375; FCC 22–76; FR ID 113660]

Rates for Interstate Inmate Calling Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission (FCC or Commission) amends its rules to: require inmate calling services providers to provide access to all relay services eligible for Telecommunications Relay Service (TRS) Fund support, as well as American Sign Language (ASL) point-to-point video communication, where broadband internet access service is available, in jurisdictions with an average daily population of 50 or more incarcerated persons; clarify and expand the scope of restrictions on inmate calling services providers assessing charges for TRS and ASL point-to-point video calls; expand the scope of inmate calling services providers' required Annual Reports; and facilitate registration for carceral use of TRS. The Commission also amends its rules to: prohibit inmate calling services providers from seizing or otherwise disposing of funds in inactive calling services accounts until at least 180 calendar days of continuous inactivity has passed; lower the caps on provider charges for single-call services and third-party financial transactions; and clarify the definitions of ''Jail'' and ''Prison.'' These actions will improve communications access for incarcerated people with disabilities and lessen the financial burdens incarcerated people and their loved ones face when using calling services.

DATES:

Effective date: The amendments to the rules are effective January 9, 2023, except for the amendments codified as §§ 64.611(k)(1)(i) through (iii) (amendatory instruction 6), 64.6040(c) (amendatory instruction 11), and 64.6060(a)(5) through (7) (amendatory instruction 12), which are delayed. The Commission will publish a document in the **Federal Register** announcing the effective date for these delayed amendments.

Compliance date: Compliance with § 64.6040(b)(2) of the rules is required by January 1, 2024.

FOR FURTHER INFORMATION CONTACT: Michael Scott, Disability Rights Office of the Consumer and Governmental Affairs Bureau, at (202) 418–1264 or via email at *Michael.Scott@fcc.gov,* regarding portions of this document relating to communications services for incarcerated people with hearing or speech disabilities, and Jennifer Best Vickers, Pricing Policy Division of the Wireline Competition Bureau, at (202) 418–1526 or via email at *jennifer.vickers@fcc.gov,* regarding other matters.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fourth Report and Order, document FCC 22–76, adopted September 29, 2022, released September 30, 2022, in WC Docket No. 12–375. The Commission previously sought comment on these issues in *Rates for Interstate Inmate Calling Services,* Fifth Further Notice of Proposed Rulemaking, WC Docket No. 12–375, FCC 21–60, published at 86 FR 40416, July 28, 2021. This summary is based on the public redacted version of document FCC 22–76, the full text of which can be accessed electronically via the FCC's Electronic Document Management System (EDOCS) website at *www.fcc.gov/edocs* or via the FCC's Electronic Comment Filing System (ECFS) website at *www.fcc.gov/ecfs.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov,* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice).

Synopsis

1. The Commission adopts several requirements to improve access to communications services for incarcerated people with communication disabilities. The Commission requires that inmate calling services providers provide access to all relay services eligible for TRS Fund support in any correctional facility where broadband is available and where the average daily population incarcerated in that jurisdiction (*i.e.,* in

that city, county, state, or the United States) totals 50 or more persons. The Commission also requires that where inmate calling services providers are required to provide access to all forms of TRS, they also must allow ASL direct, or point-to-point, video communication. The Commission clarifies and expands the scope of the restrictions on inmate calling services providers assessing charges for TRS calls, expands the scope of the required Annual Reports to reflect the above changes, and modifies TRS user registration requirements to facilitate the use of TRS by eligible incarcerated persons.

2. The Commission also adopts other reforms to lessen the financial burden incarcerated people and their loved ones face when using calling services. To address allegations of abusive provider practices, the Commission prohibits providers from seizing or otherwise disposing of funds in inactive calling services accounts until at least 180 calendar days of continuous inactivity has passed in such accounts, after which providers must refund the balance or treat the funds in accordance with any applicable state law requirements. The Commission lowers its cap on provider charges for individual calls when neither the incarcerated person nor the person being called has an account with the provider, as well as its cap on provider charges for processing credit card, debit card, and other payments to calling services accounts. Finally, the Commission amends the definitions of ''Jail'' and ''Prison'' in its rules to conform the wording of those rules with the Commission's intent in adopting them in 2015.

Background

3. *Communication Disabilities and Calling Services for Incarcerated People.* In 2013, the Commission clarified that section 225 of the Act and the Commission's implementing regulations prohibit inmate calling services providers from assessing an additional charge for a TRS call, in excess of the charge for an equivalent voice inmate calling services call. Rates for Interstate Inmate Calling Services, published at 78 FR 67956, November 13, 2013. In 2015, the Commission went further, amending its rules to prohibit inmate calling services providers from levying or collecting any charge at all for a TRS call placed by an incarcerated individual using a text telephone (TTY) device. Rates for Interstate Inmate Calling Services, published at 80 FR 79135, December 18, 2015 (*2015 ICS Order*). The Commission reasoned that, by exempting TRS calls from the fair compensation mandate of section 276 of the Act, Congress indicated an intent that such calls be provided for no charge.

4. In 2015, the Commission affirmed that the general obligation of common carriers to ensure the availability of ''mandatory'' forms of TRS—TTY-based TRS and speech-to-speech relay service (STS)—applies to inmate calling services providers. However, the Commission did not require those providers to provide access to other relay services—Video Relay Service (VRS), Captioned Telephone Service (CTS), internet Protocol Captioned Telephone Service (IP CTS), and internet Protocol Relay Service (IP Relay). The Commission reasoned that, because it had not required that all common carriers provide access to these services, it was not able to require inmate calling services providers to do so.

5. In 2021, after reviewing the record of this proceeding, and noting that there is far more demand for ''non-mandatory'' relay services, such as VRS and IP CTS, than for ''mandatory'' TTY-based relay service, the Commission found that access to commonly used, widely available relay services, such as VRS and IP CTS, is equally or more important for incarcerated people with communication disabilities than it is for the general population. Therefore, to ensure that such individuals have functionally equivalent access to communications, the Commission proposed to amend its rules to require that inmate calling services providers give access wherever feasible to all relay services eligible for TRS Fund support. The Commission also sought comment on whether changes to its TRS rules would be necessary in conjunction with expanded TRS access for incarcerated people, and proposed to amend § 64.6040 of its rules to clarify that the prohibition on inmate calling services providers charging for TRS calls applies to all forms of TRS, and that such charges must not be assessed on any party to a TRS call for either the relay service itself or the device used. In addition, the Commission sought comment on whether to require inmate calling services providers to give access to direct, or point-to-point, video communication for eligible incarcerated individuals wherever they provide access to VRS, and whether to limit the charges that may be assessed for such point-to-point video service. Finally, the Commission sought comment on whether to extend its reporting requirements from just TTY service to all other forms of TRS.

6. *Rate and Ancillary Services Fee Caps.* Beyond the disability context, in 2021, the Commission took a number of actions that warrant specific attention. Structurally, the Commission applied separate rate caps to prisons, jails having average daily populations of 1,000 or more incarcerated people, and jails with lower average daily populations. Rates for Interstate Inmate Calling Services, published at 86 FR 40682, July 28, 2021 (*2021 ICS Order*). Additionally, the Commission established interim interstate and international rate caps for prisons and for jails having average daily populations of 1,000 or more. Those rate caps are interim because flaws in the data submitted in response to the Second Mandatory Data Collection prevented the Commission from setting permanent caps for interstate and international inmate calling services and associated ancillary services that accurately reflect the costs of providing those services.

7. To account for this problem, the Commission directed the Wireline Competition Bureau (WCB) and Office of Economics and Analytics (OEA) to develop an additional data collection—the Third Mandatory Data Collection—to enable the Commission to set permanent rate caps for interstate and international inmate calling services that accurately reflect the providers' costs of providing those services, and to inform the evaluation and potential revision of the Commission's caps on ancillary service charges. After seeking public comment, WCB and OEA issued an Order, published at 87 FR 16560, March 23, 2022, requiring each inmate calling services provider to submit, among other information, detailed information regarding its inmate calling services operations, costs, revenues, site commission payments, security services, and ancillary services costs and practices. The providers' data collection responses were due June 30, 2022.

8. Looking forward, the Commission sought comment on the methodology the Commission should use to adopt permanent per-minute rate caps for interstate and international inmate calling services, including seeking comment on certain aspects of reported costs, such as on site commission costs and other site commission reforms for facilities of all sizes, and on the costs of providing calling services to jails with average daily populations of fewer than 1,000 incarcerated people.

9. *Ancillary Services Fee Caps and Practices.* The Commission adopted ancillary services charge rules in 2015 which limited permissible ancillary

services charges to only five types and capped the charges for each: (1) Fees for Single Call and Related Services—billing arrangements whereby an incarcerated person's collect calls are billed through a third party on a per-call basis, where the called party does not have an account with the inmate calling services provider or does not want to establish an account; (2) Automated Payment Fees—credit card payment, debit card payment, and bill processing fees, including fees for payments made by interactive voice response, web, or kiosk; (3) Third-Party Financial Transaction Fees—the exact fees, with no markup, that providers of calling services used by incarcerated people are charged by third parties to transfer money or process financial transactions to facilitate a consumer's ability to make account payments via a third party; (4) Live Agent Fees—fees associated with the optional use of a live operator to complete inmate calling services transactions; and (5) Paper Bill/Statement Fees—fees associated with providing customers of inmate calling services an optional paper billing statement. Building on these rules in the *2021 ICS Order,* the Commission capped, on an interim basis, the third-party fees inmate calling services providers may pass through to consumers for single-call services and third-party financial transactions at $6.95 per transaction. The Commission also sought comment on the relationship between these two ancillary services, and on reducing the caps for single-call services fees and third-party financial transactions fees for automated transactions to $3.00 and the cap for live agent fees to $5.95.

10. *Consumer Disclosures.* In the *2021 ICS Order,* the Commission adopted three new consumer disclosure requirements to promote transparency regarding the total rates charged consumers of inmate calling services. First, the Commission required providers to ''clearly, accurately, and conspicuously disclose'' any separate charge (*i.e.,* any ''rate component'') for terminating international calls to each country where they terminate international calls ''on their websites or in another reasonable manner readily available to consumers.'' Second, the Commission required providers to ''clearly label'' any site commission fees they charged consumers as ''separate line item[s] on [c]onsumer bills'' and set standards for determining when the fees would be considered ''clearly label[ed].'' Finally, the Commission required providers to ''clearly label'' all charges for international calls, as ''separate line item[s] on [c]onsumer bills.''

11. *Other Relevant Topics.* In 2021, the Commission expressed concern about providers' practices regarding unused funds in inactive accounts and invited comment on whether to require refunds after a certain period of inactivity. The Commission proposed to amend the definitions of ''Jail'' and ''Prison'' in its rules by, among other actions, explicitly including facilities of the U.S. Immigration and Customs Enforcement (ICE) and the Federal Bureau of Prisons (BOP), whether operated by the law enforcement agency or pursuant to a contract, in the rules' definition of ''Jail,'' and by adding the terms ''juvenile detention facilities'' and ''secure mental health facilities'' to that definition. The Commission also highlighted record evidence that ''some providers of inmate calling services may have been imposing 'duplicate transaction costs' on the same payments,'' such as charging both an automated payment fee when a consumer makes an automated payment to fund its account, as well as charging a third-party financial transaction fee to cover credit/debit card processing costs on the same transaction. The Commission similarly sought comment on ''whether the credit card processing fees encompassed in the automated payment fee are the same credit card processing fees referred to in the third-party financial transaction fee.''

12. Finally, the Commission sought comment on whether alternative pricing structures (*i.e.,* those that are independent of per-minute usage pricing) would benefit incarcerated people and their families. The Commission asked commenters to address the relative merits of different pricing structures, ''such as one under which an incarcerated person would have a specified—or unlimited—number of monthly minutes of use for a predetermined monthly charge.'' The Commission also asked whether it should allow providers to offer different optional pricing structures ''as long as one of their options would ensure that all consumers of inmate calling services have the ability to choose a plan subject to the Commission's prescribed rate caps.'' Relatedly, the Commission sought comment on whether it should adopt a process for waiving the per-minute rate requirement to allow for the development of alternative pricing structures.

Disability Access Requirements for Calling Services Providers

13. *Making Additional Forms of TRS Available to Incarcerated People.* The Commission amends its rules to require that inmate calling services providers must provide incarcerated, TRS-eligible users the ability to access any relay service eligible for TRS Fund support. The record amply demonstrates that, in the incarceration setting just as in other environments, access to traditional, TTY-based TRS alone is insufficient to ensure the availability of functionally equivalent communication. Access to more technologically advanced forms of TRS—VRS, IP Relay, and IP CTS or CTS—is necessary to ensure that incarcerated people with hearing or speech disabilities have access to services that are functionally equivalent to the telephone service available to incarcerated people without such disabilities. These four forms of TRS are widely available to, and relied upon by, persons with disabilities nationwide. VRS enables individuals who are deaf and use ASL to communicate in their primary language. CTS and IP CTS enable individuals who are hard of hearing and can speak to communicate by telephone with minimal disruption to the natural flow of conversation. IP Relay offers a text-based relay service that is faster than TTY-based TRS and more immune to the technical problems affecting TTY use on IP networks. Collectively, these four forms of TRS, along with TTY-based TRS and STS, are essential for ensuring that all segments of the TRS-eligible population have access to functionally equivalent communication.

14. The Commission revisits its interpretation in the *2015 ICS Order* of the Commission's authority to mandate the provision of VRS, CTS, IP CTS, and IP Relay by inmate calling services providers. The Commission now changes course and rejects that interpretation to the extent it could be read to indicate that the Commission lacks authority to mandate the provision of these services in carceral settings. The absence of a general mandate in the Commission's rules for the provision of VRS, CTS, IP CTS, and IP Relay by carriers and interconnected Voice over internet Protocol (VoIP) service providers does not preclude the Commission from adopting a rule requiring that inmate calling services providers provide access to these relay services in the special context of carceral settings. TRS Fund support for these services has been sufficient to ensure their wide availability to the general public, rendering such a general mandate unnecessary. However, the Commission now finds that the incentives resulting in providers' near-universal provision of these services to

the general public are not present in the special context of inmate calling.

15. As explained in document FCC 21–60, VRS, CTS, IP CTS, and IP Relay are ''non-mandatory'' only in the limited sense that carriers and VoIP service providers do not have an obligation to provide these services themselves, and that Commission-certified state TRS programs are not required to include these services. To ensure their availability to the general public, the Commission requires that all telecommunications carriers and VoIP service providers support the provision of VRS, IP Relay, IP CTS, and CTS through *mandatory* contributions to the TRS Fund. 47 CFR 64.604(c)(5)(iii)(A), (B). As a consequence, VRS, IP Relay, and IP CTS are available to every broadband user at no additional cost. Indeed, people who are deaf or hard of hearing or those with speech disabilities use VRS and IP CTS far more often than they use the ''mandatory'' forms of TRS. In addition, CTS, even though not ''mandatory,'' is currently included in every state TRS program and is thereby available to every telephone service subscriber. And while the near-universal availability of such relay services outside the walls of correctional facilities may make it unnecessary to formally mandate their availability to the general population, the uneven record of access to such services in correctional facilities establishes that a mandate *is* needed to ensure their availability to people who are incarcerated. Although the Commission recognizes that the provision of any communication service to incarcerated people requires the consent of the relevant correctional authority, the Commission requires inmate calling services providers to ensure that these services are made available to incarcerated people in all facilities within the scope of the rule, absent the refusal of such consent by a correctional authority.

16. Further, in requiring inmate calling services providers to provide access to all TRS Fund-supported relay services, the Commission also helps ensure the availability of relay services that enable Federal, state, and local correctional authorities to carry out their parallel obligations under Federal law. Under Title II of the Americans with Disabilities Act (ADA), Public Law 101–336, title II, sec. 202, codified at 42 U.S.C. 12131 *et seq.,* state and local correctional authorities, as well as other government agencies, must provide nondiscriminatory access to their services, programs, and activities, including telephone service. 42 U.S.C. 12132. Federal correctional authorities are subject to similar obligations. *See* 29 U.S.C. 794. Further, U.S. Department of Justice regulations implementing Title II of the ADA provide that state agencies, including correctional authorities, must ''furnish appropriate auxiliary aids and services where necessary to afford [incarcerated individuals with disabilities] an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity,'' and such ''auxiliary aids and services'' are defined to include, among other things, ''[q]ualified interpreters on-site or through video remote interpreting (VRI) services,'' and ''voice, text, and video-based telecommunications products and systems, including [TTYs], videophones, and captioned telephones, or equally effective telecommunications devices.'' 28 CFR 35.104. The Justice Department has entered numerous settlement agreements to enforce these requirements in the incarceration context, and in recent years many of these agreements specifically provide for access to advanced communications products such as captioned telephones and videophones, as well as services such as VRS.

17. As noted above, the Commission does not require inmate calling services providers to provide access to any form of TRS for which the correctional authority withholds consent. The Commission understands that under Title II of the ADA and the Department of Justice's implementing regulations, generally speaking, a correctional authority would need to have a strong justification—presumably based on evidence of ''undue financial and administrative burdens''—for withholding consent to an inmate calling services provider's provision of access to the most effective forms of TRS. The burden is on the correctional authority to establish undue burden, and the authority must still ''take any other action that would not result in . . . such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the [correctional authority].'' 28 CFR 35.164.

18. Some commenters suggest that responsibility for making TRS available should lie exclusively with correctional authorities and certified TRS providers. However, the record shows that active inmate calling services involvement can be critical to ensuring that advanced forms of TRS actually *are* made available in a facility. The Commission concludes that the imposition of this service obligation on inmate calling services providers is necessary to ensure that relay services are available in the incarceration setting ''to the extent possible and in the most efficient manner.'' The Commission does not, however, preclude an inmate calling services provider from satisfying its TRS access obligations by delegating the performance of some of those responsibilities to the correctional authority, provided that the end result of such delegation complies with the Commission's rules.

19. The record also shows that, due to recent changes in correctional visitation practices, it is now feasible for inmate calling services providers to make VRS and other advanced forms of TRS available, without undue cost or security risk, in any correctional facility with a substantial population. Indeed, as a number of commenters point out, inmate calling services and TRS providers are already partnering to provide access to internet-based forms of TRS in hundreds of facilities. Further, it appears that the availability at correctional facilities of the broadband connections needed for internet-based TRS has increased dramatically since the onset of the COVID–19 pandemic, due to the ''exponentially'' growing demand for video visitation services, which also require a broadband connection. According to a commenter, ''[t]he only jails not requiring video visitation are the small city and county facilities, generally with a population below 50 average daily population (ADP).'' As for user devices, in contrast to the situation ten years ago, when this proceeding commenced, ''now almost all [inmate calling services] bids include the provision of tablets to permit incarcerated persons to access [inmate calling services] within their cells.''

20. In general, internet-based TRS can be accessed from such tablets through downloadable software applications available from TRS providers. A commenter questions the accuracy of this statement in the incarceration context, noting that ''correctional institutions require [inmate calling services] providers to block third-party apps from being accessible by inmates on tablets provided to inmates'' and that unsecured messaging capabilities ''would allow the incarcerated to contact and harass victims, witnesses, minors, and judges.'' The Commission recognizes that TRS software applications used by the general public may require modification for use in correctional facilities. However, as discussed in the text, the current use of internet-based TRS in hundreds of correctional facilities indicates that TRS providers are able to offer modified

software that meets the security needs of correctional authorities.

21. Providing access to internet-based TRS that meets the security needs of correctional facilities may pose some technical challenges, but the record indicates that by working together, inmate calling services and TRS providers have been able to overcome such challenges. For example, a VRS provider states that, due to the call recording and monitoring capabilities that inmate calling services providers already have in place, it ''has not had any security problems providing VRS to incarcerated people.''

22. Therefore, the Commission requires that inmate calling services providers take all steps necessary to ensure that access to an appropriate relay service is made available promptly to each inmate who has a communication disability. In particular, inmate calling services providers must:

- Make all necessary contractual and technical arrangements to ensure that, consistent with the security needs of a correctional facility, incarcerated individuals eligible to use TRS can access at least one certified provider of each form of TRS.
- Work with correctional authorities, equipment vendors, and TRS providers to ensure that screen-equipped communications devices such as tablets, smartphones, or videophones are available to incarcerated people who need to use TRS; and that all necessary TRS provider software applications are included, with any adjustments needed to meet the security needs of the institution, provide compatibility with institutional communication systems, and allow operability over the inmate calling services provider's network.
- Provide assistance as needed by TRS providers in collecting the required registration information and documentation from users and from the correctional facility. Further, when an incarcerated person who has individually registered to use VRS, IP Relay, or IP CTS is released from incarceration or transferred to another correctional authority, the inmate calling services provider shall notify the TRS provider(s) with which the incarcerated person is registered.

23. The Commission notes that the rule adopted does not require the inmate calling services provider to make determinations of eligibility. The Commission also notes that it permits, but does not require, that inmate calling services providers establish connections with more than one VRS or IP CTS provider. The Commission expects that the registration information and documentation that TRS providers need to collect will be readily available from inmate calling services providers and correctional authorities. In those instances where some additional effort might be necessary to collect such information and documentation, inmate calling services providers—which have contractual relationships with correctional authorities and billing relationships with incarcerated persons—are well situated to provide such assistance. Therefore, the Commission declines a commenter's invitation to ''clarify that [inmate calling services] providers need not collect information that they do not reasonably collect in the normal course of business.''

24. *Scope of the TRS Access Requirement.* The Commission initially applies this requirement to inmate calling services providers serving any facility where broadband internet access service is available, if the average daily population of all facilities in the governing jurisdiction totals 50 or more incarcerated persons.

25. Broadband internet access service is a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up internet access service. 47 CFR 8.1(b). Congress has recently acted to make broadband more widely available. *See* 47 U.S.C. ch. 16; 47 CFR 54.1900 through 54.1904. Because the bandwidth required for various forms of TRS can change as technology develops, the rule does not specify a minimum speed or bandwidth for broadband service. To the extent an inmate calling services provider is uncertain about whether the internet access service can support all forms of TRS, the inmate calling services provider should obtain documentary support from a certified TRS provider as to whether the available speed or bandwidth is sufficient to support each form of internet-based TRS.

26. By ''jurisdiction,'' the Commission means the state, city, county, or territory operating or contracting for the operation of a correctional facility (or for Federal correctional facilities, the United States). The rule applies, for example, to a state correctional facility with an average daily population of fewer than 50 incarcerated persons, where broadband service is available, if the total average daily population for all facilities in the state is 50 or more incarcerated persons. As noted above, the current record indicates that in such facilities, the broadband connections and video-capable devices needed for, *e.g.,* VRS access are already being routinely provided for inmate use as part of video visitation systems. In such facilities, where broadband is *not* available, the Commission does not require an inmate calling services provider to provide access to the three internet-based forms of TRS—VRS, IP CTS, and IP Relay—but does require that inmate calling services providers provide access to non-internet Protocol CTS, as well as TTY-based TRS and STS, as broadband service is not needed for these forms of TRS. Conversely, where broadband service is available and the provision of IP CTS access is required by the Commission's rules and provided by the inmate calling services provider in the facility, the Commission does not require inmate calling services providers to provide access to non-internet Protocol CTS in that facility. To consolidate the rule provisions addressing the specific TRS access obligations of inmate calling services providers, the Commission amends § 64.6040 of its rules to incorporate the existing obligation to provide access to TTY-based TRS and STS. Because this change merely codifies an existing obligation, additional comment is unnecessary, and the Commission has good cause to forgo seeking such comment under 5 U.S.C. 553(b).

27. In recent *ex parte* communications, some inmate calling services providers assert that even in jurisdictions with average daily populations of 50 or more incarcerated persons, providing VRS access may be burdensome in some instances. According to one provider, many short-term facilities with average daily populations of 50 or more, such as city jails and holding facilities, do not offer video visitation systems. Assuming there are such facilities, the record does not justify a finding indicating that the cost of providing video-capable devices and appropriate security are so substantial as to make it infeasible or unreasonable to require the provision of essential communication capabilities for incarcerated people with communication disabilities. As noted above, access to VRS and other internet-based forms of TRS is currently available in hundreds of correctional facilities. The Commission notes that parties claiming that substantial costs would be imposed on providers serving jurisdictions with average daily populations of 50 or more incarcerated persons have provided no specific evidence of such costs. Again, the Commission does not require inmate calling services providers to provide

access to any form of TRS for which the correctional authority refuses consent, and ADA regulations do not require correctional authorities to take action that they can demonstrate would result in undue financial and administrative burdens. The Commission also notes that providers may supplement their responses to the Third Mandatory Data Collection to separately document, on an annualized basis, any increased costs they will incur in implementing document FCC 22–76's requirements relating to disability access.

28. The Commission defers a decision on the application of this requirement in those jurisdictions where the average daily population of incarcerated persons is less than 50, to allow further consideration of the costs and benefits of expanded TRS access in such facilities, based on a more fulsome record. Two commenters have raised concerns that a broadened TRS access requirement could impose substantial costs on small rural jails. Although the current record contains little quantitative evidence regarding the extent of this alleged burden, the Commission believes it is appropriate to seek further comment before determining whether to extend the TRS access rule to this relatively small subset of the incarcerated population. While there are 1,100 *jurisdictions* with jail populations below 50, the average daily population of these jurisdictions comprises only 3.6% of the total population of jails. And because there are approximately twice as many people incarcerated in state or Federal prisons as in city or county jails, the jail population in these 1,100 jurisdictions represents only 1.2% of all incarcerated people. The Commission stresses that every correctional system to which the rule applies is covered as to all facilities in the system, regardless of the population of inmates in any particular facility within that jurisdiction. The Commission does not find record support for the argument that correctional authorities would transfer incarcerated people with disabilities across jurisdictional lines, to rural county jails not subject to the rule, in an effort to avoid their TRS access obligations.

29. However, the Commission stresses that the TRS-related access obligations of correctional authorities under Title II of the ADA (and analogous laws governing Federal authorities) are not subject to any population size limitation. Accordingly, to ensure that TRS and point-to-point video calling are available to incarcerated persons to the fullest extent possible, the Commission believes the TRS-related access requirements of inmate calling services providers should be at least coextensive with those of correctional authorities. Therefore, in the Sixth Further Notice of Proposed Rulemaking (*Sixth FNPRM*), WC Docket No. 12–375, FCC 22–76, FR ID 111465, published at 87 FR 68416, November 15, 2022, the Commission seeks further comment on extending the obligation to provide access to additional forms of TRS and point-to-point video calling, to include jurisdictions with an average daily population of fewer than 50 incarcerated persons. The Commission also notes that the current rule remains universally applicable; therefore, an inmate calling services provider must ensure that access to the ''mandatory'' forms of TRS, traditional TRS and STS, is universally available, including in jurisdictions with average daily populations below 50.

30. *Legal Authority.* The Commission finds that it has legal authority to adopt this rule. Section 225(b) of the Act directs the Commission to ''ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to [individuals with communication disabilities] in the United States,'' 47 U.S.C. 225(b)(1), and no party contends that incarcerated people are excluded from this mandate. In addition, section 225(c) of the Act requires that each carrier provide TRS in compliance with the Commission's regulations ''throughout the area in which it offers service.'' A carrier may satisfy its obligation by providing TRS ''individually, through designees, through a competitively selected vendor, or in concert with other carriers.'' 47 U.S.C. 225(c).

31. To the extent that the *2015 ICS Order* could be read to indicate that the Commission lacked authority to mandate the provision of VRS, IP Relay, CTS, and IP CTS in a carceral setting in the absence of a general mandate, the Commission changes course from such interpretation. The Commission has long held that these services are TRS, and as noted above, section 225(c) of the Act requires common carriers to offer TRS in compliance with the Commission's TRS regulations. The Commission therefore finds that it has authority to adopt rules requiring that access to these services be provided by inmate calling services providers, notwithstanding the Commission's prior discretionary determinations not to mandate the provision of such services by carriers serving the general population.

32. The Commission also finds that inmate calling services providers that are classified as providers of interconnected VoIP service are subject to these requirements pursuant to the Commission's Title I ancillary jurisdiction. Ancillary jurisdiction may be employed, in the Commission's discretion, where Title I of the Act gives the agency subject matter jurisdiction over the service to be regulated and the assertion of jurisdiction is reasonably ancillary to the effective performance of its various responsibilities. More specifically, as the Commission has previously held, Title I of the Act gives the Commission subject matter jurisdiction over ''all interstate and foreign commerce in communication by wire or radio'' and ''all persons engaged within the United States in such communication,'' 47 U.S.C. 152(a), and interconnected VoIP services are covered by the statutory definitions of ''wire'' and ''radio.'' In 2007, the Commission also held that imposing the statutory TRS obligations of common carriers on interconnected VoIP service providers is reasonably ancillary to the Commission's responsibility to ensure the availability of TRS under section 225(b)(1) of the Act and would give full effect to the purposes underlying section 225(b)(1), as enumerated in that section. For the same reasons, asserting ancillary jurisdiction to impose TRS obligations on ICS providers is likewise reasonably ancillary to the Commission's section 225(b)(1) responsibilities and will serve the core objectives of section 225 of the Act and the Commission's TRS rules by making TRS widely available and by providing functionally equivalent services for the benefit of individuals with hearing or speech disabilities.

33. *Point-to-Point Video Communication in ASL by Incarcerated People with Communication Disabilities.* The Commission also requires that where inmate calling services providers are required to offer access to all forms of TRS (*i.e.,* in jurisdictions with average daily populations of 50 or more, where broadband service is available), they also must provide access to point-to-point video communication for ASL users with communication disabilities. Many people who are deaf and whose primary language is ASL, and who are thus eligible to use VRS, have family, friends, and associates who are also deaf and whose primary language is ASL. To facilitate functionally equivalent communication among ASL users, the Commission has long required VRS providers to allow point-to-point calls

between ASL users who have been assigned VRS telephone numbers.

34. The record indicates that access to point-to-point video communication is similarly critical to ensuring functionally equivalent communication between incarcerated VRS users and the important people in their lives. As a commenter observes, ''because Deaf individuals who use sign language do not need assistance from a relay service to understand one another, they are able to communicate most effectively through direct, face-to-face conversation.'' Similarly, another commenter notes that ''[p]roviding direct communication services will . . . ensure that incarcerated people with disabilities are able to avoid further isolation within carceral facilities by allowing them to practice their primary form of communication.'' Therefore, incarcerated individuals with hearing and speech disabilities who require the use of video calling for effective communication must be afforded the same access to point-to-point video calling that incarcerated individuals without hearing and speech disabilities are given for voice calling. The record indicates that providing access to ASL point-to-point video communication, in addition to VRS, would not impose a significant additional cost or other burden on inmate calling services providers, as VRS providers already have the capability to provide this service in conjunction with VRS.

35. The Commission has authority to adopt this requirement pursuant to its Title I ancillary jurisdiction. As the Commission has previously explained, requiring that providers facilitate point-to-point communications between persons with hearing or speech disabilities is reasonably ancillary to the Commission's responsibilities in several parts of the Act. While point-to-point services are not themselves relay services, point-to-point services even more directly support the named purposes of sections 1 and 225 of the Act, 47 U.S.C. 151, 225, to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation: they are more rapid in that they involve direct, rather than interpreted, communication; they are more efficient in that they do not trigger the costs involved with interpretation or unnecessary routing; and they increase the utility of the Nation's telephone system in that they provide direct communication—including all visual cues that are so important to persons with hearing and speech disabilities.

36. The Accessibility Coalition requests that the Commission allow entities other than VRS providers—*e.g.,* inmate calling services providers—to provide point-to-point video calling for incarcerated persons. The Commission notes that, to allow dialing of a ten-digit telephone number to connect an ASL point-to-point call between incarcerated persons and parties approved for telephone communication with them, a video communication platform must be able to access the TRS Numbering directory for information on routing such ASL point-to-point video calls to and from the TRS telephone number of an approved party. *See* 47 CFR 64.613. The Commission's current rules allow parties other than TRS providers to access the TRS Numbering Directory if they receive Commission authorization as a Qualified Direct Video Entity providing ''direct video customer support.'' *See* 47 CFR 64.613(c)(1)(v); *see also* 47 CFR 64.601(a)(15), (32). The Commission agrees that an inmate calling services provider wishing to provide ASL point-to-point video communication without the involvement of a VRS provider may request authorization as a Qualified Direct Video Entity. The Commission amends the rule governing access to the TRS Numbering directory to expressly provide for inmate calling services providers to request Qualified Direct Video Entity authorization to provide point-to-point video service in correctional facilities that enable incarcerated people to engage in real-time direct video communication in ASL.

37. *Compliance Date for Certain Amendments to § 64.6040.* To allow a reasonable time for inmate calling services providers that do not currently provide access to additional forms of TRS and to ASL point-to-point video communication in accordance with the rules adopted herein, the Commission sets January 1, 2024, as the deadline for compliance with the above-discussed amendments to § 64.6040 of its rules. To the extent that some providers' current contractual arrangements do not enable compliance with that rule as amended, this extended compliance date will allow inmate calling services providers a reasonable time to negotiate and implement any necessary changes to contracts with correctional authorities and TRS providers, and to make arrangements for the provision of user devices, secure TRS software, and any other necessary changes in their operations.

38. *Charges for TRS and ASL Point-to-Point Video Calls.* The Commission amends its rules to clarify the provision prohibiting inmate calling services providers from assessing charges for intrastate, interstate, or international TTY-based TRS calls, and to expand the scope of that rule to cover all forms of TRS, as well as point-to-point video calls conducted in ASL.

39. *Clarifying Amendment on Charging for TTY-based TRS.* Section 64.6040 of the Commission's rules currently states that ''[n]o [inmate calling services] Provider shall levy or collect any charge or fee for TRS-to-voice or voice-to-TTY calls.'' However, it appears that some inmate calling services providers may be interpreting this rule to allow the assessment of a charge on the called party, or a separate fee for using or accessing TTY equipment. Such stratagems contravene the rule's purpose to ensure that incarcerated people have free access to relay service. Therefore, the Commission amends § 64.6040 of its rules to expressly prohibit inmate calling services providers from levying or collecting any charge on *any* party to an intrastate, interstate, or international TTY-based TRS call, regardless of whether the party is the caller or the recipient and whether the party is an incarcerated person or is communicating with such individual, and regardless of whether the charge is characterized as a charge for the call itself or for the use of a device needed to make the call.

40. *Prohibition of Charges for Intrastate, Interstate, and International VRS, STS, and IP Relay.* In light of its action above to expand the kinds of relay services available to incarcerated people, the Commission also amends § 64.6040 of its rules to prohibit inmate calling services providers from charging either party to a VRS, STS, or IP Relay call, whether intrastate, interstate, or international, and whether characterized as a charge for the call itself or for use of a device to make such a call. The Commission notes that, to the extent that an inmate calling services provider incurs costs associated with the provision of access to TRS and point-to-point video, the Commission does not prohibit recovery of such costs in the provider's generally applicable rates for voice calls, provided such generally applicable rates comply with the Commission's rate-cap and other rules.

41. The Commission takes this step for several reasons. First, as discussed further below, Congress has clearly expressed its intent that consumers in general must not be subject to charges that discourage the use of relay services, and that inmate calling services providers in particular are not entitled

to compensation for each TRS call they carry. *See* 47 U.S.C. 225(d)(1)(D), 276(b)(1)(A). Second, while the Commission's rules permit limited charges to be assessed for the use of TRS in other contexts, 47 CFR 64.604(c)(4), the incarceration setting presents special considerations not present elsewhere. Incarcerated people tend to have extremely limited financial resources, and, due to their incarceration, do not have the same ability as other telephone users to choose among competitive telephone service offerings. Further, as the history of this proceeding amply demonstrates, telephone charges for inmate calling services are typically much higher than for ordinary telephone service. Also, due to the iterative nature of a communications assistant's (CA's) intermediating interactions with callers using VRS, STS, IP Relay, and TTY-based TRS, these types of TRS calls take longer than a voice call to communicate the same information. Therefore, if the per-minute inmate calling services rate for a voice call were applicable, total charges for such TRS calls would be substantially greater than for an equivalent voice call. Additionally, the Commission finds support in the record for prohibiting such charges.

42. Finally, in contrast with CTS and IP CTS (which present special considerations that are discussed below), due to the inherent nature of these services, the Commission finds it unlikely that VRS, STS, and IP Relay would be overused by incarcerated individuals who do not need these services. Like TTY-based TRS, VRS, STS, and IP Relay subject callers to recurring delays while a CA converts voice to text or ASL, and the reverse. These delays interrupt the natural flow of conversation and substantially lengthen the duration of the call. In addition, VRS requires the use of ASL, making it unlikely that incarcerated people who do not need VRS for functionally equivalent communication will seek to use it. Although IP Relay has been abused in the past, it is unlikely to be abused in the incarceration setting given the ability of inmate calling services providers and correctional authorities to supervise such use and monitor the content of conversations. Therefore, to ensure that incarcerated individuals who need these services are not deterred from using them by unaffordable costs, the Commission prohibits the imposition of charges on any party to an inmate calling services call for the use of these relay services or the devices needed to access them. Given the substantial justification for requiring that VRS access be provided free of charge, the Commission declines to allow charges for VRS of up to 25% of the per-minute calling rate to recover providers' additional costs of VRS access.

43. *Legal Authority.* The Commission concludes that it has statutory authority to take this step under section 225 of the Act, which expressly directs the Commission to ensure the availability of interstate *and intrastate* TRS. *See* 47 U.S.C. 225(b)(1). In addition, under section 201 of the Act, the Commission has authority to regulate the interstate charges and practices of common carriers. 47 U.S.C. 201. Congress expressly carved section 225 out from the Act's general reservation of state authority over intrastate communications. 47 U.S.C. 152(b). Responsibility for administering TRS is shared with the states only to the extent that a state applies for and receives Commission approval to exercise such responsibility. *See* 47 U.S.C. 225(c), (f)–(g). Indeed, section 225 of the Act affords the Commission, without limitation, ''the same authority, power, and functions with respect to *common carriers engaged in intrastate communication* as the Commission has in administering and enforcing the provisions of this [Act] with respect to any common carrier engaged in interstate communication.'' 47 U.S.C. 225(b)(2) (emphasis added). And as discussed above, the Commission has previously ruled it has authority to apply such regulations to providers of interconnected VoIP service pursuant to Title I ancillary jurisdiction. Section 225 of the Act also directs the Commission to ensure that the rates paid for TRS are *no greater than* the rates for functionally equivalent voice services, 47 U.S.C. 225(d)(1)(D), but does not preclude the Commission from setting a lower limit where necessary or appropriate to ensure that TRS is available in a particular setting.

44. Further, such a prohibition is consistent with section 276 of the Act, which requires the Commission to ensure that inmate calling services providers ''are fairly compensated for each and every completed intrastate and interstate call.'' 47 U.S.C. 276(b)(1)(A). Because TRS calls are expressly excluded from this mandate, section 276 of the Act does not entitle inmate calling services providers to receive *any* compensation for TRS calls. The regulation of intrastate TRS rates is also consistent with the D.C. Circuit's decision regarding the limits of the Commission's authority to regulate charges for intrastate inmate calling services under section 276 of the Act. In *GTL* v. *FCC,* the D.C. Circuit ruled that section 276 of the Act, by requiring that payphone service providers (including inmate calling services providers) be ''fairly compensated'' for every call using their phones, did not grant the Commission authority to cap intrastate rates based on a broader ''just, reasonable, and fair'' test. *See GTL* v. *FCC,* 866 F.3d 397, 402–12 (D.C. Cir. 2017). Here, the Commission does not purport to regulate intrastate rates under such a test; rather, as discussed above, the Commission relies on section 225 of the Act, which both explicitly applies to intrastate service and directs the Commission to set limits on charges for TRS calls.

45. The Commission does not apply this absolute prohibition to CTS and IP CTS calls. Unlike VRS, STS, and IP Relay, use of CTS and IP CTS does not require callers to accept delays in the natural flow of conversation or impose other inherent limitations, such as the necessity for VRS users to be able to sign in ASL. As a result, a telephone call using CTS or IP CTS is not significantly less convenient for a user than is an ordinary voice call, and unlike the other services discussed above, CTS and IP CTS are technically (although not legally) usable for ordinary phone calling by consumers who have no hearing or speech disabilities. Because voice services and telephones are relatively inexpensive for the general public, ordinarily there may be no particular incentive for a person without such disabilities to register for or use CTS and IP CTS. However, in the incarceration setting, where callers face unusually high telephone charges that they often can ill afford to pay, making the service available without charge could make it attractive for incarcerated people to request access to these services regardless of need, solely to make calls free of charge. Such requests for access could result in the imposition of administrative barriers that deter use of captioned telephone services by those who do need them. Therefore, rather than prohibiting any charge for the use of these services, the Commission requires adherence to the statutory ceiling on TRS charges. In other words, the Commission prohibits an inmate calling services provider from assessing—on either party to a CTS or IP CTS call, for either the service or the device(s) used—any charge in excess of the total amount that the inmate calling services provider charges, in the same correctional facility, for a non-relay voice telephone call of the same duration, time-of-day, jurisdiction, and distance. In effect, the Commission is

permitting ICS providers to charge for the voice component (but not for the TRS component) of the CTS or IP CTS call at the same rate charged to hearing users for an equivalent stand-alone voice call. The Commission notes that, although section 276 of the Act does not *entitle* inmate calling services providers to receive compensation for TRS calls, it does not prohibit the Commission from *allowing* providers to assess charges for such calls that are consistent with the limits set by section 225 of the Act.

46. Similarly, the Commission prohibits inmate calling services providers from assessing, on either party to a point-to-point video call conducted in ASL, any charge in excess of the total amount that the inmate calling services provider charges, in the same correctional facility, for a non-relay voice telephone call of the same duration, time of day, jurisdiction, and distance. Although ASL point-to-point video calls are not relay calls *per se,* placing such calls is necessary to ensure that functionally equivalent communication is available to persons who are deaf or hard of hearing and whose primary language is ASL. Therefore, for the same reason underlying the statutory prohibition on charging more for a relay call than for an equivalent voice call, the Commission concludes that its rules should similarly prohibit inmate calling services providers from charging more for an ASL point-to-point video call than for an equivalent voice call.

47. The Commission declines to prohibit all charges for ASL point-to-point video calls, as urged by the Accessibility Coalition. It is true that ASL point-to-point video does not pose the same eligibility determination concerns as those described above regarding captioned telephone service. However, because the Commission allows entities other than TRS providers to provide such services, the Commission permits the assessment of charges that do not exceed those for an equivalent voice call.

48. *Expanding Reporting Requirements Regarding TRS and Disability Access.* As a part of the Commission's Annual Reporting requirement, inmate calling services providers must submit certain information related to accessibility: ''[t]he number of TTY-based Inmate Calling Services calls provided per facility during the reporting period''; ''[t]he number of dropped calls the . . . provider experienced with TTY-based calls''; and ''[t]he number of complaints that the . . . provider received related to[,] *e.g.,* dropped calls, [or] poor call quality[,] and the number of incidents of each by TTY and TRS users.'' 47 CFR 64.6060. WCB recently revised the instructions and reporting template to require that providers report, on a facility-by-facility basis, any ancillary service charges they impose specifically for accessing and using TTY equipment and other disability-related inmate calling services technologies.

49. Given that the Commission is expanding the scope of its access mandate to all forms of TRS, and consistent with the language including other disability-related inmate calling services technologies in the revised reporting instructions, the Commission expands these reporting requirements to include all relay services. The Commission requires inmate calling services providers to list, at a minimum, for each facility served, the types of TRS that can be accessed from the facility and the number of completed calls and complaints for TTY–TTY calls, ASL point-to-point video calls, and each type of TRS for which access is provided. As in the *2015 ICS Order,* where the Commission applied these reporting requirements to TTY-based TRS calls, the Commission concludes that requiring this limited amount of reporting by inmate calling services providers will facilitate monitoring of call-related issues, encourage greater engagement by the advocacy community, and provide the Commission the basis to take further action, if necessary, to improve incarcerated persons' access to TRS. Moreover, in the event that some correctional authorities refuse to allow access to TRS, such reporting will provide the Commission with valuable data showing to what extent the rules adopted here are successfully implemented. With respect to the number of calls completed, the facility-by-facility approach is subject to possible modification by the Consumer and Governmental Affairs Bureau (CGB) and WCB in their exercise of the authority delegated to those Bureaus. The Commission directs CGB and WCB to consider the alternative of permitting reporting on a contract basis, in lieu of facility-by-facility reporting, in implementing the data collection requirements adopted in this final rule.

50. There is robust support in the record for this step. The Commission finds that the additional burden associated with providing limited reporting on this small category of calls is unlikely to be large and is outweighed by the benefits such reporting will offer in terms of greater transparency and heightened accountability on the part of inmate calling services providers. The Commission is not persuaded that expanded reporting requirements would discourage inmate calling services and TRS providers from providing access to additional forms of TRS—given that its amended rules *require* inmate calling services providers to provide such expanded access in any jurisdiction with an average daily population of more than 50, where broadband service is available. The Commission also declines the suggestion that complaints be reported in the aggregate and not by type. Complaints can be an important indicator of the presence of specific compliance issues; therefore, it is important that providers submit specific information identifying the nature of the complaint, the type of TRS, and the facility involved.

51. However, the Commission does not find it necessary to require inmate calling services providers to report the amount of call time spent on each form of accessible communication and the number of individuals in each carceral facility registered to use each service. The Commission is not convinced at this time that the additional benefits from collecting such information would justify the extra burden involved in gathering it. In addition, the Commission agrees that reporting the number of dropped calls is of little value, given that calls can be disconnected for a variety of reasons that do not necessarily reflect on the quality of the service provided, and therefore the Commission deletes this requirement.

52. *Removal of the Safe Harbor.* In adopting the reporting requirement for TTY-based TRS in 2015, the Commission stated that ''if an [inmate calling services] provider either . . . operates in a facility that allows the offering of additional forms of TRS beyond those we currently mandate or . . . has not received any complaints related to TRS calls, then it will not have to include any TRS-related reporting in [its] Annual Report . . . provided that it includes a certification from an officer of the company stating which prong(s) of the safe harbor it has met.'' *2015 ICS Order.* Given the expanded reporting requirement for additional forms of TRS, and the importance of transparency into the state of accessible communications in incarceration settings, the Commission concludes that this safe harbor is no longer appropriate. To assess the effectiveness of its policies and assist with enforcement, the Commission needs information on the extent to which TRS access is available throughout correctional systems. Further, given the inherently coercive

nature of corrections, lack of complaints from a particular jurisdiction or facility can be due to a number of factors and does not automatically indicate compliance with the Commission's rules.

53. *Delegation of Authority.* The Commission delegates authority to the Consumer and Governmental Affairs Bureau and WCB to implement this expanded reporting obligation and to develop a reporting form that will most efficiently and effectively elicit the information the Commission seeks. This delegation shall take effect on December 9, 2022. The Commission finds good cause for making this delegation take effect at that time because doing so will enable the Bureaus to move as expeditiously as practicable toward revising the instructions and reporting template for inmate calling services providers' Annual Reports, as set forth above. Given the importance of this expanded reporting to the Commission's efforts to ensure that incarcerated people with communication disabilities receive service that is functionally equivalent to that received by those without such disabilities, any unnecessary delay in this initiative would be inconsistent with the public interest.

Disability Access Requirements for TRS Providers—TRS Registration

54. To prevent waste, fraud, and abuse and allow the collection of data on TRS usage, the Commission's rules generally require that each individual using VRS, IP CTS, or IP Relay must be registered with a TRS provider. Further, VRS providers must submit user registration data to a central User Registration Database (User Database) administered under Commission supervision. Similar User Database registration and verification requirements apply to IP CTS providers. However, compliance with these requirements is not required until the User Database has been activated for registration of IP CTS users. Currently, the Commission's rules do not require that IP Relay registrations be submitted to the User Database.

55. As an alternative to individual registration, VRS providers may register videophones maintained by businesses, organizations, government agencies, or other entities and designated for use in private or restricted areas as ''enterprise videophones.'' 47 CFR 64.611(a)(6). This alternative form of registration is not available to IP CTS providers.

56. Based on the record, the Commission concludes that these TRS registration processes can be adapted to the incarceration context without major changes.

57. *Individual Registration.* To register individuals to use VRS, IP CTS, or IP Relay, a TRS provider must collect and maintain certain registration information from or regarding each prospective user. For VRS and IP CTS, this includes: the user's full name; residential address; telephone number; last four digits of the social security number or Tribal Identification number; date of birth; Registered Location (if applicable); dates of service initiation and (if applicable) termination; the date on which the user's identification was verified; and (for existing users only) the date on which the registered internet-based TRS user last placed a point-to-point or relay call. 47 CFR 64.611(a), (j). For IP CTS, a provider must also assign a unique identifier such as the electronic serial number (ESN) of the user's IP CTS device, the user's log-in identification, or the user's email address. 47 CFR 64.611(j)(2)(i)(D). This is not required for VRS because each VRS user is assigned a unique telephone number that is usable specifically for VRS. 47 CFR 64.611(a)(1). For IP Relay, the required registration is not expressly stated in the rules, but the Commission has interpreted the rule as requiring similar information.

58. In addition, to register individuals to use VRS or IP CTS, a TRS provider must obtain from each prospective user a certification, under penalty of perjury, that the user needs that form of TRS for effective communication and understands that the cost of the service is paid by a Federal program. 47 CFR 64.611(a)(3), (j)(1)(v). In addition, as part of the IP CTS user certification, a TRS provider must obtain certification that ''[t]he consumer understands that the captioning on captioned telephone service is provided by a live communications assistant who listens to the other party on the line and provides the text on the captioned phone,'' and that ''[t]he consumer will not permit, to the best of the consumer's ability, persons who have not registered to use internet protocol captioned telephone service to make captioned telephone calls on the consumer's registered IP captioned telephone service or device.'' 47 CFR 64.611(j)(1)(v)(B), (D).

59. For registration of VRS and IP CTS users, the above registration data and certifications also must be submitted to the User Database. 47 CFR 64.611(a)(4), (j)(2). Compensation for service to a new user is not paid until the user's identity has been verified by the administrator of the User Database. 47 CFR 64.615(a)(6). As noted above, the database for IP CTS user registration has not yet been activated.

60. *Enterprise Registration for VRS.* The rules on VRS enterprise registration presuppose that telephone numbers will be assigned to specific video-capable devices (videophones). Before service can be provided pursuant to an enterprise registration, an individual must be designated by the business or agency as responsible for the videophone, and must provide a certification to the VRS provider that the individual ''understands the functions of the videophone, [that] the cost of VRS calls made on the videophone is financed by the federally regulated Interstate TRS Fund, and . . . that the organization, business, or agency will make reasonable efforts to ensure that only persons with a hearing or speech disability are permitted to use the phone for VRS.'' 47 CFR 64.611(a)(6)(ii)(A). The certification may be signed and transmitted electronically. 47 CFR 64.611(a)(6)(ii)(B). For each such device, in addition to the assigned telephone number, the VRS provider must submit to the User Database: ''[t]he name and physical address of the organization, business, or agency where the enterprise . . . videophone is located''; ''the Registered Location of the phone if that is different from the physical address''; ''the type of location where the videophone is located''; the date of initiation of service; ''[t]he name of the individual responsible for the videophone''; ''confirmation that the provider has obtained the required certification'' from that individual; ''the date the certification was obtained by the provider''; and ''[w]hether the device is assigned to a hearing individual who knows sign language.'' 47 CFR 64.611(a)(6)(iii).

61. *Changes in TRS Registration Rules.* The Commission intends that incarcerated VRS users may be registered under either individual or enterprise registrations. Because the Commission's rules do not authorize enterprise registration for IP CTS and IP Relay users, incarcerated users of those services currently must have individual registrations. To facilitate the use of these registration procedures in the correctional setting, the Commission amends the TRS registration rules as described below.

62. *Individual Registration.* The Commission amends its rules to facilitate individual registration of eligible incarcerated people with disabilities for any form of internet-based TRS. The Commission notes that if an incarcerated individual is already registered to use VRS, IP Relay, or IP

CTS, then the TRS provider may continue to provide service to a user under that individual registration—unless such registration is dependent on conditions that no longer apply during incarceration (*e.g.,* if an IP CTS registration is tied to the electronic serial number (ESN) of a device that is no longer available to the individual). *See* 47 CFR 64.611(j)(2)(i)(D).

63. The Commission amends the rules to provide that the ''residential address'' specified for an incarcerated individual who has not previously registered with the VRS or IP CTS provider serving the facility shall be the address of the responsible correctional authority. Further, because 911 calls by incarcerated individuals are not permitted in a correctional facility, ''Registered Location''—that is, the physical location of the user—need not be included. For IP CTS, the telephone number specified shall be the same telephone number used by the inmate calling services provider to identify ordinary voice telephone calls placed to or from persons incarcerated in the correctional facility. Further, given that devices are not uniquely assigned to users, the unique user identifier specified in an IP CTS registration should be a log-in ID, email address (if available and unique to the user), or other unique identifier, rather than the electronic serial number of the user's device. In addition, for incarcerated persons who do not have a social security number or Tribal Identification number, the Commission allows TRS providers, as an alternative in such cases, to collect, and submit to the User Database, an identification number issued by the correctional authority. The TRS provider should obtain and provide to the TRS Fund administrator the incarcerated person's identification number and the name and address of the correctional facility providing the documentation.

64. To ensure that eligible incarcerated individuals can be promptly registered to use VRS and IP CTS, the Commission also amends the rule on verification of user registration data to allow TRS providers and the User Database administrator to accept documentation provided by an appropriate official of a correctional facility, such as a letter or statement from the official stating the name of the individual and that the individual resides in the facility, as verification of the identity and residence of an incarcerated individual seeking to use VRS or IP CTS. This change will prevent delay or denial of registration of an incarcerated individual to use these forms of TRS, due to lack of credit history or acceptable alternative documentation verification of the information provided to the User Database. The Commission does not require that the TRS provider receive such documentation directly from the issuing correctional official. As discussed above, the Commission requires inmate calling services providers to assist TRS providers in collecting the required registration information and documentation from users and from the correctional facility.

65. The Commission does not find that additional changes to its individual registration rules are needed. By requiring inmate calling services providers to assist TRS providers in collecting the required registration information and documentation, the Commission believes it has sufficiently addressed concerns about TRS providers' ability to collect such information on their own.

66. *Enterprise Registration for Incarcerated VRS Users.* There are significant differences between correctional facilities and other enterprise contexts. For example, as one commenter states, ''[i]ncarcerated individuals are regularly moved among facilities, and the inmate calling services equipment they use may not move with them.'' To facilitate enterprise registration for VRS in the correctional context, the Commission agrees with another commenter that ''a VRS provider should be able to register all the videophones and telephone numbers providing service to a single system's correctional facilities under a single account. A VRS provider should then be able to register a pool of telephone numbers under that account. It should also be able to register the main or administrative address for the correctional system in question, and that address would be considered to be the location of each kiosk used in that system.'' Given the security measures available to inmate calling services providers and correctional facilities, the Commission concludes that these changes to enterprise registration are unlikely to increase significantly the risk of waste, fraud, and abuse in TRS. The Commission accordingly adopts rule language consistent with the above proposals.

Disability Access Requirements for TRS Providers—Other Rules

67. *Confidentiality Rule Clarifications.* The Commission concludes that no amendment to its TRS confidentiality rule is necessary to address the security concerns of correctional institutions. Section 64.604(a)(2) of the Commission's rules, which applies to TRS providers and their CAs, does not impose obligations on other parties, such as inmate calling services providers, that are not eligible for TRS Fund compensation and are only providing a communications link to an authorized TRS provider. Specifically, the rule does not prohibit an inmate calling services provider or correctional facility from monitoring and recording the transmissions sent and received between an incarcerated person and the TRS provider's CA, in the same way as they monitor and record other inmate calling services calls, provided that the TRS provider and CA are not conducting such monitoring and recording. The comments confirm that it is common practice for inmate calling services providers to configure communications systems to allow monitoring or recording of calls, including TRS calls, by the inmate calling services provider or the correctional facility. For example, one TRS provider acknowledges that ''[while] Commission rules prohibit IP CTS providers from recording calls or retaining a transcript of the call after it has concluded . . . [f]or security reasons, [inmate calling services] providers often monitor and record calls.'' Similarly, another TRS provider states that it ''does not interpret the current confidentiality rules to prohibit an [inmate calling services] provider or a correctional facility from monitoring the transmissions between an incarcerated person and the VRS providers' CA so long as the VRS provider and the CA are not directly engaging in such monitoring.''

68. *Other TRS Rules.* The Commission also amends its rules to make clear that certain minimum TRS standards are not applicable to the incarceration setting. Specifically, the Commission amends its rules to provide that the types of calls, call durations, and calling features that TRS providers must offer incarcerated users are limited to those types of calls and call durations permitted for hearing people incarcerated in the correctional facility being served. In addition, the Commission does not require VRS providers to allow incarcerated users to choose their ''default provider'' or to place ''dial-around'' calls. *See* 47 CFR 64.611(a).

69. The Commission also notes that, as incarceration facilities do not allow incarcerated people to place 911 calls, TRS providers will not need to handle 911 calls from such facilities.

70. Finally, the Commission reminds TRS providers that its rules prohibiting the offering or provision of incentives to use TRS and other practices that encourage improper use of TRS are

applicable in the incarceration context as well as elsewhere. *See* 47 CFR 64.604(c)(8), (13).

Adopting Rules for the Treatment of Balances in Inactive Accounts

71. *Overview.* The Commission finds that all funds deposited into a debit-calling or prepaid-calling account and not spent on products or services shall remain the account holder's property unless they are disposed of in accordance with either a controlling judicial or administrative mandate, or applicable state law requirements. The Commission also finds that any action inconsistent with this finding (whether by a provider or an entity acting on a provider's behalf) constitutes an unjust and unreasonable practice within the meaning of section 201(b) of the Act. 47 U.S.C. 201(b). To protect account holders and incarcerated people pending further consideration of this matter based on the record to be developed in response to the requests for comment in the *Sixth FNPRM,* the Commission prohibits providers of inmate calling services from seizing or otherwise disposing of unused funds in a debit-calling or prepaid-calling account, except through a full refund to the account holder, until at least 180 calendar days of continuous account inactivity has passed. At that point in time (or at the end of any alternative time frame set by state law), the provider must make reasonable efforts to refund the balance in the account to the account holder and, if those efforts fail, must treat funds remaining in the inactive account in accordance with any controlling judicial or administrative mandate or applicable state law requirements. To clarify, while providers may elect to issue refunds to account holders they consider inactive during the 180-day inactivity period, in no event, unless required by any controlling judicial or administrative mandate or state law, may a provider deem funds unclaimed or abandoned prior to the 180-day period.

72. The Commission disagrees with the argument by Securus Technologies, LLC (Securus) that further record development is required before the Commission may act concerning the refund of debit accounts, nor does the Commission find merit in the other reasons they offer for delay. To the extent that the refund of funds in such debit accounts is ''based on agreements between providers and correctional authorities,'' Securus has offered no reasons why providers would be unable to revise such agreements within the requisite 180-day window. To the contrary, rather than demonstrate that such refunds ''do[ ] not work'' as they claim, Securus admits that ''an incarcerated person is provided with the balance on their debit account, either by the agency or Securus'' upon release or transfer, and adds that ''Securus is already making reasonable efforts to refund the balance in such accounts to the releasing individual.'' These assertions undercut Securus's request for delay, and at any rate, the refund rules the Commission adopts in this final rule appear to be consistent with Securus's debit account refund practices.

73. *Background.* The Commission's rules contemplate two types of advance payments for inmate calling services and associated permissible ancillary service fees. These arrangements are chiefly distinguishable by the difference in the identity of the payor and the holder of the account. Under the first type of advance payment—debit calling—the incarcerated person is the account holder, and the incarcerated person (or someone acting on their behalf) deposits funds into a provider account that can be used to pay for the incarcerated person's calls and other expenses. By contrast, the second type of advance payment—prepaid calling—involves a provider account in which calling expenses may be paid in advance, which is held and funded by a consumer other than the incarcerated person. The purpose behind depositing funds under either arrangement is to pay for inmate calling and associated ancillary services.

74. Commenters have long alleged that providers have implemented opaque debit-calling and prepaid-calling account balance policies that harm consumers. Among other alleged abuses, commenters previously had contended that providers ''are actually taking prepaid monies from prisoner accounts if for whatever reason the account is 'inactive.' '' In response to these and other allegations of abusive ancillary charges the Commission prohibited providers of inmate calling services from charging consumers any ancillary service charges other than the five types specifically permitted by the Commission's rules, but did not directly address the treatment of unused funds remaining in consumer accounts after a period of inactivity. Consequently, the prohibitions on certain types of ancillary service charges did not eliminate all problems related to debit or prepaid account maintenance and closures.

75. In document FCC 21–60, the Commission expressed concern regarding providers' practices with respect to unused funds in inactive accounts and invited comment on whether the Commission should require refunds after a certain period of inactivity and, if so, what timeframe would be appropriate. The record shows that some providers treat a debit or prepaid account as ''inactive'' after a certain period of time—as little as 90 days—then take possession of any funds remaining in the ''inactive'' account. Thus, the account holder loses deposited funds merely by inaction. While the individual sums involved may be modest by some standards, they likely represent meaningful amounts to many of the individuals and families who are being unjustly deprived of these funds. The record also establishes that, collectively, the amounts involved can represent a significant windfall to the providers, which have strong incentives to retain these funds for themselves.

76. *Discussion.* The Commission finds that all funds deposited into any account that can be used to pay for interstate or international inmate calling services remain the property of the account holder unless or until they are either: used to pay for products or services purchased by the account holder or the incarcerated person for whose benefit the account was established; or disposed of in accordance with a controlling judicial or administrative mandate or applicable state law requirements, including, but not limited to, requirements governing unclaimed property. Any action by a provider, or other entity acting on a provider's behalf, that is inconsistent with this finding constitutes an unjust and unreasonable practice that the Commission prohibits pursuant to section 201(b) of the Act.

77. The Commission's actions extend to commingled accounts that can be used to pay for both interstate and international calling services and nonregulated services such as tablets and commissary services. As the Commission explained in the *2020 ICS Order on Remand,* where the Commission has jurisdiction under section 201(b) of the Act to regulate the rates, charges, and practices of interstate communications services, ''the impossibility exception extends that authority to the intrastate portion of jurisdictionally mixed services 'where it is impossible or impractical to separate the service's intrastate from interstate components' and state regulation of the intrastate component would interfere with valid federal rules applicable to the interstate component.'' Rates for Interstate Inmate Calling Services, published at 85 FR 67450, October 23, 2020 (*2020 ICS Order on Remand*). In

the *2020 ICS Order on Remand,* the Commission found that ancillary service charges ''generally cannot be practically segregated between the interstate and intrastate jurisdiction'' except in a limited number of cases where the ancillary service charge clearly applies to an intrastate-only call. Applying the impossibility exception, the Commission concluded that providers generally may not impose any ancillary service charges other than those specified in the Commission's rules and are generally prohibited from imposing charges in excess of the ancillary service fee caps. Here, commingled accounts contain funds that can be used to pay for interstate and international calling, over which the Commission has jurisdiction, as well as intrastate calling and nonregulated services. The Commission concludes that it cannot practically segregate the portion of the funds in those accounts that may be used to pay for interstate or international calling services from the portion that may be used to pay for intrastate calling services and nonregulated services. Because the Commission cannot practically segregate funds in commingled accounts, the Commission concludes that such accounts are subject to the actions the Commission takes therein; and rejects any suggestion to the contrary. By contrast, the Commission's rules do not prevent providers from creating separate accounts for use with nonregulated services.

78. Sections 201 and 202 of the Act set out broad standards of conduct, and the Commission gives the standards meaning by defining practices that run afoul of carriers' obligations, either by rulemaking or by case-by-case adjudication. Acting pursuant to section 201(b) of the Act, the Commission has generally found carrier practices unjust and unreasonable where necessary to protect competition and consumers against carrier practices for which there was either no cognizable justification for the action or where the public interest in banning the practice outweighed any countervailing policy concerns. Here, when providers take possession of unused funds in customers' accounts, they deprive[ ] consumers of money that is rightfully theirs. While ''consumer'' is defined in the Commission's rules as ''the party paying a Provider of Inmate Calling Services,'' the Commission notes that it uses the term customer herein to denote an incarcerated person who uses the calling services offered to place a call, regardless of whether a separate party has actually paid for the service. No commenter supports this practice, and the Commission finds no countervailing policy concerns or cognizable justification for this practice sufficient to outweigh the public interest in ensuring that consumers have access to funds that are rightfully theirs. Pay Tel Communications, Inc. (Pay Tel) suggests that high turnover in jails increases the likelihood that a pre-funded account will require a refund, leading to higher costs associated with administering such refunds. Nevertheless, Pay Tel ''strongly believes that monies placed in inmate accounts that are unused should be refunded to the customer rather than absorbed by the [inmate calling services] provider as service 'revenue.' '' And these practices are even more clearly unjust and unreasonable if providers violate state laws when managing these accounts, which has been alleged in some instances. For these reasons, the Commission finds the practice of taking possession of unused funds in customer accounts to be unjust and unreasonable under section 201(b) of the Act and prohibits it.

79. In the *Sixth FNPRM,* the Commission seeks comment on how it can best prevent providers of inmate calling services from engaging in unjust and unreasonable practices related to unused funds in any customer account that can be used to pay for interstate or international calls. To protect account holders and incarcerated people from such practices, pending a full consideration of the record to be developed in response to the Further Notice, the Commission prohibits providers of inmate calling services from seizing or otherwise disposing of funds deposited in a debit calling or prepaid calling account until at least 180 calendar days of continuous account inactivity has passed, except when funds are tendered for services rendered, refunded to the customer, or disposed of in accordance with a controlling judicial or administrative mandate or applicable state law requirements, including, but not limited to, requirements concerning unclaimed property in such accounts. The Commission has revised § 64.6130(b) of its rules to make clear that during this 180-day period a provider may make refunds or dispose of funds in accordance with a controlling judicial or administrative mandate or an applicable state law requirement. A controlling judicial or administrative mandate includes, in this context, any final (*i.e.,* no longer appealable) court order requiring the incarcerated person to pay restitution, any fine imposed as part of a criminal sentence, and any fee imposed in connection with a criminal conviction. It also includes any final court or administrative agency order adjudicating a valid contract between the provider and the account holder, entered into prior to the release of document FCC 22–76, that allows or requires that the provider act in a manner that would otherwise violate the Commission's rule on the disposition of funds in inactive accounts. The Commission does not address in document FCC 22–76 the ultimate disposition of unclaimed funds in a debit calling or prepaid calling account in circumstances where there is no controlling judicial or administrative mandate and state law does not affirmatively require any particular disposition. Instead, the Commission reserves that issue for further consideration based on the record to be developed in response to the requests for comment in the *Sixth FNPRM.* In reserving this issue, the Commission addresses two commenters' opposition to the Commission's proposal that providers must dispose of unused funds in debit or prepaid accounts in accordance with the Uniform Unclaimed Property Act in circumstances where the providers' refund efforts fail and state law is unclear. The Commission declines, however, to adopt draft rules that would terminate account holders' property interests in those funds in such circumstances. As the Commission has noted, it seeks to obtain a more robust record on this issue before adopting final rules to govern such situations.

80. The period of inactivity (or dormancy) must be continuous, such that any of the following actions by an account holder or an incarcerated person will restart the 180-day clock: depositing, crediting, or otherwise adding funds to an account; withdrawing, spending, debiting, transferring, or otherwise removing funds from an account; or expressing an interest in retaining, receiving, or transferring the funds in an account, or otherwise attempting to exert or exerting ownership or control over the account or the funds held within the account. The Commission disagrees with Securus's contention that ''an expression of interest'' is unduly vague. The Commission finds instead that the successive activities it lists—retaining, receiving, or transferring the funds in an account, or otherwise attempting to exert or exerting ownership or control over the account or the funds held within the account—are more than sufficiently descriptive under standard principles of construction. To the extent

an account holder requests a refund of the account balance at any time during the 180-day period, the Commission expects the provider to promptly issue such refund. The Commission finds that a 180-day timeframe is a reasonable period of time that offers account holders and incarcerated persons an adequate window during which they may exert custody or control before they risk forfeiting their funds, and the Commission clarifies that this timeframe will not begin to run until the effective date of this final rule. The record shows that a 180-day period is a reasonable amount of time before deeming an account inactive. This window provides more time than the shortest ''inactive'' period of which the Commission is aware, reducing the risk that providers will seize funds inappropriately or prematurely. It is also similar to the time frame several inmate calling services providers currently appear to follow, suggesting that implementation of this time frame is unlikely to cause providers undue burdens. Certain providers find the burden so low that their policy is to hold consumer deposits indefinitely. No commenter suggests that a 180-day time frame and an obligation to process refunds would impose a significant burden on providers. Instead, the record now before the Commission indicates that processing refunds after 180 days of inactivity will impose only a marginal burden on providers.

81. Although Securus requests that providers be granted 90 days after the effective date of the final rule to comply with the refund requirement, clarifying that the 180-day period of inactivity begins on the final rule's effective date will provide an even greater period of time for Securus and other providers to implement the refund requirement, as they will not have to take action to track accounts to issue refunds until 180 days after the Commission's refund rules become effective. Thus, Securus and other providers actually have more than 180 days to make any necessary system, contractual or tariff-related adjustments, well more than the 90 days Securus seeks.

82. At the conclusion of the 180-day period (or at the end of any alternative time frame set by state law), the provider must make reasonable efforts to refund the balance in the account to the account holder and, if those efforts fail, the provider must treat that balance in accordance with applicable state law requirements, including, but not limited to, state consumer protection laws. Providers need not comply with the Uniform Unclaimed Property Act except to the extent it has been incorporated into state law. If the provider has adopted a shorter period of time for attempting refunds for accounts, these rules do not disturb the ability of account-holders to obtain a refund upon request or within the 180-day period. Under no circumstances, however, except to the extent required by state law, can a provider consider funds in an inactive account abandoned prior to 180 days of continuous inactivity. Stated differently, 180 days of continuous inactivity, as defined above, is the minimum amount of time that must pass before providers may treat funds in an account used to pay for interstate or international inmate calling services as ''abandoned,'' except where state law provides a different period. Together, these steps will help ensure that account holders are not deprived of funds that are rightfully theirs.

83. These measures will remain in place until the Commission takes further action on these issues pursuant to the requests for comment in the *Sixth FNPRM.* In document FCC 21–60, the Commission sought comment on whether it should adopt rules requiring refunds ''after a certain period of inactivity''. In light of the Commission's finding under section 201(b) of the Act, the Commission finds these standstill steps necessary to ensure that funds are not disbursed or otherwise irretrievably lost while the Commission considers additional rules. In the meantime, the actions the Commission takes in this final rule will help prevent providers from unjustly enriching themselves by taking possession of account holder funds or otherwise engaging in unjust or unreasonable practices in relation to those funds. The Commission makes no finding in this final rule regarding whether funds in an inactive account are ''unclaimed property'' within the meaning of any state law or otherwise addresses the requirements of any state law. Instead, the Commission decides, pursuant to its authority under section 201(b) of the Act, that those funds remain the account holder's property under certain circumstances and, to make clear that the Commission is not ruling on any question arising under state law, the Commission excludes from those circumstances the disposal of the funds in accordance with applicable state law, including any state laws governing unclaimed property. Thus, Securus's observations that document FCC 21–60 ''provided no notice that the Commission intended to address the treatment of unclaimed property'' and that the Commission lacks jurisdiction to ''interpret state property law'' are inapplicable.

84. The Commission declines to expand these prohibitions at this time as it is still developing the record. The Commission needs additional information before it can evaluate proposals to require providers to issue refunds ''automatically.'' Although the record suggests that issuing account refunds for consumers who paid by credit card would be relatively nonburdensome, it does not address in detail the burdens involved in issuing refunds under other circumstances. For example, the record does not illustrate the costs nor methods of providing refunds to a consumer who paid in cash or via a third party and cannot be located at a last known address. Likewise, the Commission will need to develop a more complete record before deciding whether to require providers to notify consumers before designating accounts as ''inactive'' or ''dormant.'' To that end, the Commission seeks comment in the *Sixth FNPRM* on specific questions that are designed to develop a fuller record on these and other issues related to the disposition of unused funds in calling services accounts.

85. Finally, the Commission reiterates that its ancillary service charges rules preclude providers from charging consumers for maintaining inactive debit-calling or prepaid-calling accounts that were established, in whole or in part, to pay for interstate or international inmate calling services and associated ancillary services. The record contains various examples of such charges, such as ''[p]repaid refund processing fees,'' ''Western Union Debit Refund Processing Fee,'' and ''monthly account maintenance fee[s].'' Because such services are not among the five enumerated types of ancillary services for which providers are permitted to assess charges, any fees for such services in connection with accounts that can be used for interstate or international inmate calling services and associated ancillary services are barred under the Commission's rules. Those rules also prohibit providers from charging consumers fees to close or obtain refunds from such calling services accounts. The Commission has already considered this issue, declining to allow such recovery as part of the *2015 ICS Order* adopting the current list of permissible ancillary service charges. The Commission sees no reason to revisit that issue now. The Commission therefore declines Securus's request that it allow providers to recover third-party fees incurred when refunding amounts to a consumer. To the extent any provider is imposing such charges, it

may be subject to an enforcement action.

Lowering the Single-Call Services and Third-Party Financial Transaction Fee Caps

86. To reduce the economic burdens on incarcerated people and their loved ones from unnecessarily high ancillary service charges, the Commission lowers the maximum amount for third-party fees that inmate calling services providers may pass on to consumers for single-call services and third-party financial transactions. For the purpose of this Synopsis and in the interest of brevity, the Commission refers to single-call and all related services as ''single call services.'' The Commission's use of this terminology is merely for convenience and does not reflect any changes to the rules other than those specifically set forth in the revised rules set out at the end of this final rule. In the *2021 ICS Order,* the Commission set both of these caps at $6.95 on an interim basis. The Commission now adopts lower permanent caps limiting these fees to a maximum amount of $3.00 when the fee is paid through an automated payment system and $5.95 when the fee is paid through a live agent. The Commission finds that this approach, which is unopposed in the record, will provide immediate financial relief to incarcerated people and their loved ones while the Commission continues to consider further reforms to its ancillary service charges rules.

87. *Background.* In the *2021 ICS Order,* the Commission capped, on an interim basis, the third-party fees inmate calling services providers may pass through to consumers for single-call services and third-party financial transactions at $6.95 per transaction. The Commission set these caps based on record evidence that this amount reflected the rate that one of the most prominent third-party money transfer services charged the largest inmate calling services provider, reasoning that fixed interim caps were necessary to close loopholes in the Commission's rules that had encouraged providers to seek out, as part of revenue-sharing schemes, artificially high rates for these services from third parties. In adopting the interim caps, the Commission found that it lacked sufficient record evidence to adopt a proposal from NCIC Inmate Communications (NCIC) to cap single-call services fees at $3.00 for automated credit card payments, debit card payments, and bank payments (collectively, automated transactions) and $5.95 for payments made through live agents, including payment through money transmittal services. Following the adoption of the *2021 ICS Order,* NCIC filed a Petition for Reconsideration expounding upon its prior proposal and arguing that the Commission had erred in adopting the $6.95 cap by ''confus[ing] two distinct and separate transaction fees.'' NCIC explained that single-call services are ''generally billed such that a provider may add up to a $3.00 automated transaction fee for each call'' and that third-party financial transaction fees ''relate to cash and online deposits with Western Union, MoneyGram, and other money transmittal services that had permitted certain [inmate calling services] providers to add 'kickbacks' on top of their normal transaction fees.'' NCIC further explained that the $6.95 cap applicable to third-party fees ''may offset all the efforts of the [Commission] in trying to reduce costs to inmates and their families'' and encouraged the Commission to ''use the ancillary caps of $3.00 for automated transactions and $5.95 for live agent fees, as the baseline for any further changes.'' Now that the Commission has sufficient notice and a better record, the Commission is revising its interim caps for single call services and third-party financial transaction fees, as NCIC urges. In view of this action, the Commission dismisses as moot NCIC's Petition for Reconsideration to the extent it relates to those interim caps. The Commission presently declines to act on the remainder of that petition as it is unrelated to the issues that are the focus of document FCC 22–76.

88. In document FCC 21–60, however, the Commission sought comment on NCIC's proposal. To the extent a $6.95 fee is assessed by a third-party money transmittal service in conjunction with funding an inmate calling services account, the record confirms that such fees are charged directly by the money transmittal company to the consumer.

89. *Discussion.* The Commission reduces to $3.00 the maximum amount that inmate calling services providers may pass through to a consumer for single-call services and any third-party financial transactions where the transaction involves the use of an automated payment system, and the Commission reduces to $5.95 the maximum amount where the transaction involves the use of a live agent.

90. When it adopted the interim $6.95 caps in the *2021 ICS Order,* the Commission admittedly lacked a sufficient record to fully evaluate NCIC's proposal calling for lower rates. At the time of the *2021 ICS Order,* the Commission also lacked sufficient information about the relationship between fees for single-call services and third-party financial transactions and the automated payment and live agent fee caps. This led the Commission to seek comment on that relationship in document FCC 21–60. In response, commenters clarify that fees for single-call services and third-party financial transactions can be paid through an automated payment system (corresponding with the $3.00 automated payment fee) or via a live agent (corresponding with the $5.95 live agent fee). Under the current definition, single calls are billed through a third party when the called party does not have an account with the inmate calling services provider. The Commission seeks comment on third-party involvement in single call scenarios in the *Sixth FNPRM.* The record confirms that payment for these calls can be made through either an automated payment system or via a live agent.

91. By contrast, third-party financial transaction fees are fees charged by third parties to inmate calling services providers to ''transfer money or process financial transactions'' to facilitate payments to consumers' accounts with inmate calling services providers. In those situations, account payments can be made through either an automated system or via a live agent that directs the consumer to a third party to process the account payment. In both cases, payments are being made through one of two payment channels: through an automated payment system or via a live agent. These clarifications persuade the Commission that the interim $6.95 caps exceed the costs incurred for such transactions and do not appropriately reflect the type of payment channels actually used in connection with single-call services and third-party financial transactions. The Commission thus reduces the maximum amount that providers can pass through to consumers. These measures will reduce inmate calling services providers' ability to overcharge consumers for single-call services and third-party financial transactions, as the Commission further weighs other proposals related to its ancillary service charges rules and analyzes the providers' responses to the Third Mandatory Data Collection.

92. One of the Commission's goals in replacing the pass-through caps for single-call services and third-party financial transaction fees with fixed caps in the *2021 ICS Order* was to curtail the incentives for providers to engage in revenue-sharing schemes, *i.e.,* abusive provider practices that drive up prices for consumers. Commenters now highlight that the $6.95 cap the Commission adopted in the *2021 ICS Order,* while reducing the financial

incentives to engage in these schemes stemming from the prior absence of any limit on the third-party charges that could be passed through to consumers, may have actually incentivized providers to increase charges for consumers. Other commenters argue that this $6.95 cap incentivized providers to rely on third parties for processing such payments more frequently, pursuant to revenue-sharing agreements. Reducing the $6.95 cap to $5.95 will reduce these incentives. Given evidence in the record that both single-call services and third-party financial transactions involve payment through an automated payment system or a live agent, the Commission finds that, pending its analysis of the data submitted in response to the Third Mandatory Data Collection, the amounts providers may charge for those services may not exceed the amounts providers are already permitted to charge for automated payment services (capped at $3.00) and live agent services (capped at $5.95).

93. The Commission declines suggestions that it defer any action on its ancillary service charges rules to a later date or that it undertake more sweeping reforms at this time. On the one hand, some commenters suggest that the Commission wait before taking any actions regarding ancillary service charges to observe how the market reacts to changes from the Commission's prior actions. The record offers no reason why the market should require time beyond today to stabilize, particularly where providers have previously found 90 days to be a sufficient transition period (and when the Commission's revised rules have been in effect for even longer). The Commission finds no reason for such delay. Nor is the Commission required to await perfect data before acting. On the other hand, other commenters encourage us to lower the $3.00 cap on automated payment fees, to prohibit single call fees altogether, to take a more forceful actions to prevent ''double-dipping,'' and to require that each newly incarcerated person receive two free calls.

Amending the Definitions of ''Jail'' and ''Prison''

94. The Commission next amends the definitions of ''Jail'' and ''Prison'' in § 64.6000(m) and (r) of its rules to conform those definitions with the Commission's intent to include every type of facility where individuals can be incarcerated or detained, as explained in the *2015 ICS Order.* In document FCC 21–60, the Commission proposed to amend its definition of ''Jail'' by explicitly including facilities of ICE and the BOP, whether operated by the law enforcement agency or pursuant to a contract. The Commission also proposed to add the term ''juvenile detention facilities'' and ''secure mental health facilities'' to the definition of ''Jail'' and asked whether it should make other changes to its definitions of ''Jail'' or ''Prison.'' The Commission adopts the proposed changes to ensure that its inmate calling services rules apply to all incarceration facilities.

95. The Commission revises the definition of ''Jail'' to explicitly include detention facilities operated by ICE. In the *2015 ICS Order,* the Commission explained that the term ''Jail'' was meant to include, among other facilities, ''facilities used to detain individuals pursuant to a contract with [ICE] and facilities operated by ICE.'' The relevant part of the codified definition, however, encompasses only ''facilities used to detain individuals *pursuant to a contract*'' with ICE, failing to specifically include facilities operated by the agency, creating a gap in the Commission's rules. Encompassing facilities operated by ICE aligns the definition with the Commission's intended meaning and ensures that the Commission's inmate calling services rules protect individuals detained in all ICE facilities regardless of how they are operated.

96. Similarly, the Commission revises the definition of ''Jail'' to explicitly include detention facilities operated by the BOP or pursuant to a contract with the BOP. As the Commission explained in the *2015 ICS Order,* the term ''Jail'' was meant to include facilities operated by Federal law enforcement agencies that are used primarily to hold individuals who are ''awaiting adjudication of criminal charges,'' are ''committed to confinement to sentences of one year or less,'' or are ''post-conviction and awaiting transfer to another facility.'' The codified definition, however, fails to mention the BOP, thus creating potential confusion as to whether facilities of the type described in the definition should be classified as ''Jails'' if they are operated by the BOP or pursuant to contracts with the BOP, given the use of the word ''Prison'' in the name of the facility. To eliminate this potential confusion, the Commission amends its definition of ''Jail'' to explicitly include facilities operated by the BOP, or pursuant to a contract with the BOP, that otherwise meet the existing definition of ''Jail.''

97. The Commission also revises its definition of ''Jail'' to explicitly include all ''juvenile detention facilities'' and ''secure mental health facilities'' that operate outside of facilities that are otherwise classified as prisons or jails under the Commission's rules. In the *2015 ICS Order,* the Commission found that providing inmate calling services in juvenile detention facilities and secure mental health facilities was ''more akin to providing service to jail facilities'' and instructed that ''[t]o the extent that juvenile detention facilities and secure mental health facilities operate outside of jail or prison institutions'' they would be subject to the rate caps applicable to jails. The codified definition of ''Jail,'' however, does not mention either ''juvenile detention facilities'' or ''secure mental health facilities.'' The Commission's revised definition of ''Jail'' explicitly lists all such facilities, thus ensuring that individuals held in those facilities will be covered by the Commission's rules, as the Commission intended.

98. Finally, in document FCC 21–60, the Commission sought comment on whether there are types of correctional facilities, in addition to those discussed above, that should be explicitly added to the codified definitions of ''Jail'' or ''Prison.'' The Commission now amends the definition of ''Prison'' in § 64.6000(r) of its rules to avoid potential confusion. In the *2015 ICS Order,* the Commission made clear that the term ''Prison'' should be restricted to facilities in which the majority of incarcerated people are sentenced to terms in excess of one year. This criterion is reflected in the first sentence of § 64.6000(r) of the Commission's rules. The second sentence of that rule states, however, that the term ''Prison'' includes certain facilities ''in which the majority of'' incarcerated people ''are post-conviction *or* are committed to confinement for sentences of longer than one year.'' The Commission replaces the disjunctive (''or'') with the conjunctive (''and'') in this sentence to make clear that a facility that otherwise meets the definition of ''Jail'' should be classified as a ''Prison'' only if the majority of its incarcerated people are both post-conviction *and* confined for more than one year. This change ensures that the definition conforms with the Commission's intent when it first adopted the rule.

99. Because § 64.6020 of the Commission's rules addresses five different types of ancillary service charges, the Commission also amends the heading of that rule to read ''Ancillary Service Charges,'' rather than ''Ancillary Service Charge.'' The Commission finds good cause to make this revision without notice and comment because it is editorial and

non-substantive, and therefore notice and comment is unnecessary.

Supplemental Final Regulatory Flexibility Analysis

Need for, and Objectives of, the 2022 Fourth Report and Order

100. Document FCC 22–76 adopts rules to improve access to communications services for incarcerated people with communication disabilities. Through these rules, the Commission requires that all inmate calling services providers provide access to all relay services eligible for TRS Fund support in any correctional facility in a jurisdiction with an average daily population of 50 or more inmates, where broadband is available, with the exception of non-IP CTS in facilities where IP CTS is offered. Non-IP CTS is required in any facility in a jurisdiction with an average daily population of 50 or more inmates, where IP CTS is not provided. The Commission also requires that where inmate calling services providers are required to provide access to all forms of TRS, they also must allow ASL point-to-point, video communication. Document FCC 22–76 amends the Commission's rules to clarify the rule prohibiting inmate calling services providers from assessing charges for TTY-based TRS calls. The Commission further expands the requirements under this section to prohibit inmate calling services providers from charging either party to VRS calls, STS calls, and internet Protocol Relay Service (IP Relay) calls, and adopts limits on the charges for internet Protocol Captioned Telephone Service calls, TTY-to-TTY calls, and point-to-point video calls conducted in ASL. The Commission also expands inmate calling services providers' annual reporting requirements to include all relay services. The Commission requires providers to list, for each facility served, the types of TRS that can be accessed from the facility and the number of completed calls and complaints for TTY-to-TTY calls, ASL point-to-point video calls, and each type of TRS for which access is provided. The Commission expands these reporting requirements regarding TRS and disability access to increase transparency and accountability into deployment and usage of TRS by incarcerated people with communication disabilities. The Commission also amends TRS user registration requirements to facilitate the use of TRS by eligible incarcerated individuals.

101. Document FCC 22–76 adopts other reforms to lessen the financial burden incarcerated people and their loved ones face when using calling services, as contemplated by document FCC 21–60. First, document FCC 22–76 prohibits providers from seizing or otherwise disposing of funds in inactive calling services accounts until at least 180 calendar days of continuous inactivity has passed in such accounts, except when funds are tendered for services rendered, disposed of in accordance with a controlling judicial or administrative mandate or state law requirement, or refunded to the customer. Second, document FCC 22–76 lowers certain ancillary service rate caps on provider charges for individual calls when neither the incarcerated person nor the person being called has an account with the provider. Document FCC 22–76 also lowers rate caps on provider charges for processing credit card, debit card, and other payments to calling services accounts. Finally, document FCC 22–76 amends the definitions of ''Jail'' and ''Prison'' to include institutions that the Commission has long intended to include in those definitions. *See* 47 U.S.C. 201, 225, 276.

Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

102. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

Types of Small Entities to Which Rules Will Apply

103. The types of entities affected are: wired telecommunications carriers; local exchange carriers; incumbent local exchange carriers; competitive local exchange carriers; interexchange carriers; local resellers; toll resellers; other toll carriers; payphone service providers; TRS providers; and other telecommunications.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

104. Document FCC 22–76 requires inmate calling services providers to provide incarcerated, TRS-eligible users the ability to access any relay service eligible for TRS Fund support, subject to some limitations. Providers must take all steps necessary to ensure that access to an appropriate relay service is made available promptly to each inmate who has a disability. In any correctional facility in a jurisdiction with an average daily population of 50 or more, located where broadband service is available, they must offer access to all forms of TRS and to ASL point-to-point video communication service.

105. As a part of the Commission's Annual Reporting and Certification Requirements, inmate calling services providers are required to submit certain information related to accessibility, including all relay services. Providers must list, for each facility served, the types of TRS that can be accessed from the facility and the number of completed calls and complaints for TTY-to-TTY calls, ASL point-to-point video calls, and each type of TRS for which access is provided. To facilitate TRS registration of eligible, incarcerated individuals, the Commission revises the data that TRS providers must collect. The Commission also allows enterprise registration for incarcerated VRS users.

106. Document FCC 22–76 prevents inmate calling services providers from seizing or otherwise disposing of funds deposited in a debit calling or prepaid calling account until at least 180 calendar days of continuous account inactivity has passed, except when funds are tendered for services rendered, disposed of in accordance with a controlling judicial or administrative mandate or state law requirement, or refunded to the customer. This rule is adopted on an interim basis, pending the Commission's analysis of additional information. Document FCC 22–76 also refines the interim rate caps for certain ancillary service charges. Specifically, it lowers the maximum ancillary services fees for single-call services and third-party financial transactions to $3.00 for single-call services and third-party financial transactions that involve automated payments, and to $5.95 for payments facilitated by a live agent.

Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

107. To address concerns raised by an inmate calling services provider that serves small rural jails, the Commission limits the scope of a provider's obligation to provide access to additional forms of TRS, pending further consideration of the costs, benefits, and alternatives to such obligations. The Commission does not require inmate calling services providers to offer such access in jurisdictions with an average daily population of fewer than 50 incarcerated individuals. The new rules requiring providers to provide access to ASL point-to-point video communication, in addition to VRS, will not impose a significant cost or other burden on inmate calling services

providers, as VRS providers already have the capability to comply with this requirement.

108. The Commission adopts an interim rule on the treatment of balances in inmate calling services accounts under which an account is considered ''inactive'' only after 180 days of continuous inactivity. This period is similar to the time frames several inmate calling services providers currently appear to follow, suggesting that implementation of this time frame is unlikely to cause inmate calling services providers, including those that may be small entities, undue burdens. The Commission's action lowering the maximum ancillary services fees providers may charge for single-call services and third-party financial transactions reflects a record that contains no suggestion that the lower fees will prevent inmate calling services providers, including those that may be small entities, from recovering their costs of providing those services.

Ordering Clauses

109. Pursuant to the authority contained in sections 1, 2, 4(i)–(j), 201(b), 218, 220, 225, 255, 276, 403, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 201(b), 218, 220, 225, 255, 276, 403, 617, the Fourth Report and Order in document FCC 22–76 *is adopted.*

110. Pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i)–(j), the Petition for Reconsideration that NCIC Inmate Communications filed on August 27, 2021, in WC Docket No. 12–375, *is dismissed as moot* to the extent stated in document FCC 22–76.

Congressional Review Act

111. The Commission sent a copy of document FCC 22–76 to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

Final Paperwork Reduction Act of 1995 Analysis

112. Document FCC 22–76 contains modified information collection requirements, which are not effective until approval is obtained from the Office of Management and Budget (OMB). As part of its continuing effort to reduce paperwork burdens, the Commission will invite the general public to comment on the information collection requirements as required by the Paperwork Reduction Act of 1995, Public Law 104–13. The Commission will publish a separate document in the **Federal Register** announcing approval of the information collection requirements. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 44 U.S.C. 3506(c)(4), the Commission previously sought comment on how the Commission might ''further reduce the information burden for small business concerns with fewer than 25 employees.'' 86 FR 40416, July 28, 2021.

List of Subjects in 47 CFR Part 64

Communications common carriers, Individuals with disabilities, Prisoners, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

Final Regulations

For the reasons set forth above, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 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; Pub. L. 115–141, Div. P, sec. 503, 132 Stat. 348, 1091.

Subpart F—Telecommunications Relay Services and Related Customer Premises Equipment for Persons With Disabilities

■ 2. The authority citation for subpart F continues to read as follows:

Authority: 47 U.S.C. 151–154; 225, 255, 303(r), 616, and 620.

■ 3. Amend § 64.601 by:

■ a. Redesignating paragraphs (a)(11) through (54) as paragraphs (a)(12) through (55);

■ b. Adding new paragraph (a)(11); and

■ c. Revising newly redesignated paragraph (a)(35).

The addition and revision read as follows:

§ 64.601 Definitions and provisions of general applicability.

(a) * * *

(11) *Carceral point-to-point video service.* A point-to-point video service that enables incarcerated people to engage in real-time direct video communication in ASL with another ASL speaker.

* * * * *

(35) *Qualified Direct Video Entity.* An individual or entity that is approved by the Commission for access to the TRS Numbering Database that is engaged in:

(i) Direct video customer support and that is the end-user customer that has been assigned a telephone number used for direct video customer support calls or is the designee of such entity; or

(ii) Carceral point-to-point video service as that term is defined in this section.

* * * * *

■ 4. Amend § 64.604 by revising paragraph (a)(3)(i) and adding paragraph (a)(3)(ix) to read as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(a) * * *

(3) * * *

(i) Consistent with the obligations of telecommunications carrier operators, CAs are prohibited from refusing single or sequential calls or limiting the length of calls utilizing relay services, except that the number and duration of calls to or from incarcerated persons may be limited in accordance with a correctional authority's generally applicable policies regarding telephone calling by incarcerated persons.

* * * * *

(ix) This paragraph (a)(3) does not require that TRS providers serving incarcerated persons allow types of calls or calling features that are not permitted for hearing people incarcerated in the correctional facility being served.

* * * * *

■ 5. Amend § 64.611 by adding paragraph (k) to read as follows:

§ 64.611 Internet-based TRS registration.

* * * * *

(k) *Registration for use of TRS in correctional facilities*—(1) *Individual user registration.* (i) through (iii) [Reserved]

(iv) *Dial-around calls for VRS.* VRS providers shall not allow dial-around calls by incarcerated persons.

(2) *Enterprise user registration for VRS.* Notwithstanding the other provisions of this section, for the purpose of providing VRS to incarcerated individuals under enterprise registration, pursuant to paragraph (a)(6) of this section, a TRS provider may assign to a correctional authority a pool of telephone numbers that may be used interchangeably with any videophone or other user device made available for the use of VRS in correctional facilities overseen by such authority. For the purpose of such enterprise registration, the address of the organization specified pursuant to paragraph (a)(6)(iii) of this section may be the main or administrative address of the correctional authority, and a Registered Location need not be provided.

■ 6. Delayed indefinitely, further amend § 64.611 by adding paragraphs (k)(1)(i) through (iii) to read as follows:

§ 64.611 Internet-based TRS registration.

* * * * *

(k) * * *

(1) * * *—

(i) *Registration information and documentation.* If an individual eligible to use TRS registers with an internet-based TRS provider while incarcerated, the provider shall collect and transmit to the TRS User Registration Database the information and documentation required by the applicable provisions of this section, except that:

(A) The residential address specified for such incarcerated person shall be the name of the correctional authority with custody of that person along with the main or administrative address of such authority;

(B) A Registered Location need not be provided; and

(C) If an incarcerated person has no Social Security number or Tribal Identification number, an identification number assigned by the correctional authority along with the facility identification number, if there is one, may be provided in lieu of the last four digits of a Social Security number or a Tribal Identification number.

(ii) *Verification of VRS and IP CTS registration data.* An incarcerated person's identity and address may be verified pursuant to § 64.615(a)(6), for purposes of VRS or IP CTS registration, based on documentation, such as a letter or statement, provided by an official of a correctional authority that states the name of the person; the person's identification number assigned by the correctional authority; the name of the correctional authority; and the address of the correctional facility. The VRS or IP CTS provider shall transmit such documentation to the TRS User Registration Database administrator.

(iii) *Release or transfer of incarcerated person.* Upon release (or transfer to a different correctional authority) of an incarcerated person who has registered for VRS or IP CTS, the VRS or IP CTS provider with which such person has registered shall update the person's registration information within 30 days after such release or transfer. Such updated information shall include, in the case of release, the individual's full residential address and (if required by this section or part 9 of this chapter) Registered Location, and in the case of transfer, shall include the information required by paragraph (k)(1)(ii) of this section.

* * * * *

■ 7. Amend § 64.613 by:

■ a. Revising paragraphs (a)(2), (c) heading, (c)(1)(v), (c)(3)(ii), and (c)(5)(ii);

■ b. Redesignating paragraphs (c)(5)(iii) through (v) as paragraphs (c)(5)(iv) through (vi);

■ c. Adding new paragraph (c)(5)(iii); and

■ d. Revising paragraphs (c)(6) and (c)(7)(iii) and (iv).

The addition and revisions read as follows:

§ 64.613 Numbering directory for Internet-based TRS users.

(a) * * *

(2) For each record associated with a geographically appropriate NANP telephone number for a registered VRS user, enterprise videophone, public videophone, direct video customer support center, carceral point-to-point video service, or hearing point-to-point video user, the URI shall contain a server domain name or the IP address of the user's device. For each record associated with an IP Relay user's geographically appropriate NANP telephone number, the URI shall contain the user's user name and domain name that can be subsequently resolved to reach the user.

* * * * *

(c) *Direct video customer support and carceral point-to-point video service*—

(1) * * *

(v) Certification that the applicant's description of service meets the definition of direct video customer support or carceral point-to-point video service and that the information provided is accurate and complete.

* * * * *

(3) * * *

(ii) Automatically if one year elapses with no call-routing queries received regarding any of the Qualified Direct Video Entity's NANP telephone numbers for direct video customer support; or

* * * * *

(5) * * *

(ii) Being able to make point-to-point calls to any VRS user in accordance with all interoperability standards applicable to VRS providers, including, but not limited to, the relevant technical standards specified in § 64.621(b);

(iii) For direct video customer support being able to receive point-to-point or VRS calls from any VRS user in accordance with all interoperability standards applicable to VRS providers, including, but not limited to, the relevant technical standards specified in § 64.621(b);

* * * * *

(6) *Call transfer capability.* A Qualified Direct Video Entity engaged in direct video customer support shall ensure that each customer support center is able to initiate a call transfer that converts a point-to-point video call into a VRS call, in the event that a VRS user communicating with a direct video customer agent needs to be transferred to a hearing person while the call is in progress. Each VRS provider shall be capable of activating an effective call transfer procedure within 60 days after receiving a request to do so from a Qualified Direct Video Entity engaged in direct video customer support.

(7) * * *

(iii) The name of the correctional facility or end-user customer support center (if different from the Qualified Direct Video Entity);

(iv) Contact information for the correction facility or end-user customer support call center(s); and

* * * * *

Subpart FF—Inmate Calling Services

■ 8. Amend § 64.6000 by revising paragraphs (m)(3) and (r) and adding paragraphs (y) and (z) to read as follows:

§ 64.6000 Definitions.

* * * * *

(m) * * *

(3) Post-conviction and awaiting transfer to another facility. The term also includes city, county, or regional facilities that have contracted with a private company to manage day-to-day operations; privately owned and operated facilities primarily engaged in housing city, county or regional Inmates; facilities used to detain individuals, operated directly by the Federal Bureau of Prisons or U.S. Immigration and Customs Enforcement, or pursuant to a contract with those agencies; juvenile detention centers; and secure mental health facilities.

* * * * *

(r) *Prison* means a facility operated by a territorial, state, or Federal agency that is used primarily to confine individuals convicted of felonies and sentenced to terms in excess of one year. The term also includes public and private facilities that provide outsource housing to other agencies such as the State Departments of Correction and the Federal Bureau of Prisons; and facilities that would otherwise fall under the definition of a Jail but in which the majority of inmates are post-conviction and are committed to confinement for sentences of longer than one year.

* * * * *

(y) *Controlling Judicial* or *Administrative Mandate* means:

(1) A final court order requiring an incarcerated person to pay restitution;

(2) A fine imposed as part of a criminal sentence;

(3) A fee imposed in connection with a criminal conviction; or

(4) A final court or administrative agency order adjudicating a valid contract between the provider and the account holder, entered into prior to September 30, 2022, that allows or requires that an Inmate Calling Services Provider act in a manner that would otherwise violate § 64.6130.

(z) *Jurisdiction* means:

(1) The state, city, county, or territory where a law enforcement authority is operating or contracting for the operation of a Correctional Facility; or

(2) The United States for a Correctional Facility operated by or under the contracting authority of a Federal law enforcement agency.

■ 9. Amend § 64.6020 by revising the section heading and paragraphs (b)(2) and (5) to read as follows:

§ 64.6020 Ancillary Service Charges.

* * * * *

(b) * * *

(2) For Single-Call and Related Services—when the transaction is paid for through an automated payment system, $3.00 per transaction, plus the effective, per-minute rate; or when the transaction is paid via a live agent, $5.95 per transaction, plus the effective, per-minute rate;

* * * * *

(5) For Third-Party Financial Transaction Fees—when the transaction is paid through an automated payment system, $3.00 per transaction; or when the transaction is paid via a live agent, $5.95 per transaction.

■ 10. Revise § 64.6040 to read as follows:

§ 64.6040 Communications access for incarcerated people with communication disabilities.

(a) A Provider shall provide incarcerated people access to TRS and related communication services as described in this section, except where the correctional authority overseeing a facility prohibits such access.

(b)(1) A Provider shall provide access for incarcerated people with communication disabilities to Traditional (TTY-Based) TRS and STS.

(2) Beginning January 1, 2024, a Provider serving a correctional facility in any jurisdiction with an Average Daily Population of 50 or more incarcerated persons shall:

(i) Where broadband internet access service is available, provide access to any form of TRS (in addition to Traditional TRS and STS) that is eligible for TRS Fund support (except that a Provider need not provide access to *non-internet Protocol* Captioned Telephone Service in any facility where it provides access to IP CTS); and

(ii) Where broadband internet access service is available, provide access to a point-to-point video service, as defined in § 64.601(a)(33), that allows communication in American Sign Language (ASL) with other ASL users; and

(iii) Where broadband internet access service is not available, provide access to *non-internet Protocol* Captioned Telephone Service, in addition to Traditional TRS and STS.

(c) [Reserved]

(d)(1) Except as provided in this paragraph (d), no Provider shall levy or collect any charge or fee on or from any party to a TRS call to or from an incarcerated person, or any charge for the use of a device or transmission service when used to access TRS from a Correctional Facility.

(2) When providing access to IP CTS or CTS, a Provider may assess a charge for such IP CTS or CTS call that does not exceed the charge levied or collected by the Provider for a voice telephone call of the same duration, distance, Jurisdiction, and time-of-day placed to or from an individual incarcerated at the same Correctional Facility.

(3) When providing access to a point-to-point video service, as defined in § 64.601(a)(33), for incarcerated individuals with communication disabilities who can use ASL, the total charges or fees that a Provider levies on or collects from any party to such point-to-point video call, including any charge for the use of a device or transmission service, shall not exceed the charge levied or collected by the Provider for a voice telephone call of the same duration, distance, Jurisdiction, and time-of-day placed to or from an individual incarcerated at the same Correctional Facility.

(4) No Provider shall levy or collect any charge in excess of 25 percent of the applicable per-minute rate for TTY-to-TTY calls when such calls are associated with Inmate Calling Services.

■ 11. Delayed indefinitely, further amend § 64.6040 by adding paragraph (c) to read as follows:

§ 64.6040 Communications access for incarcerated people with communication disabilities.

* * * * *

(c) As part of its obligation to provide access to TRS, a Provider shall:

(1) Make all necessary contractual and technical arrangements to ensure that, consistent with the security needs of a Correctional Facility, incarcerated individuals eligible to use TRS can access at least one certified Provider of each form of TRS required by this section;

(2) Work with correctional authorities, equipment vendors, and TRS providers to ensure that screen-equipped communications devices such as tablets, smartphones, or videophones are available to incarcerated people who need to use TRS for effective communication, and all necessary TRS provider software applications are included, with any adjustments needed to meet the security needs of the institution, provide compatibility with institutional communication systems, and allow operability over the Inmate Calling Services Provider's network;

(3) Provide any assistance needed by TRS providers in collecting the registration information and documentation required by § 64.611 from incarcerated users and correctional authorities; and

(4) When an incarcerated person who has individually registered to use VRS, IP Relay, or IP CTS is released from incarceration or transferred to another correctional authority, notify the TRS provider(s) with which the incarcerated person has registered.

* * * * *

■ 12. Delayed indefinitely, amend § 64.6060 by revising paragraphs (a)(5), (6), and (7) to read as follows:

§ 64.6060 Annual reporting and certification requirement.

(a) * * *

(5) For each facility served, the kinds of TRS that may be accessed from the facility;

(6) For each facility served, the number of calls completed during the reporting period in each of the following categories:

(i) TTY-to-TTY calls;

(ii) Point-to-point video calls placed or received by ASL users as those terms are defined in § 64.601(a); and

(iii) TRS calls, broken down by each form of TRS that can be accessed from the facility; and

(7) For each facility served, the number of complaints that the reporting Provider received in each of the categories set forth in paragraph (a)(6) of this section.

* * * * *

■ 13. Add § 64.6130 to read as follows:

§ 64.6130 Interim protections of consumer funds in inactive accounts.

(a) All funds deposited into a debit calling or prepaid calling account that can be used to pay for interstate or

international Inmate Calling Services or associated ancillary services shall remain the property of the account holder unless or until the funds are either:

(1) Used to pay for products or services purchased by the account holder or the incarcerated person for whose benefit the account was established;

(2) Disposed of in accordance with a Controlling Judicial or Administrative Mandate; or

(3) Disposed of in accordance with applicable state law requirements, including, but not limited to, requirements governing unclaimed property.

(b) No provider may seize or otherwise dispose of unused funds in a debit calling or prepaid calling account until at least 180 calendar days of continuous account inactivity has passed, or at the end of any alternative period set by state law, except as provided in paragraph (a) of this section or through a refund to the customer.

(c) The 180-day period, or alternative period set by state law, must be continuous. Any of the following actions by the account holder or the incarcerated person for whose benefit the account was established ends the period of inactivity and restarts the 180-day period:

(1) Depositing, crediting, or otherwise adding funds to an account;

(2) Withdrawing, spending, debiting, transferring, or otherwise removing funds from an account; or

(3) Expressing an interest in retaining, receiving, or transferring the funds in an account, or otherwise attempting to exert or exerting ownership or control over the account or the funds held within the account.

(d) After 180 days of continuous account inactivity have passed, or at the end of any alternative period set by state law, the provider must make reasonable efforts to refund the balance in the account to the account holder.

(e) If a provider's reasonable efforts to refund the balance of the account fail, the provider must treat the remaining funds in accordance with applicable state consumer protection law requirements concerning unclaimed funds or the disposition of such funds.

[FR Doc. 2022–25192 Filed 12–8–22; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 211101–0222; RTID 0648–XC572]

Fisheries of the Atlantic; Atlantic Migratory Group Cobia; 2022 Commercial Closure for Atlantic Migratory Group Cobia

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements a closure in Federal waters off Georgia through New York for Atlantic migratory group cobia (Atlantic cobia) that are harvested and sold (commercial). Commercial landings of Atlantic cobia are projected to reach the commercial quota on December 16, 2022. Therefore, NMFS closes the commercial sector for Atlantic cobia in Federal waters from December 16, 2022, until the start of the next fishing year on January 1, 2023. This closure is necessary to protect the Atlantic cobia resource.

DATES: This temporary rule is effective at 12:01 a.m. eastern time on December 16, 2022, until 12:01 a.m. eastern time on January 1, 2023.

FOR FURTHER INFORMATION CONTACT: Frank Helies, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *frank.helies@noaa.gov.*

SUPPLEMENTARY INFORMATION: The fishery for Atlantic cobia in Federal waters is managed under the authority of the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act) by regulations at 50 CFR part 697.

Separate migratory groups of cobia are managed in the Gulf of Mexico and Atlantic. Atlantic cobia is managed from Georgia through New York (50 CFR 697.2(a)). The southern boundary for Atlantic cobia is a line that extends due east of the Florida and Georgia state border at 30°42′45.6″ N latitude. The northern boundary for Atlantic cobia is the jurisdictional boundary between the Mid-Atlantic and New England Fishery Management Councils, as specified in 50 CFR 600.105(a). The fishing year for Atlantic cobia is January 1 through December 31 (50 CFR 697.28(a)).

Amendment 31 to the Fishery Management Plan (FMP) for Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region and the implementing final rule removed Atlantic cobia from Federal management under the Magnuson-Stevens Fishery Conservation and Management Act, while also implementing comparable regulations in Federal waters under the Atlantic Coastal Act (84 FR 4733, February 19, 2019).

The Atlantic States Marine Fisheries Commission (ASMFC) approved Amendment 1 to the Interstate FMP for Atlantic Cobia in 2019 and Addendum 1 to Amendment 1 in 2020. Amendment 1 and Addendum 1 provided for an increase in the commercial quota and transferred quota monitoring responsibility to the ASMFC. NMFS subsequently issued comparable regulations for Amendment 1 and Addendum 1 on November 8, 2021 (86 FR 61714, November 8, 2021). That final rule increased the commercial quota to 73,116 lb (33,165 kg) and transferred quota monitoring responsibility from NMFS to the ASMFC (50 CFR 697.28(f)(1)). Additionally as described in that final rule, during the fishing year, if the ASMFC estimates that the sum of commercial landings (cobia that are sold), reaches or is projected to reach the commercial quota, then the ASMFC will notify NMFS of the need for a commercial closure of Atlantic Federal waters for Atlantic cobia (50 CFR 697.28(f)(1)).

Atlantic cobia are unique among federally managed species in the U.S. southeast region, because no commercial permit is required to harvest and sell them, and so the distinction between the commercial and recreational sectors is not as clear as with other federally managed species. However, for purposes of this temporary rule, Atlantic cobia that are harvested and sold are considered commercially caught, and those that are harvested and not sold are considered recreationally caught.

On November 16, 2022, the ASMFC notified NMFS that commercial landings information indicates that the commercial quota is estimated to be met by December 16, 2022. Accordingly, the ASMFC requested that NMFS close commercial harvest of Atlantic cobia in Atlantic Federal waters on December 16, 2022, to prevent the commercial quota from being exceeded.

Regulations for the commercial sector of Atlantic cobia at 50 CFR 697.28(f)(1) require that NMFS file a notification with the Office of the Federal Register to prohibit the harvest, sale, trade, barter, or purchase of Atlantic cobia for the remainder of the fishing year when commercial landings reach or are projected to reach the commercial quota

specified in 50 CFR 697.28(f)(1). Accordingly, the commercial sector for Atlantic cobia is closed in Federal waters beginning on December 16, 2022, and will remain closed until the start of the next fishing year on January 1, 2023.

The recreational bag and possession limits for Atlantic cobia apply while the recreational sector is open (50 CFR 697.28(e)). The prohibition on sale and purchase does not apply to Atlantic cobia that were harvested, landed ashore, and sold before December 16, 2022, and were held in cold storage by a dealer or processor.

Classification

NMFS issues this action pursuant to the Atlantic Coastal Act. This action is required by 50 CFR 697.28(f)(1) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment as such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the regulations associated with the commercial quota and closure provisions for Atlantic cobia have already been subject to notice and comment, and all that remains is to notify the public of the commercial closure for the remainder of the 2022 fishing year. Prior notice and opportunity for public comment on this action is contrary to the public interest because of the need to immediately implement the commercial closure to protect Atlantic cobia, since the capacity of the fishing fleet allows for rapid harvest of the commercial quota. Prior notice and opportunity for public comment would require time and would likely result in a harvest that exceeds the commercial quota.

For the aforementioned reasons, there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in the effective date of this action.

Authority: 16 U.S.C. 5101 *et seq.*

Dated: December 5, 2022.

Jennifer M. Wallace,

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

[FR Doc. 2022–26768 Filed 12–8–22; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 87, No. 236
Friday, December 9, 2022

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

FEDERAL ELECTION COMMISSION

11 CFR Parts 1, 4, 5, 6, 100, 102, 103, 104, 105, 106, 108, 109, 110, 111, 112, 114, 116, 200, 201, 300, 9003, 9004, 9007, 9032, 9033, 9034, 9035, 9036, 9038, and 9039

[NOTICE 2022–20]

Technological Modernization

AGENCY: Federal Election Commission.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Federal Election Commission is seeking additional public comment on previously proposed rules that would modernize the agency's regulations in light of technological advances in communications, recordkeeping, and financial transactions, and that would eliminate and update references to outdated technologies and address similar technological issues. In particular, the Commission presently seeks comments on whether its definition of ''public communication'' should also include Internet communications that are ''promoted for a fee'' on another person's website, digital device, application, or advertising platform. The Commission also seeks to elicit comments concerning whether ''Internet public communications,'' a new defined term, should include public communications ''promoted for a fee'' on another person's website, digital device, application, or advertising platform. No final decision has been made by the Commission on the issues presented in this rulemaking.

DATES: Comments must be submitted on or before January 9, 2023.

ADDRESSES: All comments must be in writing. Commenters may submit comments electronically via the Commission's website at *http://sers.fec.gov/fosers/,* reference REG 2013–01.

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

FOR FURTHER INFORMATION CONTACT: Ms. Amy L. Rothstein, Assistant General Counsel, or Ms. Joanna S. Waldstreicher or Mr. Tony Buckley, Attorneys, Office of the General Counsel, at *techmod@fec.gov,* or at (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission published its original proposals in a Notice of Proposed Rulemaking (''NPRM'') on November 2, 2016.[1] The Commission had previously issued an Advance Notice of Proposed Rulemaking (''ANPRM'') on the subject.[2] The Commission received several public comments in response to both the ANPRM and the NPRM, which are available on the Commission's website at *https://sers.fec.gov/fosers/search.htm* (reference REG 2013–01). On September 8, 2022, the Commission requested additional comment about any technological developments relating to electronic payment processing, newer electronic payment technologies, and contributions made via prepaid cards that may have occurred following publication of the NPRM that would be relevant to the Commission's consideration of its proposed rules.[3] The Commission received several public comments in response to its Request for Additional Comment, which are available on the Commission's website at *https://sers.fec.gov/fosers/search.htm* (reference REG 2013–01).

The Commission presently seeks public comment with respect to one of its proposals to modernize campaign finance regulations in light of technological advances. In a separate rulemaking, the Commission changed the definition of ''public communication'' at 11 CFR 100.26 and adopted a new defined term— ''Internet public communication''—which appears at new 11 CFR 110.11(c)(5)(i). *See generally* REG 2011–02: Draft Final Rule and Explanation and Justification for Internet Communications Disclaimers (Agenda Doc. 22–52–B) (''Internet Communications Rule''). The revised definition of ''public communication'' at § 100.26 includes those communications that are ''placed for a fee on another person's website, digital device, application, or advertising platform.'' Internet Communications Rule at 16. The new defined term ''Internet public communication'' at new § 110.11(c)(5)(i) parallels the revised definition of ''public communication'' at § 100.26 by defining ''internet public communication'' as ''any public communication over the internet that is placed for a fee on another person's website, digital device, application, or advertising platform.'' Internet Communications Rule at 26.

In light of the changes in the Internet Communications Rule, as well as developments in advertising practices on the Internet, the Commission seeks comments on whether the revised definition of ''public communication'' at § 100.26, and the new term ''internet public communication'' at § 110.11(c)(5)(i), should also include communications that are ''promoted for a fee'' on another person's website, digital device, application, or advertising platform, and whether such communications that are ''promoted for a fee'' should be subject to the Commission's disclaimer requirements.

The Commission also seeks comments on how general public political advertising on the internet would be affected by the inclusion of the phrase ''promoted for a fee'' on another person's website, digital device, application, or advertising platform in §§ 100.26 and 110.11(c)(5)(i), and whether the wide and rapidly expanding array of options available in the internet advertising market bring to bear any particular considerations or concerns of which the Commission should be mindful or that warrant a particular approach.

[1] Technological Modernization, 81 FR 76416 (Nov. 2, 2016).

[2] Technological Modernization, 78 FR 25635 (May 2, 2013).

[3] Technological Modernization, 87 FR 54915 (Sept. 8, 2022).

To this end, the Commission seeks comments about whether, both for purposes of the term ''internet public communication'' and the Commission's disclaimer requirements, a distinction should be made between communications over the internet where (1) a person is paid to republish content containing express advocacy or soliciting a contribution on a third party's website, digital device, application, or advertising platform in order to increase the circulation or prominence of that content; (2) a website, digital device, application, or advertising platform is paid directly to ''boost'' or expand the scope of viewership of content containing express advocacy or soliciting a contribution in order to increase the circulation or prominence of that content; and (3) a person is paid to create or generate content containing express advocacy or soliciting a contribution, which then appears on a third party's website, digital device, application, or advertising platform.

Finally, the Commission is soliciting comments concerning whether and how this proposed change to the definitions of ''public communication'' and ''internet public communication'' would affect regulated entities broadly, including in contexts unrelated to the required disclaimers for a given communication.

Conclusion

As explained above, the Commission is soliciting comments concerning the proposed addition of certain communications ''promoted for a fee'' to its definitions of ''public communication'' and ''internet public communication.'' The details of this proposal can be found on the Commission's website at *https://sers.fec.gov/fosers/search.htm* (reference REG 2011–02). The Commission's goal in this rulemaking is to promulgate final rules that are flexible enough to encompass both non-electronic and electronic forms of payments, communications, and internet advertising, and that remain relevant as new forms of information storage, communication, payment, and advertising methods and media emerge and develop in the future. Accordingly, the Commission welcomes comments on the issues and questions addressed by this rulemaking, and on any related issues.

On behalf of the Commission.

Dated: December 1, 2022.

Allen J. Dickerson,

Chairman, Federal Election Commission.

[FR Doc. 2022–26777 Filed 12–8–22; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1304; Project Identifier AD–2022–00347–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all The Boeing Company Model 767–300F airplanes. This proposed AD was prompted by a report indicating that the installation requirements were not followed for the first observer seat in the flight deck. This proposed AD would require installing placards in various locations of the flight deck to indicate the proper position for the first observer seat during taxi, takeoff, and landing, and revising the existing airplane flight manual (AFM). 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* under Docket No. FAA–2022–1304; 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 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–2022–1304.

FOR FURTHER INFORMATION CONTACT: Kumar Khatri, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3842; email: *kumar.r.khatri@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–2022–1304; Project Identifier AD–2022–00347–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 Kumar Khatri, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3842; email: *kumar.r.khatri@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has received a non-compliance report indicating that the technical standard order installation requirements for the first observer seat in the flight deck were not followed. When the first observer seat, located in front of the supernumerary seats, is in the furthest aft position on the seat tracks, the ''head path stay out zone'' is compromised. This condition, if not addressed, could result in occupants seated in the right or center supernumerary seats sustaining an injury during an emergency landing.

FAA's Determination

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Special Attention Requirements Bulletin 767–25–0589 RB, dated February 25, 2022. This service information specifies procedures for installing markers (placards) in the flight deck regarding the position of the first observer seat position during taxi, takeoff, and landing.

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. This proposed AD would also require revising the existing AFM to include procedures for briefing all occupants other than the flightcrew members regarding the first observer seat position for taxi, takeoff, and landing, as indicated by the placards installed in the flight deck.

Compliance With AFM Revisions

Section 91.9 prohibits any person from operating a civil aircraft without complying with the operating limitations specified in the AFM and on installed placards. FAA regulations also require operators to furnish pilots with any changes to the AFM (14 CFR 121.137) and pilots in command to be familiar with the AFM and installed placards containing operating limitations(14 CFR 91.505).

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 153 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
Placard installation	1 work-hour × $85 per hour = $85	Up to $117	Up to $202	Up to $30,906.
AFM revision	1 work-hour × $85 per hour = $85	$0	$85	$13,005.

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–2022–1304; Project Identifier AD–2022–00347–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 all The Boeing Company Model 767–300F airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 11, Placards and markings.

(e) Unsafe Condition

This AD was prompted by a report indicating that the installation requirements were not followed for the first observer seat in the flight deck. When the first observer seat, located in front of the supernumerary seats, is in the furthest aft position on the seat tracks the ''head path stay out zone'' is compromised. The FAA is issuing this AD to address this condition, which if not addressed, could result in occupants seated in the right or center supernumerary seats sustaining an injury during an emergency landing.

(f) Compliance

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

(g) Placard Installation

Except as specified by paragraph (h) of this AD: At the applicable time specified in the ''Compliance'' paragraph of Boeing Special Attention Requirements Bulletin 767–25–0589 RB, dated February 25, 2022, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Special Attention Requirements Bulletin 767–25–0589 RB, dated February 25, 2022.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Special Attention Service Bulletin 767–25–0589, dated February 25, 2022, which is referred to in Boeing Special Attention Requirements Bulletin 767–25–0589 RB, dated February 25, 2022.

(h) Exception to Service Information Specifications

Where the Compliance Time column of the table in the ''Compliance'' paragraph of Boeing Special Attention Requirements Bulletin 767–25–0589 RB, dated February 25, 2022, uses the phrase ''the original issue date of Requirements Bulletin 767–25–0589 RB,'' this AD requires using ''the effective date of this AD.''

(i) Revision of Existing Airplane Flight Manual (AFM)

Within 12 months after the effective date of this AD, revise Section 3.1 of the Normal Procedures Section of the existing AFM to include the information in figure 1 to paragraph (i) of this AD. This may be done by inserting a copy of figure 1 to paragraph (i) of this AD into the existing AFM.

Figure 1 to paragraph (i): *Flight deck occupancy (freighter airplane)*

(Required by AD *****-**-**)

FLIGHT DECK OCCUPANCY (Freighter Airplane)

The following item should be briefed to all occupants other than flight crew members by the appropriate flight crew member, prior to pushback or engine start:

Occupant seat position for Taxi, Takeoff, and Landing as indicated by placards.

(j) 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 (k) 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.

(k) Related Information

For more information about this AD, contact Kumar Khatri, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3842; email: *kumar.r.khatri@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) Boeing Special Attention Requirements Bulletin 767–25–0589 RB, dated February 25, 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 12, 2022.

Christina Underwood,

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

[FR Doc. 2022–26616 Filed 12–8–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1577; Project Identifier MCAI–2022–00860–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2022–09–06, which applies to certain Airbus SAS Model A350–941 and –1041 airplanes. AD 2022–09–06 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. Since the FAA issued AD 2022–09–06, the FAA has determined that new or more restrictive airworthiness limitations are necessary. This proposed AD would continue to require the actions in AD 2022–09–06 and would require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. 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* under Docket No. FAA–2022–1577; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For material that is proposed for IBR in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.* It is also available at *regulations.gov* under Docket No. FAA–2022–1577.
- 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.

FOR FURTHER INFORMATION CONTACT: Dat Le, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 516–228–7317; email *dat.v.le@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–2022–1577; Project Identifier MCAI–2022–00860–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 Dat Le, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 516–228–7317; email *dat.v.le@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2022–09–06, Amendment 39–22026 (87 FR 29654, May 16, 2022; corrected May 23, 2022 (87 FR 31123)) (AD 2022–09–06), for certain Airbus SAS Model A350–941 and –1041 airplanes. AD 2022–09–06 was prompted by MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2021–0208, dated September 15, 2021 (EASA AD 2021–0208) (which corresponds to FAA AD 2022–09–06), to correct an unsafe condition.

AD 2022–09–06 requires revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations. The FAA issued AD 2022–09–06 to address hazardous or catastrophic airplane system failures. AD 2022–09–06 specifies that accomplishing the revision required by that AD terminates certain requirements of AD 2019–20–01, Amendment 39–19754 (84 FR 55495, October 17, 2019) (AD 2019–20–01).

Actions Since AD 2022–09–06 Was Issued

Since the FAA issued AD 2022–09–06, EASA superseded AD 2021–0208 and issued EASA AD 2022–0127, dated June 28, 2022 (EASA AD 2022–0127) (referred to after this as the MCAI), for certain Airbus SAS Model A350–941

and –1041 airplanes. The MCAI states that new and/or more restrictive tasks and limitations were introduced for Airbus A350 airplanes.

Airplanes with an original airworthiness certificate or original export certificate of airworthiness issued after May 2, 2022, must comply with the airworthiness limitations specified as part of the approved type design and referenced on the type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability.

The FAA is issuing this AD to address hazardous or catastrophic airplane system failures. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1577.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2022–0127. This service information specifies new or more restrictive airworthiness limitations for airplane structures and safe life limits.

This proposed AD would also require EASA AD 2021–0208, dated September 15, 2021, which the Director of the Federal Register approved for incorporation by reference as of June 21, 2022 (87 FR 29654, May 16, 2022; corrected May 23, 2022 (87 FR 31123)).

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

FAA's Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI described above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would retain certain requirements of AD 2022–09–06. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, which are specified in EASA AD 2022–0127 already described, as proposed for incorporation by reference. Any differences with EASA AD 2022–0127 are identified as exceptions in the regulatory text of this AD.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (n)(1) of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to retain the IBR of EASA AD 2021–0208 and incorporate EASA AD 2022–0127 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2021–0208 and EASA AD 2022–0127 through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2021–0208 or EASA AD 2022–0127 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2021–0208 or EASA AD 2022–0127. Service information required by EASA AD 2021–0208 and EASA AD 2022–0127 for compliance will be available at *regulations.gov* by searching for and locating Docket No. FAA–2022–1577 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

The FAA's process of incorporating by reference MCAI ADs as the primary source of information for compliance with corresponding FAA ADs has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI ADs that require a change to airworthiness limitation documents, such as airworthiness limitation sections.

For these ADs that incorporate by reference an MCAI AD that changes airworthiness limitations, the FAA requirements are unchanged. Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document. The airworthiness limitations must be followed according to 14 CFR 91.403(c) and 91.409(e).

The previous format of the airworthiness limitation ADs included a paragraph that specified that no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions and intervals are approved as an AMOC in accordance with the procedures specified in the AMOCs paragraph under ''Additional AD Provisions.'' This new format includes a ''New Provisions for Alternative Actions and Intervals'' paragraph that does not specifically refer to AMOCs, but operators may still request an AMOC to use an alternative action or interval.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 30 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA estimates the total cost per operator for the retained actions from AD 2022–09–06 to be $7,650 (90 work-hours × $85 per work-hour).

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate.

The FAA estimates the total cost per operator for the new proposed actions to be $7,650 (90 work-hours × $85 per work-hour).

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:

■ a. Removing Airworthiness Directive (AD) AD 2022–09–06, Amendment 39–22026 (87 FR 29654, May 16, 2022; corrected May 23, 2022 (87 FR 31123)); and

■ b. Adding the following new AD:

Airbus SAS: Docket No. FAA–2022–1577; Project Identifier MCAI–2022–00860–T.

(a) Comments Due Date

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

(b) Affected ADs

(1) This AD replaces AD 2022–09–06, Amendment 39–22026 (87 FR 29654, May 16, 2022; corrected May 23, 2022 (87 FR 31123)) (AD 2022–09–06).

(2) This AD affects AD 2019–20–01, Amendment 39–19754 (84 FR 55495, October 17, 2019) (AD 2019–20–01).

(c) Applicability

This AD applies to Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before May 2, 2022.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address hazardous or catastrophic airplane system failures.

(f) Compliance

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

(g) Retained Maintenance or Inspection Program Revision, With No Changes

This paragraph restates the requirements of paragraph (j) of AD 2022–09–06, with no changes. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before July 20, 2021: Except as specified in paragraph (h) of this AD, comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0208, dated September 15, 2021 (EASA AD 2021–0208). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (j) of this AD terminates the requirements of this paragraph.

(h) Retained Exceptions to EASA AD 2021–0208, With No Changes

This paragraph restates the exceptions specified in paragraph (k) of AD 2022–09–06, with no changes.

(1) Where EASA AD 2021–0208 refers to its effective date, this AD requires using June 21, 2022 (the effective date of AD 2022–09–06).

(2) The requirements specified in paragraphs (1) and (2) of EASA AD 2021–0208 do not apply to this AD.

(3) Paragraph (3) of EASA AD 2021–0208 specifies revising ''the approved AMP [aircraft maintenance program]'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after June 21, 2022 (the effective date of AD 2022–09–06).

(4) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2021–0208 is at the applicable ''limitations'' as incorporated by the requirements of paragraph (3) of EASA AD 2021–0208, or within 90 days after June 21, 2022 (the effective date of AD 2022–09–06), whichever occurs later.

(5) The provisions specified in paragraphs (4) and (5) of EASA AD 2021–0208 do not apply to this AD.

(6) The ''Remarks'' section of EASA AD 2021–0208 does not apply to this AD.

(7) Where EASA AD 2021–0208 refers to Airbus A350 Airworthiness Limitations Section (ALS) Part 4, Revision 6 and Variation 6.1, replace the text ''Airbus A350 Airworthiness Limitations Section (ALS) Part 4, Revision 6 and Variation 6.1,'' with ''Airbus A350 Airworthiness Limitations Section (ALS) Part 4, Revision 6 and Variation 6.1; for any airworthiness limitations (tasks and life limits) that are in both documents, the airworthiness limitations (tasks and life limits) specified in Variation 6.1 prevail.''

(i) Retained Provisions for Alterative Actions and Intervals With a New Exception

This paragraph restates the requirements of paragraph (l) of AD 2022–09–06, with a new exception. Except as required by paragraph (j) of this AD, after the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2021–0208.

(j) New Revision of the Existing Maintenance or Inspection Program

Except as specified in paragraph (k) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2022–0127, dated June 28, 2022 (EASA AD 2022–0127). Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements of paragraph (g) of this AD.

(k) Exceptions to EASA AD 2022–0127

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2022–0127 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2022–0127 specifies to revise ''the AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2022–0127 is at the applicable ''limitations'' as incorporated by the requirements of paragraph (3) of EASA AD 2022–0127, or within 90 days after the effective date of this AD, whichever occurs later.

(4) The provisions specified in paragraphs (4) and (5) of EASA AD 2022–0127 do not apply to this AD.

(5) The ''Remarks'' section of EASA AD 2022–0127 does not apply to this AD.

(l) New Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2022–0127.

(m) Terminating Action for Certain Requirements of AD 2019–20–01

Accomplishing the actions required by paragraph (g) or (j) of this AD terminates the repetitive greasing task for batch 02 group of affected thrust reverser actuators required by paragraph (g) of AD 2019–20–01.

(n) Additional AD Provisions

The following provisions also apply to this AD:

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

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

(n) Additional Information

For more information about this AD, contact Dat Le, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 516–228–7317; email *dat.v.le@faa.gov.*

(o) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR [DATE 35 DAYS AFTER PUBLICATION OF THE FINAL RULE].

(i) European Union Aviation Safety Agency (EASA) AD 2022–0127, dated June 28, 2022.

(ii) [Reserved]

(4) The following service information was approved for IBR on June 21, 2022 (87 FR 29654, May 16, 2022; corrected May 23, 2022 (87 FR 31123)).

(i) European Union Aviation Safety Agency (EASA) AD 2021–0208, dated September 15, 2021.

(ii) [Reserved]

(5) For EASA ADs 2022–0127 and 2021–0208, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find these EASA ADs on the EASA website at *ad.easa.europa.eu.*

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

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

Issued on December 5, 2022.

Christina Underwood,

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

[FR Doc. 2022–26710 Filed 12–8–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1575; Project Identifier MCAI–2022–00859–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2020–15–20, which applies to certain Airbus SAS Model A350–941 and –1041 airplanes. AD 2020–15–20 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. Since the FAA issued AD 2020–15–20, the FAA has determined that new or more restrictive airworthiness limitations are necessary. This proposed AD would continue to require the actions in AD 2020–15–20 and would require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by 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* under Docket No. FAA–2022–1575; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For material that is proposed for IBR in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.* It is also available at *regulations.gov* under Docket No. FAA–2022–1575.
- 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.

FOR FURTHER INFORMATION CONTACT: Dat Le, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 516–228–7317; email *Dat.V.Le@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–2022–1575; Project Identifier MCAI–2022–00859–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 Dat Le, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 516–228–7317; email *Dat.V.Le@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2020–15–20, Amendment 39–21183 (85 FR 53156, August 28, 2020) (AD 2020–15–20), for certain Airbus SAS Model A350–941 and –1041 airplanes. AD 2020–15–20 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2019–0288, dated November 28, 2019 (EASA AD 2019–0288), to correct an unsafe condition.

AD 2020–15–20 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA issued AD 2020–15–20 to address safety-significant latent failures that would, in combination with one or more other specific failures or events, result in a hazardous or catastrophic failure condition.

Actions Since AD 2020–15–20 Was Issued

Since the FAA issued AD 2020–15–20, EASA superseded AD 2019–0288 and issued EASA AD 2022–0126, dated June 28, 2022 (EASA AD 2022–0126) (referred to after this as the MCAI), for all Airbus SAS Model A350–941 and –1041 airplanes. The MCAI states that new or more restrictive airworthiness limitations have been developed. Airplanes with an original airworthiness certificate or original export certificate of airworthiness issued after May 2, 2022 must comply with the airworthiness limitations specified as part of the approved type design and referenced on the type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability.

The FAA is proposing this AD to address safety-significant latent failures that would, in combination with one or more other specific failures or events, result in a hazardous or catastrophic failure condition. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1575.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2022–0126. This service information specifies new or more restrictive airworthiness limitations for certification maintenance requirements.

This proposed AD would also require EASA AD 2019–0288, dated November 28, 2019, which the Director of the Federal Register approved for incorporation by reference as of October 2, 2020 (85 FR 53156, August 28, 2020).

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

FAA's Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI described above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would retain all requirements of AD 2020–15–20. This proposed AD would also require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, which are specified in EASA AD 2022–0126 already described, as proposed for incorporation by reference. Any differences with EASA AD 2022–0126 are identified as exceptions in the regulatory text of this AD.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (m)(1) of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to retain the IBR of EASA AD 2019–0288 and incorporate EASA AD 2022–0126 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0126 and EASA AD 2019–0288 through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2022–0126 or EASA AD 2019–0288 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2022–0126 or EASA AD 2019–0288. Service information required by EASA

AD 2022–0126 and EASA AD 2019–0288 for compliance will be available at *regulations.gov* by searching for and locating Docket No. FAA–2022–1575 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

The FAA's process of incorporating by reference MCAI ADs as the primary source of information for compliance with corresponding FAA ADs has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI ADs that require a change to airworthiness limitation documents, such as airworthiness limitation sections.

For these ADs that incorporate by reference an MCAI AD that changes airworthiness limitations, the FAA requirements are unchanged. Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document. The airworthiness limitations must be followed according to 14 CFR 91.403(c) and 91.409(e).

The previous format of the airworthiness limitation ADs included a paragraph that specified that no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions and intervals are approved as an AMOC in accordance with the procedures specified in the AMOCs paragraph under ''Additional AD Provisions.'' This new format includes a ''New Provisions for Alternative Actions and Intervals'' paragraph that does not specifically refer to AMOCs, but operators may still request an AMOC to use an alternative action or interval.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 30 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA estimates the total cost per operator for the retained actions from AD 2020–15–20 to be $7,650 (90 work-hours × $85 per work-hour).

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate.

The FAA estimates the total cost per operator for the new proposed actions to be $7,650 (90 work-hours x $85 per work-hour).

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:

■ a. Removing Airworthiness Directive (AD) 2020–15–20, Amendment 39–21183 (85 FR 53156, August 28, 2020); and

■ b. Adding the following new AD:

Airbus SAS: Docket No. FAA–2022–1575; Project Identifier MCAI–2022–00859–T.

(a) Comments Due Date

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

(b) Affected ADs

This AD replaces AD 2020–15–20, Amendment 39–21183 (85 FR 53156, August 28, 2020) (AD 2020–15–20).

(c) Applicability

This AD applies to Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before May 2, 2022.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address safety-significant latent failures that would, in combination with one or more other specific failures or events, result in a hazardous or catastrophic failure condition.

(f) Compliance

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

(g) Retained Revision of the Existing Maintenance or Inspection Program, With No Changes

This paragraph restates the requirements of paragraph (i) of AD 2020–15–20, with no changes. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before August 20, 2019, except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2019–0288, dated November 28, 2019 (EASA AD 2019–0288). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (j) of this AD terminates the requirements of this paragraph.

(h) Retained Exceptions to EASA AD 2019–0288 With No Changes

This paragraph restates the exceptions specified in paragraph (j) of AD 2020–15–20, with no changes.

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2019–0288 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2019–0288 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, to incorporate the ''maintenance tasks and associated thresholds and intervals'' specified in paragraph (3) of EASA AD 2019–0288 within 90 days after October 2, 2020 (the effective date of AD 2020–15–20).

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2019–0288 is at the applicable ''associated thresholds'' specified in paragraph (3) of EASA AD 2019–0288, or within 90 days after October 2, 2020 (the effective date of AD 2020–15–20).

(4) The provisions specified in paragraphs (4) and (5) of EASA AD 2019–0288 do not apply to this AD.

(5) The ''Remarks'' section of EASA AD 2019–0288 does not apply to this AD.

(i) Retained Restrictions on Alternative Actions and Intervals With a New Exception

This paragraph restates the requirements of paragraph (k) of AD 2020–15–20, with a new exception. Except as required by paragraph (j) of this AD, after the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2019–0288.

(j) New Revision of the Existing Maintenance or Inspection Program

Except as specified in paragraph (k) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2022–0126, dated June 28, 2022 (EASA AD 2022–0126). Accomplishing the maintenance or inspection program revision required by this paragraph terminates the requirements of paragraph (g) of this AD.

(k) Exceptions to EASA AD 2022–0126

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2022–0126 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2022–0126 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable within 90 days after the effective date of this AD

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2022–0126 is at the applicable ''associated thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2022–0126, or within 90 days after the effective date of this AD, whichever occurs later.

(4) The provisions specified in paragraphs (4) and (5) of EASA AD 2022–0126 do not apply to this AD.

(5) The ''Remarks'' section of EASA AD 2022–0126 does not apply to this AD.

(l) New Provisions for Alternative Actions and Intervals

After the maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (*e.g.,* inspections) or intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2022–0126.

(m) Additional AD Provisions

The following provisions also apply to this AD:

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

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

(n) Additional Information

For more information about this AD, contact Dat Le, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 516–228–7317; email *Dat.V.Le@faa.gov.*

(o) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on [DATE 35 DAYS AFTER PUBLICATION OF THE FINAL RULE].

(i) European Union Aviation Safety Agency (EASA) AD 2022–0126, dated June 28, 2022.

(ii) [Reserved]

(4) The following service information was approved for IBR on October 2, 2020 (85 FR 53156, August 28, 2020).

(i) European Union Aviation Safety Agency (EASA) AD 2019–0288, dated November 28, 2019.

(ii) [Reserved]

(5) For EASA ADs 2022–0126 and 2019–0288, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find these EASA ADs on the EASA website at *ad.easa.europa.eu.*

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

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

Issued on December 2, 2022.

Christina Underwood,

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

[FR Doc. 2022–26595 Filed 12–8–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1479; Project Identifier AD–2022–00703–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all The Boeing Company Model 737–100, 737–200, 737–200C, 737–300, 737–400, 737–500, 737–600, 737–700, 737–700C, 737–800, 737–900, 737–900ER, 757–200, 757–200PF, 757–200CB, 757–300, 767–200, 767–300, 767–300F, and 767–400ER series airplanes. This proposed AD was prompted by reports indicating premature aging of certain passenger chemical oxygen generators. This proposed AD would require repetitively replacing affected chemical oxygen generators with serviceable parts. This proposed AD would also limit the installation of affected parts. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by 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.

Examining the AD Docket

You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1479; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Nicole S. Tsang, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3959; email: *nicole.s.tsang@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1479; Project Identifier AD–2022–00703–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Nicole S. Tsang, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3959; email: *nicole.s.tsang@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has been notified by the European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, of an issue with the B/E Aerospace 117042–XX series chemical oxygen generators installed on certain Airbus airplanes. The units may fail to deliver oxygen to passengers during an emergency on the airplane. To address this issue on certain Airbus airplanes, EASA issued AD 2015–0117, dated June 24, 2015, corrected August 7, 2015, and AD 2019–0140, dated June 12, 2019. The FAA issued corresponding AD 2016–16–02, Amendment 39–18600 (81 FR 53255, August 12, 2016), and AD 2020–04–18, Amendment 39–19855 (85 FR 14409, March 12, 2020), respectively, which require the replacement of units older than 10 years and impose a 10-year life limit on all 117042–XX series generators.

The FAA released Special Airworthiness Information Bulletin NM–17–17, dated June 19, 2017, which indicated that the FAA and B/E Aerospace Systems planned to conduct further investigation of chemical oxygen generators in the 117080 series that are 10 to 15 years old since date of manufacture, to determine if these generators have an issue similar to the 117042 series generators.

The reduction of useful life was changed for 117080–02, 117080–03, and 117080–04 series chemical oxygen generators from 15 years to 10 years. Collins Aerospace has Parts Manufacturer Approval (PMA) for 117080–02, 117080–03, and 117080–04 series chemical oxygen generators on all Boeing Model 737–100, 737–200, 737–200C, 737–300, 737–400, 737–500, 737–600, 737–700, 737–700C, 737–800, 737–900, 757–200, 757–200PF, 757–200CB, 757–300, 767–200, 767–300, 767–300F, and 767–400ER series airplanes. However, the applicability of this proposed AD also includes Boeing Model 737–900ER series airplanes. The FAA determined that Boeing Model 737–900ER series airplanes are affected because there is concern that operators might mistake the 737–900ER as a sub-model of the 737–900, and the 117080–0X series of chemical oxygen generators might be installed on Boeing Model 737–900ER series airplanes.

Collins Aerospace has observed that mis-actuations are possible 10 years after the manufacturing date and increase in likelihood as the 15-year life is approached. The mis-actuations are associated with the tin-based chemistry used to manufacture the generators and specifically appear to be caused by oxidation of tin fuel added to the chemical core. Collins Aerospace's investigation and analysis concluded that the chemical core oxidizes in a manner similar to the 117042–XX series chemical oxygen generators. This condition, if not addressed, could lead to failure of the generator to activate and consequently not deliver oxygen during an emergency, possibly resulting in injury to airplane occupants.

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. This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the AD and service information referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information

Collins Aerospace Service Information Letter (SIL) 117080–SIL–002, dated May 4, 2022, specifies procedures for replacing affected chemical oxygen generators.

Proposed AD Requirements in This NPRM

This proposed AD would require inspecting the date of manufacture of chemical oxygen generators having part numbers 117080–02, 117080–03, and 117080–04, and replacing affected generators with serviceable units. This proposed AD would also limit the installation of passenger chemical oxygen generators to serviceable units.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 3,419 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	4 work-hours × $85 per hour = $340	$0	$340	$1,162,460.
Replacement	0.50 work-hour × $85 per hour = $43 per replacement cycle.	Up to $445	Up to $488 per replacement cycle.	$1,668,472 per replacement cycle.

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–2022–1479; Project Identifier AD–2022–00703–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 all The Boeing Company Model 737–100, 737–200, 737–200C, 737–300, 737–400, 737–500, 737–600, 737–700, 737–700C, 737–800, 737–900, 737–900ER, 757–200, 757–200PF, 757–200CB, 757–300, 767–200, 767–300, 767–300F, and 767–400ER series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 35, Oxygen.

(e) Unsafe Condition

This AD was prompted by reports of premature aging of certain chemical oxygen generators. The FAA is issuing this AD to address this premature aging that resulted in the generators failing to activate, which could fail to deliver oxygen during an emergency, possibly resulting in injury to the airplane occupants.

(f) Compliance

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

(g) Oxygen Generator Part Number Inspection

Within 30 days after the effective date of this AD: Inspect passenger chemical oxygen generators having part numbers 117080–02, 117080–03, and 117080–04 to determine their date of manufacture. A review of airplane maintenance records is acceptable for the inspection, provided the date of manufacture can be conclusively determined by that review.

(h) Definition

For purposes of this AD, a serviceable unit is a passenger chemical oxygen generator that meets the condition specified in either paragraph (h)(1) or (2) of this AD.

(1) Part numbers 117080–02, 117080–03, and 117080–04, with a manufacturing date not older than 10 years.

(2) Approved part numbers other than 117080–02, 117080–03, and 117080–04, provided the generator has not exceeded the life limit established for that generator by the manufacturer.

(i) Oxygen Generator Replacement

For any passenger chemical oxygen generators having part numbers 117080–02, 117080–03, and 117080–04: At the applicable time specified in paragraph (i)(1) through (3) of this AD, replace the chemical oxygen generator with a serviceable unit, as defined in this AD. Thereafter, replace chemical oxygen generators having part numbers 117080–02, 117080–03, and 117080–04 before exceeding 10 years since date of manufacture.

Note 1 to paragraph (i): Additional guidance for replacing the affected passenger chemical oxygen generators can be found in Collins Aerospace Service Information Letter 117080–SIL–002, dated May 4, 2022, and approved maintenance procedures.

(1) For passenger chemical oxygen generators that have a date of manufacture in 2008 or earlier: Replace within 6 months after the effective date of this AD or 15 years since the date of manufacture, whichever occurs earlier.

(2) For passenger chemical oxygen generators that have a date of manufacture in

2009 or 2010: Replace within 12 months after the effective date of this AD.

(3) For passenger chemical oxygen generators that have a date of manufacture in 2011, 2012, or 2013: Replace within 24 months after the effective date of this AD.

(j) Parts Installation Limitation

As of the effective date of this AD, no person may install a passenger chemical oxygen generator, unless the oxygen generator is a serviceable unit, as defined in this AD.

(k) Alternative Methods of Compliance (AMOCs)

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

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

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

(l) Related Information

(1) For more information about this AD, contact Nicole S. Tsang, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3959; email: *nicole.s.tsang@faa.gov.*

(2) For Collins Aerospace service information identified in this AD that is not incorporated by reference, contact Collins Aerospace, 15701 West 95th Street, Lenexa, KS 66219; email *ISPublications@collins.com;* website *tpi.beaerospace.com/Authentication.* 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.

(m) Material Incorporated by Reference

None.

Issued on November 10, 2022.

Christina Underwood,

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

[FR Doc. 2022–26592 Filed 12–8–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1556; Airspace Docket No. 22–ASW–25]

RIN 2120–AA66

Proposed Amendment of Class D and E Airspace; Mesquite and Dallas-Fort Worth, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class D at Mesquite, TX, and the Class E airspace at Dallas-Fort Worth, TX. The FAA is proposing this action due to an airspace review conducted as part of the decommissioning of the Mesquite localizer (LOC). The geographic coordinates of Granbury Regional Airport, Granbury, TX, would also be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before January 23, 2023.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2022–1556/Airspace Docket No. 22–ASW–25 at the beginning of your comments. You may also submit comments through the internet at *www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class D airspace at Mesquite Metro Airport, Mesquite, TX, and the Class E airspace extending upward form 700 feet above the surface at Mesquite Metro Airport, contained within the Dallas-Fort Worth, TX airspace legal description, to support instrument flight rule operations at this airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2022–1556/Airspace Docket No. 22–ASW–25.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the

internet at *www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by:

Amending the Class D airspace to within a 4.5-mile (increased from a 3.5-mile) radius of Mesquite Metro Airport, Mesquite, TX; removing the airspace extension south of the airport; removing the city associated with the airport to comply with changes to FAA Order JO 7400.2N, Procedures for Handling Airspace Matters; and replacing the outdated terms ''Notice to Airmen'' with ''Notice to Air Missions'' and ''Airport/Facility Directory'' with ''Chart Supplement'';

And amending the Class E airspace extending upward from 700 feet above the surface to within a 7-mile (increased from a 6.5-mile) radius of Mesquite Metro Airport contained within the Dallas-Fort Worth, TX, airspace legal description; removing the Mesquite Metro: RWY 18–LOC and the associated extension from the airspace legal description; and updating the geographic coordinates of the Granbury Regional Airport, Granbury, TX, also contained within the Dallas-Fort Worth, TX, airspace legal description.

This action is the result of an airspace review conducted as part of the decommissioning of the Mesquite LOC which provided navigation information to the instrument procedures at Mesquite Metro Airport.

Class D and E airspace designations are published in paragraphs 5000 and 6005, respectively, of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASW TX D Mesquite, TX [Amended]

Mesquite Metro Airport, TX
(Lat. 32°44′49″ N, long. 96°31′50″ W)

That airspace extending upward from the surface to but not including 2,000 feet MSL within a 4.5-mile radius of Mesquite Metro Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective dates and times will thereafter be continuously published in the Chart Supplement.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASW TX E5 Dallas-Fort Worth, TX [Amended]

Dallas-Fort Worth International Airport, TX
(Lat. 32°53′50″ N, long. 97°02′16″ W)
McKinney National Airport, TX
(Lat. 33°10′37″ N, long. 96°35′20″ W)
Ralph M. Hall/Rockwall Municipal Airport, TX
(Lat. 32°55′50″ N, long. 96°26′08″ W)
Mesquite Metro Airport, TX
(Lat. 32°44′49″ N, long. 96°31′50″ W)
Lancaster Regional Airport, TX
(Lat. 32°34′39″ N, long. 96°43′03″ W)
Point of Origin
(Lat. 32°51′57″ N, long. 97°01′41″ W)
Fort Worth Spinks Airport, TX
(Lat. 32°33′54″ N, long. 97°18′30″ W)
Cleburne Regional Airport, TX
(Lat. 32°21′14″ N, long. 97°26′02″ W)
Bourland Field, TX
(Lat. 32°34′55″ N, long. 97°35′27″ W)
Granbury Regional Airport, TX
(Lat. 32°26′35″ N, long. 97°49′17″ W)
Parker County Airport, TX
(Lat. 32°44′47″ N, long. 97°40′57″ W)
Bridgeport Municipal Airport, TX
(Lat. 33°10′26″ N, long. 97°49′42″ W)
Decatur Municipal Airport, TX
(Lat. 33°15′15″ N, long. 97°34′50″ W)

That airspace extending upward from 700 feet above the surface within a 30-mile radius of Dallas-Fort Worth International Airport, and within a 6.6-mile radius of McKinney National Airport, and within 1.8 miles each side of the 002° bearing from McKinney National Airport extending from the 6.6-mile radius to 9.2 miles north of the airport, and within a 6.3-mile radius of Ralph M. Hall/Rockwall Municipal Airport, and within 1.6 miles each side of the 010° bearing from Ralph M. Hall/Rockwall Municipal Airport extending from the 6.3-mile radius to 10.8 miles north of the airport, and within a 7-

mile radius of Mesquite Metro Airport, and within a 6.6-mile radius of Lancaster Regional Airport, and within 1.9 miles each side of the 140° bearing from Lancaster Regional Airport extending from the 6.6-mile radius to 9.2 miles southeast of the airport, and within 8 miles northeast and 4 miles southwest of the 144° bearing from the Point of Origin extending from the 30-mile radius of Dallas-Fort Worth International Airport to 35 miles southeast of the Point of Origin, and within a 6.5-mile radius of Fort Worth Spinks Airport, and within 8 miles east and 4 miles west of the 178° bearing from Fort Worth Spinks Airport extending from the 6.5-mile radius to 21 miles south of the airport, and within a 6.9-mile radius of Cleburne Regional Airport, and within 3.6 miles each side of the 292° bearing from the Cleburne Regional Airport extending from the 6.9-mile radius to 12.2 miles northwest of airport, and within a 6.5-mile radius of Bourland Field, and within a 8.8-mile radius of Granbury Regional Airport, and within a 6.3-mile radius of Parker County Airport, and within 8 miles east and 4 miles west of the 177° bearing from Parker County Airport extending from the 6.3-mile radius to 21.4 miles south of the airport, and within a 6.3-mile radius of Bridgeport Municipal Airport, and within 1.6 miles each side of the 040° bearing from Bridgeport Municipal Airport extending from the 6.3-mile radius to 10.6 miles northeast of the airport, and within 4 miles each side of the 001° bearing from Bridgeport Municipal Airport extending from the 6.3-mile radius to 10.7 miles north of the airport, and within a 6.3-mile radius of Decatur Municipal Airport, and within 1.5 miles each side of the 263° bearing from Decatur Municipal Airport extending from the 6.3-mile radius to 9.2 miles west of the airport.

Issued in Fort Worth, Texas, on December 5, 2022.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2022–26654 Filed 12–8–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1557; Airspace Docket No. 22–ACE–21]

RIN 2120–AA66

Proposed Amendment of Class D and E Airspace and Revocation of Class E Airspace; Topeka, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class D and E airspace and revoke Class E airspace at Topeka, KS. The FAA is proposing these actions as the result of biennial airspace reviews. The name of Topeka Regional Airport, Topeka, KS, and the geographic coordinates of Philip Billard Municipal Airport, Topeka, KS, would also be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before January 23, 2023.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2022–1557/Airspace Docket No. 22–ACE–21 at the beginning of your comments. You may also submit comments through the internet at *www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class D airspace, the Class E surface airspace, and the Class E airspace extending upward from 700 feet above the surface at Topeka Regional Airport, Topeka, KS, and Philip Billard Municipal Airport, Topeka, KS, and remove the Class E airspace designated as an extension to Class D and Class E surface airspace areas at Philip Billard Municipal Airport to support instrument flight rule operations at these airports.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2022–1557/Airspace Docket No. 22–ACE–21.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group,

10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by:

Amending the Class D airspace at Topeka Regional Airport, Topeka, KS, by removing the Forbes Field Airport ILS and RIPLY LOM and the associated extensions from the airspace legal description; updating the header of the airspace legal description from ''Topeka, Forbes Field Airport, KS'' to ''Topeka, KS'' to comply with changes to FAA Order JO 7400.2N, Procedures for Handling Airspace Matters; removing the city associated with the airport in the airspace legal description to comply with changes to FAA Order JO 7400.2N; updating the name of the airport (previously Forbes Field Airport) to coincide with the FAA's aeronautical database; and replacing the outdated terms ''Notice to Airmen'' with ''Notice to Air Missions'' and ''Airport/Facility Directory'' with ''Chart Supplement'';

Amending the Class D airspace at Philip Billard Municipal Airport by adding an extension 1 mile each side of the 002° bearing from the airport extending from the 4-mile radius of the airport to 4.1 miles north of the airport; adding an extension 1 mile each side of the 134° bearing from the Philip Billard Muni: RWY 13–LOC extending from the 4-mile radius of the airport to 4.1 miles southeast of the Philip Billard Muni: RWY 13–LOC; adding an extension 1 mile each side of the 314° bearing from the airport extending from the 4-mile radius of the airport to 4.2 miles northwest of the airport; updating the header of the airspace legal description from ''Topeka, Philip Billard Municipal Airport, KS'' to ''Topeka, KS'' to comply with changes to FAA Order JO 7400.2N; removing the city associated with the airport to comply with changes to FAA Order JO 7400.2N; updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database; removing Forbes Field, KS, from the airspace legal description as it is not required; and replacing the outdated terms ''Notice to Airmen'' with ''Notice to Air Missions'' and ''Airport/Facility Directory'' with ''Chart Supplement'';

Amending the Class E surface airspace at Topeka Regional Airport by removing the Forbes Field Airport ILS and RIPLY LOM and the associated extensions from the airspace legal description; updating the header of the airspace legal description from ''Topeka, Forbes Field Airport, KS'' to ''Topeka, KS'' to comply with changes to FAA Order JO 7400.2N; removing the city associated with the airport in the airspace legal description to comply with changes to FAA Order JO 7400.2N; updating the name of the airport (previously Forbes Field Airport) to coincide with the FAA's aeronautical database; and adding missing part-time language to the airspace legal description;

Amending the Class E surface airspace at Philip Billard Municipal Airport by adding an extension 1 mile each side of the 002° bearing from the airport extending from the 4-mile radius of the airport to 4.1 miles north of the airport; adding an extension 1 mile each side of the 134° bearing from the Philip Billard Muni: RWY 13–LOC extending from the 4-mile radius of the airport to 4.1 miles southeast of the Philip Billard Muni: RWY 13–LOC; adding an extension 1 mile each side of the 314° bearing from the airport extending from the 4-mile radius of the airport to 4.2 miles northwest of the airport; updating the header of the airspace legal description from ''Topeka, Philip Billard Municipal Airport, KS'' to ''Topeka, KS'' to comply with changes to FAA Order JO 7400.2N; removing the city associated with the airport to comply with changes to FAA Order JO 7400.2N; updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database; removing Forbes Field, KS, from the airspace legal description as it is not required; and replacing the outdated terms ''Notice to Airmen'' with ''Notice to Air Missions'' and ''Airport/Facility Directory'' with ''Chart Supplement'';

Removing the Class E airspace designated as an extension to Class D and Class E surface airspace area at Philip Billard Municipal Airport as it is no longer required; Amending the Class E airspace extending upward from 700 feet above the surface at Topeka Regional Airport by removing the Forbes Field ILS and associated extension from the airspace legal description; adding an extension 1 mile each side of the 040° bearing from the airport extending from the 7.4-mile radius of the airport to 12.8 miles northeast of the airport; adding an extension 3.9 miles each side of the Forbes TACAN 124° radial extending from the 7.4-mile radius of the airport to 10.4 miles southwest of the Forbes TACAN; adding an extension 1 mile each side of the 220° bearing from the airport extending from the 7.4-mile radius of the airport to 12.8 miles southwest of the airport; updating the header of the airspace legal description from ''Topeka, Forbes Field Airport, KS'' to ''Topeka, KS'' to comply with changes to FAA Order JO 7400.2N; removing the city associated with the airport in the airspace legal description to comply with changes to FAA Order JO 7400.2N; updating the name of the airport (previously Forbes Field Airport) to coincide with the FAA's aeronautical database;

And amending the Class E airspace extending upward from 700 feet above the surface at Philip Billard Municipal Airport by removing the Topeka VORTAC, BILOY LOM, and Philip Billard Municipal Airport ILS Localizer and the associated extensions from the airspace legal description; adding an extension 1.5 miles each side of the 134° bearing from the Philip Billard Muni: RWY 13–LOC extending from the 6.5-mile radius of the airport to 8.1 miles southeast of the Philip Billard Muni: RWY 13–LOC; adding an extension 3.8 miles each side of the 314° bearing from the Philip Billard Muni: RWY 13–LOC extending from the 6.5-mile radius of the airport to 10.9 miles northwest of the Philip Billard Muni: RWY 13–LOC; updating the header of the airspace legal description from ''Topeka, Philip Billard Municipal Airport, KS'' to ''Topeka, KS'' to comply with changes to FAA Order JO 7400.2N; removing the city associated with the airport to comply with changes to FAA Order JO 7400.2N; updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is necessary due to biennial airspace reviews.

Class D and E airspace designations are published in paragraphs 5000, 6002, 6004, and 6005, respectively, of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11. FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ACE KS D Topeka, KS [Amended]

Topeka Regional Airport, KS
(Lat. 38°57′03″ N, long. 95°39′49″ W)

That airspace extending upward from the surface to and including 3,600 feet MSL within a 4.9-mile radius of Topeka Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective dates and times will thereafter be continuously published in the Chart Supplement.

ACE KS D Topeka, KS [Amended]

Philip Billard Municipal Airport, KS
(Lat. 39°04′08″ N, long. 95°37′21″ W)
Philip Billard Muni: RWY 13–LOC
(Lat. 39°03′47″ N, long. 95°36′42″ W)

That airspace extending upward from the surface to and including 3,400 feet MSL within a 4-mile radius of Philip Billard Municipal Airport, excluding that airspace within the Topeka Regional Airport, Topeka, KS, Class D and Class E surface airspace areas; and within 1 mile each side of the 002° bearing from the airport extending from the 4-mile radius to 4.1 miles north of the airport; and within 1 mile each side of the 134° bearing from the Philip Billard Muni: RWY 13–LOC extending from the 4-mile radius of the airport to 4.1 miles southwest of the Philip Billard Muni: RWY 13–LOC; and within 1 mile each side of the 314° bearing from the airport extending from the 4-mile radius of the airport to 4.2 miles northwest of the airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective dates and times will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

ACE KS E2 Topeka, KS [Amended]

Topeka Regional Airport, KS
(Lat. 38°57′03″ N, long. 95°39′49″ W)

That airspace extending upward from the surface to and including 3,600 feet MSL within a 4.9-mile radius of Topeka Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective dates and times will thereafter be continuously published in the Chart Supplement.

ACE KS E2 Topeka, KS [Amended]

Philip Billard Municipal Airport, KS
(Lat. 39°04′08″ N, long. 95°37′21″ W)
Philip Billard Muni: RWY 13–LOC
(Lat. 39°03′47″ N, long. 95°36′42″ W)

That airspace extending upward from the surface to and including 3,400 feet MSL within a 4-mile radius of Philip Billard Municipal Airport, excluding that airspace within the Topeka Regional Airport, Topeka, KS, Class D and Class E surface airspace areas; and within 1 mile each side of the 002° bearing from the airport extending from the 4-mile radius to 4.1 miles north of the airport; and within 1 mile each side of the 134° bearing from the Philip Billard Muni: RWY 13–LOC extending from the 4-mile radius of the airport to 4.1 miles southwest of the Philip Billard Muni: RWY 13–LOC; and within 1 mile each side of the 314° bearing from the airport extending from the 4-mile radius of the airport to 4.2 miles northwest of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective dates and times will thereafter be continuously published in the Chart Supplement.

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

ACE KS E4 Topeka, Philip Billard Municipal Airport, KS [Remove]

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ACE KS E5 Topeka, KS [Amended]

Topeka Regional Airport, KS
(Lat. 38°57′03″ N, long. 95°39′49″ W)
Forbes TACAN
(Lat. 38°56′51″ N, long. 95°39′40″ W)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Topeka Regional Airport, and within 1 mile each side of the 040° bearing from the airport extending from the 7.4-mile radius of the airport to 12.8 miles northeast of the airport, and within 3.9 miles each side of the Forbes TACAN 124° radial extending from the 7.4-mile radius of the airport to 10.4 miles southeast of the Forbes TACAN, and within 1 mile each side of the 220° bearing from the airport extending from the 7.4-mile radius of the airport to 12.8 miles southwest of the airport.

ACE KS E5 Topeka, KS [Amended]

Philip Billard Municipal Airport, KS
(Lat. 39°04′08″ N, long. 95°37′21″ W)
Philip Billard Muni: RWY 13–LOC
(Lat. 39°03′47″ N, long. 95°36′42″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Philip Billard Municipal Airport, and within 1.5 miles each side of the 134° bearing from the Philip Billard Muni: RWY 13–LOC extending from the 6.5-mile radius of the airport to 8.1 miles southeast of the Philip Billard Muni: RWY 13–LOC, and within 3.8 miles each side of the 314° bearing from the Philip Billard Muni: RWY 13–LOC extending from the 6.5-mile radius of the airport to 10.9 miles from the Philip Billard Muni: RWY 13–LOC.

Issued in Fort Worth, Texas, on December 5, 2022.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2022–26653 Filed 12–8–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 312

[Docket No. FDA–2019–N–2650]

RIN 0910–AH07

Investigational New Drug Applications; Exemptions for Clinical Investigations To Evaluate a Drug Use of a Product Lawfully Marketed as a Conventional Food, Dietary Supplement, or Cosmetic

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is proposing to amend its regulations on investigational new drug applications (INDs) to exempt from the IND requirements certain clinical investigations of lawfully marketed foods for human consumption (including both conventional foods and dietary supplements) and cosmetics when the product is to be studied to evaluate its use as a drug. Under the proposal, clinical studies to evaluate a drug use of such products would not have to be conducted under an IND when, among other things, the study is not intended to support a drug development plan or a labeling change that would cause the lawfully marketed product to become an unlawfully marketed drug, and the study does not present a potential for significant risk to the health, safety, or welfare of subjects. Though exempt from the IND requirements, such investigations would still be subject to other regulations designed to protect the rights and safety of subjects, including requirements for informed consent and review by institutional review boards (IRBs). By exempting from the IND requirements certain clinical investigations of products lawfully marketed as a food or cosmetic, the proposed provisions are intended to reduce the regulatory burden of conducting such studies while retaining protections for human subjects.

DATES: Submit either electronic or written comments on the proposed rule by March 9, 2023. Submit comments on the collection of information under the Paperwork Reduction Act of 1995 by January 9, 2023.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept electronic comments until 11:59 p.m. Eastern Time at the end of March 9, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

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–2019–N–2650 for ''Investigational New Drug Applications; Exemptions for Clinical Investigations to Evaluate a Drug Use of a Product Lawfully Marketed as a Conventional Food, Dietary Supplement, or Cosmetic.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' 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.

Submit comments on the information collection under the Paperwork Reduction Act of 1995 to the Office of Management and Budget (OMB) at *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 title of this proposed collection is ''Investigational New Drug Applications; Exemptions for Clinical Investigations to Evaluate a Drug Use of a Product Lawfully Marketed as a Conventional Food, Dietary Supplement, or Cosmetic.''

FOR FURTHER INFORMATION CONTACT:

Regarding the proposed rule: Brian Pendleton, Office of Policy, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–4614, *Brian.Pendleton@fda.hhs.gov.*

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

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I. Executive Summary

A. Purpose of the Proposed Rule

FDA is proposing to amend its IND regulations to exempt from the scope of the requirements certain clinical investigations studying drug uses of products that are lawfully marketed as foods for human consumption (including dietary supplements) or as cosmetics. The proposed rule would make it easier for sponsors and sponsor-investigators to conduct certain clinical investigations evaluating drug uses of foods or cosmetics while maintaining adequate safeguards for human subjects.

Currently, FDA regulations provide an exemption from the IND requirements for studies of lawfully marketed drug products that meet certain criteria, including that the study does not involve a route of administration, dosage level, use in a patient population, or other factor that significantly increases the risks (or decreases the acceptability of these risks) associated with the use of the drug product. However, this exemption applies only to clinical investigations of *drug products* lawfully marketed in the United States, and therefore generally does not apply to clinical investigations of products marketed as foods for human consumption or as cosmetics.

FDA has exercised its enforcement discretion on a case-by-case basis and has not objected to certain clinical studies evaluating a drug use of a product lawfully marketed as a food or cosmetic being conducted without an IND, based on consideration of factors such as the purpose of the investigation and whether the study raises any concerns about the health, safety, and welfare of the subjects. This proposed rule would now establish exemptions from the IND requirements for drug studies of products lawfully marketed in the United States as a food or cosmetic when the studies meet criteria similar to those in the IND exemption for certain investigations of lawfully marketed drug products.

B. Summary of the Major Provisions of the Proposed Rule

The proposed rule would create two types of IND exemptions for drug studies of products lawfully marketed in the United States as foods or cosmetics. One exemption, the proposed ''self-determined exemption,'' would specify that a clinical investigation to evaluate a drug use of a product lawfully marketed in the United States as a conventional food for human consumption, a dietary supplement, or a cosmetic is exempt from the IND requirements if certain conditions are met:

- The investigation is not intended to support a drug development plan for the product (including a future IND or application for marketing approval) or a labeling change that would cause the lawfully marketed product to become an unlawfully marketed drug;
- The investigation is conducted in compliance with the requirements for IRB review and informed consent;
- The investigation is conducted in compliance with the regulations governing promotion and commercial distribution of investigational drugs;
- The route of administration of the product in the investigation is the same as that of the lawfully marketed product; and
- The investigation meets certain criteria designed to protect the health, safety, and welfare of subjects.

Under this self-determined exemption, if a clinical investigation to evaluate a drug use of a product lawfully marketed in the United States as a food or cosmetic meets these criteria, the study would be exempt from the IND regulations. Provided the criteria are met, the study's sponsor (who may also be an investigator conducting the study, *i.e.,* a sponsor-investigator) would not be required to submit an IND for the study or request that FDA exempt the study from the IND requirements (and we would not accept an IND for a study that we had determined was exempt).

Under the second IND exemption we propose to establish, the ''FDA-determined exemption,'' the sponsor of a clinical investigation to evaluate a drug use of a product lawfully marketed in the United States as a food or cosmetic could ask the Agency to exempt the investigation from the IND requirements when the investigation meets the self-determined exemption criteria except for one or more of the subject health, safety, and welfare criteria, but the sponsor has concluded that the investigation nevertheless does not present a potential for significant risk to subjects. To obtain such an exemption, the sponsor would submit a written request that includes information on the sponsor, the proposed investigation, and the product to be studied, as well as a description of why the investigation does not present a potential for significant risk to the health, safety, or welfare of subjects.

Upon receiving such a request for exemption from the IND requirements, FDA would evaluate any risks to subjects and would grant an exemption if we found that the investigation did not present a potential for significant risk (or decrease the acceptability of the risks) to the health, safety, or welfare of subjects. The proposal also would authorize FDA to exempt a study from the IND requirements on our own initiative if we determined, upon review of an IND for the study, that the study met the decision criteria for an FDA-determined exemption. The FDA-determined exemption proposal also states that we may revoke an exemption if we become aware of information suggesting that the investigation: (1) could present a potential for significant risk to the health, safety, or welfare of subjects or (2) does not meet any other eligibility requirement for the exemption.

Adopting these proposed IND exemptions would reduce the burden of

conducting certain clinical investigations evaluating drug uses of products lawfully marketed as foods or cosmetics, as well as the Agency's burden of reviewing such studies, without eliminating requirements that help ensure the safety of subjects and the quality of data submitted in support of drug product approval.

C. Legal Authority

We are issuing this proposed rule under FDA's authority to regulate drug products under the Federal Food, Drug, and Cosmetic Act (FD&C Act) and the Public Health Service Act (PHS Act).

D. Costs and Benefits

Quantifiable benefits of this proposed rule are cost savings that come from reducing the burden of submitting INDs to FDA for clinical investigations to evaluate a drug use of a food or cosmetic. The proposed rule would have a one-time, upfront cost for current and future sponsors and sponsor-investigators who would have to read the rule, if it is finalized. In addition, there would be costs to FDA associated with a new type of IND-related submission, a request for an FDA-determined exemption. The impact of reviewing this new submission is analyzed in section II.E of the Preliminary Economic Analysis of Impacts for this proposed rule, as a partial offset to the cost savings of the rule. Discounted over 10 years, the total net benefit of the rule is estimated to be $33 million at a 3 percent discount rate and $27 million at a 7 percent discount rate.

II. Table of Abbreviations and Commonly Used Acronyms in This Document

Abbreviation or acronym	What it means
ANDA	Abbreviated New Drug Application.
BLA	Biologics License Application.
CBER	Center for Biologics Evaluation and Research.
CDER	Center for Drug Evaluation and Research.
FD&C Act	Federal Food, Drug, and Cosmetic Act.
FDA	Food and Drug Administration.
IND	Investigational New Drug Application.
IRB	Institutional Review Board.
NDA	New Drug Application.
OMB	Office of Management and Budget.
PHS Act	Public Health Service Act.

III. Background

This proposed rule concerns the establishment of exemptions from the requirement to submit an IND before initiating certain clinical investigations evaluating drug uses of lawfully marketed food for human consumption (including both conventional foods and dietary supplements) and cosmetics. (We refer to these product categories collectively as ''foods and cosmetics'' in this document.) Following is a brief discussion of important terms used in this proposed rule, the applicability of the IND regulations in part 312 (21 CFR part 312) to clinical investigations of foods and cosmetics for use as drugs, and why the proposed exemptions are needed.

A. Definitions

Before explaining the need for the proposed IND exemptions, we believe it is helpful to discuss several terms used in the proposed rule. Under § 312.3(a), the definitions and interpretations of terms contained in section 201 of the FD&C Act (21 U.S.C. 321) apply to those terms when used in the IND regulations. Therefore, the terms ''food,'' ''dietary supplement,'' ''cosmetic,'' and ''drug'' in the proposed exemptions are defined as they are in the FD&C Act.

''Food'' is defined as articles used for food or drink for man or other animals, chewing gum, and articles used for components of any such article (section 201(f) of the FD&C Act). For purposes of the proposed exemptions, ''food'' does not include animal feed, pet food, or other food intended for consumption by animals other than humans. Examples of food include, but are not limited to, fruits, vegetables, fish, dairy products, eggs, raw agricultural commodities for use as food or as components of food, food ingredients, food additives (including substances that migrate into food from packaging and other articles that contact food), dietary supplements, dietary ingredients, infant formula, medical foods, beverages (including alcoholic beverages and bottled water), bakery goods, snack foods, candy, and canned foods.

''Dietary supplement'' is defined, in part, as a product that is intended for ingestion to supplement the diet and that contains one or more dietary ingredients (section 201(ff) of the FD&C Act). Dietary ingredients include vitamins, minerals, herbs and other botanicals, amino acids, other dietary substances intended to supplement the diet by increasing the total dietary intake, and concentrates, metabolites, constituents, extracts, and combinations of the preceding types of ingredients (section 201(ff)(1) of the FD&C Act). Because dietary supplements are deemed to be food for most purposes, the term ''food'' includes dietary supplements (see section 201(ff) of the FD&C Act). Notably, however, dietary supplements are not deemed to be food for purposes of section 201(g) of the FD&C Act, which, as discussed below, defines ''drug'' for purposes of the FD&C Act (section 201(ff) of the FD&C Act).

The term ''conventional food'' is not defined in the FD&C Act or in FDA's regulations. In this proposed rule, we use it to mean any food that is not a dietary supplement.

A ''cosmetic'' is an article (other than soap) intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, or an article intended for use as a component of any such article (section 201(i) of the FD&C Act).

The definition of ''drug'' includes, among other things, ''articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals'' and ''articles (other than food) intended to affect the structure or any function of the body of man or other animals'' (section 201(g)(1)(B) and (C) of the FD&C Act). This proposed rule applies only to products that are intended for investigational use as drugs in humans. A biological product subject to licensure under section 351 of the PHS Act (42 U.S.C. 262) fits within the drug definition under the FD&C Act. A ''biological product'' is a virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, protein, or analogous product, or arsphenamine or derivative of arsphenamine (or any other trivalent organic arsenic compound), applicable to the prevention, treatment, or cure of a disease or condition of human beings (section 351(i) of the PHS Act).

''Clinical investigation'' is defined in the IND regulations as any experiment in which a drug is administered or dispensed to, or used involving, one or more human subjects (excluding use of a marketed drug in medical practice) (§ 312.3(b)). A ''subject'' is defined in the IND regulations as a human who participates in an investigation, either as a recipient of an investigational new drug or as a control; subjects may be healthy or have a disease (§ 312.3(b)).

A ''sponsor'' of a clinical investigation is an individual or entity (*e.g.,* pharmaceutical or other company, governmental agency, academic

institution, private organization, or other organization) who takes responsibility for and initiates the investigation (§ 312.3(b)). An ''investigator'' is an individual who actually conducts a clinical investigation (*i.e.,* the investigational drug is administered or dispensed to subjects under his or her immediate direction) (§ 312.3(b)). A person may be a ''sponsor-investigator,'' who is an individual who initiates and conducts an investigation, and under whose immediate direction the investigational drug is administered or dispensed (§ 312.3(b)). For simplicity, we refer to sponsors and sponsor-investigators collectively as ''sponsors'' in this document except in the proposed regulatory text.

B. Applicability of the IND Regulations

The new drug provisions of the FD&C Act require that a person obtain approval of a new drug application (NDA) or abbreviated new drug application (ANDA) before introducing or delivering for introduction into interstate commerce a new drug (section 505(a) of the FD&C Act (21 U.S.C. 355(a))). Similarly, the PHS Act requires that a person obtain approval of a biologics license application (BLA) before introducing or delivering for introduction into interstate commerce a biological product (section 351(a) of the PHS Act). However, these approval requirements do not apply to a drug or biological product intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety and effectiveness of drugs, provided the sponsor of the study complies with the regulations in part 312 governing the use of investigational new drugs (section 505(i) of the FD&C Act). These regulations include provisions for the submission and FDA review of INDs (see, *e.g.,* §§ 312.20, 312.40).

There are two primary objectives of IND review. First, IND review is designed to help ensure that the safety and rights of subjects of clinical investigations are protected. Second, as applied to Phase 2 and Phase 3 studies, IND review is intended to help ensure that the quality of data obtained from a clinical study is adequate to permit evaluation of the safety and effectiveness of a drug for which marketing approval is sought (§ 312.22(a)). Phase 2 studies are controlled clinical studies conducted to evaluate the effectiveness of a drug for a particular indication in patients with the disease or condition under study or to determine the short-term side effects and risks associated with the drug (§ 312.21(b)). Phase 3 studies are expanded controlled and uncontrolled trials performed after preliminary evidence suggesting a drug's effectiveness has been obtained; they are intended to gather additional information about effectiveness and safety needed to evaluate the overall benefit-risk relationship of the drug and to provide an adequate basis for physician labeling (§ 312.21(c)). Sponsor compliance with IND requirements (such as for the content and format of INDs (§ 312.23), safety reports (§ 312.32), annual progress reports (§ 312.33), and monitoring of investigations (*e.g.,* §§ 312.50, 312.53, and 312.56)) and FDA review of the content of INDs, protocol amendments (§ 312.30), safety reports, annual progress reports, and other IND-related information help ensure that subjects are adequately protected and that sponsors may rely on data from investigations to support applications for approval.

Section 312.2(a) states that the IND requirements apply to all clinical investigations of products that are subject to section 505 of the FD&C Act (which includes the new drug approval requirement) or the biological product licensing provisions of the PHS Act. However, there are a few exemptions from the IND requirements set forth in § 312.2(b). For the purposes of the proposed rule, the most significant of these exemptions concerns certain investigations of drug products lawfully marketed in the United States. Under § 312.2(b)(1), a clinical investigation of a drug product that is lawfully marketed in the United States is exempt from the IND regulations if all the following apply:

- The investigation is not intended to be reported to FDA as a well-controlled study in support of a new indication for use nor to support any other significant change in the labeling for the drug;
- If the drug that is undergoing investigation is lawfully marketed as a prescription drug product, the investigation is not intended to support a significant change in the advertising for the product;
- The investigation does not involve a route of administration, dosage level, use in a patient population, or other factor that significantly increases the risks (or decreases the acceptability of the risks) associated with use of the drug;
- The investigation is conducted in compliance with the requirements for review by an IRB in part 56 (21 CFR part 56) and the requirements for informed consent in part 50 (21 CFR part 50); and
- The investigation is conducted in compliance with the requirements in § 312.7, which govern promotion and commercial distribution of investigational new drugs, among other things.

Section 312.2(b)(1) was created during the revision of the IND regulations in the 1980s (''IND Rewrite'') because it became clear that physicians, especially those affiliated with academic institutions, sought to conduct clinical investigations using marketed drugs, either to investigate new uses or to use the drug as a research tool to explore biological phenomena or disease processes (48 FR 26720, June 9, 1983). Although such clinical investigations are subject to section 505(i) of the FD&C Act, FDA reevaluated the utility of reviewing these INDs and concluded that our review of certain categories of INDs was not necessary to ensure the protection of study subjects. Accordingly, in the final rule adopting the IND Rewrite, we exempted from the IND requirements clinical investigations of lawfully marketed drugs that meet specific criteria designed to help ensure that exempted investigations do not expose subjects to new risks (52 FR 8798 at 8832, March 19, 1987) (codified in § 312.2(b)(1)). Under § 312.2(b)(1)(iv), investigators conducting exempt studies are still required to conform to all ethical principles applicable to the conduct of clinical investigations, including the statutory requirement for informed consent (section 505(i)(4) of the FD&C Act). Thus, a study's exemption is conditioned on a sponsor complying with the requirements for informed consent set forth in part 50 as well as the requirements for review and approval by an IRB set forth in part 56. Finally, the sponsor is prohibited from test marketing or commercially distributing the product and from promoting the product for its investigational use (see §§ 312.2(b)(1)(v) and 312.7).

C. Guidance on Whether Clinical Investigations Can Be Conducted Without an IND

To address questions about the applicability of the IND regulations to certain types of clinical investigations, in the **Federal Register** of October 14, 2010, we issued a notice of availability (75 FR 63189) of a draft guidance entitled ''Guidance for Industry: Investigational New Drug Applications (INDs)—Determining Whether Human Research Studies Can Be Conducted Without an IND'' (''2010 Draft IND Guidance''). In addition to explaining when the FD&C Act and FDA regulations require an IND to be

submitted, the draft guidance described the types of clinical investigations that are exempt by regulation from the IND requirements and addressed a range of issues that commonly arise in inquiries to FDA about the application of those requirements.

On September 10, 2013, we issued a notice of availability (78 FR 55262) of the final version of that draft guidance, entitled ''Guidance for Clinical Investigators, Sponsors, and Institutional Review Boards (IRBs) on Investigational New Drug Applications—Determining Whether Human Research Studies Can Be Conducted Without an IND'' (''2013 IND Guidance'' (Ref. 1)). Like the draft guidance (2010 Draft IND Guidance), the final guidance notes that a ''drug'' is not limited to articles intended to have a therapeutic purpose (*i.e.,* to diagnose, cure, mitigate, treat, or prevent a disease), but also includes articles (other than food) intended to affect the structure or function of the body. For example, an article administered to healthy individuals to prevent pregnancy or treat male pattern baldness is a drug. The 2013 IND Guidance further explained that the drug definition also includes articles used for research purposes in healthy subjects to blunt or provoke a physiologic response or study the mechanism of action or metabolism of a drug (Ref. 1 at 3).

The final guidance also explains the application of the IND regulations to studies of ingredients or products marketed as foods or cosmetics. The guidance explains that a clinical investigation assessing the use of a conventional food for a therapeutic purpose (*e.g.,* to relieve symptoms of Crohn's disease) would be a study to evaluate a drug use of the food and would therefore require an IND (Ref. 1 at 12–13; see also section 201(g)(1)(B) of the FD&C Act). However, a clinical study designed to evaluate the safety or tolerability of a food ingredient when ingested as food (*i.e.,* primarily for its taste, aroma, or nutritive value) would not be a study to evaluate a drug use, so an IND would not be required (Ref. 1 at 13–14; see also section 201(g)(1)(C) of the FD&C Act and *Nutrilab* v. *Schweiker,* 713 F.2d 335 (7th Cir. 1983)).

Regarding dietary supplements, the final guidance explains that a dietary supplement intended only to affect the structure or function of the body and not intended for a therapeutic purpose is not a drug (Ref. 1 at 12; see also sections 201(g)(1) and 403(r)(6) of the FD&C Act (21 U.S.C. 321(g)(1) and 343(r)(6)). Therefore, an IND is not required for a clinical investigation intended only to evaluate a dietary supplement's effect on the structure or function of the body. However, if a clinical investigation is intended to evaluate a dietary supplement's ability to diagnose, cure, mitigate, treat, or prevent a disease, an IND is required.

The final guidance explains that clinical investigations of ingredients or products marketed as cosmetics require an IND if the ingredient is being studied for use to affect the structure or function of the body or for a therapeutic purpose (Ref. 1 at 11). This is because section 201(g)(1)(B) and (C) of the FD&C Act defines as drugs both articles (other than food) intended to affect the structure or function of the body and articles intended to diagnose, cure, mitigate, treat, or prevent a disease.

Because FDA received multiple comments asking for further opportunity to comment on portions of the final guidance (sections VI.C and VI.D) addressing the applicability of the IND regulations to clinical investigations evaluating drug uses of foods (including dietary supplements) or cosmetics, on February 6, 2014, we reopened the comment period on those sections of the guidance (79 FR 7204). These comments raised questions about application of the IND requirements to certain clinical studies of conventional foods, dietary supplements, and cosmetics being investigated for uses covered by the drug definition in section 201(g)(1)(B) or (C) of the FD&C Act.

On October 30, 2015, we issued a notice of administrative stay of action staying parts of the final guidance to allow for further consideration of issues raised by comments received following the reopening of the comment period (80 FR 66907). Specifically, we stayed portions of section VI.D.2, ''Conventional Food'' (concerning clinical studies to evaluate non-nutritional effects on the structure or function of the body), and all of section VI.D.3, ''Studies Intended to Support a Health Claim'' (except as to studies intended to evaluate whether a food substance reduces the risk of a disease in individuals less than 12 months old, those with altered immune systems, and those with serious or life-threatening medical conditions). The stayed portion of section VI.D.2 states that under the applicable regulations, a clinical investigation intended only to evaluate the nutritional effects of a food (including medical foods) would not require an IND, but an investigation intended to evaluate other effects of a food on the structure or function of the body would require an IND. Section VI.D.3 (stayed except as to studies that include subjects in the three medically vulnerable categories previously described) states that under the applicable regulations, a clinical study designed to evaluate the relationship between a food substance and a disease, and intended to provide support for a health claim about reducing the risk of the disease, must be conducted under an IND, unless the substance-disease relationship being studied is already the subject of an authorized health claim under section 403(r)(1)(B) and (r)(3) of the FD&C Act (for a conventional food) or section 403(r)(1)(B) and (r)(5)(D) (for a dietary supplement). The notice announcing the administrative stay of portions of the final guidance states that we do not intend to enforce the IND requirement for studies in the stayed categories while the stay is in effect (80 FR 66907 at 66908 to 66909).

As previously stated, some clinical investigations of products marketed as foods and cosmetics are included among the types of studies that are required by the FD&C Act and FDA regulations to be conducted under an IND. Under the proposed rule, some of these clinical investigations would be exempt from the IND requirements if they meet the proposed exemption criteria discussed in section V of this document. At the completion of this rulemaking, we anticipate taking action to resolve related issues in the final guidance, including the stayed portions of the guidance.

D. Need for the Regulation

In recent years, FDA has received inquiries about many clinical investigations evaluating a drug use of an article marketed as a food or cosmetic. Examples of such articles include conventional foods such as potatoes and dried fruit; dietary supplements such as soy isoflavones, vitamins, and green tea extract; and cosmetics such as lavender oil and hydroquinone (which is a cosmetic when used as a fragrance ingredient or hair colorant, but a drug when used to bleach the skin by decreasing the formation of melanin). Products in these categories have been studied to evaluate their use in treating, mitigating, curing, or preventing diseases such as asthma, diabetes, arthritis, gastrointestinal disorders, depression, cardiovascular disease, and cancer.

In some cases, the sponsor of a clinical investigation of a food or cosmetic—often, the manufacturer of the product—seeks to study the product for use in treating, mitigating, curing, or preventing a disease because the sponsor hopes to develop and obtain marketing approval of the product as a

drug, has a financial relationship with an entity that hopes to obtain such marketing approval, or wishes to market the product for disease treatment or prevention without seeking approval for it as a new drug. For example, the manufacturer of a dietary supplement marketed with a claim that the product ''supports digestive health'' might wish to sponsor a clinical investigation designed to evaluate the product's ability to treat a digestive disorder. However, in other cases, a person or institution may have a purely scientific or medical interest in studying a conventional food, dietary supplement, or cosmetic for a drug use. For example, physicians and other researchers in hospitals and universities often explore potentially novel mechanisms of action of a food or cosmetic to understand whether such a product could have an effect on an aspect of a disease or medical condition. In many cases, such researchers have no intent to seek approval of the product as a drug or market it unlawfully for disease treatment or prevention without such approval, no financial interest in the product, and no research funding or other financial support from the product's manufacturer or other potential sponsors of an application for drug marketing approval.

Review divisions in the Center for Biologics Evaluation and Research (CBER) and the Center for Drug Evaluation and Research (CDER) frequently receive inquiries from study sponsors and investigators about whether the IND requirements apply to a planned study to evaluate a drug use of a food or cosmetic. In some cases, the sponsor asserts that the study is exempt from the IND requirements under § 312.2(b)(1). However, most of these studies are not eligible for the exemption in § 312.2(b)(1) because the study is not a clinical investigation of a drug product that is lawfully marketed in the United States. Nevertheless, in some cases, the Agency has concluded that it is not necessary or desirable to apply the IND requirements to a proposed drug study of a food or cosmetic because the study poses minimal risks to subjects and is not intended to be used in support of a drug marketing application, drug development plan, or labeling change that would cause the lawfully marketed food or cosmetic to become an unlawfully marketed drug. In such cases, we have exercised enforcement discretion regarding the submission of an IND for the study and the IND reporting requirements (*e.g.,* study progress and safety reports). Sponsors of such studies must still comply with FDA regulations on the protection of human subjects and IRB review (parts 50 and 56, respectively), along with the IND regulation regarding promotion and commercial distribution of investigational drugs (§ 312.7), and they are expected to notify us of any changes to the study protocol that could affect subjects' safety.

We believe that establishing IND exemptions for certain clinical investigations of drug uses of foods and cosmetics based on the principles behind the adoption of § 312.2(b)(1) would reduce regulatory and resource burdens on sponsors, investigators, and the Agency in circumstances when application of the IND requirements is not needed to ensure adequate protection of human subjects. Many of the proposed clinical investigations of foods and cosmetics that we have considered in recent years would have been eligible for either the proposed self-determined exemption or FDA-determined exemption. Codifying IND exemptions for investigations of drug uses of foods and cosmetics that meet certain criteria similar to the eligibility criteria for exempting studies of lawfully marketed drug products under § 312.2(b)(1) could result in reduced research costs for sponsors, fewer inquiries submitted to CBER and CDER review divisions, and greater numbers of clinical trials (because FDA consultation would not be needed for the self-determined exemption), without compromising the health, safety, or welfare of subjects or undermining the quality of data needed to support drug marketing approval.

IV. Legal Authority

This proposed rule would exempt from the IND regulations in part 312 certain clinical investigations evaluating drug uses of products lawfully marketed in the United States as foods (including dietary supplements) or cosmetics. These exemptions would track the exemption already provided in § 312.2(b)(1) for certain clinical investigations of lawfully marketed drugs.

Under section 701(a) of the FD&C Act (21 U.S.C. 371(a)), the Agency is empowered to issue regulations for the efficient enforcement of that statute. FDA's primary objective in reviewing an IND is to assure the rights, safety, and welfare of subjects (see 48 FR 26720 at 26725 and § 312.60), with a secondary objective of helping to ensure that the quality of data obtained from a Phase 2 or Phase 3 clinical study is adequate to permit evaluation of the drug's safety and effectiveness (§ 312.22(a)). Like any other clinical investigation where the intended use to be studied brings the investigational product within the drug definition, clinical investigations evaluating drug uses of foods and cosmetics are subject to section 505(i) of the FD&C Act. However, after reevaluating the utility of requiring such clinical investigations to be conducted under an IND, FDA finds that these investigations are remarkably diverse with respect to the composition and risk profile of the products studied, the health of the study subjects, and the nature of the study procedures (*e.g.,* invasive vs. non-invasive testing). Accordingly, we have drafted subject protection and study purpose criteria in an attempt to define categories of low-risk clinical investigations that can be exempted from the IND requirements without compromising human subject protection or the quality of data used to support drug marketing applications. FDA tentatively concludes that, for clinical investigations that meet the proposed criteria, review of an IND is not necessary for subject protection and would be an inefficient use of sponsor and Agency resources. Therefore, under our authority to issue regulations for the efficient enforcement of the FD&C Act, we are proposing to exempt clinical investigations that meet the proposed criteria from the IND requirements.

We are also issuing this proposed rule under FDA's authority to regulate unapproved new drug products under the FD&C Act (see sections 201, 301, 501, 502, 503, 505, 561, and 701) (21 U.S.C. 321, 331, 351, 352, 353, 355, 360bb, and 371) and section 351 of the PHS Act.

V. Description of the Proposed Rule

We are proposing to amend the IND regulations to establish two exemptions for clinical investigations evaluating a drug use of a food or cosmetic. Under the first exemption provision, a clinical investigation to evaluate a drug use of a food or cosmetic would be exempt from the IND requirements if certain criteria were met regarding: (1) the intent of the investigation; (2) compliance with requirements and restrictions regarding institutional review, informed consent, and promotion and commercial distribution of investigational drugs; (3) the route of administration of the product as used in the investigation; and (4) protection of subjects' health, safety, and welfare. Because a sponsor would self-determine whether the investigation met the criteria to be conducted without an IND, we refer to this exemption as the ''self-determined exemption.''

Under the second proposed exemption, a sponsor of an investigation that did not meet one or more of the self-determined exemption's health, safety, and welfare criteria, but did meet all the other criteria for the self-determined exemption, could submit to us a written request for exemption if the sponsor concluded that the study nevertheless did not present a potential for significant risk to the health, safety, or welfare of subjects. Under this ''FDA-determined exemption,'' we would grant an exemption if we found that the investigation did not present a potential for significant risk. In addition to authorizing the Agency to grant an FDA-determined exemption upon the request of a sponsor, the proposed rule would allow FDA to exempt a study on our own initiative if we determined, upon review of an IND that had been submitted for the study, that the study met the decision criteria for an FDA-determined exemption. The proposed rule would also permit us to revoke an exemption we had granted if we subsequently became aware of information suggesting that the study presented a potential for significant risk to the health, safety, or welfare of subjects, or that the study did not meet any of the other requirements for the exemption.

The proposed self-determined and FDA-determined exemptions (including the FDA-initiated exemption) would be set forth in proposed § 312.2(b)(4) and (5), respectively, with existing exemptions and related provisions in current § 312.2(b)(4) through (6) to be renumbered accordingly. In addition, we propose to amend current § 312.2(b)(4), which states that we will not accept an IND for investigations exempt under § 312.2(b)(1), to specify that we also would not accept an IND for investigations exempt under proposed § 312.2(b)(4) and (5).

The following paragraphs describe the proposed self-determined and FDA-determined exemption provisions and other proposed changes to § 312.2(b).

A. Self-Determined Exemption (Proposed § 312.2(b)(4))

Under proposed § 312.2(b)(4), a clinical investigation to evaluate a drug use of a product lawfully marketed in the United States as a food intended for human consumption (including as a conventional food or dietary supplement) or as a cosmetic would be exempt from the IND requirements if the following criteria are met:

- The investigation is not intended to support a drug development plan for the product, including a future IND or application for marketing approval (an application under section 505 of the FD&C Act or section 351 of the PHS Act), or to support a change in the labeling of the lawfully marketed product that would cause it to become an unlawfully marketed drug;
- The investigation is conducted in compliance with the requirements for institutional review in part 56 and the requirements for informed consent in part 50;
- The investigation is conducted in compliance with the requirements of § 312.7;
- The route of administration of the product in the investigation is the same as that of the lawfully marketed product; and
- The investigation meets the following criteria relating to the health, safety, and welfare of study subjects:
  - The investigation does not include subjects who are less than 12 months of age or subjects who are pregnant or lactating;
  - The investigation does not include subjects with a compromised immune system or a serious or life-threatening disease or condition;
  - The investigation does not restrict subjects from continuing with treatments or therapies prescribed or recommended by a healthcare provider;
  - The investigation does not involve any procedures that would increase the risks (or decrease the acceptability of the risks) to subjects beyond what they would ordinarily encounter during routine physical or psychological examinations or standard of care procedures to treat their medical condition;
  - The product is being used in the investigation consistent with its labeled conditions of use or, in the absence of labeled conditions of use, consistent with its ordinary conditions of use (*e.g.,* same dose range and total daily intake, same formulation, same duration of use); and
  - During the investigation, subjects are not taking and will not be treated with any other product(s) that would significantly increase the risks (or decrease the acceptability of the risks) they will encounter in the investigation (*e.g.,* because of drug interactions).

The following paragraphs discuss the scope and criteria of the proposed self-determined exemption in more detail.

1. Products Lawfully Marketed in the United States as Foods or Cosmetics

The self-determined exemption would apply to studies of products that are lawfully marketed in the United States as foods intended for human consumption (including as a dietary supplement) or as cosmetics (proposed § 312.2(b)(4)). For purposes of the proposed self-determined exemption, ''lawfully marketed'' means the product is marketed in the United States as a food or cosmetic consistent with the FD&C Act and any applicable FDA regulations.

2. Clinical Investigation To Evaluate a Drug Use

The proposed self-determined exemption would apply to clinical investigations evaluating a food or cosmetic for use as a drug (proposed § 312.2(b)(4)). The intended use of a product determines whether the product fits within the definition of a ''drug'' under the FD&C Act (see section III.C of this document).

3. Not Intended To Support a Drug Development Plan or Marketing for Use as a Drug

The proposed self-determined exemption would not apply to a clinical investigation intended to support a drug development plan for a food or cosmetic, including a future IND or marketing approval application, or to support a change in the labeling of the food or cosmetic that would cause the product to become an unlawfully marketed drug (proposed § 312.2(b)(4)(i)). For example, this means that if the investigation were intended to support a future IND for a clinical trial investigating a drug use of the product, or a future NDA or BLA for the product, the investigation would not be eligible for the exemption.

As previously noted, the IND exemption for clinical investigations of lawfully marketed drug products in existing § 312.2(b)(1) does not apply to a study intended to be reported to FDA as a well-controlled study in support of a new indication for use or intended to be used to support any other significant change in a drug's labeling. In proposing this criterion in the 1983 IND Rewrite, FDA stated that the criterion was ''aimed at helping ensure that investigations intended to be submitted to FDA for labeling or advertising changes are adequate in design to serve that purpose'' (48 FR 26720 at 26733). We further stated that this is the ''same reason the agency evaluates the design of Phase 2 and Phase 3 studies,'' noting that this review ''adds considerable efficacy to the drug development process'' (48 FR 26720 at 26733). Similarly, if a clinical investigation of a food or cosmetic is intended to support a drug development plan for that product, the investigation must be conducted under an IND to help ensure that the quality of the scientific evaluation of the product is adequate to

permit an evaluation of the product's effectiveness and safety when used as a drug, including whether data from the investigation can be used to support approval of the product as a drug (see § 312.22(a)).

The self-determined exemption also would not apply if the sponsor of the clinical investigation intended to use the study to support marketing of the food or cosmetic for a use that caused the product to be an unlawfully marketed drug. For example, if a sponsor sought to study a dietary supplement to support marketing it for a disease treatment use (rather than for a structure or function use), the study would not be eligible for the self-determined exemption. Similarly, the exemption would not apply to a study intended to support the addition of a drug claim to the label of a conventional food or a cosmetic.

4. Conducted in Compliance With Part 56 and Informed Consent Requirements of Part 50

To be eligible for the proposed self-determined exemption, the study must also be conducted in compliance with the IRB requirements in part 56 and the informed consent requirements in part 50 (proposed § 312.2(b)(4)(ii)). This criterion would mirror the provision in § 312.2(b)(1)(iv) that requires compliance with the IRB and informed consent requirements as a condition of eligibility for the IND exemption for certain studies of drug products lawfully marketed in the United States.

5. Conducted in Compliance With § 312.7

Another eligibility criterion for the proposed self-determined exemption matching a criterion for the exemption for lawfully marketed drugs is the proposed requirement that the investigation be conducted in compliance with § 312.7 (proposed § 312.2(b)(4)(iii)). Among other things, § 312.7 prohibits commercially distributing or test marketing an investigational new drug, as well as representing in a promotional context that an investigational new drug is safe or effective for the purposes for which it is under investigation.

6. Same Route of Administration as Lawfully Marketed Food or Cosmetic

Another eligibility criterion for the proposed self-determined exemption that is based on a criterion for the exemption for lawfully marketed drugs is the requirement that the route of administration of the product in the investigation be the same as that of the lawfully marketed product (proposed § 312.2(b)(4)(iv)). For example, a clinical investigation of a product lawfully marketed as a dietary supplement for oral ingestion would not qualify for the exemption if the product would be administered topically or transmucosally (*i.e.,* sublingually, buccally, or intranasally) when used as a drug in the investigation. Similarly, a clinical investigation of a product lawfully marketed as a cosmetic applied to the skin would not qualify for the exemption if the product would be administered subcutaneously, intravenously, or intramuscularly when used as a drug in the investigation. This requirement would ensure that the self-determined and FDA-determined exemptions are limited to investigations evaluating drug uses of foods and cosmetics when the investigational products are administered in the same way as the marketed products, thereby avoiding potential safety risks posed by atypical routes of administration (*e.g.,* products marketed as dietary supplements being studied as injectable drugs).

7. Criteria To Help Ensure Health, Safety, and Welfare of Subjects

The proposed self-determined exemption includes several eligibility criteria designed to protect the health, safety, and welfare of study subjects (proposed § 312.2(b)(4)(v)). These criteria, discussed in the following paragraphs, are intended to serve the same purpose as the requirement under the lawfully marketed drug exemption that the investigation not involve a dosage level, use in a patient population, or other factor that significantly increases the risks (or decreases the acceptability of the risks) associated with use of the drug product (§ 312.2(b)(1)(iii)). Because of age-dependent development, immune system impairment, or other physiological differences, certain populations (described in the following paragraphs) may have the potential for a higher degree of risk or different risks compared to the general population. The proposed health, safety, and welfare criteria are especially important because, under the self-determined exemption, FDA would not have an opportunity to evaluate potential safety concerns before a proposed study begins.

a. No subjects less than 12 months of age or who are pregnant or lactating.

To be eligible for the self-determined exemption, a proposed study could not involve subjects less than 12 months of age or subjects who are pregnant or lactating (proposed § 312.2(b)(4)(v)(A)). We are proposing this criterion because foods and cosmetics that would not pose a safety concern in the general population may not be safe for study in these vulnerable populations. For example, a study to evaluate use of honey or a honey-containing product to prevent diarrhea in subjects less than 12 months of age would pose a risk of botulism if *Clostridium botulinum* spores were present in the honey. These medically vulnerable populations pose special safety concerns typically requiring that an investigation be conducted under the protections afforded by an IND (although it is possible that a sponsor could show, in a request for an FDA-determined exemption, that a particular investigation involving such a population does not present a potential for significant risk to subjects' health, safety, or welfare).

b. No subjects with a compromised immune system or a serious or life-threatening disease or condition.

The self-determined exemption would not apply if a proposed study included subjects with a compromised immune system or a serious or life-threatening disease or condition (proposed § 312.2(b)(4)(v)(B)). A person with an immune system impaired or weakened by disease (*e.g.,* diabetes, cancer), malnutrition, or drugs (*e.g.,* chemotherapy) may be unable to fight off an infection. For example, a study to evaluate use of a probiotic dietary supplement in adult subjects to prevent nausea associated with chemotherapy might pose a risk of mucormycosis due to fungal contamination of the probiotic.

A ''serious'' disease or condition is one that is associated with persistent or recurrent morbidity (a diseased condition or state) that has substantial impact on day-to-day functioning; the morbidity need not be irreversible to be ''serious'' if it is persistent or recurrent (see § 312.300(b)). FDA considers a disease or condition to be ''life-threatening'' if: (1) the likelihood of death is high unless the course of the disease is interrupted or (2) the disease or condition has a potentially fatal outcome (see § 312.81(a)). For example, a study to evaluate high doses of a vitamin in adults with insulin-dependent diabetes might pose risks of worsening kidney or heart function. Similarly, a study of the herbal product valerian, which potentiates the effects of alcohol, could be dangerous in adults with alcohol use disorder. Because the potential risks to subjects would generally warrant that the investigation be conducted under the IND requirements and their protections for subjects who have a serious or life-threatening disease, a study of a food or

cosmetic to treat even a non-serious disease would not be eligible for the self-determined exemption if the study included such subjects.

c. Continuing treatments or therapies prescribed or recommended by a healthcare provider.

To be eligible for the self-determined exemption, the investigation could not restrict the subjects of the study from continuing with any treatment or therapy prescribed or recommended for them by a healthcare provider (proposed § 312.2(b)(4)(v)(C)). Healthcare providers could include, for example, physicians, physician assistants, dentists, physical therapists, and nurses. Being unable to continue a course of treatment or therapy that one's physician, therapist, or other healthcare provider has prescribed or recommended could significantly increase risks for a subject; therefore, an investigation in which this might occur usually warrants the protections of an IND.

d. No study procedures that would increase the risks to subjects beyond what are ordinarily encountered.

Another proposed eligibility criterion for the self-determined exemption is that the investigation not involve any procedures that would increase the risks (or decrease the acceptability of the risks) to subjects beyond what they would ordinarily encounter during a routine physical or psychological examination or standard of care procedures to treat their medical condition (proposed § 312.2(b)(4)(v)(D)). For example, using an invasive technique such as a biopsy to evaluate a study endpoint in subjects who ordinarily would be monitored with routine blood tests might increase risks to the subjects. Studies with the potential to expose subjects to greater risk than they would normally encounter in the course of their clinical care should not be conducted without an IND unless the sponsor can show (in a request for an FDA-determined exemption) that no such increase in risk will occur.

e. Product used consistent with labeled or ordinary conditions of use.

Another proposed criterion for eligibility for the self-determined exemption is that the product would have to be used in the investigation consistent with its labeled conditions of use when lawfully marketed as a food or cosmetic (§ 312.2(b)(4)(v)(E)). In the absence of labeled conditions of use, the product would have to be used consistent with its ordinary conditions of use as a lawfully marketed food or cosmetic (*e.g.,* same dose range and total daily intake, same formulation, same duration of use). This eligibility criterion would help ensure that a clinical investigation not conducted under an IND does not pose significant risks to subjects due to atypical use of the product.

For a product that does not have labeled conditions of use, the ''ordinary'' conditions of use would be those found in a regulation prescribing conditions of safe use (*e.g.,* a food additive or color additive regulation), if such a regulation exists. For products that do not have a regulation prescribing conditions of safe use (such as dietary supplements, cosmetics, and most conventional foods), the ''ordinary'' conditions of use could be those recommended in, for example, the following: guidelines issued by the Department of Health and Human Services, one of its components (such as the National Institutes of Health), or another Federal Agency; recommendations from a division of the National Academy of Sciences or the National Academy of Medicine; publicly available websites of medical societies and professional associations; and guidelines recognized by a professional medical society or nutrition association. For example, although vitamin D products may lack directions for use in children, the American Academy of Pediatrics has issued recommendations on vitamin D supplementation in children.

f. No other product taken by or used to treat subjects during the investigation would significantly increase the risks (or decrease acceptability of the risks) encountered in the investigation.

The last proposed eligibility criterion for the self-determined exemption would limit the exemption to clinical investigations in which the subjects are not taking and will not be treated with any other product that would significantly increase the risks (or decrease the acceptability of the risks) they will encounter in the investigation (proposed § 312.2(b)(4)(v)(F)). For example, drinking grapefruit juice can increase the bioavailability of blood pressure-lowering drugs in the body, and taking the herb ginseng can enhance the bleeding effects of heparin, aspirin, and nonsteroidal anti-inflammatory drugs such as ibuprofen (Ref. 2). Because administering a food or cosmetic as an investigational drug to study subjects who are taking or are being treated with another FDA-regulated product could significantly increase risks to these subjects, such an investigation should not be conducted without an IND unless the sponsor can show (in a request for an FDA-determined exemption) that no such increase in risk will occur.

8. Application of the Self-Determined Exemption

Under the proposed self-determined exemption, a sponsor would not be required to submit a request to FDA for exemption from the IND requirements. (Moreover, as discussed in section V.C of this document, we would not accept an IND for an investigation that is exempt from the IND requirements under the self-determined exemption.) If a sponsor determines that its proposed study meets the eligibility criteria for the exemption, the sponsor may proceed with the study without having to submit an IND.

If the sponsor later revises the protocol or otherwise changes the study so that it no longer meets the eligibility criteria for the self-determined exemption, the sponsor would have to submit an IND for the study or a request for an FDA-determined exemption under proposed § 312.2(b)(5). In addition, if FDA becomes aware (such as during an IRB inspection or through communications from the sponsor, an investigator, a subject, or the IRB) that a study conducted without an IND in reliance on the self-determined exemption is ineligible for the exemption, we may issue an untitled letter or warning letter to the study sponsor and, if necessary, take appropriate enforcement action, such as seeking an injunction.

B. FDA-Determined Exemption (Proposed § 312.2(b)(5))

Some proposed investigations to evaluate a drug use of a food or cosmetic may not meet all the safety-related eligibility criteria for the self-determined exemption, but FDA still might conclude, under appropriate circumstances, that the study does not pose a significant risk to the health, safety, or welfare of subjects. For example, even in an investigation that included subjects with a serious disease, if the product to be studied and the study procedures were low risk, we might conclude, depending on other subject characteristics and the intended use of the investigational product, that the study did not present a potential for significant risk that would necessitate conducting the study under an IND. For example, we might conclude that an investigation evaluating the use of beetroot juice to mitigate, treat, or prevent signs and symptoms of chronic kidney disease did not present a potential for significant risk to subjects because, among other factors, subjects would continue to receive standard of

care treatment for their disease. Therefore, we propose to establish an ''FDA-determined exemption'' under which a sponsor of a study that does not meet one or more of the subject health, safety, and welfare criteria for the self-determined exemption could request an IND exemption from FDA.

1. Request for an Exemption

Under the FDA-determined exemption, a sponsor could request that we exempt from the IND requirements a clinical investigation to evaluate a drug use of a product lawfully marketed in the United States as a food or cosmetic when the investigation satisfies the requirements of the self-determined exemption except for one or more of the criteria related to the health, safety, or welfare of subjects (in proposed § 312.2(b)(4)(v)), but the sponsor has concluded that the study nevertheless does not present a potential for significant risk to subjects' health, safety, or welfare (proposed § 312.2(b)(5)(i)). The request would have to be in writing and would be required to contain the following information.

a. Study protocol or protocol summary.

A request for an FDA-determined IND exemption for a drug study of a food or cosmetic would be required to include a copy of the study protocol or a detailed protocol summary that includes, at a minimum, the following: the study design and duration; proposed endpoints; the study population, including inclusion and exclusion criteria for subjects; a description of the specific product to be studied as an investigational drug, including ingredients, composition, and any labeling; the dosage form, dosing regimen, and route of administration of the investigational drug; the study procedures (including safety monitoring procedures); and planned modifications to the protocol in the event of adverse events (proposed § 312.2(b)(5)(i)(A)). This information about the proposed study is necessary to give FDA an adequate context in which to assess the potential risks to subjects and decide whether to exempt the study from the IND requirements.

b. Names of manufacturer and source of product to be studied.

A request for exemption would have to include the names of the manufacturer and the entity that is the source of the specific product to be studied in the investigation (proposed § 312.2(b)(5)(i)(B)). In cases where the product to be studied will be provided directly by the manufacturer, the manufacturer and source of the investigational product will be the same. However, in some cases, the investigational product might be obtained from someone other than the manufacturer, such as a distributor.

For foods not in package form and not labeled with the name of the manufacturer, the exemption request would only have to provide the source of the product.

c. Name and form of lawfully marketed food or cosmetic product; labeling.

A request for exemption would have to include the name (if different from the name of the product to be studied in the investigation) and form (*e.g.,* conventional food, liquid, tablet, lotion) of the lawfully marketed food or cosmetic product, and a copy of the product labeling (proposed § 312.2(b)(5)(i)(C)). If the product's labeling does not identify its ingredients, the sponsor would also be required to provide a description of the composition of the product.

d. Source(s) of funding for the investigation.

A request for exemption would have to include the source(s) of funding for the investigation (proposed § 312.2(b)(5)(i)(D)). This information is needed to help ensure that an investigation is not intended to support a drug development plan for the product being studied, which is a requirement for eligibility for the FDA-determined exemption. For example, if an investigation is funded by the manufacturer of the investigational product or by a trade association representing the interests of firms that manufacture that type of product, we would consider the funding source as a factor in determining whether an investigation is intended to support a drug development plan for the product.

e. Information about the sponsor.

A request for exemption would have to include the name, address, telephone number, email address, and contact name for the sponsor (proposed § 312.2(b)(5)(i)(E)). This information will, among other things, enable us to contact the sponsor if we have any questions and to provide our response to the request.

f. Description of why the investigation does not present a potential for significant risk to the health, safety, or welfare of subjects.

A request for exemption would have to include a brief description of why the investigation does not present a potential for significant risk to the health, safety, or welfare of subjects, including, where relevant, the following information regarding the subject health, safety, and welfare eligibility criteria set out in the self-determined exemption (proposed § 312.2(b)(5)(i)(F)):

- If the proposed investigation includes subjects who are less than 12 months of age or subjects who are pregnant or lactating, the exemption request would have to include information to demonstrate that the use of the investigational product does not present a potential for significant risk to the health, safety, or welfare of these subjects (proposed § 312.2(b)(5)(i)(F)(*1*)).
- If the investigation includes subjects with a compromised immune system or a serious or life-threatening disease or condition, the exemption request would have to include information to demonstrate that the use of the investigational product does not present a potential for significant risk to the health, safety, or welfare of these subjects (proposed § 312.2(b)(5)(i)(F)(*2*));
- If participation in the investigation will preclude subjects from continuing with a treatment or therapy prescribed or recommended for them by a healthcare provider (*e.g.,* if some subjects randomized to the investigational product or placebo will be instructed to discontinue their current treatment), the exemption request would have to include an explanation of why this restriction would not present a potential for significant risk to the health, safety, or welfare of these subjects (proposed § 312.2(b)(5)(i)(F)(*3*));
- If the subjects in the investigation will undergo any procedures during the investigation that would expose them to more risk than they would ordinarily encounter during routine physical or psychological examinations or standard of care procedures to treat their medical condition, the exemption request would have to include information to demonstrate that the procedures do not present a potential for significant risk to the health, safety, or welfare of these subjects (proposed § 312.2(b)(5)(i)(F)(*4*));
- If the proposed conditions of use of the product in the investigation differ from the product's labeled or ordinary conditions of use, the exemption request would have to include an explanation of why the proposed conditions of use do not present a potential for significant risk to the health, safety, or welfare of the subjects (proposed § 312.2(b)(5)(i)(F)(*5*)); and
- If the investigational product is being used concurrently with other products that a subject is taking or being treated with, either as part of the study or as prescribed or recommended by a healthcare provider outside the study, the exemption request would have to include information to demonstrate that the investigational product has a history

of safe use with those products or is otherwise not expected to have clinically significant interactions with the other products (proposed § 312.2(b)(5)(i)(F)(*6*)).

g. Other information as requested by FDA.

A request for exemption would have to include any other information requested by FDA for use in reviewing the exemption request (proposed § 312.2(b)(5)(i)(G)). This means that the sponsor would have to provide additional information if, upon reviewing the request, we found that such information was necessary to determine whether the investigation met the exemption criteria. For example, if a sponsor provided insufficient information to explain why use of the investigational product in a manner that differs from its labeled conditions of use did not present a potential for significant risk to subjects, we would ask for additional information to address concerns about the different conditions of use.

2. Submitting a Request for Exemption

A sponsor seeking an FDA-determined exemption would have to submit a written request to CBER or CDER at the appropriate address set forth in § 312.140(a), which specifies where to send a new IND for a drug or biological product (proposed § 312.2(b)(5)(ii)). Sponsors should consult the 2013 IND Guidance (or successor guidance) to find the appropriate contact for inquiries about when the IND requirements apply (see Ref. 1). The FDA components listed in the guidance may also be consulted for help in determining the appropriate Center to which an exemption request should be submitted.

3. FDA Action on a Request for Exemption

Upon receiving a complete exemption request, FDA would evaluate any risks to subjects that may result from participation in the clinical investigation (proposed § 312.2(b)(5)(iii)). We would grant an exemption from the IND regulations if we found that the investigation satisfied the requirements of § 312.2(b)(4)(i) through (iv) and did not present a potential for significant risk to the health, safety, or welfare of the subjects. We would notify the sponsor in writing whether the request for an FDA-determined exemption was granted. An exemption granted under this provision would not become effective until the sponsor received written notification that we had granted the exemption.

4. FDA-Initiated Exemption

In addition to permitting FDA to grant an exemption following the request of a sponsor, the proposed rule would allow FDA to exempt a study from the IND requirements if we determine, after reviewing an IND for a study, that the study meets the decision criteria for an FDA-determined exemption (*i.e.,* the study meets the requirements in proposed § 312.2(b)(4)(i) through (iv) and the study does not present a potential for significant risk to the health, safety, or welfare of subjects). We believe there might be instances in which, although a sponsor had submitted an IND for a study and had not requested an exemption, we might conclude, upon reviewing the IND, that the study meets the decision criteria for an FDA-determined exemption. (We also might conclude that a study for which an IND has been submitted meets all the criteria for a self-determined exemption. If so, we would simply refuse to accept the IND under § 312.2(b)(4) (redesignated in the proposed rule as § 312.2(b)(6)), as we do when we receive an IND for a study of a lawfully marketed drug product that meets the exemption criteria in § 312.2(b)(1).) Exempting on our own initiative a study that meets the criteria for an FDA-determined exemption would reduce the regulatory burden on both the sponsor and FDA without causing harm to the health, safety, or welfare of study subjects. Therefore, proposed § 312.2(b)(5)(iv) provides that FDA may grant an exemption from the IND requirements on our own initiative after reviewing an IND and determining that the clinical investigation for which the IND was submitted satisfies the requirements of § 312.2(b)(4)(i) through (iv) and does not present a potential for significant risk to the health, safety, or welfare of subjects. Proposed § 312.2(b)(5)(iv) further states that if FDA decides to grant an exemption under § 312.2(b)(5)(iv), we will notify the sponsor or sponsor-investigator of the exemption in writing, and that the exemption will become effective when the sponsor or sponsor-investigator receives written notification that we have granted the exemption.

5. Revocation of an FDA-Determined Exemption

Under proposed § 312.2(b)(5)(v), we could revoke a previously granted exemption (whether requested by a sponsor under proposed § 312.2(b)(5)(i) or initiated by FDA under proposed § 312.2(b)(5)(iv)) if we become aware of information suggesting that the clinical investigation presents a potential for significant risk to the health, safety, or welfare of study subjects, or that the investigation does not meet any other requirement for the FDA-determined exemption (such as the requirement that the route of administration of the product in the investigation be the same as that of the lawfully marketed product). For example, we might revoke an exemption if we learn that subjects are experiencing clinically significant adverse events associated with the investigational product or if we learn of an interaction between the investigational product and another product prescribed for or dispensed to study subjects. If we learn of something that creates a potential for significant risk to subjects, we may conclude that the study must be conducted in accordance with the IND requirements to provide adequate protection to subjects. If we decided to revoke an exemption, we would notify the sponsor of the reason for revoking the exemption and, if appropriate, direct the sponsor to suspend the investigation and/or cease recruiting new subjects to the investigation.

C. Proposed Technical and Conforming Amendments

In accordance with the proposed addition of the self-determined exemption in § 312.2(b)(4) and the FDA-determined exemptions in § 312.2(b)(5), we propose to renumber the existing provisions in § 312.2(b)(4) through (b)(6) as § 312.2(b)(6) through (b)(8).

We also propose to make a conforming amendment to existing § 312.2(b)(4) (to be renumbered as § 312.2(b)(6)), which states that FDA will not accept an application (IND) for an investigation that is exempt from the IND requirements under § 312.2(b)(1). We propose to include investigations exempted under the self-determined and FDA-determined exemption provisions among those for which we will not accept an IND.

VI. Proposed Effective Date

We propose that any final rule resulting from this rulemaking become effective 30 days after the date of its publication in the **Federal Register**.

VII. Preliminary Economic Analysis of Impacts

A. Introduction

We have examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563

direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We believe that this proposed rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this proposed rule would create net cost savings for the affected industry by reducing the number of INDs that must be submitted to FDA, we propose to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

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

B. Summary of Costs and Benefits

Quantifiable benefits of this proposed rule are cost savings that come from reducing the burden of submitting INDs to FDA for clinical investigations evaluating drug uses of foods for human consumption (including dietary supplements) and cosmetics. The cost savings go to sponsors and sponsor-investigators (collectively, ''sponsors''), typically physicians and other researchers at hospitals and academic institutions, who would no longer need to submit as many INDs because the proposed rule provides exemptions for qualifying drug studies of products lawfully marketed as a food or cosmetic. The proposed rule would also provide cost savings to FDA, which would not need to evaluate and monitor as many INDs. We expect the average present value of the benefits to be $28 million at a 7 percent discount rate and $34 million at a 3 percent discount rate over a 10-year time horizon.

If this proposed rule is finalized, sponsors would incur a one-time cost because they, or lawyers or consultants acting on their behalf, would have to spend time reading the rule to understand what studies are eligible for exemption and how to request an FDA-determined exemption. We estimate that 557 sponsors would read the rule the first year and 279 additional sponsors would read the rule in subsequent years. We estimate the cost of reading the rule to be $153 per sponsor. We expect the average present value of the reading cost to be $418,000 at a 3 percent discount rate and $364,000 at a 7 percent discount rate over a 10-year time horizon. In addition, there would be costs to FDA associated with a new type of IND-related submission, a request for an FDA-determined exemption. We have analyzed this cost as a partial offset to the cost savings of the rule. The total net benefit of the rule is estimated to be $33 million at a 3 percent discount rate and $27 million at a 7 percent discount rate.

Table 1 provides annualized values for the estimated benefits and costs of the proposed rule:

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

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered	
Benefits:							
Annualized Monetized/year	$3,450,000 3,530,000	($850,000) (780,000)	$7,730,000 $7,840,000	2021 2021	7 3	10 10	Cost savings to FDA and industry.
Annualized Quantified	....	....	....	....	....	7 3	
Qualitative							
Costs:							
Annualized Monetized/year	45,300 43,800	15,700 15,100	77,800 75,700	2021 2021	7 3	10 10	
Annualized Quantified	.....	.....	.....	.....	7 3		
Qualitative							
Transfers:							
Federal Annualized Monetized/year	.....	.....	.....	.....	7 3		
From/To	From:			To:			3
Other Annualized Monetized/year	.....	.....	.....	.....	7 3		
From/To	From:			To:			3

Effects:
State, Local or Tribal Government:
Small Business:
Wages:
Growth:

We have developed a comprehensive Preliminary Economic Analysis of Impacts that assesses the impacts of the proposed rule. This full preliminary analysis of economic impacts is available in the docket for this proposed rule (Ref. 3) and at *https://www.fda.gov/about-fda/reports/economic-impact-analyses-fda-regulations.*

VIII. Analysis of Environmental Impact

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

IX. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). This analysis provides a description of these provisions and an estimate of the annual reporting burden associated with the proposed rule. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA'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 the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Exemptions from IND Requirements for Certain Clinical Investigations to Evaluate a Drug Use of a Product Lawfully Marketed as a Food (Including a Dietary Supplement) or Cosmetic (Revision to Investigational New Drug (IND) Regulations—OMB Control Number 0910–0014).

Description: The proposed rule would revise FDA's IND regulations to exempt from the IND requirements certain clinical investigations of foods for human consumption (including dietary supplements) or cosmetics. For one type of proposed exemption, respondents must submit a written request to FDA electronically or in paper form.

Description of Respondents: Respondents to the information collection are individuals and organizations who plan to conduct or sponsor a clinical investigation evaluating a drug use of a product lawfully marketed in the United States as a conventional food, dietary supplement, or cosmetic for human use.

The reporting and recordkeeping requirements in part 312 provide the means by which FDA can monitor clinical investigations of the safety and effectiveness of unapproved new drugs and biological products. Information provided by applicants (sponsors and sponsor-investigators) allows us to monitor the safety of ongoing clinical investigations as well as help ensure the reliability and quality of data submitted in support of drug marketing applications. While the regulations provide an exemption from most IND requirements for studies of lawfully marketed drug products that meet certain criteria, including that the study does not involve a route of administration, dosage level, use in a patient population, or other factor that significantly increases the risks associated with the use of the drug product (see § 312.2(b)(1)), the proposed rule would codify IND exemptions for clinical studies investigating drug uses of lawfully marketed foods for human consumption or cosmetics.

We estimate the burden of the information collection for the proposed rule as follows:

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR part	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
312.2(b)(5); Written request for exemption	28	1	28	24	672

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

The proposed rule would create two types of IND exemptions for clinical investigations to evaluate drug uses of products lawfully marketed for human use in the United States as conventional foods, dietary supplements, or cosmetics. Under proposed § 312.2(b)(4) and (5), respondents could qualify for, respectively, either a ''self-determined exemption'' or an ''FDA-determined exemption'' from the IND requirements, provided certain criteria were met. Under the self-determined exemption, if an investigation met the requirements for the exemption, the sponsor or sponsor-investigator would not have to submit an IND for the study or request that FDA exempt the study from the IND requirements. To obtain an FDA-determined exemption, a sponsor or sponsor-investigator would submit a written request for exemption that includes a copy of the study protocol or a detailed protocol summary with information about the study design, investigational product, and procedures; the names of the manufacturer and source of the product to be studied; the name (if different from the name of the product to be studied in the investigation) and form of the lawfully marketed food or cosmetic product, accompanied by a copy of the product's labeling and, if the labeling does not list the product's ingredients, a description of the product's composition; the source(s) of funding for the investigation; the name, address, telephone number, email address, and contact name for the sponsor or sponsor-investigator; a brief description of why the investigation does not present a potential for significant risk to the health, safety, or welfare of subjects; and any other information requested by FDA.[1]

As shown in table 2, we estimate that 28 total sponsors and sponsor-investigators will submit requests for exemption annually and that preparing a request will take approximately 24 hours. The Preliminary Economic Analysis of Impacts for the proposed rule (Ref. 3) estimates that, of the 322 clinical investigations of foods

[1] The proposed rule also would authorize FDA to grant an exemption from the IND requirements on our own initiative when we determined, upon review of an IND for a study, that the study met the decision criteria for an FDA-determined exemption. However, as with the self-determined exemption, this FDA-initiated exemption would not impose any burden on sponsors or sponsor-investigators.

(including dietary supplements) or cosmetics that were the subject of INDs or IND-related inquiries received between 2016 and 2020, we likely would have granted an FDA-determined exemption for 68 studies (approximately 14 each year) had the proposed rule been in effect and the exemption requests been submitted. Because we believe that codifying the FDA-determined exemption in the regulations would make sponsors and sponsor-investigators more likely to seek an exemption, we have doubled the figure of 14 investigations, resulting in an estimated 28 requests for an FDA-determined exemption each year. The estimated time for preparation of a request, 24 hours, is based on the time needed to assemble the information required to be included in the request and describe why the investigation does not present a potential for significant risk to the health, safety, and welfare of subjects. We believe this burden is comparable to the burden associated with preparing a request for advice on whether the IND requirements apply to a planned clinical investigation under § 312.2(e), which we have estimated to be 24 hours (84 FR 3462 at 3463, February 12, 2019). However, we invite comment on the accuracy of this estimate.

Although the proposed procedure for requesting an FDA-determined exemption would create a new reporting element for exemption requests, the proposed rule would likely also reduce burden associated with requesting FDA advice on the applicability of the IND regulations to particular clinical investigations under § 312.2(e). Amending the IND regulations to exempt certain clinical investigations of foods and cosmetics would reduce the need for consulting FDA in this regard because sponsors and sponsor-investigators who use one of the new exemption pathways would not need to use the § 312.2(e) mechanism to ask FDA's advice on whether an IND is required for their clinical investigations to evaluate a drug use of such products.

To ensure that comments on this information collection are received, OMB recommends that written comments be through reginfo.gov (see **ADDRESSES**). All comments should be identified with the title of the information collection.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3407(d)), we have submitted the information collection provisions of this proposed rule to OMB for review. These information collection requirements will not be effective until FDA publishes a final rule, OMB approves the information collection requirements, and the rule goes into effect. FDA will announce OMB approval of these requirements in the **Federal Register**.

X. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. We have determined that the proposed rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we conclude that the proposed rule does not contain policies that have federalism implications as defined in the Executive Order and, consequently, a federalism summary impact statement is not required.

XI. Consultation and Coordination With Indian Tribal Governments

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13175. We have tentatively determined that the proposed rule does not contain policies that would have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. We invite comments from tribal officials on any potential impact on Indian Tribes from this proposed action.

XII. References

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

1. FDA, ''Guidance for Clinical Investigators, Sponsors, and Institutional Review Boards (IRBs) on Investigational New Drug Applications—Determining Whether Human Research Studies Can Be Conducted Without an IND'', available at *https://www.fda.gov/media/79386/download.*
2. FDA Consumer Update, ''Avoiding Drug Interactions'', available at *https://www.fda.gov/consumers/consumer-updates/avoiding-drug-interactions.*
3. FDA, Preliminary Economic Analysis of Impacts, Docket No. FDA–2019–N–2650, available at *https://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm.*

List of Subjects in 21 CFR Part 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, we propose that 21 CFR part 312 be amended as follows:

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

■ 1. The authority citation for part 312 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360bbb, 371; 42 U.S.C. 262.

■ 2. Amend § 312.2 by:
■ a. Redesignating paragraphs (b)(4) through (6) as paragraphs (b)(6) through (8);
■ b. Revising newly redesignated paragraph (b)(6); and
■ c. Adding new paragraphs (b)(4) and (5).

The revision and additions read as follows:

§ 312.2 Applicability.

* * * * *

(b) * * *

(4) A clinical investigation to evaluate a drug use of a product that is lawfully marketed in the United States as a food intended for human consumption (including as a conventional food or dietary supplement) or as a cosmetic, is exempt from the requirements of this part if all of the following apply:

(i) The investigation is not intended to support:

(A) A drug development plan for the product, including a future IND or application for marketing approval (an application under section 505 of the Federal Food, Drug, and Cosmetic Act or section 351 of the Public Health Service Act); or

(B) A change in the labeling of the lawfully marketed product that would cause it to become an unlawfully marketed drug;

(ii) The investigation is conducted in compliance with the requirements for institutional review set forth in part 56 of this title and the requirements for informed consent set forth in part 50 of this title;

(iii) The investigation is conducted in compliance with the requirements of § 312.7;

(iv) The route of administration of the product in the investigation is the same as that of the lawfully marketed product; and

(v) The investigation meets all of the following criteria:

(A) The investigation does not include subjects who are less than 12 months of age or subjects who are pregnant or lactating;

(B) The investigation does not include subjects with a compromised immune system or a serious or life-threatening disease or condition;

(C) The investigation does not restrict subjects from continuing with treatments or therapies prescribed or recommended by a healthcare provider;

(D) The investigation does not involve any procedures that would increase the risks (or decrease the acceptability of the risks) to subjects beyond what they would ordinarily encounter during routine physical or psychological examinations or standard of care procedures to treat their medical condition;

(E) The product is being used in the investigation consistent with its labeled conditions of use when lawfully marketed as a food or cosmetic or, in the absence of labeled conditions of use, consistent with its ordinary conditions of use as a lawfully marketed food or cosmetic (*e.g.,* same dose range and total daily intake, same formulation, same duration of use); and

(F) During the investigation, subjects are not taking and will not be treated with any other product(s) that would significantly increase the risks (or decrease the acceptability of the risks) they will encounter in the investigation (*e.g.,* from drug interactions).

(5)(i) A sponsor or sponsor-investigator may request that FDA exempt from the requirements of this part a clinical investigation to evaluate a drug use of a product that is lawfully marketed in the United States as a food intended for human consumption (including as a conventional food or dietary supplement) or as a cosmetic, when the investigation satisfies the requirements of paragraphs (b)(4)(i) through (iv) of this section, but not paragraph (b)(4)(v) of this section, and the sponsor or sponsor-investigator has concluded that the investigation does not present a potential for significant risk to the health, safety, or welfare of subjects. Such requests must be made in writing and must contain the following:

(A) A copy of the study protocol or protocol summary that includes, at a minimum, the following:

(*1*) Study design;

(*2*) Proposed endpoints;

(*3*) Study population, including inclusion and exclusion criteria for subjects;

(*4*) Duration of the study;

(*5*) Description of the product to be studied as an investigational drug, including ingredients, composition, and any labeling;

(*6*) Dosage form, dosing regimen, and route of administration of the investigational drug;

(*7*) Study procedures (including safety monitoring procedures); and

(*8*) Planned modifications to the protocol in the event of adverse events.

(B) The names of the manufacturer and of the entity that is the source of the product to be studied in the investigation. For foods not in package form and not labeled with the name of the manufacturer, only the source of the product is required;

(C) The name (if different from the name of the product to be studied in the investigation) and form of the lawfully marketed food or cosmetic product; a copy of the product labeling; and, if the labeling does not identify the ingredients of the lawfully marketed product, a description of the product's composition;

(D) The source(s) of funding for the investigation;

(E) The name, address, telephone number, email address, and contact name for the sponsor or sponsor-investigator;

(F) A brief description of why the investigation does not present a potential for significant risk to the health, safety, or welfare of subjects, including, where relevant, the following information to justify an exemption:

(*1*) If the investigation includes subjects who are less than 12 months of age or subjects who are pregnant or lactating, information to demonstrate that the use of the product in the investigation does not present a potential for significant risk to the health, safety, or welfare of these subjects;

(*2*) If the investigation includes subjects with a compromised immune system or a serious or life-threatening disease or condition, information to demonstrate that the use of the product in the investigation does not present a potential for significant risk to the health, safety, or welfare of these subjects;

(*3*) If participation in the investigation will preclude subjects from continuing with a treatment or therapy prescribed or recommended for them by a healthcare provider (*e.g.,* if some subjects are randomized to the investigational product or placebo instead of their current treatment), an explanation of why this restriction does not present a potential for significant risk to the health, safety, or welfare of these subjects;

(*4*) If the subjects in the investigation will undergo any procedures during the investigation that would expose them to more risk than they would ordinarily encounter during routine physical or psychological examinations or standard of care procedures to treat their medical condition, information to demonstrate that the procedures do not present a potential for significant risk to the health, safety, or welfare of these subjects;

(*5*) If the proposed conditions of use of the product in the investigation differ from the product's labeled or ordinary conditions of use, an explanation of why the proposed conditions of use do not present a potential for significant risk to the health, safety, or welfare of the subjects; and

(*6*) If the investigational product is being used concurrently with other products that the subject is taking or being treated with as part of the study or for other reasons as prescribed or recommended by a healthcare provider, information to demonstrate that the investigational product has a history of safe use with those products or is otherwise not expected to have clinically significant interactions with the other products; and

(G) Any other information requested by FDA for use in reviewing the exemption request.

(ii) A sponsor or sponsor-investigator requesting an exemption under paragraph (b)(5)(i) of this section must submit the request to the Center for Drug Evaluation and Research or the Center for Biologics Evaluation and Research at the appropriate address set forth in § 312.140(a).

(iii) Upon receiving an exemption request under paragraph (b)(5)(i) of this section, FDA will evaluate any risks to subjects that may result from participation in the clinical investigation and will grant an exemption from the requirements of this part if we find that the investigation satisfies the requirements of paragraphs (b)(4)(i) through (iv) of this section and does not present a potential for significant risk to the health, safety, or welfare of the subjects. FDA will notify the sponsor or sponsor-investigator in writing whether the request for exemption is granted. An exemption will become effective when the sponsor or sponsor-investigator receives written notification that we have granted the exemption.

(iv) FDA may grant an exemption from the requirements of this part on our own initiative after reviewing an IND and determining that the clinical investigation for which the IND was submitted satisfies the requirements of

paragraphs (b)(4)(i) through (iv) of this section and does not present a potential for significant risk to the health, safety, or welfare of the subjects. If FDA grants such an exemption, we will notify the sponsor or sponsor-investigator of the exemption in writing. The exemption will become effective when the sponsor or sponsor-investigator receives written notification that we have granted the exemption.

(v) FDA may revoke an exemption granted under paragraph (b)(5)(iii) or (iv) of this section if we become aware of information suggesting that the clinical investigation could present a potential for significant risk to the health, safety, or welfare of subjects, or that the investigation does not meet any requirement in paragraphs (b)(4)(i) through (iv) of this section. FDA will notify the sponsor or sponsor-investigator who received the exemption of the reason for revoking the exemption and, if appropriate, may direct the sponsor or sponsor-investigator to suspend the investigation and/or cease recruiting new subjects to the investigation.

(6) FDA will not accept an application for an investigation that is exempt under the provisions of paragraph (b)(1), (b)(4), or (b)(5) of this section.

* * * * *

Dated: November 28, 2022.

Robert M. Califf,

Commissioner of Food and Drugs.

[FR Doc. 2022–26728 Filed 12–8–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 312

[Docket No. FDA–2020–N–0258]

RIN 0910–AI37

Investigational New Drug Application Annual Reporting

AGENCY: Food and Drug Administration, Department of Health and Human Services (HHS).

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is proposing to replace its current annual reporting requirement for investigational new drug applications (INDs) with a new requirement: the annual FDA development safety update report (FDA DSUR). The proposed annual FDA DSUR is intended to be consistent with the format and content of the DSUR that is supported by the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use (ICH), which is described in FDA's ICH guidance for industry entitled ''E2F Development Safety Update Report'' (E2F DSUR) (August 2011). The proposed annual FDA DSUR regulation, if finalized, would require an annual report that is more comprehensive and informative than the IND annual report currently required under FDA regulations.

DATES: Submit either electronic or written comments on the proposed rule by March 9, 2023. Submit comments on information collection issues under the Paperwork Reduction Act of 1995 (PRA) by January 9, 2023.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 9, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

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–2020–N–0258 for ''Investigational New Drug Application Annual Reporting.'' Received comments, those filed in a timely manner (see **ADDRESSES**) will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- 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.

Submit comments on information collection issues under the PRA to the Office of Management and Budget (OMB) in the following ways:

• Fax to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or email to *oira_submission@omb.eop.gov*. All comments should be identified with the title, ''Investigational New Drug Application Annual Reporting.''

FOR FURTHER INFORMATION CONTACT:

With regard to the proposed rule: Dat Doan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3334, Silver Spring, MD 20993–0002, 240–402–8926, *Dat.Doan@fda.hhs.gov; or* Stephen Ripley, 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, *Stephen.Ripley@fda.hhs.gov.*

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

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I. Executive Summary

A. Purpose of the Proposed Rule

FDA is proposing to replace the current annual reporting requirement under § 312.33 (21 CFR 312.33), Annual reports, with a new requirement under § 312.33, Development safety update reports. Current § 312.33 requires sponsors that have an IND in effect to submit an annual report that must contain individual study information, which generally includes brief summaries of the status of each ongoing study and of each study completed during the previous year. The proposed annual FDA DSUR regulation would require these sponsors to provide an annual report that is more comprehensive and informative than the IND annual report currently required under FDA regulations—such as the requirement for an integrated overall safety analysis and a summary of cumulative pertinent safety information. In light of the increasing complexity of clinical studies, requiring a DSUR that offers a more comprehensive and informative assessment of risk than the current annual report would provide an important tool for FDA and sponsors to identify and manage potential risks and therefore reduce exposure of human subjects to unnecessary risks. Furthermore, because FDA intends that the DSUR be consistent with the format and content of submission of the DSUR supported by ICH, the annual reporting process for sponsors would be more efficient by supporting one format for submission to FDA and multiple regulatory authorities in the European Union (EU) and other countries and regions. This action is consistent with FDA's overarching goal of fostering international harmonization of regulatory requirements to the extent appropriate and feasible. If ICH updates its DSUR guidelines, FDA may evaluate the proposed regulation to determine if any corresponding updates are necessary.

B. Summary of the Major Provisions of the Proposed Rule

The following is a brief summary of the proposed revisions to the current requirements for IND annual reporting that are made by the proposed annual FDA DSUR regulation:

• Expands the scope to require comprehensive information and allow for a thorough assessment by FDA of clinical investigations conducted anywhere in the world on behalf of the sponsor evaluating the drug (proposed § 312.33(a)(1)).

• Provides that a sponsor-investigator for a clinical investigation that is not intended to support a marketing application is only required to submit information obtained from that clinical investigation (*e.g.,* information that is part of that sponsor-investigator's protocol for the IND) (proposed § 312.33(a)(2)).

• Requires an executive summary (proposed § 312.33(c)).

• Requires a description of all actions relevant to the safety of the drug that were taken during the reporting period by any regulatory authority or by the sponsor, if known (proposed § 312.33(g)).

• Provides that the investigator brochure would serve as the reference safety information during the reporting period. If a sponsor is not required to submit an investigator brochure, the FDA-approved prescribing information would serve as the reference safety information. If the sponsor uses another source as the reference safety information, the regulation would require the sponsor to identify the reference safety information used (proposed § 312.33(h)(1)).

• Requires sponsors to provide a list of all safety-related changes to the reference safety information, if applicable, for the investigational drug during the reporting period. (proposed § 312.33(h)(2)).

• Requires that the report provide the clinical trial phase, the date the first participant provided informed consent, a brief description of the clinical investigation, and a brief description of the dose and regimen of the investigational drug and any comparators as part of an inventory of clinical investigations conducted during the reporting period. Also expands the requirement for information on study subjects to include the cumulative number of subjects enrolled in all treatment arms of each clinical investigation (or an estimate), the countries or regions in which each investigation was conducted, and the total number of subjects planned to be enrolled in each clinical investigation (proposed § 312.33(i)).

• Adds the requirement to include the cumulative number of subjects exposed to the investigational drug and comparators during clinical investigations that are conducted on behalf of the sponsor (proposed § 312.33(j)).

• Adds the requirement that sponsors provide line listings of all *serious suspected adverse reactions* (as defined in § 312.32(a)) that occurred during the reporting period, including treatment assignment. Adds the requirement that

the line listings of all serious suspected adverse reactions identify those that are unexpected (serious and unexpected suspected adverse reaction) as defined in § 312.32(a).

- Adds the requirement to include a cumulative summary tabulation of *serious adverse events* (as defined in § 312.32(a)) obtained from all clinical investigations conducted on behalf of the sponsor that occurred since the date the IND went into effect (proposed § 312.33(k)(1)(ii)).
- Requires identifying each event omitted from the listings and tabulations of safety data required under proposed § 312.33(k)(1) because the event is a study endpoint or a component of a study endpoint (proposed § 312.33(k)(2)).
- Requires a brief summary of safety and effectiveness findings from clinical investigations of the investigational drug conducted on behalf of the sponsor that are obtained during the reporting period (proposed § 312.33(l)).
- Adds the requirement that the sponsor submit a brief summary of key safety findings obtained from other sources during the reporting period (proposed § 312.33(m)).
- Requires sponsors to provide a summary of significant chemistry, manufacturing, and control changes, including microbiological changes (if applicable), made to the investigational drug during the reporting period, as well as a brief description of the safety significance of the identified changes (proposed § 312.33(n)).
- Requires a concise, integrated evaluation of all new clinical, nonclinical, and epidemiological safety information obtained about the drug by the sponsor during the reporting period relative to the sponsor's prior knowledge of the drug (proposed § 312.33(s)).
- Requires providing a cumulative listing and brief description of all important known risks and potential risks associated with the use of the drug identified by the sponsor throughout the course of studies of the drug conducted on behalf of the sponsor (proposed § 312.33(t)).
- Requires a conclusion that briefly summarizes changes to the sponsor's previous knowledge of the investigational drug's efficacy and safety resulting from information obtained during this reporting period, in addition to an outline of actions by the sponsor that have been taken during the current reporting or will be taken in the future to address emerging safety findings (proposed § 312.33(u)).

C. Legal Authority

FDA is issuing this proposed rule under sections 201, 301, 501, 502, 503, 505, and 701 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 321, 331, 351, 352, 353, 355, and 371) and under section 351 of the Public Health Service Act (PHS Act) (42 U.S.C. 262).

D. Costs and Benefits

The estimated benefits would result from savings in labor costs for sponsors who may no longer have to prepare a different type of periodic safety report for submission to certain other countries or regions in which a drug might be studied. Moreover, FDA would receive safety data on investigational new drugs that is more comprehensive, which would enhance our ability to oversee the progress and safety of clinical investigations. The estimate of annualized benefits over 10 years ranges from $47.86 million to $117.99 million with a primary value of $86.46 million at a 7 percent discount rate and from $49.24 million to $121.01 million with a primary value of $88.79 million at a 3 percent discount rate. The primary estimate of the present value of benefits over 10 years is $607.29 million at a 7 percent discount rate and $757.38 million at a 3 percent discount rate. Costs would arise from increased labor associated with preparing and submitting a periodic safety report that is more comprehensive to meet the proposed requirements. Costs to government would arise from increased FDA resources being used to review the more comprehensive report. The estimate of annualized costs over 10 years ranges from $40.43 million to $101.34 million at a 7 percent discount rate with a primary value of $61.11 million. Using a 3 percent discount rate, the annualized costs range from $40.89 million to $102.48 million with a primary value of $61.81 million. The primary estimate of the present value of costs over 10 years is $429.20 million at a 7 percent discount rate and $527.21 million at a 3 percent discount rate.

II. Table of Abbreviations/Commonly Used Acronyms in This Document

Abbreviation/acronym	What it means
CBER	Center for Biologics Evaluation and Research.
CDER	Center for Drug Evaluation and Research.
CIOMS	Council for International Organizations of Medical Sciences.
DMC	Data Monitoring Committee.
DSUR	Development Safety Update Report.
E2F DSUR	E2F Development Safety Update Report (guidance for industry).
EU	European Union.
FDA	Food and Drug Administration.
FDA DSUR	FDA Development Safety Update Report.
ICH	International Council for Harmonisation.
IND	Investigational New Drug Application.
OMB	Office of Management and Budget.
PHS	Public Health Service.
PRA	Paperwork Reduction Act of 1995.

III. Background

A. Introduction

FDA is proposing to replace the current annual reporting requirement with a new annual reporting requirement. The proposed action would require IND sponsors to submit an annual FDA DSUR—a report that retains the general aspects of the current annual report but includes information that is more comprehensive and is generally consistent with the format and content of the E2F DSUR (available at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/e2f-development-safety-update-report*). The proposed annual FDA DSUR is similar to the annual safety reporting requirements in certain other countries and regions in which a drug might be studied. Promulgation of a rule containing requirements that are similar to the DSUR recommendations developed by ICH (see E2F DSUR) is also consistent with FDA's overarching goal of fostering international

harmonization of regulatory requirements to the extent appropriate and feasible. Therefore, FDA expects that some of the additional regulatory burden associated with preparing a report for FDA that is more comprehensive than previously required will be offset by the mitigation of the previous regulatory burden on those sponsors who submit multiple different reports to regulatory authorities in other countries or regions.

B. Need for the Regulation

FDA is proposing this action because of the advantages that the proposed annual FDA DSUR would provide over the current IND annual report. The advantages include: (1) enabling FDA to more efficiently identify and review new safety signal information; (2) creating a more efficient reporting process for certain sponsors by supporting a more comprehensive format for submission to FDA and multiple regulatory authorities worldwide; and (3) allowing regulatory authorities worldwide to have access to the same data within the same timeframes. For example, the DSUR includes a section that tracks knowledge about each specific safety issue through time, facilitating efficient identification and review of any new safety signal information. The integration of data from a development program with postmarketing data provides a powerful means to facilitate identification and review of any new safety signals. As discussed in section III.D.3, the proposed annual FDA DSUR will provide a more comprehensive and detailed safety summary than the IND annual report, which will facilitate reviewers' ability to efficiently identify and review new safety signal information.

The proposed annual FDA DSUR would better capture and characterize the evolving safety profile of the investigational drug and would better describe new safety findings that could have an impact on the protection of study subjects. Simply accumulating and reporting data for a given time period, as required under the current IND annual report, without considering all previously available data from clinical trials and other sources, may delay identification of important risks. DSURs specifically include a section that tracks knowledge about each specific safety issue through time, facilitating efficient identification and review of any new safety signal information.

Furthermore, a requirement for investigational drug reporting similar to the reporting done in the EU could help sponsors who need to satisfy annual reporting requirements in different countries and regions and would help prevent sponsors from sending duplicative information in different formats to different regulatory authorities. A similar annual reporting requirement would also help provide authorities in different countries with a common description of the evolving safety profile of a drug, and thus, could help ensure greater consistency and predictability in regulatory actions. We expect that the proposed annual FDA DSUR would help harmonize FDA's requirements for IND annual reporting with the E2F DSUR.

We have received support for the proposed annual FDA DSUR through public comments submitted in response to documents published in the **Federal Register**. For example, in response to a request for public comment in the **Federal Register** of April 27, 2011 (76 FR 23520), a trade organization representing major biotechnology companies urged FDA to update its regulations to reflect current practice and to be consistent with the language in the E2F DSUR. (See Docket No. FDA–2011–N–0259.) In the **Federal Register** of August 5, 2008 (73 FR 45462), FDA requested public comment on the E2F DSUR draft guidance for industry. In response, FDA received comments from pharmaceutical manufacturers and a trade association. (See Docket No. FDA–2008–D–0386.) Some comments proposed certain modifications to the DSUR as described in the draft guidance but were generally supportive of the draft guidance and noted that the use of the E2F DSUR would help harmonize annual reporting of clinical trials, thus enhancing efficiency and providing regulators, investigators, patients, and industry with valuable, consolidated safety information. Other comments expressed a preference for the use of the E2F DSUR to minimize discrepancies, which are, at the present time, common in the information different regulators receive. Taken together, the public comments expressed support for requiring a single reporting format for periodic safety reporting under an IND and a preference for use of the format, content, and timing of the E2F DSUR.

C. FDA's Current Regulatory Framework

1. IND Regulations

The IND regulations in part 312 contain procedures and requirements governing the use of investigational drugs, including biological products that do not also meet the definition of *device* under the FD&C Act (*see* 21 U.S.C. 321(g) through (h), 42 U.S.C. 262(i) through (j); *see also* 21 CFR 601.21) and contain procedures and requirements for the submission of INDs to FDA and for FDA's review of those INDs. Under the IND regulations in part 312, sponsors are required to have an IND in effect to support the use of an investigational drug in clinical trials or for expanded access uses. The IND regulations also provide various mechanisms for continued FDA oversight of clinical investigations conducted under an IND. The IND annual report currently required under § 312.33 is intended to serve as the means for reporting the status of studies being conducted under the IND and for providing the general investigational plan and safety-related changes to the investigational plan for the coming year. This proposed rule focuses on § 312.33, Annual report.

2. FDA's IND Annual Report

In the **Federal Register** of March 19, 1987 (52 FR 8798, as amended at 52 FR 23031, June 17, 1987; 63 FR 6854, February 11, 1998; and 67 FR 9584, March 4, 2002), FDA published regulations for new drug, antibiotic, and biologic drug products as part of an overall revision of the IND regulations (known as the IND Rewrite). These regulations, in part, require each sponsor to submit an annual report providing an update on the progress of clinical investigations conducted under its IND. The annual report must contain individual study information, which generally includes brief summaries of the status of each ongoing study and of each study completed during the previous year. These summaries are required to include, among other things: (1) a brief description of available results of each study completed during the previous year and interim results of ongoing clinical investigations and (2) information on the number of subjects included in each study (see § 312.33(a)). The annual report must also include summarized information about the clinical investigations conducted under the IND during the previous year, including the following, for example:

- A summary showing the most frequent and most serious adverse experiences (§ 312.33(b)(1)).
- A summary of all IND safety reports submitted during the previous year (§ 312.33(b)(2)).
- A list of preclinical studies completed or in progress during the previous year, including a summary of the major preclinical findings (§ 312.33(b)(6)).
- A summary of any significant manufacturing or microbiological

changes made during the past year (§ 312.33(b)(7)).

Since the publication of the IND Rewrite, the increasing size and scope of clinical investigations have created the need for information and analyses that are more comprehensive, as well as the need for information to be presented in a format that is more useful for FDA, clinical investigators, sponsors, and others using the data included in the reports. Such comprehensive analyses will assist FDA in evaluating the safety profile of an investigational drug during its development and will assist in identifying safety signals while the clinical trials are ongoing. Because of the increasing complexity of clinical trials, having periodic reporting and consistent information reported are of increased importance for protecting human subjects from unnecessary risks. Additionally, there have been concerns about differences in the content and objectives between the current IND annual report and the annual safety report that is being used in other countries, as well as concerns about the burden associated with preparing different periodic safety reports for different regulatory authorities. These concerns led to an international effort to develop a common periodic safety report that could be used globally to satisfy reporting requirements.

D. History of the Rulemaking

1. International Harmonization of Regulatory Requirements for Drug Development

In the **Federal Register** of October 11, 1995 (60 FR 53078), FDA published a notice entitled ''International Harmonization, Policy on Standards'' that described FDA's policy for working with other countries to achieve greater harmonization of regulatory requirements and guidelines. It also described FDA's views on international harmonization and collaboration as a way to enhance regulatory effectiveness by providing more consumer protection without added expenditure of government resources. Harmonization and collaboration can also increase worldwide consumer access to safe, effective, and high-quality products.

International harmonization has been facilitated through the development of ICH guidelines via a process of scientific consensus with regulatory and industry experts participating in multinational working groups. In 2006, the Center for Biologics Evaluation and Research (CBER) and the Center for Device Evaluation and Research (CDER) participated in a working group sponsored by the Council for International Organizations of Medical Sciences (CIOMS), referred to as CIOMS VII (Ref. 1). CIOMS is an international, nongovernmental, nonprofit organization established by the World Health Organization and the United Nations Educational, Scientific, and Cultural Organization that covers drug safety topics through working groups (Refs. 2 and 3). The CIOMS VII working group proposed that ICH develop a guideline on periodic reporting of safety information from clinical trials (which it termed the development safety update report (DSUR)) that would harmonize guidelines and requirements from the various regulatory agencies (Ref. 1).

2. Development of an International DSUR

The CIOMS report was the starting point for the ICH initiative (Ref. 4). In June 2008, the draft ICH guideline for the E2F DSUR was approved by the ICH steering committee (Ref. 5). In the **Federal Register** of August 5, 2008, FDA announced the availability of the draft ICH guidance for industry (E2F DSUR) (available at *https://www.regulations.gov/document?D=FDA-2008-D-0386-0002)* for public comment, which was the guideline prepared under the auspices of the ICH. After consideration of the comments received on the draft guidance for industry, the ICH steering committee approved a final draft of the guideline to be adopted by the United States, Japan, and participating European countries entitled ''Development Safety Update Report, E2F,'' dated August 17, 2010 (Ref. 5). In the **Federal Register** of August 23, 2011 (76 FR 52667), FDA issued this guideline as a final ICH guidance for industry (the E2F DSUR) that discusses the format, content, and timing of submission of a DSUR as developed by the ICH.

3. Overview of the Differences Between the E2F DSUR and the Current IND Annual Report Regulations

The E2F DSUR provides the recommended content and format of a drug safety update report that sponsors can use to satisfy the EU requirements for annual safety reports and FDA's requirements for IND annual reports, despite the differences between the EU requirements and FDA's requirements. Specifically, the annual safety report required under the EU Clinical Trial Directive 2001/20EC contains significant differences in the purpose, content, and timing of submission compared to FDA's IND annual report (Refs. 6 and 7). As a result, sponsors developing a drug in both jurisdictions are required to submit different annual reports each year to each regulatory authority. For example, the IND annual report is intended to provide only summaries of clinical studies conducted under the IND and requires a narrative or tabular summary of the most frequent and most serious adverse experiences. In contrast, the EU annual safety report is intended to be a clinical trial safety report and requires a cumulative summary tabulation of all serious adverse reactions (Refs. 6 and 7). With regard to timing, the required date for submission of the IND annual report is based on the anniversary of the effective date of the IND under § 312.40(b), whereas the date for submission of the EU annual safety report is the anniversary of the development international birth date, which is the date on which the sponsor was first authorized to conduct a clinical trial in any country or region (Ref. 1). The differences in the purpose, content, and timing of annual reporting in the EU and the United States result in study sponsors sending duplicative information to regulators, as well as regulatory authorities receiving inconsistent safety information.

The E2F DSUR provides recommendations with respect to periodic safety reporting during clinical development, offers guidance on providing meaningful information to regulators, and facilitates consistency among sponsors and regulators (Ref. 4). The E2F DSUR emphasizes high-value activities, such as data interpretation, while ensuring that the regulatory authorities that use the E2F DSUR have access to the same data in similar timeframes (Ref. 4). Following are overarching objectives enabled by the use of the E2F DSUR:

- Examining whether the information obtained by the sponsor during the reporting period aligns with prior knowledge of the safety of the investigational drug.
- Describing new safety findings that could have an impact on the protection of study subjects.
- Summarizing the current understanding and management of identified and potential risks.
- Providing an update on the status of the clinical investigation/development program and study results.

Use of the E2F DSUR provides important advantages for safety evaluation as compared to FDA's IND annual report. First, the E2F DSUR includes additional safety information to help enhance the safety of subjects. For example, the E2F DSUR specifically includes a description of significant, safety-related changes to the investigator

brochure and an evaluation of the significance of the identified changes for the safety of subjects. For some drugs, this increased safety reporting requirement could potentially help characterize a safety signal and associated risks, and lead to timely action to protect subjects such as earlier termination of a study or withdrawal of a drug from the market due to safety concerns (as mentioned previously). In contrast, the IND annual report is a general update on the progress of the investigational drug's clinical development, which includes a description of the revisions made to the investigator brochure and a copy of the new brochure, if revised, and a summary of all IND safety reports submitted during the year, but no additional analysis is conducted by the sponsor.

Second, unlike FDA's IND annual report, the E2F DSUR contains an integrated safety analysis and a summary of cumulative pertinent safety information. Simply accumulating and reporting data for a given time period, without considering all previously available data from clinical trials and other sources, may delay identification of important risks. A meaningful understanding of the evolving safety profile of an investigational drug requires a periodic analysis of all available safety information, which is crucial to the ongoing assessment of risks to subjects of clinical trials during the clinical development of an investigational drug. An integrated analysis and a summary of overall safety risks, as contained in the E2F DSUR, would help increase the usefulness of the safety data and help facilitate efforts to identify and assess important safety risks promptly. The E2F DSUR includes information on cumulative patient exposure and a summary of cumulative serious adverse events, which would further enhance risk identification and assessment.

Third, the E2F DSUR provides safety information that is more comprehensive than the IND annual report, which requires only summaries of clinical studies conducted under the IND. In contrast to the current IND annual report, the E2F DSUR contains safety information from all studies using the drug, whether conducted under an IND or not. The E2F DSUR also incorporates information from studies not initiated by the sponsor and information from other relevant sources. For example, safety findings from published literature and information from the marketing experience of the drug would be included in the E2F DSUR, but these findings are not required in the IND annual report. Some sponsors have already voluntarily submitted their IND annual reports in the E2F DSUR format to the FDA; the submitted E2F DSURs have provided the aforementioned advantages, including superior organization and more comprehensive information to facilitate review.

Finally, the ability to submit a similar annual report to regulatory authorities in multiple countries and for all investigations of the drug conducted on behalf of the sponsor could provide significant advantages to those sponsors who submit reports to multiple regulatory authorities. A similar comprehensive annual report submitted to regulatory authorities in multiple countries could help ensure consistent understanding of the safety profile of a drug and could therefore help improve consistency and predictability of regulatory actions. The use of a similar annual report in multiple countries and for all studies conducted on behalf of the sponsor in which the particular drug is studied also could help ensure that regulatory authorities for all development programs are relying on the same information about the evolving safety profile of a drug.

IV. Legal Authority

FDA is issuing this proposed rule under sections 201, 301, 501, 502, 503, 505, and 701 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 321, 331, 351, 352, 353, 355, and 371) and under section 351 of the PHS Act.

V. Description of the Proposed Rule

A. Scope

The proposed rule would revise current §§ 312.3 and 312.33 concerning IND annual reports. The proposed rule would require IND sponsors to submit an annual DSUR that is more comprehensive and informative than the IND Annual Report currently required under FDA regulations. The proposed annual FDA DSUR is intended to be consistent with the format and content of the E2F DSUR supported by ICH for annual reporting in certain other countries and regions. If finalized, this rule would require sponsors to submit an annual FDA DSUR in lieu of the IND Annual Report. A sponsor would be able to submit an annual DSUR containing additional information to that proposed to be required by the annual FDA DSUR, in the format recommended in the E2F DSUR, as long as the submitted DSUR complies with the requirements provided in the proposed annual FDA DSUR and FDA requirements for electronic submissions (see, *e.g.,* section 745A(a) of the FD&C Act (21 U.S.C. 379k–1)(a)). The proposed requirements are intended to provide information that is sufficiently comprehensive to facilitate FDA's assessment of clinical investigations conducted on behalf of the IND sponsor, including the sponsor of a large, multinational clinical development program intended to support applications for marketing approval of a drug in multiple countries and regions.

B. Definitions

The proposed rule would revise § 312.3 (Definitions and interpretations) by adding a definition for *data lock point.* The data lock point would be defined as the designated cutoff date for data to be included in the proposed annual FDA DSUR. The definition would establish a fixed data lock point that is 1 calendar day before the anniversary of the date the IND went into effect. We propose to require that a sponsor submit the annual FDA DSUR to FDA not later than 60 calendar days after the data lock point (see proposed § 312.33).

C. Proposed Provisions of the FDA DSUR

1. General

FDA is proposing to revise current § 312.33, Annual reports, by replacing the section with a section entitled ''Development safety update reports.'' Proposed § 312.33 describes the scope, format, and content of the proposed annual FDA DSUR as well as when to submit the annual report. The proposed requirements are intended to be consistent with the content recommended in the E2F DSUR to the extent possible. Some of the language used in this proposed rule differs from that in the E2F DSUR because of minor differences in terminology and for consistency with other FDA requirements. We recognize that some of the information discussed in the proposed annual FDA DSUR may not be known to sponsors, which is why the proposed annual FDA DSUR only requires sponsors to submit the information that is known to them.

2. Scope

Proposed § 312.33(a) states that the annual FDA DSUR is intended to provide a thorough annual assessment of the clinical investigations conducted and safety information collected during the reporting period that is related to an investigational new drug. The annual FDA DSUR is intended to: (1) be sufficiently comprehensive to cover the entire scope of a large-scale, international development program

designed to support applications for marketing in multiple countries and regions and (2) capture data from all completed and ongoing clinical investigations conducted on behalf of the sponsor anywhere in the world evaluating the drug, including investigations not conducted under an IND (see § 312.33(a)(1)). Proposed § 312.33(a)(1) further provides that a sponsor must submit the same annual FDA DSUR for each IND held by the sponsor for that drug.

Under § 312.10, sponsors may request that FDA waive any applicable requirement in part 312. We expect that some sponsors will request that FDA waive the requirement under proposed § 312.33 that they must submit the annual FDA DSUR not later than 60 calendar days after a *data lock point* established by proposed § 312.3 (which is 1 calendar day before the anniversary of the date the IND went into effect) to allow them to coordinate the timing of the annual FDA DSUR submission with the submission of reports to regulatory agencies in other countries or regions. We also expect that some sponsors will request that FDA waive the requirement under proposed § 312.33(a)(1) that a sponsor submit the same annual FDA DSUR for each IND held by the sponsor for the drug because of substantial differences in, for example, the intended uses or populations being studied under different INDs.

As required under § 312.10(a), a waiver request must contain the following: (1) an explanation of why the sponsor's compliance with the requirement is unnecessary or cannot be achieved, (2) a description of an alternative submission or course of action that satisfies the purpose of the requirement, or (3) other information that justifies a waiver. As provided under § 312.10(b), FDA may grant a requested waiver if it finds that the sponsor's noncompliance would not pose a significant and unreasonable risk to human subjects of the investigation and that at least one of the following is met: (1) the sponsor's compliance with the requirement is unnecessary for the Agency to evaluate the application or compliance cannot be achieved, (2) the sponsor's proposed alternative satisfies the requirement, or (3) the applicant's submission otherwise justifies a waiver.

FDA expects that the waiver criteria in § 312.10(b) will likely be met when a sponsor submits a waiver request in accordance with § 312.10(a) for the following reasons: (1) an alternate data lock point would permit the sponsor to coordinate the timing of submission of an annual FDA DSUR with the sponsor's submission of the proposed annual FDA DSUR to other INDs covered by the same annual FDA DSUR (*e.g.,* INDs for studies investigating other indications for a drug), (2) an alternate data lock point would permit the sponsor to coordinate the timing of submission of an annual FDA DSUR with the timing of submission of other reports to regulatory agencies in other countries and regions (*e.g.,* to coordinate the timing of submission of an annual FDA DSUR with the date of first approval or authorization for conducting a clinical investigation in any country or region (*i.e.,* the development international birth date of the drug)), or (3) an alternate data lock point would permit the sponsor to coordinate the timing of submission of an annual FDA DSUR with the timing of submission of the postmarketing periodic safety report required under 21 CFR 314.80(c)(2) or 600.80(c)(2), if a sponsor is submitting both reports to FDA (*e.g.,* is conducting clinical investigations of a lawfully marketed drug or biological product).

FDA expects that the waiver criteria in § 312.10(b) will probably be met when a sponsor submits a waiver request in accordance with § 312.10(a) to allow a sponsor to submit individual annual FDA DSURs for INDs that cover very different dosage forms of a drug (*e.g.,* the same active ingredient for intravenous use for a life-threatening disease versus topical administration for a more chronic disease) on the basis that submission of the same annual FDA DSUR for each IND would not be useful to FDA because of substantial differences in, for example, the intended uses or populations being studied.

3. Major Differences Between the Current IND Annual Report and the Proposed FDA DSUR

Table 1 shows the major differences between the current IND annual report and the proposed annual FDA DSUR.

TABLE 1—EXAMPLES OF MAJOR DIFFERENCES BETWEEN THE CURRENT REGULATORY REQUIREMENTS FOR THE IND ANNUAL REPORT AND THE REGULATORY REQUIREMENTS FOR THE PROPOSED FDA DSUR [1]

§ 312.33	Current IND annual report requirements	Proposed FDA DSUR requirements
Overall safety assessment	• Not required	• Requires providing a concise, integrated evaluation of all new clinical, nonclinical, and epidemiological safety information obtained about the drug by the sponsor during the reporting period in relation to the safety information obtained during prior reporting periods (proposed § 312.33(s)(1)) and a description of the balance between theoretical or anticipated benefits and cumulative identified risks related to use of the drug. • Requires a description of changes in the benefit-risk profile compared to the previous DSUR, based on information obtained during the reporting period (proposed § 312.33(s)(2))
Executive summary	• Not required	• Requires an executive summary (proposed § 312.33(c))
Scope of information on clinical investigations.	• Requires information about clinical investigations of the investigational drug under the IND (§ 312.33).	• Expands the scope to require comprehensive information about clinical investigations conducted anywhere in the world on behalf of the sponsor evaluating the drug or, including clinical investigations not conducted under an IND (proposed § 312.33(a)(1)).
Cumulative exposure	• Not required	• Adds the requirement to include the cumulative number of subjects exposed to the investigational drug and comparators during clinical investigations conducted on behalf of the sponsor and to include a tabulation of such exposure by age, sex, and race (proposed § 312.33(j)). • If the drug is lawfully marketed by the sponsor, the report must include an estimate of patients' cumulative exposure in any country or region, including an explanation of how that exposure was estimated (proposed § 312.33(j)).
Study description (individual study information).	• Requires a brief summary of the status of each study in progress and each study completed during the previous year, including the title of each study, its purpose, a brief statement identifying the patient population, and a statement as to whether the study is completed (§ 312.33(a)(1)).	• Requires an inventory of ongoing and completed clinical investigations conducted during the reporting period. • For each investigation in this inventory, requires the protocol number, the title, the clinical trial phase, the date the first subject provided informed consent, a brief description of clinical investigation design, and a brief description of the dose and regimen of the investigational drug and any comparators (proposed § 312.33(i)).

TABLE 1—EXAMPLES OF MAJOR DIFFERENCES BETWEEN THE CURRENT REGULATORY REQUIREMENTS FOR THE IND ANNUAL REPORT AND THE REGULATORY REQUIREMENTS FOR THE PROPOSED FDA DSUR [1]—Continued

§ 312.33	Current IND annual report requirements	Proposed FDA DSUR requirements
Study subjects (individual study information).	• Requires a brief summary of the status of each study in progress and each study completed during the previous year, including the following: —the total number of subjects initially planned for inclusion in the study (§ 312.33(a)(2)). —the number of subjects entered into the study to date (tabulated by age group, sex, and race). —the number whose participation in the study was completed as planned, and —the number who withdrew from the study for any reason (§ 312.33(a)(2)).	• Requires an inventory of ongoing and completed clinical investigations conducted during the reporting period. • For each investigation in this inventory, requires the cumulative number of subjects enrolled in all treatment arms of the investigation (or an estimate); a demographic breakdown of study population by age, sex, and race; and the total number of subjects (if any) planned to be enrolled in the clinical investigation (proposed § 312.33(i)). • Requires a list of subjects who withdrew from a clinical investigation during the reporting period because of an adverse event (proposed § 312.33(k)(1)(iv) and § 312.33(s)(iv)).
Study results (individual study information).	• In a brief summary of the status of each study in progress and each study completed during the previous year, requires including a brief description of any available study results if a study has been completed or if interim results are known (§ 312.33(a)(3)).	• Requires a brief summary of safety and effectiveness findings obtained from clinical investigations conducted on behalf of the sponsor of the investigational drug during the reporting period, including results obtained from any completed trials or interim analysis that resulted in a decision, based on lack of efficacy, to either stop a trial or to revise the information provided to subjects to seek informed consent (proposed § 312.33(*l*)).
Safety findings from other sources.	• Not required	• Adds the requirement that a sponsor submit a brief summary of relevant safety findings from other sources, if known, including noninterventional studies of the drug; pooled or meta-analyses of randomized clinical investigations of the drug; safety findings from marketing experience, if the drug is lawfully marketed; nonclinical studies of the drug; published clinical or nonclinical investigations of the drug not conducted on behalf of the sponsor; and published studies concerning other members of the pharmacological class of the drug. • The brief summary would also include all additional significant safety findings about the drug that are obtained from other sources during the reporting period, if known, including expanded access use under part 312, subpart I, or a similar program conducted on behalf of the sponsor in another country or region (proposed § 312.33(m)).
Serious adverse experiences.	• Requires a narrative or tabular summary showing the most frequent and most serious adverse experiences by body system (§ 312.33(b)(1)).	• Requires a list of all serious suspected adverse reactions as defined in § 312.32(a) that occurred during the reporting period, including the treatment group assignment, if known, or designated as ''blinded'' if the blind has not been broken. • Requires that the line listings identify serious and unexpected suspected adverse reactions as defined in § 312.32(a) and that they also include study identification information as listed (proposed § 312.33(k)(1)(i)). • Requires a summary list of serious adverse events for all clinical investigations conducted on behalf of the sponsor that occurred since the date the IND went into effect (proposed § 312.33(k)(1)(ii)).
IND safety reports	• Requires a summary of all IND safety reports submitted during the past year (§ 312.33(b)(2)).	
Information on drug's actions.	• Requires a brief description of what information, if any, was obtained during the previous year's clinical and nonclinical investigations that is pertinent to an understanding of the drug's actions (such as dose response, bioavailability) (§ 312.33(b)(5)).	• A brief description is not required for this section because information that is more detailed is required elsewhere in the proposed rule.
Nonclinical studies and findings.	• Requires a list of preclinical studies (including animal studies) completed or in progress during the past year and a summary of the major preclinical findings (§ 312.33(b)(6)).	• Changes the requirement to focus on safety by requiring a summary of safety findings from other sources for the reporting period, including nonclinical in vivo and in vitro studies; published nonclinical studies not conducted on behalf of the sponsor; and published studies on other members of the pharmacological class of the drug (proposed § 312.33(m)).
Manufacturing and microbiological changes.	• Requires a summary of any significant manufacturing or microbiological changes made during the past year (§ 312.33(b)(7)).	• Revises the current requirement so that sponsors would be required to provide a summary of significant chemistry, manufacturing, and control changes, including microbiological changes (if applicable), made to the investigational drug during the reporting period. • Requires a brief description of the safety significance of the identified changes (proposed § 312.33(n)).
Investigator brochure changes.	• If the investigator brochure has been revised, requires a description of the revision and a copy of the new brochure (§ 312.33(d)).	• States that, if the sponsor must submit an investigator brochure under § 312.23(a)(5), the brochure will serve as the reference safety information during that reporting period. • If an investigator brochure is not required under § 312.23(a)(5) and the drug is subject to an FDA-approved marketing application, the FDA-approved prescribing information will serve as the reference safety information during the reporting period. • If neither is the case and the sponsor uses another source as the reference safety information, the report must identify the reference safety information used (e.g., coding dictionary version(s) used). • Requires that the report list all safety-related changes to the reference safety information made during the reporting period.
Actions taken for safety reasons.	• Requires a brief summary of significant foreign marketing developments with the drug during the past year, such as approval of marketing in any country or withdrawal or suspension from marketing in any country (§ 312.33(f)).	• Requires a description of all actions relevant to safety and reasons for such actions taken during the reporting period by the sponsor (including actions taken following a recommendation from a DMC) or by a regulatory authority.

TABLE 1—EXAMPLES OF MAJOR DIFFERENCES BETWEEN THE CURRENT REGULATORY REQUIREMENTS FOR THE IND ANNUAL REPORT AND THE REGULATORY REQUIREMENTS FOR THE PROPOSED FDA DSUR [1]—Continued

§ 312.33	Current IND annual report requirements	Proposed FDA DSUR requirements
Event otherwise omitted from safety tabulations because it is a study endpoint.	• Not required	• Requires identifying each event omitted from the listings and tabulations of safety data required by § 312.33(k)(1) because the event is a study endpoint or a component of a study endpoint (proposed § 312.33(k)(2)).
Summary of important risks.	• Not required	• Requires providing a cumulative listing and a brief description of all important known and potential risks associated with the drug identified by the sponsor during the course of studies of the drug conducted on behalf of the sponsor. • Requires an update of the risks identified in a prior reporting period with any new risk information obtained during the current reporting period (proposed § 312.33(t)).
Exceptions for sponsor-investigators.	• Provides no distinction between sponsor-investigators and other sponsors (§ 312.33).	• States that a sponsor-investigator for a clinical investigation not intended to support a marketing application is required to submit only information obtained from the clinical investigation conducted by the sponsor-investigator (proposed § 312.33(a)(2)).
Conclusion	• Not required	• Requires including a conclusion (proposed § 312.33(u)).

[1] This table compares the regulatory requirements in current § 312.33 with the new requirements in proposed § 312.33. Although current annual reporting practices may go further than that required by the current regulations to be more consistent with the E2F DSUR, this table only highlights the regulatory requirements and not common practices.

4. FDA DSUR Content

FDA acknowledges that the proposed content requirements of the annual FDA DSUR are more extensive than generally would be needed for reporting the status of a sponsor-investigator IND for a single clinical investigation that is not intended to support a marketing application. Therefore, we are proposing that the report for an IND conducted by a *sponsor-investigator* (as defined in § 312.3) that is not intended to support a marketing application must contain the required information that is obtained from the investigation conducted by the sponsor-investigator (see § 312.33(a)(2)). The sponsor-investigator is required to submit only information that is obtained from the clinical investigation conducted by the sponsor-investigator (*e.g.,* information that is part of that sponsor-investigator's protocol for the IND). For example, if a commercial IND sponsor provides an investigational drug to a sponsor-investigator to conduct an investigation under the sponsor-investigator's IND, it would not be necessary for the sponsor-investigator to submit information unrelated to their study (*e.g.,* data concerning animal toxicity, drug manufacturing information, or safety information from investigations conducted under the commercial sponsor's IND) because the information would be submitted by the sponsor. Also, the sponsor-investigator may not have right of reference to the data. For these reasons, we do not propose requiring the sponsor-investigator to provide information in the annual FDA DSUR that is not obtained from the sponsor-investigator's own clinical investigation under an IND.

Proposed § 312.33(a)(3) provides that, in § 312.33, ongoing clinical investigations consist of all active investigations, including those that are on clinical hold; investigations that have not been terminated; and investigations for which a final study report has not been submitted but the investigation might otherwise be completed. The intent is to capture all relevant investigations conducted on behalf of the sponsor.

Proposed § 312.33(b) through (u) describe the content FDA proposes to be included in the annual FDA DSUR.

Proposed § 312.33(b) describes the content of the title page, including the IND number, report number (reports to be numbered sequentially), name of the investigational drug, reporting period, date of the report, and sponsor's name and address. The reporting period is the designated 12-month period during which information was obtained for the annual FDA DSUR and ending with the data lock point. This period would run from the previous anniversary of the date the IND went into effect under § 312.40(b) until 1 calendar day before the anniversary of the date the IND went into effect unless FDA grants a waiver pursuant to § 312.10(b) for the sponsor to designate an alternate date for the data lock point.

Proposed § 312.33(c) describes the content of the executive summary for the proposed annual FDA DSUR. Proposed § 312.33(c) would require that the executive summary contain all of the following information:

- The report number and reporting period;
- A brief description of the investigational drug, including the therapeutic class(es), pharmacological class (if applicable), and mechanism of action (if known), and the indications, doses, formulations, and routes of administration being studied on behalf of the sponsor;
- The cumulative number of subjects to whom the drug has been administered throughout the course of studies of the drug conducted on behalf of the sponsor or an estimate of these subjects if a precise number cannot be determined (*e.g.,* for a study that is currently enrolling subjects);
- A summary of the overall safety assessment required under proposed § 312.33(s) of the main report;
- A summary of the list of important risks required under proposed § 312.33(t) of the main report;
- A summary of actions taken for safety reasons as required under proposed § 312.33(g);
- A list of countries and regions (if a drug product is approved by a region, which may be the case in the EU) in which the drug has been approved for marketing; and
- A summary of the conclusion as required under proposed § 312.33(u) of the main report.

We are proposing to require that the report contain a table of contents with sufficient detail to direct the annual FDA DSUR reader to each of the components of the report described in paragraphs (e) through (u) of proposed § 312.33 (see proposed § 312.33(d)).

We are proposing to require a detailed introduction containing the following information: (1) identification of the reporting period; (2) a brief description of the investigational drug (including the therapeutic class(es), pharmacological class (if applicable), and the mechanism of action (if known); (3) a list of the indications, doses, formulations, and routes of administration being investigated; and (4) a list of the clinical investigations conducted on behalf of the sponsor that are referred to in the report (see § 312.33(e)).

Section 312.33(e) in this proposed rule corresponds to section 3.1 (Introduction) of the E2F DSUR. In comparing these sections, we note that section 3.1 of the E2F DSUR recommends the inclusion of certain information that is not included in FDA's proposed § 312.33(e), such as information about the Development International Birth Date; a short summary of the scope of the clinical trials covered by the report; and a brief description and explanation of all information that has not been included in the annual FDA DSUR. FDA is not requiring this information under proposed § 312.33(e) because the information is not expected to provide additional important information for FDA's safety evaluation of the drug.

Proposed § 312.33(e) would require information about the drug's therapeutic class(es) and pharmacological class (with pharmacological class included as part of the original IND per § 312.23(a)(3)) because therapeutic class is important to FDA's evaluation of drugs and biologics, and pharmacological class is important to FDA's evaluation of drugs. Also, proposed § 312.33(e) would require that the mechanism of action rather than the mode of action (the term used in the E2F DSUR) be included in the description of the drug because other FDA IND regulations already use the term mechanism of action (see, *e.g.,* § 312.23(a)(8)(i)). Unlike the E2F DSUR recommendations, FDA does not propose to require in this section information about population or populations being studied because FDA would receive this information pursuant to proposed § 312.33(i). Lastly, FDA does not propose to require in this section a rationale for the submission of multiple annual FDA DSURs for the investigational drug because FDA proposes to require sponsors to prepare and submit a single report for a drug studied under multiple INDs. If a sponsor is unable to comply with this requirement (*e.g.,* the sponsor would like to submit separate annual FDA DSURs for individual INDs), the sponsor may submit a waiver request in accordance with § 312.10(a) that includes information that justifies a waiver.

We are proposing that if the drug has been approved anywhere in the world, the sponsor would be required to provide a brief summary of the status of the approved drug, including the date of first approval, the indication(s), the approved dose(s), and where approved, (see proposed § 312.33(f)). This proposed requirement is consistent with the content recommended in section 3.2 (Worldwide Marketing Approval Status) of the E2F DSUR.

We are proposing to require that the sponsor describe all actions relevant to the safety of the drug that were taken by the sponsor or by a regulatory authority during the reporting period, if known (see proposed § 312.33(g)). The sponsor's actions include any actions taken by the sponsor in response to a regulatory action or any actions taken by the sponsor following a recommendation from a Data Monitoring Committee (DMC), if one is used. Proposed § 312.33(g) would also require the sponsor to provide the reason or reasons for each action.

The corresponding section 3.3 (Actions Taken in the Reporting Period for Safety Reasons) of the E2F DSUR recommends, in addition, actions related to safety that have been taken by an ethics committee. While some countries use established ethics committees with responsibilities that differ from those of institutional review boards in the United States, FDA believes that actions taken by an ethics committee in another country would often be included in a report of actions taken by sponsors or regulatory authorities. Section 3.3 of the E2F DSUR includes a list of examples of significant actions taken for safety reasons, which is similar in concept to the list of actions in proposed § 312.33(g). As such, FDA considers the information recommended in section 3.3 of the E2F DSUR to be substantially similar to what is called for by proposed § 312.33(g). The intent of proposed § 312.33(g) is to capture actions taken for safety reasons by the sponsor and by FDA in the United States and to capture analogous actions taken by regulatory authorities in other countries or regions. The intent is also to capture only actions that are significant to the conduct of clinical investigations under the IND, including the following examples of the types of actions to be reported under the proposed requirements:

- A clinical hold order issued under § 312.42;
- Denial of authorization to initiate a clinical investigation or the suspension of the conduct of a clinical investigation involving use of the drug in another country or region (*e.g.,* this includes early termination of an ongoing clinical trial because of safety findings or lack of efficacy);
- A requirement to cease distribution of the drug or other action related to the quality of the drug (*e.g.,* recall of the drug);
- Refusal to approve any application for marketing of the drug (this includes voluntary withdrawal of an application);
- An action by a regulatory authority that places a condition or limitation on the use or development of the drug (*e.g.,* a requirement to conduct long-term animal testing before beginning long-term studies in humans, the need for a validated immunogenicity assay before beginning phase 3 testing, specific testing needed before initiating pediatric studies, the limitation on dosing pending additional safety data, the exclusion of a particular population from clinical investigations);
- A safety-related change in the protocol or in the investigational plan of an ongoing clinical investigation of the drug (*e.g.,* change in dose, change in inclusion/exclusion criteria, monitoring that is new or more intensive, limit to the duration of the trial);
- A safety-related change in the information provided to human subjects in order to obtain informed consent for a clinical investigation of the drug;
- A safety-related formulation change to the drug;
- A safety advisory communication to investigators conducting studies under the IND or to healthcare professionals concerning use of the drug;
- An investigation of the drug that is initiated or planned to evaluate a safety risk associated with use of the drug;
- If the drug is lawfully marketed, each safety-related change to its labeling, including the prescribing information;
- If the drug is lawfully marketed, a significant restriction on distribution or other risk mitigation strategy (*e.g.,* a risk evaluation and mitigation strategy implemented under section 505–1 of the FD&C Act (21 U.S.C. 355–1)); and
- If the drug was lawfully marketed, withdrawal or suspension of marketing approval for the drug in any country or region.

We are proposing that the investigator brochure, if required under §§ 312.23(a)(5) and 312.55, will serve as the reference safety information to be used during the clinical investigation of the investigational drug. The investigator brochure in effect at the start of the reporting period will represent the reference safety information to be used by the sponsor during that reporting period. If an investigator brochure is not required and the drug is subject to an FDA-approved marketing application, we propose that the FDA-approved prescribing information will serve as the reference safety information. If an investigator brochure is not required under §§ 312.23(a)(5) and 312.55, the drug is not FDA-approved; and if the sponsor uses another source as the reference safety information, the

sponsor would be required to identify the reference safety information (*e.g.,* coding dictionary version(s) used or the European Summary of Product Characteristics) (see proposed § 312.33(h)(1)).

We are also proposing to require the sponsor to provide a report that lists all safety-related changes to the reference safety information, if applicable, during the reporting period. If the investigator brochure is used as the reference safety information, changes to that information would include revisions made to the investigator brochure by the sponsor as described in § 312.55(b) (see proposed § 312.33(h)(2)).

We are proposing to require the sponsor to provide an inventory of ongoing and completed clinical investigations of the investigational drug that were conducted on behalf of the sponsor during the reporting period (see proposed § 312.33(i)). The intent is to identify the universe of clinical investigations that are conducted under the IND. For each clinical investigation identified, the sponsor would be required to provide the following information:

- The protocol number.
- The clinical investigation title (or abbreviated title).
- The National Clinical Trial (NCT) number, if applicable.
- The phase of the clinical investigation (*i.e.,* 1, 2, 3, or postmarketing).
- The date the first subject provided informed consent.
- A brief description of the clinical investigation design and the dose and regimen of the investigational drug and any comparators.
- The cumulative number (or an estimate) of subjects enrolled in each treatment arm for all treatment arms of the clinical investigation during the reporting period.
- Countries or regions in which the clinical investigation was conducted. This would include any country or region with one or more study sites.
- A demographic breakdown of study population by age, sex, and race.
- The status of the clinical investigation (ongoing or completed).
- The total number of subjects (if any) planned to be enrolled in the clinical investigation.

We are proposing that the report identify the cumulative number of subjects exposed to the investigational drug and comparators (placebo and active controls) since the date the IND went into effect (see proposed § 312.33(j)(1)). For blinded studies, this number would be estimated. It would also require that such exposure be broken down by age, sex, and race. Proposed § 312.33(j)(2) would further require the report to estimate patients' cumulative exposure to the marketed drug in each country and region in which the sponsor has lawfully marketed the drug since the date the IND went into effect, if any, accompanied by an explanation of how that exposure was estimated. The estimate of exposure is intended to provide context (*i.e.,* a denominator) for the cumulative summary tabulations of serious adverse events and the overall assessment of safety.

Proposed § 312.33(k)(1) generally would require lists of safety data and other information from clinical investigations of the investigational drug conducted on behalf of the sponsor. Proposed § 312.33(k)(1) would not require information about adverse events that are study endpoints or components of study endpoints (*e.g.,* mortality events in an outcomes trial).

Proposed § 312.33(k)(1)(i) would require line listings of serious suspected adverse reactions as defined in § 312.32(a) that occurred during the reporting period, including the treatment associated with the serious suspected adverse reaction, as well as all serious suspected adverse reactions for any comparators, if known. The line listing would identify those serious suspected adverse reactions that are unexpected (*serious and unexpected suspected adverse reactions*), as defined in § 312.32(a). The line listing should be formatted as a detailed record of the serious suspected adverse reactions and would also be required to include the following information, if applicable:

- Study title or abbreviated title.
- Subject's clinical trial identification number.
- Sponsor's adverse reaction case reference number.
- IND Safety Report reference number.
- Country in which case occurred.
- Age and sex of trial subject.
- Treatment group; identified as ''blinded'' if the blind has not been broken.
- Dose and dosing interval of investigational drug and, when relevant, dosage form and route of administration.
- Date of onset and/or time to onset from administration of last dose of the most serious suspected adverse reaction.
- Dates of treatment and/or best estimate of treatment duration of serious suspected adverse reaction.
- Outcome (*e.g.,* resolved, fatal, improved, sequelae, unknown). This field must indicate the consequences of the reaction(s) for the trial subject, using the worst of the different outcomes for multiple reactions.
- Comments (*e.g.,* causality assessment if the sponsor disagrees with the reporter; concomitant medications suspected to play a role in the reactions directly or by interaction; indication treated with suspect drug(s); dechallenge/rechallenge results if available).

The study identification information included with the line listing of serious suspected adverse reactions required under proposed § 312.33(k)(1)(i) would facilitate FDA's evaluation of the drug's safety information across multiple clinical trials and INDs.

Proposed § 312.33(k)(1)(ii) would require a cumulative summary tabulation *of serious adverse events* as defined in § 312.32(a) for all clinical investigations conducted on behalf of the sponsor since the date the IND went into effect under § 312.40(b). This summary should be formatted as a table.

Proposed § 312.33(k)(1)(iii) would require a list of study subjects who died during the reporting period and the cause of death.

Proposed § 312.33(k)(1)(iv) would require a list of subjects who withdrew from a clinical investigation during the reporting period because of an adverse event as defined in § 312.32(a), whether the adverse event was related to the investigational drug or not.

The line listings and cumulative summary lists required under proposed § 312.33(k)(1) correspond to section 3.7 (Data in Line Listings and Summary Tabulations) of the E2F DSUR, which includes slightly different information as a result of differences in terminology in safety reporting standards. Specifically, FDA issued a final ICH guidance for industry in March 1995 entitled ''E2A Clinical Safety Data Management: Definitions and Standards for Expedited Reporting'' (ICH E2A Clinical Safety Data Management guideline) (available at *https://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/ucm073087.pdf*). The E2F DSUR cross-referenced definitions for serious adverse reaction, serious adverse event, and adverse drug reaction as defined in the ICH E2A Clinical Safety Data Management guideline. The ICH Clinical Safety Data Management guideline defines adverse drug reaction as ''All noxious and unintended responses to a medicinal product related to any dose should be considered adverse drug reactions. The phrase 'responses to medicinal products' means that a causal relationship between a medicinal product and an adverse event is at least

a reasonable possibility, *i.e.,* the relationship cannot be ruled out.'' However, FDA issued a final rule entitled ''Investigational New Drug Safety Reporting Requirements for Human Drug and Biological Products and Safety Reporting Requirements for Bioavailability and Bioequivalence Studies in Humans'' on September 29, 2010 (75 FR 59935), which revised the definitions of these safety reporting terms under current § 312.32(a). As a result, instead of using the term *adverse drug reaction* as defined in the ICH E2A Clinical Safety Data Management guideline, we are using *suspected adverse reaction,* which is defined under current § 312.32(a). For the purposes of IND safety reporting, ''reasonable possibility,'' as it appears in § 312.32(a), means there is evidence to suggest a causal relationship between the drug and the adverse event. Suspected adverse reaction implies a lesser degree of certainty about causality than adverse reaction, which means any adverse event caused by a drug. We are also making use of the term *serious adverse event* or *serious suspected adverse reaction* as defined in § 312.32(a). In light of this revision in terminology, we are making it clear that sponsors would be required under proposed § 312.33(k)(1)(i) to provide a line listing of all serious suspected adverse reactions. We note that adverse reactions, which are defined under current § 312.32(a) as adverse events caused by a drug, are a subset of all suspected adverse reactions—for which there is reason to conclude that the drug caused the event—and, if serious, would be required to be included in the line listings for proposed § 312.33(k)(1)(i).

FDA's requirements under proposed § 312.33(k)(1) for a list of study subjects who died during the reporting period and the cause of death and for a list of subjects who withdrew from the clinical investigation during the reporting period correspond to section 3.16 (Region-Specific Information) of the E2F DSUR, which similarly includes a list of subjects who died during the reporting period, the case number, the assigned treatment, and the cause of death for each subject, as well as a list of subjects who withdrew from clinical investigations during the reporting period in association with an adverse event. The E2F DSUR states that information should include whether or not withdrawing from the investigation was thought to be drug-related.

We are further proposing that a sponsor identify each event omitted from these listings or tabulations because the event is a study endpoint or a component of a study endpoint (see proposed § 312.33(k)(2)). This provision is intended to account for study endpoints in outcome studies in which death or major morbidity is the study endpoint (an adverse outcome) and to isolate those events from other reported adverse events. For example, deaths in a cancer trial in which overall survival is the study endpoint would be identified as required in proposed § 312.33(k)(2) and omitted from the safety line listings and summary tabulations described in proposed § 312.33(k)(1). Similarly, fatal strokes that are a component of a composite primary study endpoint (*e.g.,* all-cause mortality) would be identified as required by proposed § 312.33(k)(2) and omitted from the listings and summary tabulations of serious adverse events described in proposed § 312.33(k)(1).

We are proposing that the report briefly summarize all safety and effectiveness findings from clinical investigations of the investigational drug conducted on behalf of the sponsor that are obtained during the reporting period (see proposed § 312.33(*l*)). Statistically significant differences would be an example of such a finding, but in addition, clinically meaningful differences identified in an interim analysis that were provided to the sponsor and that led to a change in the protocol or population would also be required. The report would include data from any completed trials, interim analyses of ongoing trials, or long-term follow-up of subjects after exposure to the investigational drug in a clinical trial (*e.g.,* for advanced therapies such as gene therapy, cell therapy, or tissue-engineered products). In certain cases, the lack of effectiveness on an endpoint compared to a comparator (*e.g.,* cardiovascular events) can be a safety issue. Therefore, it is important to also report on studies in which there was a lack of effectiveness or lesser effectiveness relative to an active comparator, including results obtained from any completed trials or interim analysis that influenced a decision, based on lack of efficacy, to either stop a trial or to revise the documents provided to subjects when seeking informed consent.

Proposed § 312.33(m) is intended to ensure that all information that is relevant to the safety of the drug and obtained during the reporting period from any source is considered and analyzed in the report. This proposed section would require the report to briefly summarize the following safety information, if known:

- Noninterventional studies where participants are not prospectively assigned to receive a drug or other intervention per a protocol, including observational studies, epidemiological studies, registries, and active surveillance.
- Pooled or meta-analyses of randomized clinical investigations.
- Safety findings from marketing experience, if the drug is lawfully marketed in any country or region.
- Nonclinical in vivo and in vitro studies (*e.g.,* carcinogenicity, reproductive toxicity, immunotoxicity studies).
- Published clinical or nonclinical investigations of the drug not conducted on behalf of the sponsor.
- Published studies of other members of the drug's pharmacological class. Section 3.13 (Literature) of the E2F DSUR provides for the inclusion of information from unpublished studies of which the sponsor has become aware during the reporting period. This section of the proposed rule would require information from published studies and does not create a requirement for sponsors to seek out unpublished studies that may be related to the drug.
- All additional significant safety findings about the drug from other sources. In addition, safety information provided by codevelopment partners or safety information from investigator-initiated trials would also be captured under this bullet and is consistent with section 3.10 (Other Clinical Trial/Study Safety Information) of the E2F DSUR.

We are proposing that the report include a summary of all significant chemistry, manufacturing, and control changes, including microbiological changes (if applicable), made to the investigational drug during the reporting period and briefly describe the safety significance of the identified changes (see proposed § 312.33(n)).

We are proposing that the report briefly describe each significant modification made to protocols in response to safety data on behalf of the sponsor for clinical investigations being conducted with the investigational drug that were not previously reported under § 312.30 (see proposed § 312.33(o)). The intent of this proposed regulation is to provide awareness of significant modifications related to safety issues in trials being conducted in another country or region and not under an IND.

We are proposing that the report contain a description of the general investigational plan for the coming year to replace the plan submitted 1 year earlier (consistent with the content of the general investigational plan described in § 312.23(a)(3)(iv)) (see proposed § 312.33(p)).

We are providing the sponsor the option of including a log of any outstanding business concerning the IND for which the sponsor requests a reply, comment, or meeting (see proposed § 312.33(q)).

We are proposing that the report describe any potentially important late-breaking safety information about the investigational drug or the studies conducted under the IND that were identified by the sponsor during preparation of the annual FDA DSUR and after the data lock point (see proposed § 312.33(r)). The types of findings or actions that would be required to be described under proposed § 312.33(r) include clinically significant new adverse event reports; important follow-up data; clinically relevant toxicological findings; and actions taken for safety reasons that, if the actions had occurred before the data lock point, would have been described as required under proposed § 312.33(g). This proposed section is intended to capture findings that would have been included in the body of the report but did not come to the sponsor's awareness until after the data lock point when the sponsor was preparing the annual FDA DSUR.

We are proposing that the report provide an overall safety assessment that is a concise, integrated evaluation of all new clinical, nonclinical, and epidemiological safety information obtained by the sponsor during the reporting period relative to previous knowledge of the drug (see proposed § 312.33(s)(1)). Proposed § 312.33(s)(1) is not intended to require a repeat of information or a summary of information presented in previous sections of the annual FDA DSUR; rather, it would require an interpretation of the information and its implications for the IND. This proposed section corresponds to section 3.18.1 (Evaluation of the Risks) of the E2F DSUR, and both provide relevant points to consider (if applicable) for evaluating the risks of the drug. The integrated evaluation required under proposed § 312.33(s)(1) would include the following: (1) cumulative experience with the drug, (2) new information about the drug that was collected during the reporting period covered by the proposed annual FDA DSUR, and (3) for drugs with a marketing approval, clinically significant postmarketing data related to the drug. This proposed section of the report would explain how safety information obtained during the reporting period integrates with what was already known about the drug (*e.g.,* what was in prior annual FDA DSURs). The assessment must include an evaluation of the following information potentially relevant to the risk associated with use of the drug:

- Findings that suggest a significant risk in humans exposed to the drug, with associated laboratory values and relationship to dose, duration, or time course of exposure, if known.
- Significant changes to the information concerning an adverse event that was contained in a previous report (*e.g.,* increased frequency, increased severity, identification of a population at greater risk for this adverse event).
- Deaths that were previously included in an IND safety report required under § 312.32.
- Subject withdrawals from a clinical investigation resulting from an adverse event.
- Findings that suggest a significant risk to specific populations (*e.g.,* pediatric, geriatric, populations with hepatic or renal impairment, pregnant or lactating women, populations differentiated by genomic or genetic characteristics).
- Overdose, misuse, and abuse cases or findings regarding the potential for abuse to occur.
- Risks associated with long-term exposure (*e.g.,* a drug used to treat a chronic disease).
- Risks associated with the method of administration of the drug (*e.g.,* drugs administered by injection or drugs administered by intravenous, intrathecal, or inhalation methods might be associated with the risk of increased local concentrations, sterility, pyrogenicity, hypersensitivity, or variations in metabolism), diagnostic procedures related to use of the drug (*e.g.,* an invasive sampling procedure), or procedures described in a study protocol.
- Evidence of clinically significant medication errors (*i.e.,* any preventable event that may cause or lead to inappropriate medication use or patient harm while the medication is in the control of a healthcare provider, patient, or consumer).
- Drug interactions (*e.g.,* drug-drug, drug-food).
- Any other risks that significantly affect the safety assessment of the investigational drug.

We are proposing that the overall safety assessment also describe the balance between benefits, including theoretical or anticipated benefits, and cumulative identified risks related to use of the drug (see proposed § 312.33(s)(2)). The assessment would also be required to describe all changes to the benefit-risk profile compared to the previous annual report, based on information obtained during the reporting period. Proposed § 312.33(s)(2) is not intended to require a full benefit-risk assessment of the drug.

We are proposing that the report contain a cumulative listing of all important known risks (*i.e.,* risks established to be related to the use of the drug) and potential risks (*i.e.,* risks that have a reasonable possibility of a relationship to the drug, but have not yet been established) associated with the drug that are identified by the sponsor during the course of studies of the drug conducted on behalf of the sponsor, along with a brief description of the nature of each risk (see proposed § 312.33(t)). Such risks might include, for example, toxicities known to be associated with a particular molecular structure or drug class or concerns based on accumulating nonclinical or clinical data. Risks identified in a prior reporting period would be required to be re-evaluated annually and a description of each risk updated with new risk information obtained during the current reporting period. Risks that have been fully addressed or resolved would be required to remain in the summary and be briefly described (*e.g.,* findings from toxicology studies or early clinical trials that were not borne out by later clinical data).

Proposed § 312.33(t) would require a summary of all important known and potential risks, whereas proposed § 312.33(s) would provide an overall safety assessment.

We are proposing that the report include a conclusion to briefly summarize the following information: (1) all changes to the sponsor's previous knowledge of efficacy and safety of the investigational drug resulting from information obtained during the reporting period, (2) an outline of actions that the sponsor has taken during the reporting period to address emerging safety findings, and (3) all additional actions that the sponsor will take to address emerging safety findings in the future (see proposed § 312.33(u)).

VI. Proposed Effective and Compliance Dates

FDA proposes that any final rule based on this proposed rule become effective 30 days after the final rule publishes in the **Federal Register**. FDA is proposing that the compliance date for any final rule based on this proposed rule be 180 days after the date of publication of such final rule to give sponsors sufficient time to compile the additional information that the proposed rule would require, if finalized. We request comments

specifically regarding the proposed compliance date.

VII. Preliminary Economic Analysis of Impacts

A. Introduction

We have examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Office of Information and Regulatory Affairs has determined that this proposed rule is an economically significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the proposed requirements are unlikely to impose a substantial burden on the affected small entities, we propose to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

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

B. Summary of Costs and Benefits

The proposed rule seeks to revise FDA's regulations for IND annual reporting. The proposed rule would modify the format and content of the IND annual report to be generally consistent with those of the annual DSUR standards devised by the ICH. The proposed harmonization would result in savings in labor costs for certain sponsors who may no longer have to prepare a different type of periodic safety report for submission to certain other countries or regions in which a drug might be studied. Moreover, FDA would receive safety data on investigational new drugs that is more comprehensive, which would enhance our ability to oversee the progress and safety of clinical investigations. The estimate of annualized benefits over 10 years ranges from $47.86 million to $117.99 million with a primary value of $86.46 million at a 7 percent discount rate and from $49.24 million to $121.01 million with a primary value of $88.79 million at a 3 percent discount rate. The primary estimate of the present value of benefits over 10 years is $607.29 million at a 7 percent discount rate and $757.38 million at a 3 percent discount rate.

Costs would arise from increased labor associated with preparing and submitting a periodic safety report that is more comprehensive to meet the proposed requirements. Costs to government would arise from increased FDA resources being used to review the more comprehensive report. The estimate of annualized costs over 10 years ranges from $40.43 million to $101.34 million at a 7 percent discount rate with a primary value of $61.11 million. Using a 3 percent discount rate, the annualized costs range from $40.89 million to $102.48 million with a primary value of $61.81 million. The primary estimate of the present value of costs over 10 years is $429.20 million at a 7 percent discount rate and $527.21 million at a 3 percent discount rate. The annualized estimates are presented in Table 2.

TABLE 2—SUMMARY OF BENEFITS AND COSTS IN MILLIONS OF 2020 DOLLARS OVER A 10-YEAR TIME HORIZON

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rates (%)	Period covered (years)	
Benefits:							
Annualized Monetized $/year	$86.46	$47.86	$117.99	2020	7	10	Benefits are estimated in terms of cost savings.
	88.79	49.24	121.01	2020	3	10	
Annualized Quantified	.....	.....	.....	.....	7		
					3		
Qualitative							
Costs:							
Annualized Monetized $/year	61.11	40.43	101.34	2020	7	10	
	61.81	40.89	102.48	2020	3	10	
Annualized Quantified	.....	.....	.....	.....	7		
					3		
Qualitative							
Transfers:							
Federal Annualized Monetized $/year	.....	.....	.....	.....	7		
					3		
From/To	From:			To:			
Other Annualized Monetized $/year	.....	.....	.....	.....	7		
					3		
From/To	From:			To:			

Effects:
State, Local or Tribal Government: None.
Small Business: Annual costs per affected small entity represent a maximum of 0.61 percent of average shipments.

TABLE 2—SUMMARY OF BENEFITS AND COSTS IN MILLIONS OF 2020 DOLLARS OVER A 10-YEAR TIME HORIZON—Continued

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rates (%)	Period covered (years)	
Wages: None. Growth: None.							

C. Summary of Regulatory Flexibility Analysis

We estimate that at least 77 percent of establishments in the pharmaceutical preparations industry and at least 69 percent of establishments in the biological products industry employ fewer than 1,250 employees and are therefore also classified as small businesses. Although a large number of small businesses will face costs under the proposed rule, the costs to these firms would be relatively small. The average annual cost per IND annual report as a percentage of average value of shipments for small entities is estimated to be between 0.00 percent and 0.61 percent. We therefore conclude that this proposed rule is unlikely to have a significant impact on a substantial number of small entities.

We have developed a comprehensive Preliminary Economic Analysis of Impacts that assesses the impacts of the proposed rule. The full preliminary analysis of economic impacts is available in the docket for this proposed rule (Ref. 8) and at *https://www.fda.gov/about-fda/reports/economic-impact-analyses-fda-regulations.*

VIII. Analysis of Environmental Impact

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

IX. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by OMB under the PRA (44 U.S.C. 3501–3521). A description of these provisions is given in the *Description* section with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA'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 the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Investigational New Drug Application Annual Reporting.

Description: FDA is proposing to revise its requirements for annual reports submitted to INDs. FDA is proposing to replace the current annual reporting requirement with a new annual reporting requirement that is intended to be generally consistent with the format and content of submission of the annual DSUR devised by the ICH and described in the E2F DSUR. The proposed annual FDA DSUR would provide an annual report that is more comprehensive and informative than the IND annual report required under current § 312.33. The E2F DSUR can be used to satisfy similar annual reporting requirements in certain other countries and regions in which a drug is being studied. Therefore, the proposed implementation of an annual reporting requirement similar to the E2F DSUR in place of the IND annual report format and content is consistent with FDA's overarching goal of fostering international harmonization of regulatory requirements to the extent appropriate and feasible. With the increasing complexity of clinical studies, DSURs that are more comprehensive and informative are important tools to identify and reduce exposure of human subjects to unnecessary risks. The proposed annual FDA DSUR would also help ensure FDA's ongoing oversight of the evolving safety and efficacy profile of the drug throughout the drug development process. We anticipate an additional regulatory burden associated with preparing the proposed annual FDA DSUR. However, for sponsors that currently prepare and submit the IND annual report to FDA and the E2F DSUR to another regulatory authority in another country or region, FDA expects that the burden associated with preparing two periodic safety reports will be reduced because the sponsors might no longer have to prepare two different annual safety reports, because the annual FDA DSUR and the E2F DSUR would be generally consistent in content and format.

Description of Respondents: Sponsors of clinical investigations under an IND.

In tables 4 and 5, the estimated averages for the number of respondents and total annual responses were obtained from CDER and CBER reports and data management systems.

In the approved package for OMB control number 0910–0014, FDA estimated 360 burden hours to complete and submit an IND annual report. To complete and submit the annual FDA DSUR, FDA estimates that a sponsor would spend an additional 18 to 72 hours because of the more comprehensive information not currently required by the IND annual report. Thus, we estimate that sponsors will spend a total of 396 hours to comply with the proposed requirement. The estimated average burden hours per response was made by CDER and CBER individuals familiar with the burden associated with these reports and from estimates received from the pharmaceutical industry. For the total information collection burden for preparing and submitting an annual FDA DSUR, FDA estimates 4,590,432 hours (3,855,456 CDER hours + 734,976 CBER hours = 3,430,944). The estimated 4,590,432 total hours includes 4,173,120 total hours to submit an IND annual report and 417,312 additional total hours to provide the additional information required in the annual FDA DSUR.

TABLE 4—ESTIMATED ANNUAL REPORTING BURDEN FOR HUMAN DRUGS REGULATED BY CDER [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
§ 312.33	2,877	3.38	9,736	396	3,855,456

[1] There are no capital or operating and maintenance costs associated with this collection of information.
Note: The Total Annual Responses may not sum up as a result of rounding.

TABLE 5—ESTIMATED ANNUAL REPORTING BURDEN FOR HUMAN DRUGS REGULATED BY CBER [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
§ 312.33	745	2.49	1,856	396	734,976

[1] There are no capital or operating and maintenance costs associated with this collection of information.
Note: The Total Annual Responses may not sum up as a result of rounding.

This proposed rule also refers to previously approved collections of information found in FDA regulations. The collections of information in part 312 have been approved under OMB control number 0910–0014.

In compliance with the PRA (44 U.S.C. 3407(d)), the Agency has submitted the information collection provisions of this proposed rule to OMB for review. These information collection requirements will not be effective until FDA publishes a final rule, OMB approves the information collection requirements, and the rule goes into effect. FDA will announce OMB approval of these requirements in the **Federal Register**.

X. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. We have determined that the proposed rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

XI. Consultation and Coordination With Indian Tribal Governments

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13175. We have tentatively determined that the rule does not contain policies that would have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The Agency solicits comments from tribal officials on any potential impact on Indian Tribes from this proposed action.

XII. References

The following references marked with an asterisk (*) are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov.* References without asterisks are not on public display at *https://www.regulations.gov* because they have copyright restriction. Some may be available at the website address, if listed. References without asterisks are available for viewing only at the Dockets Management Staff. FDA has verified the website addresses as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. CIOMS, ''Development Safety Update Report (DSUR) Harmonizing the Format and Content for Periodic Safety Report During Clinical Trials: Report of CIOMS Working Group VII,'' ''Introduction and Overview, Rationale for the CIOMS VII Project,'' Chapter I.a, pp. 11 and 12, Geneva 27, Switzerland, 2006.

* 2. ICH, Harmonisation for Better Health, ''Vision: Mission,'' accessed August 22, 2016.

* 3. ICH, ''ICH Steering Committee, Minneapolis, MN, USA,'' June 2014 (available at *https://www.ich.org/pressrelease/ich-steering-committee-minneapolis-mn-usa-june-2014*), accessed January 7, 2020.

* 4. ICH, ''Final Concept Paper, E2F: Development Safety Update Report,'' 2006 (available at *https://database.ich.org/sites/default/files/E2F_Concept_Paper.pdf*), accessed January 7, 2020.

* 5. ICH, Harmonised Tripartite Guideline ''Development Safety Update Report, E2F, Finalised Guideline,'' August 2010 (*https://database.ich.org/sites/default/files/E2F_Guideline.pdf*), accessed January 7, 2020.

* 6. EU, ''Communication From the Commission—Detailed Guidance on the Collection, Verification and Presentation of Adverse Event/Reaction Reports Arising From Clinical Trials on Medicinal Products for Human Use ('CT–3'),'' 2011 (available at *https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2011:172:0001:0013:EN:PDF*), accessed October 22, 2022.

* 7. European Medicines Agency, ''ICH Topic E 2 C (R1) Clinical Safety Data Management: Periodic Safety Update Reports for Marketed Drugs,'' June 1997 (available at *https://www.ema.europa.eu/docs/en_GB/document_library/Scientific_guideline/2009/09/WC500002780.pdf*), accessed December 30, 2019.

* 8. FDA, Preliminary Regulatory Impact Analysis; Initial Regulatory Flexibility Analysis; Unfunded Mandates Reform Act Analysis, ''Investigational New Drug Application Annual Reporting,'' 2019 (available at *https://www.fda.gov/about-fda/reports/economic-impact-analyses-fda-regulations*).

List of Subjects in 21 CFR Part 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 312 be amended as follows:

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

■ 1. The authority citation for part 312 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360bbb, 371; 42 U.S.C. 262.

■ 2. Amend § 312.3(b) by alphabetically adding a definition for *Data lock point* to read as follows:

§ 312.3 Definitions and interpretations.

* * * * *

(b) * * *

Data lock point means the cutoff date for data to be included in the development safety update report required under § 312.33. The data lock point is 1 calendar day before the anniversary of the date the IND went into effect under § 312.40(b).

* * * * *

■ 3. Revise § 312.33 to read as follows:

§ 312.33 Development safety update reports.

Not later than 60 calendar days after the data lock point, a sponsor must submit to FDA a development safety update report (DSUR) as described in paragraphs (a) through (u) of this section.

(a) *Scope.* The DSUR is intended to provide a thorough annual assessment of clinical investigations conducted and safety information collected during the reporting period that are related to an investigational new drug.

(1) A sponsor must submit an annual DSUR that contains the information required to be submitted under paragraphs (b) through (u) of this section for all ongoing or completed clinical investigations conducted anywhere in the world on behalf of the sponsor evaluating the drug, including clinical investigations not conducted under an investigational new drug application (IND), unless otherwise specified in this section. The sponsor must submit the same DSUR for each IND held by the sponsor for any dosage form of the drug.

(2) A sponsor-investigator for a clinical investigation not intended to support a marketing application must provide information required under this section that is obtained from the clinical investigation conducted by the sponsor-investigator, but the sponsor-investigator is not required to submit information that is not obtained from the clinical investigation conducted by the sponsor-investigator.

(3) For the purposes of this section, ongoing clinical investigations consist of active clinical investigations, clinical investigations that are on clinical hold under § 312.42, clinical investigations that have not been terminated, and clinical investigations for which a final study report has not been submitted but the clinical investigation might otherwise be completed.

(b) *Title page.* The title page of the DSUR must contain the IND number, DSUR number (numbered sequentially), name of the investigational drug, reporting period, date of the DSUR, and sponsor's name and address.

(c) *Executive summary.* The executive summary must contain all of the following information:

(1) The DSUR number and reporting period.

(2) A brief description of the investigational drug (including the therapeutic class, pharmacological class (if applicable), and mechanism of action (if known)) and the indication(s), dose(s), formulation(s), and route(s) of administration being studied.

(3) The cumulative number of subjects to whom the drug has been administered throughout the course of clinical investigations of the drug conducted on behalf of the sponsor or, if a precise number cannot be determined, an estimate.

(4) A summary of the overall safety assessment required in paragraph (s) of this section.

(5) A summary of the list of important risks required in paragraph (t) of this section.

(6) A summary of actions taken for safety reasons as required in paragraph (g) of this section.

(7) A list of countries and regions in which the drug has been approved for marketing.

(8) A summary of the conclusion required in paragraph (u) of this section.

(d) *Table of contents.* The DSUR must contain a table of contents that is sufficiently detailed to direct the reader to the components of the DSUR as described in paragraphs (e) through (u) of this section.

(e) *Introduction.* The introduction must:

(1) Identify the reporting period;

(2) Briefly describe the investigational drug, including the therapeutic class, pharmacological class (if applicable), and mechanism of action (if known);

(3) List the indication(s), dose(s), formulation(s), and route(s) of administration being investigated; and

(4) List the clinical investigation(s) conducted on behalf of the sponsor that are referred to in the DSUR.

(f) *Worldwide marketing authorizations and applications.* If the drug has been approved for marketing anywhere in the world, the DSUR must provide a brief summary of the status of the approved drug, including date of first approval, indication(s), dose(s), and countries or regions in which it is approved.

(g) *Actions taken for safety reasons.* The DSUR must describe all actions relevant to the safety of the drug that were taken during the reporting period by a regulatory authority or by the sponsor, if known. For each action taken, the reason(s) the action was taken must be provided, if known. Actions taken by the sponsor include those actions taken in response to a regulatory action and those actions taken following a recommendation from a data monitoring committee. Actions relevant to the safety of the drug include, but are not limited to, any of the following:

(1) A clinical hold order issued under § 312.42;

(2) Denial of authorization to initiate a clinical investigation, or the suspension of the conduct of a clinical investigation of the drug in another country or region;

(3) A requirement to cease distribution of the drug or other action related to the quality of the drug;

(4) Refusal to approve any application for marketing of the drug;

(5) An action that places a condition or limitation on the use or development of the drug;

(6) A safety-related change in the protocol or investigational plan of an ongoing clinical investigation of the drug;

(7) A safety-related change in the information provided to human subjects in order to obtain informed consent for a clinical investigation of the drug;

(8) A safety-related formulation change to the drug;

(9) A safety advisory communication to investigators conducting clinical investigations under the IND or to healthcare professionals concerning use of the drug;

(10) A clinical investigation of the drug that is initiated or planned to evaluate a risk associated with use of the drug;

(11) If the drug is lawfully marketed, a safety-related change to its labeling, including the prescribing information;

(12) If the drug is lawfully marketed, a significant restriction on distribution or other risk mitigation strategy, including a risk evaluation and mitigation strategy (REMS) required under section 505–1 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355–1); and

(13) If the drug was lawfully marketed in the past, withdrawal or suspension of marketing approval for the drug.

(h) *Reference safety information.* (1) If required under §§ 312.23(a)(5) and 312.55, the investigator brochure in effect at the start of a reporting period will serve as the reference safety information for that reporting period. If an investigator brochure is not required under §§ 312.23(a)(5) and 312.55 and

the drug is subject to an FDA-approved marketing application, the FDA-approved prescribing information will serve as the reference safety information during the reporting period. If an investigator brochure is not required under §§ 312.23(a)(5) and 312.55 and the drug is not subject to an FDA-approved marketing application, the sponsor must use another source as the reference safety information. The sponsor must identify the reference safety information used during the reporting period.

(2) The DSUR must list all safety-related changes to the reference safety information, made during the reporting period.

(i) *Inventory of clinical investigations conducted during the reporting period.* For each ongoing and completed clinical investigation of the investigational drug conducted on behalf of the sponsor during the reporting period, the DSUR must provide the following:

(1) The protocol number;

(2) The clinical investigation title (or abbreviated title);

(3) The NCT number, if applicable;

(4) The phase of the clinical investigation (*i.e.,* 1, 2, 3, or postmarketing);

(5) The date the first subject provided informed consent;

(6) A brief description of the clinical investigation design and the dose and regimen of the investigational drug and any comparators;

(7) The cumulative number (or an estimate) of subjects enrolled in each treatment arm for all treatment arms of the clinical investigation;

(8) Countries or regions in which the clinical investigation was conducted;

(9) A demographic breakdown of study population by age, sex, and race;

(10) The status of the clinical investigation (*i.e.,* ongoing or completed); and

(11) The number of subjects (if any) planned to be enrolled in the clinical investigation.

(j) *Cumulative exposure.* (1) The DSUR must provide the cumulative number (or an estimate) of subjects exposed to the investigational drug and comparators during clinical investigations conducted on behalf of the sponsor since the date the IND went into effect. The DSUR must provide a tabulation of exposed subjects by age, sex, and race.

(2) If the drug is lawfully marketed by the sponsor, the DSUR must provide an estimate of patients' cumulative exposure to the drug in each country and region in which the sponsor has marketed the drug since the date the IND went into effect, including an explanation of how that exposure was estimated.

(k) *Safety data tabulations and line listings.* (1) The DSUR must provide the following safety data from clinical investigations of the investigational drug that are conducted on behalf of the sponsor, with the exception of adverse events that are study endpoints or components of study endpoints:

(i) Line listings of all serious suspected adverse reactions as defined in § 312.32(a) that occurred during the reporting period, as well as all serious suspected adverse reactions for any comparators, if known. The line listings must identify those serious suspected adverse reactions that are unexpected (serious and unexpected suspected adverse reaction) as defined in § 312.32(a) and must also include the following information, if applicable:

(A) Clinical investigation identification information (*e.g.,* number or name).

(B) Subject's clinical investigation identification number.

(C) Sponsor's adverse reaction case reference number.

(D) IND Safety Report reference number.

(E) Country in which case occurred.

(F) Age and sex of subject.

(G) Treatment group; identified as ''blinded'' if the blind has not been broken.

(H) Dose and dosing interval of investigational drug and, when relevant, dosage form and route of administration.

(I) Date of onset and/or time to onset from administration of last dose of the most serious suspected adverse reaction.

(J) Date(s) of treatment and/or best estimate of treatment duration.

(K) The DSUR must indicate the consequences of the reaction(s) for the subject, using the worst of the different outcomes for multiple reactions.

(L) Comments.

(ii) A cumulative summary tabulation of serious adverse events (as defined in § 312.32(a)) obtained from all clinical investigations conducted on behalf of the sponsor that occurred since the date the IND went into effect under § 312.40(b).

(iii) A list of subjects who died during the reporting period and the cause of death for each subject.

(iv) A list of subjects who withdrew from a clinical investigation during the reporting period because of an adverse event (as defined in § 312.32(a)), whether the adverse event was related to the investigational drug or not.

(2) The DSUR must identify each event omitted from the information reported pursuant to paragraph (k)(1) of this section because the event is a study endpoint or a component of a study endpoint.

(l) *Results from clinical investigations.* The DSUR must briefly summarize all safety and effectiveness findings from clinical investigations of the investigational drug that are conducted on behalf of the sponsor and obtained during the reporting period, including results obtained from any completed clinical investigations or interim analysis that resulted in a decision, based on lack of efficacy, to either stop a clinical investigation or to revise the information provided to subjects when seeking to obtain informed consent.

(m) *Other safety findings.* The DSUR must briefly summarize the following information obtained during the reporting period, if known:

(1) Noninterventional studies of the drug, including observational studies; epidemiological studies; registries; and active surveillance.

(2) Pooled analyses or meta-analyses of randomized clinical investigations of the drug.

(3) Safety findings from marketing experience if the drug is lawfully marketed.

(4) Nonclinical in vivo and in vitro studies of the drug.

(5) Published clinical or nonclinical investigations of the drug not conducted on behalf of the sponsor.

(6) Published studies of other members of the pharmacological class of the drug.

(7) All additional significant safety findings about the drug from other sources.

(n) *Significant chemistry, manufacturing, and control changes, including microbiological changes (if applicable).* The DSUR must include a summary of significant chemistry, manufacturing, and control changes, including microbiological changes (if applicable), made during the reporting period to the investigational drug and must briefly describe the safety significance of the identified changes.

(o) *Protocol modifications.* The DSUR must briefly describe each significant modification made on behalf of the sponsor to protocols for phase I clinical investigations being conducted with the drug that were not previously reported under § 312.30.

(p) *Investigational plan.* The DSUR must contain a description of the general investigational plan for the coming year to replace the plan submitted 1 year earlier. The description of the general investigational plan must contain the

information described in § 312.23(a)(3)(iv).

(q) *Log of outstanding business.* The DSUR may, at the option of the sponsor, include a log of any outstanding business concerning the IND for which the sponsor has requested a reply, comment, or meeting.

(r) *Late-breaking information.* The DSUR must describe any potentially important safety information about the investigational drug or the clinical investigations conducted under the IND that was identified by the sponsor during preparation of the DSUR and after the data lock point.

(s) *Overall safety assessment.* (1) The DSUR must provide an overall safety assessment that is a concise, integrated evaluation of all new clinical, nonclinical, and epidemiological safety information obtained about the drug by the sponsor during the reporting period relative to the sponsor's prior knowledge of the drug, including knowledge obtained by the sponsor during any prior reporting periods. The assessment must include an evaluation of the risks associated with use of the drug that includes an interpretation of new safety information relative to the safety information that was previously obtained by the sponsor. The overall safety assessment must include the following items:

(i) Findings that suggest a significant risk in humans exposed to the drug, with any associated laboratory values, and relationship to dose, duration, or time course of exposure, if known.

(ii) Significant changes in information concerning adverse events that were identified in a previous DSUR.

(iii) Deaths that were previously included in an IND safety report required in § 312.32.

(iv) Subjects who withdrew from a clinical investigation because of an adverse event.

(v) Findings that suggest a significant risk to specific populations.

(vi) Drug overdose, misuse, and abuse cases or findings regarding the potential for abuse to occur.

(vii) Risks associated with long-term exposure.

(viii) Risks associated with the method of administration of the drug, diagnostic procedures related to use of the drug, or other procedures described in a protocol.

(ix) Evidence of clinically significant medication errors.

(x) Drug interactions.

(xi) Any other risks that significantly affect the safety assessment of the drug.

(2) The overall safety assessment must describe the balance between benefits, including theoretical or anticipated benefits, and cumulative identified risks related to use of the drug. The overall safety assessment must also describe changes to the benefit-risk profile compared to the previous DSUR, based on information obtained during the reporting period.

(t) *Summary of important risks.* The DSUR must provide a cumulative listing, along with a brief description, of all the important known risks and potential risks associated with use of the drug identified by the sponsor during the course of clinical and nonclinical investigations of the drug conducted on behalf of the sponsor. The listing must include a description of each risk. Risks identified by the sponsor in a prior reporting period must be re-evaluated annually, and their descriptions must be updated with any new risk information obtained during the reporting period.

(u) *Conclusion.* The DSUR must briefly summarize the following information:

(1) All changes to the sponsor's previous knowledge of the investigational drug's efficacy and safety resulting from information obtained during this reporting period.

(2) An outline of actions that have been taken by the sponsor during the current reporting period to address emerging safety findings.

(3) All additional actions that will be taken in the future by the sponsor to address emerging safety findings, to the extent known.

Dated: November 29, 2022.

Robert M. Califf,

Commissioner of Food and Drugs.

[FR Doc. 2022–26731 Filed 12–8–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648–BL42

Extension of Public Comment Period for Amendment 123 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP); Bering Sea and Aleutian Islands Halibut Abundance-Based Management of Amendment 80 Prohibited Species Catch Limit

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

ACTION: Notice; extension of public comment period.

SUMMARY: On November 9, 2022, the National Marine Fisheries Service published a Notice of Availability and request for comments on Amendment 123 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP), but inadvertently did not include the supporting Amendment text. With this notice, NMFS is extending the public comment period by 60 days to February 7, 2023, to afford the public with additional time to provide comments on Amendment 123.

DATES: Comments on Amendment 123 and supporting documents must be received by February 7, 2023 as specified under **ADDRESSES**.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2022–0088, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2022–0088 in the Search box. Click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Josh Keaton, Acting Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Records Office. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

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

Electronic copies of Amendment 123 and the final Environmental Impact Statement/Regulatory Impact Review (collectively referred to as the ''Analysis'') prepared for this proposed rule may be obtained from *https://www.regulations.gov.* The Analysis may also be found on the Alaska Regional Office website at: *https://www.fisheries.noaa.gov/resource/document/final-environmental-impact-statement-bering-sea-and-aleutian-islands-bsai-halibut.*

FOR FURTHER INFORMATION CONTACT: Bridget Mansfield, 907–586–7228.

SUPPLEMENTARY INFORMATION: On November 9, 2022, the National Marine Fisheries Service published a Notice of Availability (NOA) and request for comments on Amendment 123 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) (87 FR 67665, November 9, 2022). After inquiries from the public, NMFS realized that a supporting document containing the revised BSAI FMP text was not made available for public review with the November 9, 2022 publication of the NOA. The BSAI FMP revised text was posted to *regulations.gov* on December 2, 2022. With this notification, NMFS is extending the comment period on the FMP Amendment to provide 60 days from the date of publication of this notification in the **Federal Register**.

NMFS is soliciting public comments on proposed Amendment 123 through the end of the comment period (see **DATES**). NMFS is separately seeking public comment on a proposed rule that would implement Amendment 123.

Respondents do not need to submit the same comments on Amendment 123 and the proposed rule. All relevant written comments received by the end of the applicable comment period, whether specifically directed to the BSAI FMP amendment or the proposed rule will be considered by NMFS in the approval/disapproval decision for Amendments 123 and addressed in the response to comments in the final rule. Comments received after the end of the applicable comment period will not be considered in the approval/disapproval decision on Amendment 123. To be considered, comments must be received, not just postmarked or otherwise transmitted, by the last day of the comment period (see **DATES**).

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

Dated: December 6, 2022.

Jennifer M. Wallace,

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

[FR Doc. 2022–26828 Filed 12–8–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 221128–0250]

RIN 0648–BL42

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Halibut Abundance-Based Management of Amendment 80 Prohibited Species Catch Limit

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 123 to the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI). If approved, the proposed rule would amend regulations governing limits on Pacific halibut (*Hippoglossus stenolepis*) (halibut) prohibited species catch (PSC), or bycatch, in the BSAI. Namely, the proposed amendment would link the halibut PSC limit to halibut abundance for the Amendment 80 commercial groundfish trawl fleet in the BSAI groundfish fisheries. This action responds to the obligation in section 303(a)(11) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to minimize bycatch to the extent practicable, and is consistent with the Magnuson-Stevens Act national standards. This action: minimizes halibut PSC to the extent practicable under National Standard 9; ensures that the FMP will continue to achieve optimum yield in the BSAI groundfish fisheries on a continuing basis under National Standard 1; is based upon the best scientific information available under National Standard 2; to the extent it involves an allocation of fishing privileges, is fair and equitable, reasonably promotes conservation by reducing incidental halibut mortality caused by the Amendment 80 trawl fleet, and does not result in any excessive shares of fishing privileges under National Standard 4; and takes into account the importance of fishery resources to fishing communities under National Standard 8. The action is expected to provide incentives for the Amendment 80 fleet to minimize halibut mortality at all times and conserve and improve bycatch management of the halibut resource, and it may result in additional harvest opportunities in the commercial halibut fishery. This action is intended to promote the goals and objectives of the Magnuson-Stevens Act, other applicable laws, and Amendment 123 to the BSAI FMP.

DATES: Submit comments on or before January 23, 2023.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2022–0088, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2022–0088 in the Search box. Click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Josh Keaton, Acting Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Records Office. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

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

Electronic copies of Amendment 123 may be obtained from *https://www.regulations.gov.* The final Environmental Impact Statement/Regulatory/Impact Review (collectively referred to as the ''Analysis'') prepared for this proposed rule may be found on the Alaska Regional Office website at: *https://www.fisheries.noaa.gov/resource/document/final-environmental-impact-statement-bering-sea-and-aleutian-islands-bsai-halibut.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted by mail to NMFS at the above address; emailed to *OIRA_Submission@omb.eop.gov;* or faxed to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Bridget Mansfield, 907–586–7228.

SUPPLEMENTARY INFORMATION:

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I. Authority for Action

NMFS manages the United States (U.S.) groundfish fisheries in the exclusive economic zone (EEZ) of the BSAI under the BSAI FMP. The North Pacific Fishery Management Council (Council) prepared, and the Secretary of Commerce (Secretary) approved, the BSAI FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the BSAI FMP appear at 50 CFR parts 600 and 679. The Council is authorized to prepare and recommend an FMP amendment for the conservation and management of a fishery managed under the FMP. NMFS conducts rulemaking to implement FMP amendments and related regulatory amendments. FMP amendments and regulations developed by the Council may be implemented by NMFS only after approval by the Secretary.

A notice of availability (NOA) for Amendment 123 was published in the **Federal Register** on November 9, 2022, with comments invited through January 9, 2023. Comments submitted on this proposed rule by the end of the comment period (See **DATES**) will be considered by NMFS and addressed in the response to comments in the final rule. Comments submitted on this proposed rule may address Amendment 123 or this proposed rule. However, all comments addressing Amendment 123 must be received by January 9, 2023, to be considered in the approval/disapproval decision on Amendment 123. Commenters do not need to submit the same comments on both the NOA and this proposed rule. All relevant written comments received by January 9, 2023, whether specifically directed to Amendment 123, this proposed rule, or both will be considered by NMFS in the approval/disapproval decision for Amendment 123 and addressed in the response to comments in the final rule.

II. Background

In December 2021, the Council voted to recommend Amendment 123 to link the halibut PSC limit to halibut abundance for the Amendment 80 (*i.e.,* non-pollock) commercial groundfish trawl fleet in the BSAI groundfish fisheries. In recommending Amendment 123, the Council intended to minimize halibut PSC to the extent practicable as required by section 303(a)(11) and National Standard 9 of the Magnuson-Stevens Act and to continue achieving optimum yield in the BSAI groundfish fisheries on a continuing basis under National Standard 1. The Council weighed and balanced the Magnuson-Stevens Act's legal requirements, including the ten national standards. Based on public comment, the analysis prepared pursuant to the National Environmental Policy Act (NEPA), and analyses under Executive orders and related laws that were included in the NEPA documentation, the Council selected to recommend Amendment 123 to NMFS.

This action would provide incentives for the Amendment 80 fleet to minimize halibut mortality at all times. Achievement of these objectives would conserve the halibut resource by improving bycatch management and could result in additional harvest opportunities in the directed commercial and subsistence halibut fisheries. To implement Amendment 123, in this action, NMFS proposes regulations that would link the halibut PSC limit to halibut abundance for the Amendment 80 commercial groundfish trawl fleet in the BSAI groundfish fisheries.

Pacific halibut is fully utilized in Alaska as a target species in subsistence, personal use, recreational (sport), and commercial halibut fisheries. Halibut has significant social, cultural, and economic importance to fishery participants and fishing communities throughout the geographical range of the resource. Halibut is also incidentally taken as bycatch in commercial groundfish fisheries. The Magnuson-Stevens Act defines bycatch as fish that are harvested in a fishery, but are not sold or kept for personal use, and includes economic and regulatory discards. 16 U.S.C. 1802(2). The term does not include fish released alive under a recreational catch and release fishery management program.

The International Pacific Halibut Commission (IPHC) adopts regulations governing the target fishery for Pacific halibut under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979). As provided by the Northern Pacific Halibut Act of 1982 (Halibut Act) (16 U.S.C. 773–773k), the Secretary of State, with the concurrence of the Secretary of Commerce, may accept or reject, on behalf of the United States, regulations recommended by the IPHC in accordance with the Convention. The Halibut Act provides the Secretary of Commerce with the authority and general responsibility to carry out the requirements of the Convention and the Halibut Act. After acceptance by the Secretary of State and concurrence by the Secretary of Commerce, NMFS publishes the IPHC regulations in the **Federal Register** as annual management measures pursuant to 50 CFR 300.62.

Section 773c(c) of the Halibut Act also provides the Council with authority to develop regulations that are in addition to, and not in conflict with, approved IPHC regulations. The Council has exercised this authority in the development of Federal regulations for the halibut fishery such as (1) subsistence halibut fishery management measures, codified at 50 CFR 300.65; (2) the limited access program for charter vessels in the guided recreational fishery, codified at 50 CFR 300.67; and (3) the Individual Fishing Quota (IFQ) Program for commercial halibut fisheries, codified at 50 CFR 679.40 through 679.45.

In recent years, catch limits for the commercial halibut fishery in the BSAI have generally declined in response to decreasing halibut spawning biomass (though the catch limits increased slightly in 2021), while limits on the maximum amount of halibut bycatch allowed in the groundfish fisheries have remained the same since 2016, when they were reduced under BSAI FMP

Amendment 111. The proposed rule would set annual halibut bycatch limits, also referred to as halibut PSC limits, in the BSAI Amendment 80 sector groundfish fisheries based on halibut abundance. This proposed approach for setting halibut PSC limits is consistent with the requirements of the Magnuson-Stevens Act to minimize bycatch to the extent practicable while achieving, on a continuing basis, optimum yield from the groundfish fisheries. This section of the preamble provides background on the halibut resource, halibut management, the halibut fisheries, and halibut bycatch in the groundfish fisheries in the BSAI. Sections III and IV describe the rationale and impacts of Amendment 123 and this proposed rule.

This preamble relies on the best data available consistent with the final Environmental Impact Statement/Regulatory Impact Review (collectively referred to as the ''Analysis'') prepared to support this action.

A. The Halibut Resource

Section 4.0 of the Analysis describes the stock assessment process and IPHC management framework for halibut in Alaska. A brief summary of section 4.0 follows.

1. Status of the Halibut Stock and Management Framework

The IPHC assesses the status of the Pacific halibut stock at a coastwide level from California through the Bering Sea. The IPHC assesses female spawning biomass as one important indicator of the status of the halibut stock, including the long-term reproductive health of the halibut resource. Female spawning biomass is composed of female halibut of reproductive size. Generally, this includes female halibut that are 26 inches (66.04 centimeters) in length or greater (O26), and a small proportion of the female spawning biomass includes female halibut less than 26 inches in length (U26).

The IPHC conducts an annual stock assessment for the coastwide halibut stock. Currently, the stock assessment for halibut uses four integrated age-structured models in an ensemble resulting in a single value for the entire coast (U.S. and Canada). Migration between the halibut management areas is not modeled. The IPHC's data indicate that the Pacific halibut stock declined continuously from the late 1990s to around 2012, largely as a result of decreasing size at a given age (size-at-age), higher harvest rates in the early 2000s, and weaker recruitment (the process by which new fish are incorporated into the stock) than observed during the 1980s. From about 2013 to 2016, there was a slight increasing trend in the spawning biomass, followed by a slight decline continuing into the current assessment. In recent years, the spawning biomass projections continue to indicate slight decreases, even at low fishing levels, due to recent below-average recruitment. The stock assessment models used by the IPHC in 2020 project a decreasing female spawning biomass over the next few years assuming continued current removal rates from all sources (see Figure 4–3 in section 4.2 of the Analysis).

Notably, halibut is not a groundfish species under the BSAI FMP and is instead managed under an international agreement; therefore, halibut is not subject to provisions of the Magnuson-Stevens Act that require the establishment of an annual overfishing limit (OFL), an acceptable biological catch level (ABC), or a total allowable catch (TAC) limit.

Although halibut is not managed under an OFL, ABC, or TAC, the IPHC has developed a harvest policy to control removals based on stock abundance. In 2017, the IPHC implemented an interim spawning potential ratio (SPR)-based harvest strategy policy while a management strategy evaluation (MSE) process is underway. An SPR-based harvest policy defines a default or reference level of fishing intensity to determine mortality limits. The reference level of fishing intensity is the level of fishing that would reduce the lifetime spawning output per recruit to some percentage of the unfished level. That percent of the unfished level is also dependent on current biology, fishery characteristics, and demographics. Lower values of spawning output per recruit indicate higher fishing intensity (see section 4.4 of the Analysis). The IPHC MSE simulations found that a level of fishing intensity corresponding to an SPR of 43%, in conjunction with a control rule where the fishing intensity is reduced when the stock status is estimated to be below 30 percent and set to zero when stock status is estimated to be below 20 percent, would successfully meet the coastwide conservation and fishery objective outlined by the IPHC. Additional information on the anticipated impacts of the proposed rule on the status of halibut stock is provided in section 5.2 of the Analysis.

The IPHC's harvest control rule reduces fishing intensity linearly if the stock is estimated to have fallen below the 30 percent threshold. As described in the preceding paragraph, this harvest control rule would severely curtail removals during times of particularly poor stock conditions. To date, the harvest control rule has not been triggered, even during the most recent years of relatively low exploitable biomass (see section 3.1.1.1 and section 3.1.2.1 of the Analysis). While the harvest control rule has not been triggered, the total mortality limits established by the IPHC have decreased substantially, with the exception of 2021 (see Table 4–3 in the Analysis), corresponding to the low halibut abundance conditions.

Each year, the most recent stock assessment ensemble is presented to the IPHC as a risk-based decision matrix that combines different catch levels and various performance metrics. The IPHC uses the interim SPR-based approach to recommend to the Commission a coastwide commercial catch limit, also known as a mortality limit, considering mortality from all sources, and then distributes the mortality limit across regulatory areas using estimates of stock distribution from the IPHC fishery independent setline survey, relative harvest rates, and other pertinent information. The Commission can set total mortality limits that do not follow the harvest policy, such as to address socioeconomic considerations.

The IPHC evaluates halibut mortalities using a combination of two metrics: (1) the Total Constant Exploitation Yield (TCEY), which includes harvests and incidental discard mortalities from directed commercial fisheries, plus mortality estimates from sport, subsistence, personal use, and estimates of non-directed discard mortality of halibut over 26 inches; and, (2) Total Mortality, which includes all the above sources of mortality, plus estimates of non-directed discard mortality of halibut less than 26 inches (U26). Although U26 halibut mortality is factored into the stock assessment and harvest strategy calculations, the IPHC delineates U26 and O26 differently for the following reasons: (1) U26 Pacific halibut are highly mobile and much less likely to occur in the same regulatory area in the upcoming year in which PSC limits would apply, (2) the setline survey captures almost exclusively O26 Pacific halibut, (3) there is currently no reliable tool for describing the annual distribution of U26 halibut across the entire convention area, and (4) the mortality of U26 Pacific halibut has a differing effect on the SPR than O26 fish (they are not entirely exchangeable).

The IPHC considers the TCEY distribution among regulatory areas based on estimates of biomass from the setline survey and relative harvest rates, then considers recommendations from the IPHC's advisory boards, public

input, and social and economic factors to potentially adjust the TCEYs among regulatory areas. Unlike the Magnuson-Stevens Act, the Halibut Act does not include specific provisions that require the IPHC to allocate quotas within, for example, an overfishing threshold; the IPHC's broad mandate is the conservation of the halibut stock.

Due to a combination of changing IPHC harvest policies and decisions that depart from harvest policy recommendations, the IPHC has adopted coastwide catch limits of varying fishing intensities in recent years. The IPHC has adopted TCEYs above those recommended by the harvest policy in three of the last five years (Table 4–1 of the Analysis). Estimates of fishing intensity are uncertain and may change in subsequent years based on actual mortality and new stock assessments. Further, the specific formula used by the IPHC Commissioners to distribute catch limits among regulatory areas has been different for each of the past three years.

The Fishery Constant Exploitation Yield (FCEY) represents the directed fishery limits that result from the IPHC's adopted TCEYs. To calculate the FCEYs from the TCEYs, all sources of O26 halibut mortality are considered, such as unguided recreational fisheries, subsistence/personal use fisheries, and directed and non-directed commercial fishing discard mortalities. The default projection for U26 and O26 discards is to use the three-year average of recent discard mortality to minimize the effect of interannual variability of annual discard estimates. (IPHC AM096). Section 4.4.1 of the Analysis contains additional information on the process the IPHC uses to set catch limits.

2. Allocation of Halibut Among Fisheries

Pacific halibut is allocated among fisheries by a combination of management actions taken by the IPHC, the Council, and NMFS. The IPHC annually completes a halibut stock assessment and makes recommendations for annual management measures for the halibut fishery within Convention waters. These annual management measures include specific regulations governing the commercial halibut fishery, including area-specific catch limits, authorized gear, and fishing season dates. In the United States, the IPHC recommendations are subject to acceptance by the Secretary of State with the concurrence of the Secretary of Commerce, as described above in the ''Authority for Action'' section of this preamble. (See sections 1.1 and 4.4.1 of the Analysis and the 2022 annual management measures for additional information on the process for establishing commercial halibut fishery catch limits (87 FR 11626, March 02, 2022).)

Although the halibut stock is assessed at a coastwide level, commercial catch limits are established for each of the IPHC regulatory areas: 2A (Washington, Oregon, and California), 2B (British Columbia), 2C (Southeast Alaska), 3A (Central Gulf of Alaska), 3B (Western Gulf of Alaska), and 4A, 4B, 4C, 4D and 4E (BSAI). The IPHC combines Areas 4C, 4D, and 4E into Area 4CDE for purposes of establishing a commercial fishery catch limit. Areas 4A, 4C, 4D, and 4E roughly correspond to the Bering Sea Subarea defined in the FMP, with Area 4CDE encompassing most of the Bering Sea Subarea in the FMP. Area 4B roughly corresponds to the Aleutian Islands Subarea in the FMP. See Figure 15 in part 679 and Table 1–3 in section 1.5 of the Analysis for Area maps and additional information on halibut and groundfish management areas in the BSAI.

B. Halibut Fisheries in the BSAI

In the BSAI (Area 4) halibut is harvested primarily in directed commercial fisheries and secondarily in subsistence, personal use, and recreational fisheries. Based on harvest data from 2016 through 2019, the recreational fishery operating out of ports in the BSAI harvests approximately 12,000 lb (5.44 metric tons (mt)) in Area 4 compared to approximately 50,000 lb (22.68 mt) of subsistence and personal use harvest from Area 4, and more than 5,000,000 lb (2287.96 mt) in the Area 4 commercial fishery. This action is not likely to impact the recreational fishery. BSAI recreational effort and removals are both very limited. Therefore, this preamble does not address the recreational fishery in additional detail. (See sections 4.5, 5.4, and 5.5 of the Analysis for additional detail on subsistence, personal use, recreational, and commercial halibut harvests in Area 4.)

Subsistence halibut is caught by rural residents and members of Alaska Native tribes for direct personal or family consumption as food, sharing for personal or family consumption as food, or customary trade. Pursuant to section 773c(c) of the Halibut Act, the Council developed, and NMFS implemented, the Subsistence Halibut Program to manage subsistence harvests in Alaska. Persons fishing for subsistence halibut must obtain a Subsistence Halibut Registration Certificate. Special permits for community harvest, ceremonial, and educational purposes also are available to qualified Alaska communities and federally-recognized Alaska Native tribes. A complete description of the Subsistence Halibut Program is provided in the final rule implementing the Program (68 FR 18145, April 15, 2003).

In addition to subsistence harvest, IPHC annual management measures allow halibut caught in the commercial halibut fishery that are less than the legal size limit of 32 inches (81.28 centimeters) to be retained for personal use in the Area 4D and Area 4E Community Development Quota (CDQ) halibut fishery as long as the fish are not sold or bartered. The CDQ groups are required to report the amount of personal use halibut retained during the CDQ halibut fishery to the IPHC. Sections 4.5.1.2 and 5.4 of the Analysis contain descriptions of the personal use fishery.

The commercial halibut fishery in the BSAI is managed by NMFS under the Individual Fishing Quota (IFQ) and CDQ Programs that allocate exclusive harvest privileges. The IFQ Program was implemented in 1995 (58 FR 59375, November 9, 1993). The Council and NMFS designed the IFQ Program to end a wasteful and unsafe ''race for fish'' and to maintain the social and economic character of the fixed-gear fisheries and the coastal fishing communities where many of these fisheries are based. Access to the halibut and sablefish fisheries is limited to those persons holding quota share (QS). Quota shares equate to exclusive harvesting privileges that are given effect on an annual basis through the issuance of IFQ permits. An annual IFQ permit authorizes the permit holder to harvest a specified amount of IFQ halibut or sablefish in a NMFS regulatory area.

The CDQ Program was established in 1992 (57 FR 54936, November 23, 1992) and amended substantially by the Coast Guard and Maritime Transportation Act of 2006 (Pub. L. 109–241 § 416; 120 Stat. 541). Under section 305(i)(1)(D) of the Magnuson-Stevens Act, a total of 65 villages are authorized to participate in the CDQ Program. Six CDQ groups represent these villages. CDQ groups manage and administer allocations of crab, groundfish, and halibut to commercial fisheries and use the revenue derived from the harvest of these CDQ allocations to fund economic development activities and provide employment opportunities on behalf of the villages they represent. See sections 3.3.4 and 4.5.1.2 of the Analysis for

additional information on the CDQ Program.

Section 305(i)(1)(B) of the Magnuson-Stevens Act specifies the proportion of crab, groundfish, and halibut in the BSAI allocated to the CDQ Program. Section 305(i)(1)(C) of the Magnuson-Stevens Act specifies the proportion of the overall CDQ Program allocations assigned to each CDQ group. Each year, NMFS publishes the specific annual allocations to each CDQ group on the NMFS Alaska Region website at: *https://www.fisheries.noaa.gov/alaska/commercial-fishing/fisheries-catch-and-landings-reports-alaska.* The amount of halibut for commercial harvest allocated to the CDQ Program varies by Area and ranges from 20 to 100 percent of the commercial catch limits assigned to Areas 4B, 4C, 4D, and 4E.

The combined CDQ and IFQ halibut fisheries in Area 4 were harvested by, on average, approximately 120 vessels from 2015 through 2019 (see Table 4–7 in section 4.5.1 of the Analysis). The CDQ and IFQ halibut fisheries provide revenue to vessel owners and crew members who harvest halibut. These fisheries also provide economic benefits to shore-based processors and socioeconomic benefits to BSAI fishing communities that provide support services to the halibut harvesting and processing sectors. The Analysis estimates that halibut harvests in the Area 4 CDQ and IFQ fisheries averaged 5.1 million lb (2,313.32 mt) annually and generated an average of $21 million in ex-vessel revenues annually from 2015 through 2019.

However, Area 4 halibut ex-vessel revenues declined over this period, resulting in negative economic impacts for fishery participants and affected fishing communities. Since 2015, the Area 4 ex-vessel value has declined by 32 percent from the peak value of $24.9 million in 2016 to a low of $16.9 million in 2018 due to changing market conditions, while catch levels of halibut in Area 4 have remained relatively constant. The declines in ex-vessel value of commercial halibut were greatest in Areas 4A and 4B. See section 4.5.1 of the Analysis for a more detailed description of the Area 4 commercial halibut catch, revenue, and fishery participants.

C. Comparing Commercial Halibut Catch and PSC in the BSAI Groundfish Fisheries

In Area 4, the specific proportion of halibut removals that are taken as catch in the commercial halibut fishery or as PSC in the groundfish fisheries has shifted over time. From 1990 to 1996 (the period prior to the recent peak and decline in removals in the halibut fishery), the commercial halibut fisheries averaged 37 percent, and PSC averaged 60 percent of total halibut removals in Area 4. From 1997 to 2011 (the period of both the greatest increase and subsequent decline in the total removals of halibut), the commercial halibut fishery removals increased as a portion of total removals; the commercial halibut fisheries averaged 57 percent and PSC averaged 41 percent of total halibut removals. From 2012 through 2014, the commercial halibut fishery removals decreased as a portion of total removals; the commercial halibut fishery averaged 41 percent and PSC averaged 55 percent of total removals. Halibut PSC limits were reduced in 2016, but since 2016 the proportion of halibut removals from the commercial halibut fishery has increased. From 2016 through 2019, the commercial halibut fishery averaged 52 percent and bycatch averaged 47 percent of total removals. See sections 3.4.1, 4.5.1 and 5.4.1 of the Analysis for additional detail.

D. Halibut PSC Management in the BSAI Groundfish Fisheries

The Magnuson-Stevens Act authorizes the Council and NMFS to manage groundfish fisheries in the Alaska EEZ that take halibut as PSC, or bycatch. Every FMP must minimize bycatch to the extent practicable, 16 U.S.C. 1853(a)(11), and be consistent with the Act's ten national standards, 16 U.S.C. 1851(a)(1)–(10). The groundfish fisheries cannot be prosecuted without some level of halibut bycatch because groundfish and halibut occur in the same areas at the same times and no fishing gear or technique has been developed that can harvest commercial quantities of groundfish while avoiding all halibut bycatch. The Council has designated Pacific halibut and several other species (herring, salmon and steelhead, king crab, and Tanner crab) as ''prohibited species'' (section 3.6.1 of the FMP). Regulations implement the Act's requirements and require that the operator of any vessel fishing for groundfish in the BSAI minimize the catch of prohibited species (50 CFR 679.21(a)(2)(i)).

Halibut incidental catch rates are based on NMFS-certified fisheries observers' estimates of halibut incidental catch in the groundfish fishery. Discard mortality rates (DMR) are estimates of the proportion of incidentally caught halibut that do not survive after being returned to the sea. The cumulative halibut mortality that accrues to a particular halibut PSC limit is the product of a DMR multiplied by the estimated halibut PSC. DMRs are estimated using the best scientific information available in conjunction with the annual BSAI stock assessment process. The DMR methodology and findings are included as an appendix to the annual BSAI groundfish SAFE report beginning in 2022.

Although halibut PSC results from all types of gear (trawl, hook-and-line, pot, and jig gear), halibut PSC primarily occurs in the trawl and hook-and-line groundfish fisheries. NMFS minimizes halibut bycatch to the extent practicable in the BSAI by (1) establishing halibut PSC limits for trawl and non-trawl fisheries; (2) apportioning those halibut PSC limits to groundfish sectors, fishery categories, and seasons; and (3) managing groundfish fisheries to prevent PSC from exceeding the established limits. The following sections provide additional information on the process NMFS uses to establish, apportion, and manage halibut PSC limits in the BSAI.

Halibut PSC limits in the groundfish fisheries provide a constraint on halibut PSC mortality and promote conservation of the halibut resource. With one limited exception for Atka mackerel at 50 CFR 679.21(b)(4)(i)(A), groundfish fishing is prohibited once a halibut PSC limit has been reached for a particular sector or season. Therefore, halibut PSC limits are set to balance conservation of the halibut resource with the needs of fishermen, fishing communities, and U.S. consumers who depend on both halibut and groundfish resources.

1. Annual Halibut PSC Limits and the Amendment 80 Sector

The Council and NMFS have taken a number of management actions to minimize halibut bycatch to the extent practicable in the BSAI groundfish fisheries. Most recently, the Council adopted, and NMFS approved, Amendment 111 to the FMP for Groundfish of the BSAI management area in 2016 (81 FR 24714, April 27, 2016). That amendment established the current halibut PSC limits for BSAI groundfish fisheries, which were considered to be an effective means to minimize bycatch to the extent practicable at that time. The current total annual halibut PSC limit for BSAI groundfish fisheries is 3,515 mt. From that total, 1,745 mt are apportioned to the Amendment 80 sector, which is comprised of non-pollock trawl vessels (see the next sections for more detail on the Amendment 80 sector). The BSAI trawl limited access sector, which is comprised of all other trawl catcher/processor and trawl catcher vessels, is apportioned 745 mt. The BSAI non-

trawl sector, which includes primarily hook-and-line catcher/processors, is apportioned 710 mt. The remaining 315 mt are apportioned to the CDQ program, which is comprised of vessels fishing for CDQ groups.

Of those four BSAI groundfish fishery sectors, the Amendment 80 sector receives the largest proportion of halibut PSC limits in the BSAI (roughly 50 percent). Therefore, the Council recommended, and NMFS agrees, that this proposed action should focus on the halibut PSC limit for the Amendment 80 sector. Several reasons drove this decision, as discussed below.

When it took final action on Amendment 111 in December 2015 to reduce the PSC limits for all fishing sectors in the BSAI, the Council considered the methods available to the fisheries and the practicability of reducing halibut bycatch and mortality at that time. The preamble to the proposed rule to implement Amendment 111 noted that the Council and NMFS believed that more stringent PSC limit reductions than those proposed were not practicable for the groundfish sectors at that time. However, at the same meeting, the Council noted that additional halibut bycatch reduction would be needed in the future and initiated analysis of means to link halibut PSC limits to halibut abundance, thereby indicating that additional efforts would be required beyond those established by Amendment 111 and utilized by the fisheries to reduce halibut bycatch and mortality. From 2015 (when the Council requested the Amendment 80 sector to proactively reduce halibut mortality ahead of Amendment 111's regulatory PSC limit reductions expected to be implemented in 2016) through 2020, the Amendment 80 sector reduced its halibut mortality to levels well below the PSC limit of 1,745 mt established under Amendment 111. Those reductions resulted in halibut mortality levels close to or below the PSC limit that would be implemented by this proposed rule based on halibut abundance estimates derived from current survey indices described below (see section 3.4.1 of the Analysis).

Notably, the ratio of estimated halibut PSC mortality (halibut bycatch with the DMR applied) to actual halibut bycatch (described in section 3.4.4 of the analysis as effective mortality) declined from 2015 through 2019. A slight uptick in effective mortality in 2020 was an artifact of greatly reduced halibut bycatch; that is, the reduced bycatch resulted in a slight increase in the ratio of mortality to bycatch. While many variables may have contributed to that relative decline, section 3.4.1 of the Analysis provides a compelling correlation between effective mortality and halibut deck sorting effort, which allows halibut to be returned to the sea more quickly thereby reducing mortality. Deck sorting efforts were increasingly employed by the Amendment 80 sector beginning in 2015. Thus, the Council and NMFS's concerns in 2015 over a potential lack of effective tools to reduce mortality and the practicability of meeting more stringent PSC limit reductions at that time have significantly been alleviated, at least with respect to the Amendment 80 sector, as evidenced by successful halibut mortality reductions. This proposed rule and BSAI FMP Amendment 123 represent the continuation of the Council's and NMFS's intent, as envisaged at the time of adoption of Amendment 111, to further reduce halibut bycatch and mortality and link halibut PSC limits to halibut abundance.

At its February 2020 meeting, the Council elected to focus its next step in halibut bycatch reduction on the Amendment 80 fleet. The Council's rationale was based on several factors: (1) the Amendment 80 fleet halibut bycatch and mortality comprised the largest proportion of the BSAI halibut PSC; (2) halibut bycatch in some other sectors had been or was being addressed under separate actions, *e.g.,* the trawl limited access (TLAS) halibut PSC, the second largest portion of halibut PSC, is mainly taken in the directed Pacific cod and yellowfin sole fisheries, and halibut bycatch in the BSAI TLAS yellowfin sole fishery was addressed under BSAI FMP Amendment 116 (83 FR 49994, October 4, 2018), and the Council has recommended to NMFS a Pacific Cod Trawl Cooperative Program (PCTC) which will address halibut bycatch in the directed Pacific cod fishery; (3) other sectors were removed from this action (*e.g.* freezer longline, catcher vessel hook-and-line, CDQ) because they are apportioned a relatively small proportion of the annual halibut PSC limit compared to the first two sectors; and (4) a step-wise approach by sector allowed for a simplified and more efficient approach. Because this proposed action directly impacts only the Amendment 80 sector's halibut PSC, no further discussion of the other sectors is provided in this preamble. That said, the Council has indicated that it may consider additional action to reduce other sectors' halibut PSC in addition to the past and present actions noted above.

Fishing under the Amendment 80 Program began in 2008 (72 FR 52668, September 14, 2007). The Amendment 80 sector comprises trawl vessels in the BSAI active in groundfish fisheries other than Bering Sea pollock. The Amendment 80 species are identified in regulation (50 CFR 679.2) as the following six species: BSAI Atka mackerel, Aleutian Islands Pacific ocean perch, BSAI flathead sole, BSAI Pacific cod, BSAI rock sole, and BSAI yellowfin sole. The Amendment 80 Program allocates a portion of the TACs of these species between the Amendment 80 fleet and other fishery participants. The Amendment 80 Program also allocates crab and halibut PSC limits to constrain bycatch of these species while Amendment 80 vessels harvest groundfish.

At its inception, the Amendment 80 Program allocated QS for the six specified species based on the historical catch of these species by Amendment 80 vessels. The Amendment 80 Program allows and facilitates the formation of Amendment 80 cooperatives among QS holders who receive an exclusive harvest privilege. This exclusive harvest privilege allows Amendment 80 cooperative participants to collaboratively manage their fishing operations and more efficiently harvest groundfish allocations and PSC limits.

The Amendment 80 sector includes vessels that focus primarily on flatfish (*i.e.,* flathead sole, rock sole, and yellowfin sole) and vessels that focus on Atka mackerel. In 2020, 22 fishing permits were issued to vessels in the Amendment 80 sector. Overall, 56 percent of the Amendment 80 sector's QS units were for flatfish (*i.e.,* flathead sole, rock sole, and yellowfin sole), 29 percent were for Aleutian Island Pacific ocean perch or Atka mackerel, and 15 percent were for Pacific cod. Section 3.3 of the Analysis provides more detailed information on Amendment 80 sector participants, harvests, and revenues in the BSAI groundfish fisheries.

Annually, each Amendment 80 QS holder elects to participate in either a cooperative or the Amendment 80 limited access fishery. Participants in the Amendment 80 limited access fishery do not receive an exclusive harvest privilege for a portion of the TACs allocated to the Amendment 80 Program. Since 2011, the Amendment 80 sector has been prosecuted exclusively by vessels operating as part of a cooperative, and all QS holders have participated in one of two cooperatives. From 2011 to 2017 there were two cooperatives; since 2017, all active Amendment 80 vessels are part of a single cooperative, the Alaska Seafood Cooperative (AKSC).

As specified in section 3.7.5.2 of the FMP and at 50 CFR 679.91, NMFS annually establishes a halibut PSC limit of 1,745 mt for the Amendment 80 sector. This halibut PSC limit is apportioned between the Amendment 80 cooperative(s) and the Amendment 80 limited access fishery according to the process specified at 50 CFR 679.91. Amendment 80 cooperatives are responsible for coordinating members' fishing activities to ensure the cooperative halibut PSC allocation is not exceeded. 50 CFR 679.91(h)(3)(xvi) prohibits each Amendment 80 cooperative from exceeding the halibut PSC limit specified on its annual Amendment 80 Cooperative Quota (CQ) permit. The regulations further specify that each member of the Amendment 80 cooperative is jointly and severally liable for any violations of the Amendment 80 Program regulations while fishing under the authority of an Amendment 80 CQ permit.

In a year when there are vessels participating in the Amendment 80 trawl limited access fishery, NMFS apportions the halibut PSC limit for that fishery among the following six fishery categories: (1) yellowfin sole, (2) rock sole/flathead sole/''other flatfish,'' (3) Greenland turbot/arrowtooth flounder/Kamchatka flounder/sablefish, (4) rockfish, (5) Pacific cod, and (6) pollock/Atka mackerel/''other species,'' which includes the midwater pollock fishery (see 50 CFR 679.21(e)(3)(i)(B), (e)(3)(ii)(C), and (e)(3)(iv)).

NMFS manages the Amendment 80 trawl limited access fishery halibut PSC allowances, because participants in the Amendment 80 trawl limited access fishery do not have exclusive privileges to use a specific amount of halibut PSC. To manage halibut PSC, NMFS monitors participation and PSC use in the Amendment 80 trawl limited access fishery categories. As noted above, except for the pollock/Atka mackerel/other species fishery, NMFS is authorized to close directed fishing for a trawl fishery category in the Amendment 80 trawl limited access fishery if NMFS concludes that the fishery category will or has exceeded its halibut PSC allowance. NMFS enforces a halibut PSC allowance through the prohibition against conducting any fishing contrary to an inseason action, closure, or adjustment (50 CFR 679.7(a)(2)).

Section 3.3 of the Analysis and the final rule implementing the Amendment 80 Program (72 FR 52668, September 14, 2007) provide more detailed information on the process NMFS uses to assign Amendment 80 species and halibut PSC to each Amendment 80 cooperative and the Amendment 80 limited access fishery. The current allocations of Amendment 80 species TACs and apportionments of halibut PSC to each of the Amendment 80 cooperatives were provided in the final 2022 and 2023 harvest specifications for the BSAI groundfish fisheries (87 FR 11626, March 2, 2022).

The Amendment 80 groundfish fisheries provide revenue to Amendment 80 vessel owners and crew members who harvest and process groundfish. In addition, the fisheries provide socioeconomic benefits to communities that provide support services for Amendment 80 vessel operations. Amendment 80 groundfish harvests in the BSAI averaged 289,000 mt and generated an average of $334 million in wholesale revenues annually from 2015 through 2020. Catches of yellowfin sole and Atka mackerel provided over 50 percent of the wholesale revenue for the Amendment 80 sector from 2015 through 2020. Pacific cod, rock sole, and Pacific Ocean perch were also major sources of revenue for the Amendment 80 sector during those years. See section 3.3.2 of the Analysis for more detail on Amendment 80 catch and revenue.

The halibut PSC limit established for each BSAI groundfish sector is an upper limit on halibut PSC in that sector for each year. However, the amount of halibut PSC used by a BSAI groundfish sector is almost always less than its halibut PSC limit. Halibut PSC use is less than the halibut PSC limit due to a wide range of operational factors, including the fleet's desire to avoid a closure or an enforcement action if a PSC limit is reached. By regulation (50 CFR 679.21(b)) the current PSC limit of halibut caught while conducting any fishery in the Amendment 80 sector is an amount of halibut equivalent to 1,745 mt of halibut mortality, which includes the application of the DMR. To monitor halibut bycatch mortality, the NMFS Alaska Region uses observed halibut incidental catch rates, halibut DMRs, and estimates of groundfish catch to project when a fishery's halibut bycatch mortality allowance will be and is reached.

Table 3–19 in the Analysis compares Amendment 80 halibut catch and PSC mortality to other BSAI groundfish sectors from 2010 through 2019. In 2020, the Amendment 80 sector recorded 2,031 mt of halibut bycatch and was credited with 1,097 mt of halibut PSC mortality, which was the lower than any annual total during the analyzed period (2010 through 2019) (see section 3.4.1 and Figure 3–25 in the Analysis for more detail). Examining trends in Amendment 80 halibut PSC and PSC mortality is complicated by the fact that many variables that affect these metrics have changed in recent years. PSC limits, DMR estimation methods, and halibut handling procedures have all changed to varying degrees since 2010. Section 3.4.4 of the Analysis describes methods the Amendment 80 sector has pursued to reduce its halibut PSC mortality. Section 3.3 of the Analysis describes the annual variations in halibut PSC use. Regulations were implemented in 2019 (50 CFR 679.120) to standardize catch handling and monitoring requirements to allow halibut bycatch to be sorted on the deck of trawl catcher processors and motherships participating in the non-pollock groundfish fisheries off Alaska (84 FR 55044, October 15, 2019). Historical information shows that the Amendment 80 sector's PSC use has varied annually in response to a variety of changing conditions. NMFS anticipates that these annual variations in halibut PSC use would continue under this proposed action.

III. Rationale and Impacts of Amendment 123 and the Proposed Rule

Amendment 123 and the proposed rule reflect requirements that NMFS balance several factors when establishing PSC limits. The Council and NMFS considered the detailed information provided in the Analysis, including the impacts from several action alternatives with different halibut PSC limits, on (1) the halibut stock, (2) directed halibut fishery participants and communities that are engaged in directed halibut fisheries in the BSAI and in other Areas, and (3) BSAI groundfish fishery participants, like the Amendment 80 sector, and communities that are engaged in the BSAI groundfish fisheries. In developing the proposed action, the Council and NMFS aimed to appropriately balance the Magnuson-Stevens Act's requirements and national standards, particularly the requirements to establish conservation and management measures that minimize bycatch to the extent practicable, achieve optimum yield on a continuing basis, and take into account the importance of fishery resources to fishing communities. Section 5.3.2.3.1 of the Analysis provides additional detail on the balancing of the national standards. The Council believes, and NMFS agrees, that the proposed PSC limit reductions are consistent with the national standards and other Magnuson-Stevens Act requirements.

Halibut is fully utilized in the BSAI. Therefore, consistent with the Council's purpose and need statement for this

action to prevent halibut PSC from becoming a larger proportion of total halibut removals in the BSAI, the Council recommended, and NMFS agrees, that PSC limits should decline in proportion to reduced amounts of halibut available for harvest by all users. The proposed action balances the interests of the two largest halibut user groups in the BSAI, the directed commercial halibut fishery and the Amendment 80 sector, by establishing abundance-based halibut PSC limits for the Amendment 80 sector. This abundance-based approach is consistent with the IPHC management approach for the directed commercial halibut fisheries off Alaska, which establishes annual catch limits that vary with halibut abundance as discussed above.

The proposed action would specify halibut PSC limits for the Amendment 80 sector based on the combined results of the most recent annual IPHC setline survey and the NMFS Alaska Fisheries Science Center (AFSC) Eastern Bering Sea (EBS) shelf trawl survey (EBS shelf trawl survey). Results of the EBS shelf trawl survey provide up-to-date estimates of biomass, abundance, distribution, and population structure of groundfish populations in support of stock assessment and ecosystem forecast models that form the basis for groundfish and crab harvest advice. Relative abundance (catch per unit effort) and size and/or age composition data are key results from this survey. The survey covers Pacific halibut in addition to other groundfish and crab target species. Data collected on the survey are also used to improve understanding of life history of the fish and invertebrate species, as well as the ecological and physical factors affecting their distribution and abundance. The EBS shelf trawl survey is generally described in a NOAA Technical Memo (Stauffer, 2004). When used together, the EBS shelf trawl survey and IPHC setline survey indices capture abundance trends for both O26 and U26 halibut.

After considering these factors, the Council recommended, and NMFS proposes, to specify halibut PSC limits for the Amendment 80 sector linked to halibut abundance indices. In any given year, results from the most recent IPHC setline survey index for halibut in Area 4ABCDE would be categorized into one of four ranges: very low, low, medium, or high. Annual results from the EBS shelf trawl survey index for halibut would be categorized into one of two ranges: high or low.

This proposed action would establish an index table that specifies a halibut PSC limit for each of several specified halibut abundance ranges, or survey index states, that may result from the annual IPHC setline and AFSC EBS shelf trawl surveys. Each year, the intersect of the most recent results from each survey in the proposed index table would establish the annual halibut PSC limit for the Amendment 80 sector. Those limits would range from the current Amendment 80 halibut PSC limit when abundance is high in the IPHC setline survey to 35 percent below the current limit when abundance is very low in the IPHC setline survey. This is within the range of alternative halibut PSC limits analyzed for this action in the Analysis (*i.e.,* between 15 percent above the current limit and 45 percent below it).

To illustrate how linking PSC limits to halibut abundance would work in practice, an example using 2021 data follows. Based on the halibut abundance values from the 2021 setline and EBS shelf trawl survey abundance indices in the proposed index table, a 1,309 mt PSC limit for the Amendment 80 sector would apply. This constitutes a 25 percent reduction from the 1,745 mt limit currently in regulation and is 37 mt under the sector's average halibut PSC levels from 2016 through 2019. Use of the index table to arrive at PSC limits, as in the above example, is appropriate, because it varies the allowable halibut PSC at several intervals roughly in proportion to halibut abundance, while accounting for the inter-annual variability in the Amendment 80 sector's encounters with halibut and resulting halibut PSC mortality.

Amendment 80 ''halibut encounters'' is a term used to describe halibut bycatch before a DMR is applied, meaning both the amount of halibut returned to the sea that is expected to survive and the amount expected to result in mortality (halibut PSC use). Amendment 80 halibut encounters from 2016 through 2020 were between 1,965 mt and 3,067 mt, and PSC mortality was between 1,097 mt and 1,461 mt. The period from 2016 through 2020 considered in the Analysis is appropriate to evaluate halibut PSC use because it reflects Amendment 80 sector operations under the existing Halibut Avoidance Plan (an industry-developed best practices guide to aid in halibut avoidance), deck sorting, and other available tools to avoid halibut and reduce halibut mortality. PSC data for 2021 was not considered in the Analysis because Amendment 80 fishing operations, along with other fisheries in Alaska, were more greatly affected in 2021 by COVID–19 mitigation measures and international supply chain and market disruptions in harvesting, processing, and shipping than they were in 2020.

The following sections of the preamble further describe the rationale for this action and its impacts on the halibut stock, the directed halibut fishery and fishing communities, and the BSAI groundfish fishery participants and fishing communities. Sections 5.2 and 5.3 of the Analysis provide additional details.

A. Methods for Analysis of Impacts

In order to analyze the impact of the proposed rule and other alternatives considered, the Analysis is predicated on two broad ideas. First, the IPHC has a mandate under the Convention to ''permit the optimum yield from the fishery and to maintain the stocks at those levels'' and the IPHC's management procedures are designed to achieve that. The IPHC is not required to strictly apply its stated management procedures, and marginal, short term adjustments have been made that do not materially affect the long term sustainability of the halibut resource. The Analysis prepared for this proposed rule assumed the IPHC would maintain its stated management procedures; thus, those management procedures were used as the best available method for analyzing the effects of Amendment 123, including the preferred alternative that would be implemented under this proposed rule. That assumption was made because possible changes in those management procedures, or the specific commercial catch limits that will actually be adopted by the IPHC, cannot be known or predicted with certainty. Finally, it is reasonable to conclude that even marginal adjustments similar to the recent past would not significantly change the conclusions of the Analysis.

Second, the estimates from the EBS shelf trawl survey and the IPHC setline survey are relative indices and are not absolute estimates. The relative difference between estimates in each year (*i.e.,* the trend) is the important outcome of the survey estimates. Changed or improved methods in either survey, should any be employed in the future, would likely result in changes to annual estimates for the entire survey time-series. As such, absolute values derived from each survey index are dependent on the assumptions of the survey design and data analysis, whereas a standardized index that indicates the trend could show less year-to-year variability. However, basing an index table on standardized trend values would make it more difficult for stakeholders to read reported survey indices in a given year and map those onto a table to anticipate the resulting

Amendment 80 PSC limit Therefore, in the interest of greater transparency to the public and in regulation, the Council and NMFS chose to use absolute values derived from the surveys, rather than a standardized index, recognizing that these historical values could change in the future. This is similar to how PSC limits for other PSC species are presently set in the BSAI.

B. Impacts on the Halibut Stock

The Council and NMFS considered the impacts the proposed rule would have on the halibut stock as detailed in the Analysis. While reducing halibut bycatch mortality is a conservation measure, the Analysis concluded that, under all the alternatives considered, the impact on exploitable, coastwide halibut biomass and the halibut female spawning biomass was not likely to be significant. This is because the halibut resource in the BSAI is fully utilized, and the Council and NMFS assume that, under this proposed action, a dynamic balance between halibut allocated to directed halibut fisheries by the IPHC on one hand and PSC limits assigned to the Amendment 80 fleet (plus fixed halibut PSC limits for other sectors) on the other, would always result in full utilization, but not over-utilization of the halibut resource. According to the Analysis section 5.2, the IPHC's SPR-based management approach is expected to conserve spawning biomass across differing patterns in fishery selectivity and/or allocation among different fisheries. As such, there is likely to be little difference among the average future halibut spawning biomass under levels of PSC anticipated across all of the alternatives considered, including the proposed action.

At the Very Low/Low and Very Low/High index states, the proposed action would reduce the Amendment 80 halibut PSC limit by 35 percent from the current limit. Should the IPHC setline survey results fall into the very low abundance state, the Council and NMFS concluded that this halibut PSC limit reduction would be important to promote conservation and equitable use of the halibut stock and consistency with the abundance-based process for establishing directed halibut fishery catch limits.

C. Impacts on Directed Halibut Fishery Participants and Fishing Communities

In recommending the proposed rule, the Council and NMFS considered the impacts of reducing halibut PSC limits on fishermen and fishing communities that depend on the halibut resources in the BSAI, as well as in other Areas in Alaska and the Pacific Northwest, including the commercial, subsistence, personal use, and recreational fisheries (see sections 5.4 and 5.5 of the Analysis).

Near-term benefits of the proposed action to fishermen and communities dependent on the directed fishery in the Bering Sea may include accrual of fewer O26 halibut caught as PSC by the Amendment 80 sector. The current IPHC interim harvest policy subtracts the projected O26 portion of non-directed discard mortality (bycatch) from the TCEY by Area when calculating fishing limits. A portion of these halibut would be available to the commercial halibut fishery participants in the area that the PSC mortality is forgone in subsequent years or when the fish reach the legal size limit for the commercial halibut fishery (greater than or equal to 32 inches (81.28 centimeters) in total length). But, as shown in section 3.4 of the Analysis, the relationship between the PSC limit and PSC use varies; therefore, a reduction in the PSC limit may not always generate an increase in directed fishery catch limits in the short term. Even when it does, the magnitude may vary based on the actual Amendment 80 O26 PSC mortality.

The Analysis indicates that under the assumption of a 0.5 ratio for the Amendment 80 PSC limit to the directed catch limit, which is close to the 2010 through 2019 average proportion of O26 halibut in PSC mortality (~ 45 percent), directed commercial halibut catch limits could increase by approximately 360,000 lb (163.29 mt) under the 1,309 mt Amendment 80 PSC limit that would be established under the proposed action at the low/low state (the current state of the halibut stock survey indices). NMFS assumes that directed commercial halibut catch limits could increase under the 1,134 mt PSC limit that would be established under the proposed action at the very low/low state.

Anticipated benefits to the directed commercial halibut fishery from the proposed Amendment 80 PSC limits also include longer term benefits from reductions in the U26 portion of the bycatch. Reduced mortality of smaller halibut could provide benefits for the directed fishery in the Bering Sea and elsewhere as these halibut migrate and recruit to legal size. The directed halibut fishery in Area 4CDE would have the greatest potential for experiencing any incidental reallocative effects that may occur under the proposed action. The provision of additional opportunities for the directed halibut fishery that may accompany PSC limit reductions would be determined by IPHC management processes, (see section 5.4 of the Analysis). However, there is no guarantee that this action would translate into increased opportunities for the directed fishery since the IPHC is not obligated to alter, maintain, or implement their current harvest strategies based on the outcome of this action.

Sport halibut harvests, including guided and unguided sport/recreational halibut fisheries, could indirectly benefit from the implementation of the proposed action. That is, if reducing BSAI halibut PSC limits under low abundance conditions were to ultimately result in an overall improvement in availability of halibut for sport harvest, an accompanying decrease in effort and expense in harvesting halibut for sport use, and/or an increase in interest in halibut sport fishing in the region prompted by an increasing abundance of larger halibut. These indirect benefits could occur if the overall Pacific halibut stock benefits from additional promotion of conservation of the stock under the proposed action.

D. Impacts on Amendment 80 Participants and Fishing Communities

The proposed action would have differing impacts on Amendment 80 companies, and changes to fishing plans and operations would be needed to adjust to the reduction in halibut PSC limits under different survey abundance index states, with more significant changes required at lower abundance states. Efforts already undertaken by the sector have shown that increases in halibut avoidance or reductions in mortality are possible with the tools that are currently available to the fleet. Additional improvements are anticipated to continue to be realized, especially if halibut limits are further reduced, although the Analysis projects that the fleet will forgo some amount of profitability to reduce halibut mortality further. Reductions in halibut mortality are expected to result from changes in fishing operations that cause the sector to increase operating costs and/or reduce efficiency. The amount of mortality reduction cannot be quantified with certainty.

When the halibut PSC limits constrain target catch and Amendment 80 firms are required to implement more measures to reduce halibut mortality, operating costs may increase and revenue may decrease making annual net revenue more volatile. This could result in increased consolidation of the Amendment 80 sector and the Cooperative Quota (CQ). Firms that are less efficient at addressing halibut

bycatch experience less profitability and may sell to firms that are more efficient, derive more revenue from other fisheries to provide revenue during years halibut is a constraint, or have access to more cash reserves than the sellers. Firms that cannot remain viable under the new conditions would eventually exit the fishery. Current Amendment 80 ownership and control limits leave room for one firm to exit the fishery, because a person may not individually or collectively hold or use more than 30 percent of the aggregate Amendment 80 Quota Share units initially assigned to the sector. The number of vessels in the fishery could be reduced to a minimum of five, because an Amendment 80 vessel may not be used to catch an amount of species greater than 20 percent of the aggregate Amendment 80 sector's species initial Total Allowable Catch (ITAC). While the number of vessels could decline, NMFS does not anticipate a decrease to the vessel minimum, because the fleet would still need sufficient capacity to harvest the CQ that can be supported by the available halibut PSC mortality limit. For complete discussion of impacts to the Amendment 80 sector, see section 5.3.2 of the Analysis.

Multiple coastal communities in the BSAI, as well as coastal communities elsewhere in Alaska and the Pacific Northwest, participate in the BSAI groundfish fisheries in one way or another, such as being homeport to participating vessels, the location of processing activities or product transfers, the location of fishery support businesses, the home of employees in the various sectors, or as the base of ownership or operations of various participating entities. An analysis of community engagement in and dependency on the Amendment 80 fishery is provided in appendix 1 (the Social Impact Assessment) of the Analysis. An analysis of the alternatives suggests that reductions in PSC limits could constrain the Amendment 80 sector under some conditions and consequently may impact the communities that depend on those fisheries. It is also important to note that some communities are substantially engaged in or substantially dependent on both the Amendment 80 fishery and the Area 4 directed halibut fishery, and thus may experience both negative and positive effects from this action. Consequently, a simple characterization of potential incidental reallocative effects to halibut dependent communities would not capture the complexity of overall impacts to those communities, much less the range of potential impacts to individual harvesters, processors, and/or fishery support businesses in those communities which may ultimately result from changes in Amendment 80 PSC limits.

As described in section 5.5 of the Analysis, reduced halibut PSC mortality relative to the status quo may indirectly benefit fishing communities that depend upon commercial and noncommercial halibut harvest, though the magnitude of that effect is likely to be attenuated by multiple biological factors and policy steps that separate bycatch mortality savings from directed harvest opportunities. Conversely, communities engaged in the Amendment 80 sector groundfish fisheries could be adversely impacted on a more direct basis.

The Seattle-Tacoma-Bellevue Washington Metropolitan Statistical Area (Seattle MSA) is substantially engaged in the Area 4 directed halibut commercial fishery as measured by ownership address of actively participating catcher vessels, among other indicators of engagement. However, compared to Alaska communities, its engagement in the BSAI halibut fishery is not as dominant as it is in the BSAI groundfish fisheries, which are likely to be most directly affected by the proposed action alternatives. No community level adverse impacts related to the BSAI halibut fishery are anticipated to the Seattle MSA under the proposed action.

E. Rationale for Amendment 123 and the Proposed Rule and Consistency With Magnuson-Stevens Act National Standards

The Council and NMFS believe that linking Amendment 80 halibut PSC limits to halibut abundance levels as proposed in this rule: (1) will ensure that halibut PSC mortality in Amendment 80 fisheries does not become a greater share of overall halibut removals in the BSAI, particularly in Area 4CDE; (2) will create a more equitable approach between competing users; and (3) may increase halibut harvest opportunities in directed halibut fisheries. In short, the proposed rule is reasonably calculated to promote conservation of the halibut resource, improve its management, and create a more equitable distribution process between the directed and non-directed fisheries.

The Council and NMFS have concluded that Amendment 123 is consistent with the Magnuson-Stevens Act, including the ten national standards, and other applicable law. The Analysis contains a detailed analysis of those standards. The Council and NMFS considered the proposed action in context of balancing all the national standards. Below, we highlight four of them: National Standards 1, 4, 8, and 9.

National Standard 1. The Analysis shows that, consistent with National Standard 1, the groundfish fisheries will continue to achieve optimum yield on a continuing basis under Amendment 123. Congress set, and the BSAI FMP includes, the optimum yield (OY) range for the BSAI groundfish complex as 85 percent of the historical estimate of MSY, which results in an OY range between 1.4 and 2.0 million mt of groundfish. The Analysis indicates that, even if the Amendment 80 sector harvested no fish, overall, the groundfish fisheries would continue to harvest within this OY range in most years. Thus, under National Standard 1, despite the imposition of costs on and potential loss of a portion of harvest by the Amendment 80 sector, this action is not expected to affect the BSAI groundfish fisheries' ability to achieve OY on a continuing basis.

National Standard 4. To the extent that this action involves an allocation of fishing privileges contemplated in National Standard 4, the new PSC limits are fair and equitable. An allocation need not preserve the status quo in the fishery to qualify as ''fair and equitable'' if a restructuring of fishing privileges would maximize overall benefits. The Council and NMFS considered that the potential hardship imposed on the Amendment 80 fleet at low and very low survey indices was, on balance, outweighed by the potential benefits from the reduction in the Amendment 80 fleet's halibut mortality and the potential increase in halibut availability to the directed halibut fisheries. The action is also reasonably calculated to promote conservation through the reduction of halibut bycatch and mortality in the Amendment 80 fleet. Further, as the National Standard Guidelines explain, the action promotes conservation (in the sense of wise use) by optimizing yield in terms of the economic and social benefit of the product. Finally, the action does not result in the acquisition of an excessive share of any fishing privileges.

In developing this proposed action, the Council and NMFS also considered other factors identified in the National Standard 4 guidance, including economic and social consequences, food production (subsistence use), dependence on the fishery by present participants and coastal communities, efficiency of various types of gear used in the fishery, transferability of effort to

and impact on other fisheries, opportunity for new or past participants to enter the fishery, and enhancement of opportunities for recreational fishing.

National Standard 8. The Magnuson-Stevens Act's National Standard 8 and the associated NMFS Guidelines provide that conservation and management measures shall, consistent with the conservation requirements of the Magnuson-Stevens Act, take into account the importance of fishery resources to fishing communities by utilizing economic and social data that are based upon the best scientific information available in order to: (1) provide for the sustained participation of such communities and (2) to the extent practicable, minimize adverse economic impacts on such communities.

When the proposed action results in lower halibut PSC mortality by the Amendment 80 fleet than would have occurred under the current limit, the proposed action is expected to have a positive effect on all directed halibut fisheries (commercial, guided and unguided recreational (sport), and subsistence), minimize adverse economic impacts to communities dependent on those directed fisheries and, thus, provide for the sustained participation of such communities. The reduction in the halibut PSC limit and potential for increased opportunities for additional halibut harvest for the directed halibut fisheries are also expected to have positive social and environmental justice impacts on the directed users of the halibut resource and halibut-dependent communities, many of which are predominantly Alaska Native communities. Those impacts are estimated in section 5.5 of the Analysis and appendix 1 to the Analysis.

The social and cultural importance of halibut (as a species) and halibut fishing (as a traditional activity) for Alaska Native tribes and ethnic groups throughout Alaska is well-documented. The cultural significance of halibut for these fishermen and their associated communities exceeds the economic value of the fishery. Minority populations of the seventeen Alaska communities considered BSAI halibut-dependent range from 65 to over 90 percent of those communities' populations. Notably, those communities' low-income populations (residents living below the poverty threshold) comprise 10 percent to over 40 percent of the community.

While the Council does not currently set catch limits in the directed halibut fishery, the economic, social, and cultural benefits to Alaska communities that may result from halibut PSC reductions is discussed in section 5.5 and appendix 1 of the Analysis. Overall positive social and environmental justice impacts on dependent halibut directed fishery communities would be expected as a result of this proposed rule. In recommending the proposed action to NMFS, the Council considered providing for the sustained participation of fishing communities and minimizing adverse economic impacts on such communities, consistent with National Standard 8.

National Standard 9. Section 303(a)(11) of the Magnuson-Stevens Act and National Standard 9 generally require FMPs to include conservation and management measures that minimize bycatch to the extent practicable. The proposed action is intended to minimize halibut PSC in the Amendment 80 sector to the extent practicable. What is practicable will be determined on a case-by-case basis. According to the Merriam-Webster Dictionary, practicable means ''capable of being done or carried out.'' The available technology and the potential costs of carrying out bycatch minimization measures are relevant to the practicability determination. The practicability of the proposed PSC reduction relative to the status quo is discussed in sections 3.4.5 and 5.3.2.3 of the Analysis. Under the high IPHC setline survey index value, the PSC limit remains unchanged. At lower levels of halibut abundance, some of the PSC limits may be more difficult to achieve by the Amendment 80 fleet using currently available tools, forcing the Amendment 80 sector to stop fishing before harvesting their entire groundfish allocations. However, at lower halibut abundance and PSC limits, halibut encounter rates by the Amendment 80 fleet may also be lower. The following additional factors were taken into consideration under National Standard 9:

Population effects for the bycatch species. The IPHC's SPR-based management approach is expected to conserve the halibut spawning biomass across differing patterns in fishery selectivity and/or allocation among different fisheries. As such, there is likely to be little difference in the average future halibut spawning biomass coastwide under levels of PSC anticipated through this proposed action. Although the spawning stock biomass is not expected to be affected by this action, since halibut are a fully allocated species, reductions in juvenile halibut mortality may occur as a result of the PSC limits imposed by this action, particularly at low levels of abundance, allowing greater number of larger fish to recruit into the directed fisheries. However, the degree of change in the BSAI halibut fishery per unit change in PSC cannot be reliably estimated.

Ecological effects. To the extent that the proposed action changes effort in the BSAI groundfish fisheries and reduces the bycatch of halibut in the Amendment 80 fleet, those changes are not likely to have ecological effects on other species in the ecosystem or impacts on ecosystem components. Nor are they likely to produce considerations beyond those summarized in the annual Stock Assessment and Fishery Evaluation report for the BSAI groundfish fisheries.

Effects on marine mammals and birds. The potential for incidental take, prey availability, and disturbance of marine mammals and seabirds may change from status quo under the proposed rule. If the Amendment 80 fleet reduces fishing effort in specific fisheries to conserve halibut PSC and shifts to target different species, that shift in operations may result in incrementally more or less potential for incidental take, prey availability, and disturbance of marine mammals and/or seabirds. If a groundfish fishery increases the duration of fishing in certain areas, there may be more potential for incidental take, prey availability, and disturbance in those locations if they are used by marine mammals or seabirds. The fisheries are unlikely to increase their take of marine mammals above the Potential Biological Removal (PBR) levels (the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population), since take numbers are currently well below PBR levels in BSAI groundfish fisheries and no PSC limits under the proposed action are expected to result in significant increases in total fishing effort in the BSAI.

Changes in fishing practices and behavior of fishermen. Whether PSC limits under the proposed rule will result in changes in fishing practices or fishermen's behavior is unclear. As the annual PSC limit changes in accordance with halibut abundance index states, the proposed rule may yield no change to existing levels of PSC, or a reduced PSC limit may result in the industry changing its fishing patterns to avoid halibut. This could result in reduced fishing effort as the industry chooses not to pursue fisheries associated with higher halibut encounter rates to conserve halibut PSC, or it could result

in greater fishing effort at lower catch per unit effort as vessels change fishing patterns or seasonal changes in the timing of the fishing to increase halibut avoidance. A program that links the Amendment 80 sector PSC limit to halibut abundance may provide incentives for the fleet to minimize halibut mortality at all times. Shifts in the location or timing of fishing may occur as a result of this action. However, there is already considerable inter-annual variability in the patterns of fishing across the Amendment 80 sector as environmental conditions and avoidance of PSC species have caused vessels to adjust their fishing patterns. Implementation of a lower PSC limit will likely result in the fleet stopping fishing before the limit is taken to avoid penalties of exceeding the hard cap. The proposed rule also assumes that the conditions in the Amendment 80 groundfish fishery will result in years when halibut mortality rates are lower, because directed fishery species are more aggregated and avoiding halibut bycatch is easier.

Changes in research, administration, enforcement costs, and management effectiveness. By law, NMFS is required to recover the actual costs of management, data collection, and enforcement directly related to any Limited Access Privilege Program and the CDQ program. This action could change halibut PSC limits that could impact the value of fisheries subject to cost recovery. Changes to direct program costs, fishery value, or both, could alter the cost recovery fee percentage due. However, it is not possible to quantitatively estimate the potential impact of this action on cost recovery fee percentages, given the wide variety of factors that affect the direct program costs and the value of a fishery. But it is reasonable to assume that the larger the change in PSC limit from status quo under this proposed action, the greater the potential impact to fishery value and fee percentage due.

When the proposed action results in a reduction to halibut PSC limits, it may increase, among some operators, the economic incentives to attempt to bias halibut PSC data. The Alaska Division of NOAA Office of Law Enforcement (OLE) has identified recent increases in reports of harassment, intimidation, hostile work environment, and other attempts to bias observer samples of PSC in the Amendment 80 sector. The Amendment 80 sector has one of the highest rates of interpersonal issues report by observers (0.49 per assignment). A further reduction of the halibut PSC limit for this sector may result in additional coercive behavior toward observers and attempts to bias their sampling. NOAA OLE's recent outreach efforts in conjunction with the recent implementation of another recent halibut action, halibut deck sorting, could be used as a model to address these concerns. Specifically, successful outreach from NOAA OLE after the implementation of halibut deck sorting, followed by routine boardings, served as a useful way for vessels to report problems they might be having with new regulations. Those efforts appeared to encourage communication and self-reporting by the vessels, and may be employed by NOAA OLE during implementation of this proposed action.

This proposed rule would change PSC limits annually for the Amendment 80 sector based on the proposed Table 58 that would be included in regulation. Thus, the use of the table would obviate the need for the Council to take action each October or December to specify the PSC limit for the following year.

Changes in fishing, processing, disposal, and marketing costs; changes in economic, social, or cultural value of fishing activities; and changes in non-consumptive uses of fishery resources, including distribution of costs and benefits. The Analysis notes that the Amendment 80 sector will incur higher costs to avoid halibut to maximize harvest of Amendment 80 species TACs with any reduction in the halibut PSC limit, and such costs are assumed to increase as the survey index states decrease. The precise extent to which these costs would affect groundfish harvests and negatively impact the Amendment 80 sector is unknown. The analysis demonstrates that the lower halibut PSC limits may result in reduced groundfish harvests and revenues for the Amendment 80 sector. The analysis also notes that the impacts of this action on the different Amendment 80 companies are likely to vary given the diversity of their respective quota holdings of different target stocks (See section 3.3 of the Analysis). Positive impacts may occur for some Amendment 80 suppliers (fuel, excluder manufacturers, etc.) and for suppliers to the directed halibut fisheries, if the proposed rule results in increased commercial, charter, unguided sport, or subsistence harvests. Some negative impacts may occur for suppliers to the Amendment 80 fleet (*e.g.,* suppliers of packaging material) that lose business as a result of the action.

Overall, economic producer surplus—that is, the difference between the minimum the producer would be willing to sell for and what the producer actually sells its goods for—is expected to be negatively affected, depending on future conditions of halibut abundance, which is unknown. This is because the expected reductions in the Amendment 80 producer surpluses would not be expected to be offset by economic increases in producer surpluses due to increased catch in the directed halibut fisheries.

Changes in social, or cultural value of fishing activities, and changes in non-consumptive uses of fishery resources, including distribution of costs and benefits were considered in evaluating the proposed rule's consistency with National Standard 9. These factors are described in other sections of this preamble, including under impacts to directed halibut fisheries and communities and discussion of consistency of the proposed rule with National Standards 4 and 8.

On balance, the Council and NMFS determined that reducing halibut mortality from bycatch in the Amendment 80 fleet is warranted in light of the above factors, the Magnuson-Stevens Act's requirements, and other legal requirements. The Council and NMFS concluded that the total benefits of the halibut PSC reduction outweigh its costs.

IV. The Proposed Rule

The Council took final action to base the annual halibut PSC limit for the Amendment 80 sector on halibut abundance under Amendment 123. Here, NMFS proposes regulations to implement that amendment and establish a process to set the annual halibut PSC limit for the Amendment 80 sector, namely, by linking it to annual survey indices. This proposed rule would accomplish the following:

- Specify that BSAI halibut PSC for the Amendment 80 sector be determined annually.
- Specify that halibut biomass estimates derived from results of the most recent IPHC setline survey and the AFSC EBS shelf trawl survey be applied to a specified set of index ranges for each survey to establish the BSAI halibut PSC limit for the Amendment 80 sector for the following year.
- Specify that each year the Amendment 80 sector halibut PSC limit will be included in the proposed and final rules for the annual harvest specifications for the BSAI.

Turning to the affected regulations, 50 CFR 679.21 describes prohibited species bycatch management procedures: paragraph (b)(1) establishes BSAI halibut PSC limits for the Amendment 80 sector. To establish the annual process for determining BSAI halibut PSC limit for the Amendment 80 sector,

this proposed rule would revise 50 CFR 679.21.

The proposed rule would revise paragraph (b)(1) by adding paragraphs (b)(1)(i)(A) through (C) to establish the process for determining the annual BSAI halibut PSC limits for the Amendment 80 sector, including Amendment 80 cooperatives and the Amendment 80 limited access fishery. The proposed rule would specify that halibut biomass estimates derived from results of the most recent IPHC setline and the AFSC EBS shelf trawl surveys be applied to a specified table of index ranges for each survey (proposed Table 58). The value at the intercept of those survey indices within the table would be the BSAI halibut PSC limit for the Amendment 80 sector for the following year. The annual limit would be published in the draft and final harvest specifications each year.

The proposed rule would also revise 50 CFR 679.91, which establishes Amendment 80 Program annual harvester privileges and the process for assigning halibut PSC to the Amendment 80 sector, cooperatives, and limited access fishery. The proposed rule would revise paragraphs (d)(1), (d)(2)(i), and (d)(3) to clarify that the amount of halibut PSC limit for the Amendment 80 sector for each calendar year is specified and determined according to the procedure in § 679.21(b)(1)(i), replacing the references in those paragraphs to Table 35 to this part that stipulates the annual fixed amount of 1,745 mt for the Amendment 80 sector as a whole.

NMFS would modify Table 35 to Part 679 (Apportionment of Crab PSC and Halibut PSC Between the Amendment 80 and BSAI Trawl Limited Access Sectors) to indicate that the Amendment 80 sector halibut PSC would be determined annually, rather than set at a fixed amount. NMFS would add Table 58 to Part 679—Amendment 80 Sector Annual BSAI Pacific Halibut PSC Limits to establish the IPHC setline and the AFSC EBS shelf trawl survey index ranges in a table with the corresponding PSC limit at the intercepts of each survey range.

V. Classification

Pursuant to sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 123, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment period.

This proposed rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866.

A. Regulatory Impact Review (RIR)

An RIR was prepared and incorporated in the final EIS to assess the costs and benefits of available regulatory alternatives. A copy of this analysis is available from NMFS (see **ADDRESSES**). NMFS is recommending Amendment 123 and the regulatory revisions in this proposed rule to minimize potentially adverse economic impacts on benefits to the Nation. Specific aspects of the economic analysis related to the impact of this proposed rule on small entities are discussed below in the Initial Regulatory Flexibility Analysis (IRFA) section.

B. Initial Regulatory Flexibility Analysis (IRFA)

This IRFA was prepared for this proposed rule, as required by section 603 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 603), to describe the economic impact this proposed rule, if adopted, would have on small entities. The IRFA is required to describe why this action is being proposed; the objectives and legal basis for the proposed rule; the number of small entities to which the proposed rule would apply; any projected reporting, recordkeeping, or other compliance requirements of the proposed rule; any overlapping, duplicative, or conflicting Federal rules; and any significant alternatives to the proposed rule that would accomplish the stated objectives, consistent with applicable statutes, and that would minimize any significant adverse economic impacts of the proposed rule on small entities. Descriptions of this proposed rule, its purpose, and the legal basis are contained earlier in this preamble and are not repeated here.

1. Number and Description of Small Entities Regulated by This Proposed Rule

NMFS has determined that vessels that are members of a fishing cooperative are affiliated when classifying them for the RFA analysis. In making this determination, NMFS considered the Small Business Administration (SBA) ''principles of affiliation'' at 13 CFR 121.103. Specifically, in 50 CFR 121.103(f), SBA refers to ''[a]ffiliation based on identity of interest,'' which states that affiliation may arise among two or more persons with an identity of interest. Individuals or firms that have identical or substantially identical business or economic interests (such as family members, individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships) may be treated as one party with such interests aggregated. If business entities are affiliated, then the threshold for identifying small entities is applied to the group of affiliated entities rather than on an individual entity basis. NMFS has reviewed affiliation information for Amendment 80 cooperative members that are directly regulated by this action and has determined that all directly regulated catcher/processors are large via cooperative affiliation, with one exception discussed below.

This action also affects the six Western Alaska CDQ entities that are non-profit corporations, are not dominant in the BSAI non-pollock fishery, and are specifically identified as ''small'' entities in the regulations implementing the RFA. The CDQ entities have made direct investments in fishing vessels by creating wholly owned for-profit fishing companies, several of which are directly regulated by this action. However, as for-profit ventures, these companies are not automatically defined as small entities due to CDQ ownership, and this analysis has determined that they are all Amendment 80 cooperative-affiliated. Thus, while this proposed action directly regulates these for-profit CDQ owned companies, they are considered to be large entities for RFA purposes.

The thresholds applied to determine if an entity or group of entities are ''small'' under the RFA depend on the industry classification for the entity or entities. Businesses classified as primarily engaged in commercial fishing are considered small entities if they have combined annual gross receipts not in excess of $11.0 million for all affiliated operations worldwide. 50 CFR 200.2. Businesses classified as primarily engaged in fish processing are considered small entities if they employ 750 or fewer persons on a full-time, part-time, temporary, or other basis at all affiliated operations worldwide. Since at least 1993, NMFS Alaska Region has considered catcher/processors to be predominantly engaged in fish harvesting rather than fish processing. Under this classification, the threshold of $11.0 million in annual gross receipts is appropriate.

One additional vessel, the Golden Fleece, has been identified as a potentially directly regulated small entity based on revenue analysis. The Golden Fleece is Amendment 80-eligible but has chosen not to utilize its right to an Amendment 80 permit. Thus,

it is not Amendment 80 cooperative-affiliated or Amendment 80 ownership-affiliated, as it is an independent company. The Golden Fleece is a member of a marketing cooperative called Golden-Tech International, Inc. This cooperative markets the catch of several Amendment 80 catcher/processors; however, NMFS does not have access to information regarding contractual relationships necessary to determine whether membership in this marketing cooperative also affiliates the Golden Fleece with Amendment 80 vessels. Therefore, the Golden Fleece is considered to be the only small entity directly regulated by this action. However, since the Golden Fleece has not participated in the Amendment 80 fishery, it is not possible to quantify adverse impacts other than to acknowledge that the proposed rule may constrain its halibut PSC limits should it choose to do so in the future. In times of lower halibut abundance, that constraint may mean that there is not adequate PSC quota to allocate to the Amendment 80 limited access fishery to allow a directed fishery to be opened by NMFS in-season management should the Golden Fleece choose to register for that fishery. Were the Golden Fleece to register in the Amendment 80 fishery as a cooperative of one, their ability to fish would be similarly constrained by the potentially lower halibut PSC limit.

In sum, based on the foregoing analysis, NMFS preliminarily determines that there is one catcher/processor entity, the Golden Fleece, that may be considered small and would potentially be directly regulated by this action. NMFS has carefully considered whether a single entity represents a ''substantial number'' of directly regulated entities. When Amendment 80 was enacted, there were 27 original issuances of License Limitation Permits (LLPs). That is the same number of Amendment 80 LLPs issued currently. The Golden Fleece does not hold one of the 27 original or current LLPs issued, having, having not applied for an Amendment 80 LLP to date. Through consolidation and vessel replacement, all of the LLPs participating in the Amendment 80 fishery are presently owned by five distinct corporations that are all cooperative-affiliated large entities. NMFS acknowledges that the corporation owning the LLPs is the proper consideration for determining whether a substantial number of directly regulated entities is affected. While one of 28 does not appear to represent a substantial number of directly regulated entities, one of six directly regulated entities may give the appearance of a substantial number. Thus, NMFS has prepared this IRFA, which provides potentially affected small entities an opportunity to provide comments. NMFS will evaluate any comments received regarding the potential for significant economic impact on a substantial number of small entities in the final RFA contained within the final rule.

Recordkeeping, Reporting, and Other Compliance Requirements

No small entity is subject to reporting requirements that are in addition to or different from the requirements that apply to all directly regulated entities.

Under this proposed rule, requirements for recording and reporting would not be changed. Therefore, this proposed action will not change recordkeeping and reporting costs for fishery participants or impose any additional or new costs on participants.

2. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Action

NMFS has not identified any duplication, overlap, or conflict between this proposed rule and existing Federal rules.

3. Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities

No significant alternatives were identified that would accomplish the stated objectives for implementing a halibut abundance-based management via regulation, be consistent with applicable statutes, would minimize costs to potentially affected small entities more than the proposed rule. The Council considered five alternatives for action in this proposed rule along with three sub-options that could apply to all action alternatives. Alternative 1 is the no action alternative and would continue the static annual halibut PSC limit of 1,745 mt for the Amendment 80 sector.

The Council's recommended Preferred Alternative (Alternative 5) bases the determination of the annual PSC limit on the most recent survey values for the IPHC setline survey and the EBS shelf trawl survey using an index table that links PSC limits to survey abundance index states (see Table 2–8 of the Analysis). The two abundance indices are measures of the survey estimate of halibut either in metric tons (NMFS AFSC EBS shelf trawl survey) or population-density as measured by weight per unit effort (IPHC setline survey). These indices will be used to track halibut abundance and to guide setting the PSC limit for the Amendment 80 sector. The selected indices are based on the EBS shelf trawl survey and the IPHC setline survey covering IPHC Areas 4ABCDE. Both indices represent the best available scientific information. Alternatives 2 through 4 would use the same style of index table as proposed in the Preferred Alternative but would use different ranges of halibut PSC limits for the survey index levels. Alternative 2 includes a range from the current halibut PSC limit of 1,745 mt to 1,396 mt or 20 percent below the current limit. Alternative 3 includes a range from 2,007 mt or 15 percent above the current limit to 1,222 mt or 30 percent below the current limit. Alternative 4 includes a range from the current limit of 1,745 mt to 960 mt or 45 percent below the current limit.

The Preferred Alternative reflects requirements for the Council, and NMFS, to balance several factors when establishing PSC limits, including the likely impacts on the halibut stock and affected participants in the Amendment 80 and directed halibut fisheries. The Preferred Alternative would specify halibut PSC limits that range from the current Amendment 80 halibut PSC limit to 35 percent below the current limit. This is within the range of halibut PSC limits considered for this action, which range from 15 percent above the current limit to 45 percent below the current limit. The Council has acknowledged that halibut is fully utilized in the BSAI and at the medium to very low survey index states, the Amendment 80 PSC limit should decline as halibut available for harvest for all users also declines. Under those conditions, reduced halibut mortality through lower PSC limits is likely to prevent halibut PSC from becoming a larger proportion of total removals in the BSAI, consistent with the Council's purpose and need statement.

In recommending the Preferred Alternative, the Council appropriately considered the Magnuson-Stevens Act requirements. The Preferred Alternative balances the interests of the two largest halibut user groups in the BSAI, the directed commercial halibut fishery and the Amendment 80 sector, by establishing abundance-based halibut PSC limits for the Amendment 80 sector. This abundance-based approach is similar to the IPHC's management approach for the directed halibut fisheries off Alaska, which establishes annual catch limits that vary with established measures of halibut abundance.

4. Collection of Information Requirements

This proposed rule does not require any collection of information (''recordkeeping and reporting'') requirements approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This proposed rule does not amend existing information collections or create new information collections applicable to directly regulated entities. The Amendment 80 sector is subject to a comprehensive information collection in the form of the Economic Data Reporting (EDR) Program enacted in 2008. The Council reviewed the EDR for Amendment 80, and three other sectors, in February of 2022 and kept the Amendment 80 EDR largely intact while adopting some agency recommendations for small changes to the information collection forms to reduce respondent burden.

Send comments on these or any other aspects of the collection of information to NMFS Alaska Region at the **ADDRESSES** above, by email to *OIRA_Submission@omb.eop.gov,* or by fax to (202) 395–5806.

Notwithstanding any other provision of law, no person is required to respond to, and no person shall be subject to 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. All currently approved NOAA collections of information may be viewed at *http://www.cio.noaa.gov/services_programs/prasubs.html.*

C. Tribal Consultation

E.O. 13175 of November 6, 2000, the Executive Memorandum of April 29, 1994, the American Indian and Alaska Native Policy of the U.S. Department of Commerce (March 30, 1995), and the Department of Commerce Tribal Consultation and Coordination policy (78 FR 33331, June 4, 2013) outline the responsibilities NMFS has for tribal consultations related to Federal policies that have tribal implications. Further, section 161 of Public Law 108–199 extends the consultation requirements of E.O. 13175 to Alaska Native corporations. Under E.O. 13175 and agency policies, NMFS is required to give the opportunity for meaningful and timely input by tribal officials and representatives of Alaska Native corporations in the development of regulatory policies that have tribal implications. To that end, NMFS will provide a copy of this proposed rule to all potentially impacted federally recognized tribal governments in Alaska and Alaska Native corporations to notify them of the opportunity to comment or request a consultation on this proposed action.

Section 5(b)(2)(B) of E.O. 13175 requires NMFS to prepare a ''tribal summary impact statement'' for any regulation that has tribal implications, imposes substantial direct compliance costs on Native tribal governments, and is not required by statute. The tribal summary impact statement must contain (1) a description of the extent of the agency's prior consultation with tribal officials, (2) a summary of the nature of their concerns, (3) the agency's position supporting the need to issue the regulation, and (4) a statement of the extent to which the concerns of tribal officials have been met. If the Secretary of Commerce approves this proposed action, a tribal impact summary statement that addresses the four questions above will be prepared and included in the final rule.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Halibut, Reporting and recordkeeping requirements.

Dated: November 29, 2022.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set out in the preamble, NMFS proposes to amend 50 CFR part 679 as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447; Pub. L. 111–281.

■ 2. In § 679.21, revise paragraph (b)(1) introductory text, and add paragraphs (b)(1)(i)(A) through (C) to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(b) * * *

(1) *Establishment of BSAI halibut PSC limits.* Subject to the provisions in paragraphs (b)(1)(i) through (iv) of this section, the following three BSAI halibut PSC limits are established, which total 1,770 mt: BSAI trawl limited access sector—745 mt; BSAI non-trawl sector—710 mt; and CDQ Program—315 mt (established as a PSQ reserve). An additional amount of BSAI halibut PSC limit for the Amendment 80 sector will be determined for each calendar year according to the procedure in paragraph (b)(1)(i) of this section.

(i) * * *

(A) *General.* The Amendment 80 sector BSAI halibut PSC limit applies to Amendment 80 vessels while conducting any fishery in the BSAI and is an amount of halibut determined annually according to the procedure in paragraph (b)(1)(i)(B) of this section.

(B) *Annual procedure.* By October 1 of each year, the Alaska Fisheries Science Center will provide the Regional Administrator an estimate of halibut biomass derived from the most recent Alaska Fisheries Science Center Eastern Bering Sea shelf trawl survey index. Each year, NMFS will request that the International Pacific Halibut Commission provide to the Regional Administrator, by December 1 of that year, an estimate of halibut biomass derived from the most recent International Pacific Halibut Commission setline survey index. NMFS will apply both halibut biomass estimates to Table 58 of this part, such that the value at the intercept of those survey indices in Table 58 is the Amendment 80 sector halibut PSC limit for the following calendar year. NMFS will publish the new Amendment 80 sector halibut PSC limit in the proposed annual harvest specifications.

(C) *Allocation of BSAI halibut PSC to Amendment 80 cooperatives and the Amendment 80 limited access fishery.* For Amendment 80 cooperatives and the Amendment 80 limited access fishery, BSAI halibut PSC limits will be allocated according to the procedures and formulas in § 679.91(d) and (f) (not paragraph (b)(1)(i)(B) of this section). If halibut PSC is assigned to the Amendment 80 limited access fishery, it will be apportioned into PSC allowances for trawl fishery categories according to the procedure in paragraphs (b)(1)(ii)(A)*(2)* and *(3)* of this section.

* * * * *

■ 3. In § 679.91, revise paragraphs (d)(1), (d)(2)(i), and (d)(3) to read as follows:

§ 679.91 Amendment 80 Program annual harvester privileges.

* * * * *

(d) * * *

(1) *Amount of Amendment 80 halibut PSC for the Amendment 80 sector.* The amount of halibut PSC limit for the Amendment 80 sector for each calendar year is determined according to the procedure in § 679.21(b)(1)(i). That halibut PSC limit is then assigned to Amendment 80 cooperatives and the Amendment 80 limited access fishery

pursuant to paragraphs (d)(2) and (3) of this section. If one or more Amendment 80 vessels participate in the Amendment 80 limited access fishery, the halibut PSC limit assigned to the Amendment 80 cooperatives will be reduced pursuant to paragraph (d)(3) of this section.

(2) * * *

(i) Multiply the amount of annual halibut PSC established according to the procedure in § 679.21(b)(1)(i) by the percentage of the Amendment 80 halibut PSC apportioned to each Amendment 80 species as established in Table 36 to this part. This yields the halibut PSC apportionment for that Amendment 80 species.

* * * * *

(3) *Amount of Amendment 80 halibut PSC assigned to the Amendment 80 limited access fishery.* The amount of Amendment 80 halibut PSC limit assigned to the Amendment 80 limited access fishery is equal to the amount of halibut PSC assigned to the Amendment 80 sector, as established according to the procedure in § 679.21(b)(1)(i), less the amount of Amendment 80 halibut PSC assigned as CQ to all Amendment 80 cooperatives as determined in paragraph (d)(2)(iv) of this section, multiplied by 80 percent.

* * * * *

■ 4. Revise Table 35 to part 679 to read as follows:

TABLE 35 TO PART 679—APPORTIONMENT OF CRAB PSC AND HALIBUT PSC BETWEEN THE AMENDMENT 80 AND BSAI TRAWL LIMITED ACCESS SECTORS

Fishery	Halibut PSC limit in the BSAI is . . . (mt)	Zone 1 Red king crab PSC limit is . . .	*C. opilio* crab PSC limit (COBLZ) is . . .	Zone 1 *C. bairdi* crab PSC limit is . . .	Zone 2 *C. bairdi* crab PSC limit is . . .
		As determined according to § 679.21(b)(1) and the procedures at § 679.21(b)(1)(i).			
Amendment 80 sector	Annual Determination [1]	49.98	49.15	42.11	23.67
BSAI trawl limited access	745	30.58	32.14	46.99	46.81

[1] See paragraph 679.21(b)(1)(i) and Table 58 for the annual determination process for Amendment 80 halibut PSC limits in the BSAI.

* * * * *

■ 5. Add Table 58 to Part 679 to read as follows:

TABLE 58 TO PART 679—AMENDMENT 80 SECTOR ANNUAL BSAI PACIFIC HALIBUT PSC LIMITS

Survey index ranges	Eastern Bering Sea shelf trawl survey index (t)	
	Low <150,000	High ≥150,000
IPHC setline survey index in Area 4ABCDE (WPUE)		
High ≥11,000	1,745 mt	1,745 mt.
Medium 8,000–10,999	1,396 mt	1,571 mt.
Low 6,000–7,999	1,309 mt	1,396 mt.
Very Low <6,000	1,134 mt	1,134 mt.

[FR Doc. 2022–26337 Filed 12–8–22; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 87, No. 236

Friday, December 9, 2022

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–SC–22–0078]

Regulations Governing Inspection Certification of Fresh & Processed Fruits, Vegetables, & Other Products; Request for Extension of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget (OMB) for an extension of a currently approved information collection for Regulations Governing Inspection Certification of Fresh & Processed Fruits, Vegetables, & Other Products.

DATES: Comments on this notice must be received by February 7, 2023.

ADDRESSES: Interested persons are invited to submit written comments concerning this notice to Francisco Grazette, USDA Specialty Crops Inspection Division, 1400 Independence Avenue SW, Suite 1536, Washington, DC 20250–0240; or internet: *https://www.regulations.gov.* Comments should reference the date and page number of this issue of the **Federal Register**. All comments submitted in response to this notice will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made available to the public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Francisco Grazette, USDA Specialty Crops Inspection Division, 1400 Independence Avenue SW, Suite 1536, Washington, DC 20250–0240; Telephone: (202) 720–1556; Fax (866) 230–9168; or Email: *francisco.grazette@usda.gov.*

SUPPLEMENTARY INFORMATION: The total number of responses and burden hours associated with the renewal are the same as those in the currently approved Information Collection.

Title: Regulations Governing Inspection Certification of Fresh & Processed Fruits, Vegetables, & Other Products.

OMB Number: 0581–0125.

Expiration Date of Approval: March 31, 2022.

Type of Request: Extension of a currently approved information collection.

Abstract: The Agricultural Marketing Act of 1946, (7 U.S.C. 1621–1627) as amended authorizes the Agricultural Marketing Service, Specialty Crops Program, Specialty Crops Inspection Division to provide inspection and certification of the quality and condition of agricultural products. The Specialty Crops Inspection Division provides a nationwide inspection, grading, and auditing service for fresh and processed fruits, vegetables, and other products for shippers, importers, processors, sellers, buyers, and other financially interested parties on a user-fee basis. Services are voluntary and made available only upon request or when specified by a special program or contract. Information is needed to carry out the inspection, grading, or auditing services, including: the name and location of the person or company requesting service; the type and location of product to be inspected/audited; the type of service requested; and, information that identifies the product or type and scope of audit requested. This is a request for renewal of the currently approved OMB 0581–0125 Regulations Governing Inspection Certification of Fresh & Processed Fruits, Vegetables, & Other Products.

Estimate of Burden: Public reporting burden for this collection is estimated to average 0.13 hours per response.

Respondents: Business or other for-profit or nonprofit organization, farm, or Federal, State, local or Tribal government.

Estimated Number of Respondents: 60,000.

Estimated Total Annual Responses: 194,176.

Estimated Number of Responses per Respondent: 3.24.

Estimated Total Annual Burden on Respondents: 25,282 hours.

Comments are invited 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 use; (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 the collection of information on respondents, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or forms of information technology.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record, including any personal information provided.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2022–26738 Filed 12–8–22; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2022–0067]

Notice of Request for Extension of Approval of an Information Collection; Imports of Live Fish, Fertilized Eggs, and Gametes From Tilapia Lake Virus-Susceptible Species

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Request for extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the regulations for the importation of live fish, fertilized eggs, and gametes from tilapia lake virus-susceptible species into the United States.

DATES: We will consider all comments that we receive on or before February 7, 2023.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2022–0067 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2022–0067, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *regulations.gov* or in our reading room, which is located in Room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the regulations related to the importation of live fish, fertilized eggs, and gametes from TiLV-susceptible species, contact Dr. Alicia Marston, Senior Staff Veterinary Medical Officer, Live Animal Imports and Exports, APHIS Veterinary Services, 4700 River Road, Riverdale, MD 20737; (301) 851–3361. For detailed information about the information collection reporting process, contact Mr. Joseph Moxey, APHIS' Information Collection Coordinator; (301) 851–2483; *joseph.moxey@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Imports of Live Fish, Fertilized Eggs, and Gametes from Tilapia Lake Virus-Susceptible Species.

OMB Control Number: 0579–0473.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) is authorized, among other things, to prohibit or restrict the importation and interstate movement of animals and animal products to prevent the introduction into and dissemination within the United States of livestock diseases and pests. To carry out this mission, APHIS regulates the importation of animals and animal products into the United States.

The U.S. aquaculture industry experienced an outbreak of tilapia lake virus (TiLV) in March 2019, and APHIS determined that the introduction and establishment of TiLV posed a serious threat to U.S. agriculture. Subsequently, APHIS published a Federal Order [1] in November 2019 placing certain import requirements on all live fish, fertilized eggs, and gametes from TiLV-susceptible species imported from all countries. At this time, the Federal Order remains in effect. These imported items must be accompanied by a USDA-issued import permit, an official veterinary health certificate, and evidence of a U.S. veterinary inspection before being allowed entry into the United States.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 0.86 hours per response.

Respondents: State animal health officials, importers, and veterinarians.

Estimated annual number of respondents: 57.

Estimated annual number of responses per respondent: 2.

Estimated annual number of responses: 114.

Estimated total annual burden on respondents: 98 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

[1] *https://www.aphis.usda.gov/animal_health/downloads/import/tilv-federal-order.pdf.*

Done in Washington, DC, this 5th day of December 2022.

Anthony Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2022–26760 Filed 12–8–22; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Renewing Temporary Denial of Export Privileges, Quicksilver Manufacturing, Inc., 8209 Market St. #A173, Wilmington, NC 28411; Rapid Cut LLC, 8209 Market St. #A173, Wilmington, NC 28411; US Prototype, Inc., 8209 Market St. #A173, Wilmington, NC 28411

Pursuant to section 766.24 of the Export Administration Regulations, 15 CFR parts 730–774 (2021) (''EAR'' or ''the Regulations''),[1] I hereby grant the request of the Office of Export Enforcement (''OEE'') to renew the temporary denial order (''TDO'') issued in this matter on June 7, 2022. I find that renewal of this order is necessary in the public interest to prevent an imminent violation of the Regulations.

I. Procedural History

On June 7, 2022, an order was issued denying the export privileges under the Regulations of Quicksilver Manufacturing, Inc. (''Quicksilver''), Rapid Cut LLC (''Rapid Cut''), and US Prototype, Inc. (''US Prototype'') (collectively Respondents) for a period of 180 days on the ground that issuance of the order was necessary in the public interest to prevent an imminent violation of the Regulations. The order was issued *ex parte* pursuant to section

[1] On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. 4801–4852 (''ECRA''). While Section 1766 of ECRA repeals the provisions of the Export Administration Act, 50 U.S.C. App. 2401 *et seq.* (''EAA''), (except for three sections which are inapplicable here), section 1768 of ECRA provides, in pertinent part, that all orders, rules, regulations, and other forms of administrative action that were made or issued under the EAA, including as continued in effect pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.* (''IEEPA''), and were in effect as of ECRA's date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA. Moreover, section 1761(a)(5) of ECRA authorizes the issuance of temporary denial orders. 50 U.S.C. 4820(a)(5).

766.24(a) of the Regulations and was effective upon issuance.[2]

On November 10, 2022, BIS, through OEE, submitted a written request for renewal of the TDO that was issued on June 7, 2022. The written request was made more than 20 days before the TDO's scheduled expiration. A copy of the renewal request was sent to Respondents in accordance with sections 766.5 and 766.24(d) of the Regulations. On November 29, 2022, Respondents made a written submission for consideration by BIS.

II. Renewal of the TDO

A. Legal Standard

Pursuant to section 766.24, BIS may issue an order temporarily denying a respondent's export privileges upon a showing that the order is necessary in the public interest to prevent an ''imminent violation'' of the Regulations, or any order, license or authorization issued thereunder. 15 CFR 766.24(b)(1) and 766.24(d). ''A violation may be 'imminent' either in time or degree of likelihood.'' 15 CFR 766.24(b)(3). BIS may show ''either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.'' *Id.* As to the likelihood of future violations, BIS may show that the violation under investigation or charge ''is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent[.]'' *Id.* A ''lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.'' *Id.*

B. The TDO and BIS's Request for Renewal

OEE's request for renewal is based upon the facts underlying the issuance of the initial TDO, as well as evidence developed over the continuing course of this investigation. The initial TDO, issued on June 7, 2022, was based on evidence that Respondents engaged in conduct prohibited by the Regulations by exporting or causing the export from the United States of technology controlled on national security and/or missile technology grounds to China for 3D printing without the required U.S. government authorization.[3] ''Export'' is defined in the EAR as an ''actual shipment or transmission out of the United States, including the sending or taking of an item out of the United States, in any manner.'' 15 CFR 734.13(a)(1).[4]

In its November 10, 2022, request for renewal of the TDO, BIS has submitted evidence that Respondents' export compliance failures are broader in scope than the initial investigation revealed along with new concerns raised by actions taken after the issuance of the June 7, 2022 TDO. Specifically, BIS's evidence and further investigation has identified additional U.S. companies that engaged in business with Respondents involving the unlicensed export of technical specifications to China related to firearm components (ECCN 0E501.a) and space-rated items (ECCN 9E515.a), both of which are controlled on national security and regional stability grounds, as well as numerous additional suspected export control-related violations between 2017 and 2022. BIS's evidence also indicates that Respondents' apparent attempts at compliance since the issuance of the June 7, 2022 TDO at best continue to fall short by providing inaccurate information to customers about the scope of items subject to the Regulations.

Moreover, BIS has submitted evidence that a China-based individual who is known to operate an *@rapidcut.com* email address to facilitate Rapid Cut's business operations, may have violated the TDO shortly after its issuance by providing customers information on how to complete and fulfill pending orders, despite the issuance of the TDO. Such information includes instructions to cancel existing Rapid Cut orders and reissue purchase orders to China Company No. 1, in an apparent attempt to avoid the restrictions of the TDO.[5]

III. Findings

Under the applicable standard set forth in section 766.24 of the Regulations and my review of the entire record, including Respondents' November 29, 2022 submission, I find that the evidence presented by BIS convincingly demonstrates that Respondents have acted in violation of the Regulations; that such violations have been significant, deliberate and covert; and that given the foregoing and the nature of the matters under investigation, there is a likelihood of imminent violations. Therefore, renewal of the TDO is necessary in the public interest to prevent imminent violation of the Regulations and to give notice to companies and individuals in the United States and abroad that they should avoid dealing with Respondents, in connection with export and reexport transactions involving items subject to the Regulations and in connection with any other activity subject to the Regulations.

IV. Order

It is therefore ordered:

First, that Quicksilver Manufacturing, Inc., with an address at 8209 Market St. #A173, Wilmington, NC 28411; Rapid Cut LLC, with an address at 8209 Market St. #A173, Wilmington, NC 28411; and US Prototype, Inc., with an address at 8209 Market St. #A173, Wilmington, NC 28411 (collectively Respondents), when acting for or on their behalf, any successors or assigns, agents, or employees may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or engaging in any other activity subject to the EAR; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or from any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of Respondents any item subject to the EAR;

[2] The TDO was published in the **Federal Register** on June 15, 2022 (87 FR 36104).

[3] The June 7, 2022 TDO also detailed the export of technical specifications to China controlled under United States Munitions List Category XX (Submersible Vessels and Related Articles), section (d), without the required U.S. Department of State authorization.

[4] ''Item'' means ''commodities, software, and technology.'' 15 CFR 772.1. Further, ''technology'' may be in any tangible or intangible form, such as written or oral communications, blueprints, drawings, photographs, plans, diagrams, models, formulae, tables, engineering designs and specifications, computer-aided design files, manuals or documentation, electronic media or information revealed through visual inspection. *Id.*

[5] Respondents' November 29, 2022 submission asserts that the individual who sent the above-described emails was not an employee of Rapid Cut but rather an employee of China Company No. 1, a separate legal entity. Rapid Cut markets and sells China Company No. 1's manufacturing capabilities in North America, and China Company No. 1 pays Rapid Cut commissions on these sales.

B. Take any action that facilitates the acquisition or attempted acquisition by Respondents of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby Respondents acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from Respondents of any item subject to the EAR that has been exported from the United States;

D. Obtain from Respondents in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by Respondents or service any item, of whatever origin, that is owned, possessed or controlled by Respondents if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification, or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to Respondents by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order.

In accordance with the provisions of sections 766.24(e) of the EAR, Respondents may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. A renewal request may be opposed by Respondents as provided in section 766.24(d), by filing a written submission with the Assistant Secretary of Commerce for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be provided to Respondents and shall be published in the **Federal Register**.

This Order is effective immediately and shall remain in effect for 180 days.

Dated: December 5, 2022.

Kevin J. Kurland,

Deputy Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2022–26737 Filed 12–8–22; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–817]

Ripe Olives From Spain: 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 U.S. Department of Commerce (Commerce) determines that producers or exporters subject to this administrative review made sales of subject merchandise at less than normal value during the period of review (POR), August 1, 2020, through July 31, 2021. We further determine that Alimentary Group Dcoop S. Coop. And. (Dcoop) had no shipments during the POR.

DATES: Applicable December 9, 2022.

FOR FURTHER INFORMATION CONTACT: Bryan Hansen or Claudia Cott, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3683 or (202) 482–4270, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 8, 2022, Commerce published the preliminary results of the 2020–2021 administrative review of the antidumping duty order on ripe olives from Spain.[1] This administrative review covers five producers or exporters of the subject merchandise, including the two mandatory respondents, Agro Sevilla Aceitunas, S. Coop. And. (Agro Sevilla), and Angel Camacho Alimentacion, S.L. (Camacho). We invited interested parties to comment on the *Preliminary Results*.[2] On July 8, 2022, we received case briefs from the domestic interested party, Musco Family Olive Company (Musco), and from the mandatory respondents, Agro Sevilla and Camacho.[3] On July 15, 2022, Agro Sevilla and Camacho submitted rebuttal briefs.[4] On September 12, 2022, Commerce extended the deadline for the final results by 60 days to December 5, 2022.[5] Commerce conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [6]

The products covered by the *Order* are ripe olives from Spain. For a full description of the scope of the *Order, see* the Issues and Decision Memorandum.[7]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs that were submitted by parties in this administrative review are addressed in the Issues and Decision Memorandum and are listed in the appendix to this notice. 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 at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

[1] *See Ripe Olives from Spain: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2020–2021,* 87 FR 34841 (June 8, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See Preliminary Results,* 87 FR at 34842.

[3] *See* Musco's Letters, ''Ripe Olives from Spain; 3rd Administrative Review Musco Case Brief Concerning Agro Sevilla,'' dated July 8, 2022; and ''Ripe Olives from Spain; 3rd Administrative Review Musco Case Brief Concerning Camacho,'' dated July 8, 2022; *see also* Agro Sevilla's Letter, ''Case Brief of Agro Sevilla Aceitunas S.Coop Andalusia and its Affiliated Importer, Agro Sevilla USA Ripe Olives From Spain (POR3: 08/01/2020–07/31/2021),'' dated July 8, 2022; Camacho's Letter, ''Camacho's Letter in Lieu of Case Brief Ripe Olives From Spain (08/01/2020–07/31/2021),'' dated July 8, 2022.

[4] *See* Agro Sevilla's Letter, ''Rebuttal Brief of Agro Sevilla Aceitunas S.Coop Andalusia and its Affiliated Importer, Agro Sevilla USA Ripe Olives From Spain (POR3: 08/01/2020–07/31/2021),'' dated July 15, 2022; *see also* Camacho's Letter, ''Camacho's Rebuttal Brief Ripe Olives From Spain (POR3: 08/01/2020–07/31/2021),'' dated July 15, 2022.

[5] *See* Memorandum, ''Ripe Olives from Spain: Extension of Deadline for Final Results of Antidumping Duty Administrative Review; 2020–2021,'' dated September 12, 2022.

[6] *See Ripe Olives from Spain: Antidumping Duty Order,* 83 FR 37465 (August 1, 2018) (*Order*); *see also Ripe Olives from Spain: Notice of Correction to Antidumping Duty Order,* 83 FR 39691 (August 10, 2018) (*Order*).

[7] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review: Ripe Olives from Spain; 2020–2021,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Changes Since the Preliminary Results

We made no changes to our calculations for the final results of review.

Final Determination of No Shipments

We preliminary found that Dcoop had no shipments of subject merchandise during the POR.[8] No party commented on the *Preliminary Results* regarding the no-shipments decision with respect to Dcoop. Therefore, for the final results, we continue to find that Dcoop had no shipments of subject merchandise during the POR and will issue appropriate instructions to U.S. Customs and Border Protection (CBP) based on the final results.

Rate for Non-Examined Companies

In the *Preliminary Results,* Commerce calculated weighted-average dumping margins for the mandatory respondents, Agro Sevilla and Camacho, that are not zero, *de minimis,* or determined entirely on the basis of facts available.[9] No party commented on the *Preliminary Results* regarding the rates assigned to non-examined respondents and we have made no changes to the margin calculations for the mandatory respondents. Therefore, in accordance with section 735(c)(5)(A) of the Act, Commerce assigned to the companies not individually examined, listed in the chart below, a margin of 2.87 percent which is the weighted-average of Agro Sevilla's and Camacho's calculated weighted-average dumping margins for these final results.[10]

Final Results of Review

Commerce determines that the following weighted-average dumping margins exist for the period August 1, 2020, through July 31, 2021:

Producer or exporter	Weighted-average dumping margin (percent)
Agro Sevilla Aceitunas, S. Coop. And	1.84
Angel Camacho Alimentacion, S.L	4.56
Aceitunas Guadalquivir, S.L.U	2.87
Aceitunas Torrent, S.L	2.87

[8] *See Preliminary Results,* 87 FR at 34842.

[9] *Id.*

[10] For more information regarding the calculation of this margin, *see* Memorandum, ''Ripe Olives from Spain: Calculation of the Preliminary Margin for Respondents Not Selected for Individual Examination,'' dated June 3, 2022. As the weighting factor, we relied on the publicly ranged sales data reported in the quantity and value charts submitted by Agro Sevilla and Camacho.

Disclosure

Normally, Commerce discloses to the parties in a proceeding the calculations performed in connection with final results of review within five days after public announcement of final results.[11] However, because Commerce made no adjustments to the margin calculation methodology used in the *Preliminary Results,* there are no calculations to disclose for the final results of review.

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Because the weighted-average dumping margins for Agro Sevilla and Camacho are not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results of this review, we calculated an importer-specific assessment rate based on the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[12] The final results of this administrative 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.[13]

For entries of subject merchandise during the POR produced by either of the individually examined respondents for which they did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate these entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[14] For the companies identified above that were not selected for individual examination, we will instruct CBP to liquidate entries at the rates established after the completion of the final results of review.

Because we have determined that Dcoop had no shipments of subject merchandise in this review, Commerce will instruct CBP to liquidate any suspended entries that entered under Dcoop's case number (*i.e.,* at Dcoop's cash deposit rate) at the all-others rate (*i.e.,* 19.98 percent).

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

Upon publication of this notice in the **Federal Register**, the following cash deposit requirements will be effective for all shipments of ripe olives from Spain entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) the cash deposit rate for companies subject to this review will be equal to the weighted-average dumping margins established in the final results of the review; (2) for merchandise exported by companies not covered in this review but covered in a prior segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation but the producer is, then the cash deposit rate will be the rate established in the completed segment for the most recent period for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 19.98 percent,[15] the all-others rate established in the LTFV investigation. 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 and/or countervailing duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties, and/or an increase

[11] *See* 19 CFR 351.224(b).

[12] In these final results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

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

[14] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[15] *See Ripe Olives from Spain: Final Affirmative Determination of Sales at Less Than Fair Value,* 83 FR 28193 (June 18, 2018).

in the amount of antidumping duties by the amount of the countervailing duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

Notification to Interested Parties

Commerce is issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: December 5, 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 the Issues
  Comment 1: Whether to Reject Agro Sevilla's Revisions and Corrections to Sales and Cost Data as Untimely and Unsolicited and Apply Partial Adverse Facts Available (AFA) to Unreported U.S. Sales
  Comment 2: Agro Sevilla's Verification Corrections
  Comment 3: Camacho's Adjustment to Cost for Purchase of Certain Sales
VI. Recommendation

[FR Doc. 2022–26782 Filed 12–8–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–812]

Certain Carbon and Alloy Steel Cut-to-Length Plate From Belgium: Final Results of Antidumping Duty Administrative Review; 2020–2021

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

SUMMARY: The Department of Commerce (Commerce) determines that Industeel Belgium S.A. (Industeel) made sales of subject merchandise at less than normal value during the period of review (POR), May 1, 2020, through April 30, 2021.

DATES: Applicable December 9, 2022.

FOR FURTHER INFORMATION CONTACT: Alex Wood or Ann Marie Caton, 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) 482–1959 and (202) 482–2607, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 6, 2022, Commerce published the *Preliminary Results.*[1] On August 1, 2022, we extended the deadline for the final results until December 2, 2022.[2] On October 6, 2022, we released the final verification report and invited parties to comment on the *Preliminary Results.*[3] Also in October 2022, we received a case brief from Nucor Corporation (the petitioner) and a rebuttal brief from Industeel.[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 nonmetallic substances from Belgium. Products subject to the order are currently classified in the Harmonized Tariff Schedule on 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]

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.*

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 Industeel.[7]

Final Results of the Review

We are assigning the following weighted-average dumping margin to Industeel for the period May 1, 2020, through April 30, 2021:

Producers/exporters	Weighted-average dumping margin (percent)
Industeel Belgium S.A	1.14

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 has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all

[1] *See Certain Carbon and Alloy Steel Cut-to-Length Plate from Belgium: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2020–2021,* 87 FR 34244 (June 6, 2022) (*Preliminary Results*).

[2] *See* Memorandum, ''Extension of Deadline for Final Results of 2020–2021 Antidumping Duty Administrative Review,'' dated August 1, 2022.

[3] *See* Memorandum, ''Verification of Industeel Belgium S.A.,'' dated October 4, 2022; *see also* Memorandum, ''Briefing Schedule for the Final Results,'' dated October 6, 2022.

[4] *See* Petitioner's Letter, ''Nucor's Case Brief,'' dated October 13, 2022; *see also* Industeel's Letter, ''Industeel's Rebuttal Brief,'' dated October 24, 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 Belgium,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

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

[7] *See* Issues and Decision Memorandum.

appropriate entries of subject merchandise in accordance with the final results of this review.

Pursuant to 19 CFR 351.212(b)(1), 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. 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.

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.[8]

Commerce's ''automatic assessment'' will apply to entries of subject merchandise during the POR produced by Industeel in these final results of review for which Industeel did not know that the merchandise it 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.

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 5.40 percent, the all-others rate established in the LTFV investigation.[9] These 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 and published 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
  Comment 1: Application of Facts Available to Home Market Inland Freight
  Comment 2: Adjustment to Scrap Offset
  Comment 3: Adjustments to General and Administrative Expense Ratio
VI. Recommendation

[FR Doc. 2022–26730 Filed 12–8–22; 8:45 am]

BILLING CODE 3510–DS–P

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

[9] *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–570–018, C–570–019]

Boltless Steel Shelving Units Prepacked for Sale From the People's Republic of China: Initiation of Circumvention Inquiry on the Antidumping Duty and Countervailing Duty Orders

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

SUMMARY: In response to a request from Edsal Manufacturing Company, Inc. (Edsal), the U.S. Department of Commerce (Commerce) is initiating a circumvention inquiry to determine whether imports of boltless steel shelving units prepackaged for sale (boltless steel shelving), which are completed or assembled in Malaysia using certain components from the People's Republic of China (China), are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on boltless steel shelving from China.

DATES: Applicable December 9, 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:

Background

On October 20, 2022, pursuant to section 781(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.226(c), Edsal filed a circumvention inquiry request alleging that boltless

steel shelving completed or assembled in Malaysia using certain components manufactured in China and imported to the United States are circumventing the *Orders*[1] and, accordingly, should be included within the scope of the *Orders.*[2] On November 21, 2022, we extended the deadline to initiate this circumvention inquiry by 15 days, to December 5, 2022, in accordance with 19 CFR 351.226(d)(1).[3]

Scope of the Orders

The merchandise covered by these *Orders* is boltless steel shelving units prepackaged for sale. Merchandise covered by these *Orders* is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 9403.20.0018, 9403.20.0020, 9403.20.0025, and 9403.20.0026, but may also enter through HTSUS 9403.10.0040. Although these HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *Orders* is dispositive. For a complete description of the scope of the *Orders, see* the Initiation Memorandum.[4]

Merchandise Subject to the Circumvention Inquiry

This circumvention inquiry covers boltless steel shelving that has been completed or assembled in Malaysia using, at a minimum, the key components of boltless steel shelving, *i.e.,* vertical posts and horizontal beams, from China, that are then subsequently exported to the United States.

Initiation of Circumvention Inquiry

Section 351.226(d) of Commerce's regulations states that if Commerce determines that a request for a circumvention inquiry satisfies the requirements of 19 CFR 351.226(c), then Commerce ''will accept the request and initiate a circumvention inquiry.'' Section 351.226(c)(1) of Commerce's regulations, in turn, requires that each request for a circumvention inquiry allege ''that the elements necessary for a circumvention determination under section 781 of the Act exist'' and be ''accompanied by information reasonably available to the interested party supporting these allegations.'' Edsal alleged circumvention pursuant to section 781(b) of the Act (merchandise completed or assembled in other foreign countries).

According to section 781(b)(1) of the Act, after taking into account any advice provided by the U.S. International Trade Commission (ITC) under section 781(e) of the Act, Commerce may find merchandise imported into the United States to be covered by the scope of an order if: (A) merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject of an AD order or finding or a CVD order; (B) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which is subject to the order or finding or is produced in the foreign country with respect to which such order or finding applies; (C) the process of assembly or completion in the foreign country referred to in subparagraph (B) is minor or insignificant; (D) the value of the merchandise produced in the foreign country to which the AD (or CVD) order applies is a significant portion of the total value of the merchandise exported to the United States; and (E) the administering authority determines that action is appropriate to prevent evasion of such order or finding.

In determining whether the process of assembly or completion in a third country is minor or insignificant under section 781(b)(1)(C) of the Act, section 781(b)(2) of the Act directs Commerce to consider: (A) the level of investment in the foreign country; (B) the level of research and development in the foreign country; (C) the nature of the production process in the foreign country; (D) the extent of production facilities in the foreign country; and (E) whether the value of processing performed in the foreign country represents a small proportion of the value of the merchandise imported into the United States.

In addition, section 781(b)(3) of the Act sets forth additional factors to consider in determining whether to include merchandise completed or assembled in a third country within the scope of an AD or CVD order. Specifically, Commerce shall take into account such factors as: (A) the pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the merchandise that was shipped to the third country for completion or assembly is affiliated with the person in the third country who assembles or completes the merchandise that is subsequently imported into the United States; and (C) whether imports of the merchandise into the third country that was completed or assembled have increased after the initiation of the investigation which resulted in the issuance of the order or finding.

Based on our analysis of Edsal's circumvention request, we determined that Edsal's request satisfied the criteria under 19 CFR 351.226(c), and thus, pursuant to 19 CFR 351.226(d)(1)(ii), we have accepted the request and are initiating the requested circumvention inquiry of the *Orders.* For a full discussion of the basis for our decision to initiate the requested circumvention inquiry, *see* the Initiation Memorandum.[5] Moreover, as explained in the Initiation Memorandum, based on the information provided by Edsal, we are initiating a country-wide circumvention inquiry. Commerce has taken this approach in prior circumvention inquiries where the facts warranted initiation on a country-wide basis.[6]

Consistent with the approach taken in prior circumvention inquiries that Commerce initiated on a country-wide basis, we intend to solicit information from certain companies in Malaysia concerning their production of boltless steel shelving and their shipments thereof to the United States. A company's failure to completely respond to Commerce's requests for information may result in the application of partial or total facts available, pursuant to section 776(a) of the Act, which may include adverse inferences, pursuant to section 776(b) of the Act.

For companion AD and CVD proceedings, ''the Secretary will initiate

[1] *See Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Antidumping Duty Order,* 80 FR 63741 (October 21, 2015); *Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 80 FR 63745 (October 21, 2015) (collectively, *Orders*).

[2] *See* Edsal's Letter, ''Boltless Steel Shelving Units Prepackaged for Sale from China—Petitioner's Request for Circumvention Ruling Pursuant to Section 781(b), as Amended,'' dated October 20, 2022.

[3] *See* Memorandum, ''Extension of Time to Determine Whether to Initiate Circumvention Inquiry,'' dated November 21, 2022.

[4] *See* Memorandum, ''Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Initiation of Circumvention Inquiries,'' dated concurrently with, and hereby adopted by, this notice (Initiation Memorandum).

[5] *See* Initiation Memorandum.

[6] *See, e.g., Certain Corrosion-Resistant Steel Products from the Republic of Korea and Taiwan: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders,* 83 FR 37785 (August 2, 2018); *Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Initiation of Anti-Circumvention Inquiry on the Antidumping Duty Order,* 82 FR 40556, 40560 (August 25, 2017) (stating at initiation that Commerce would evaluate the extent to which a country-wide finding applicable to all exports might be warranted); and *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders,* 81 FR 79454, 79458 (November 14, 2016) (stating at initiation that Commerce would evaluate the extent to which a country-wide finding applicable to all exports might be warranted).

and conduct a single inquiry with respect to the product at issue for both orders only on the record of the antidumping proceeding.'' [7] Further, once ''the Secretary issues a final circumvention determination on the record of the antidumping duty proceeding, the Secretary will include a copy of that determination on the record of the countervailing duty proceeding.'' [8] Accordingly, once Commerce concludes this circumvention inquiry, Commerce intends to place its final circumvention determination on the record of the companion CVD proceeding.

Suspension of Liquidation

Pursuant to 19 CFR 351.226(l)(1), Commerce will notify U.S. Customs and Border Protection (CBP) of its initiation of the requested circumvention inquiries and direct CBP to continue the suspension of liquidation of entries of products subject to the circumvention inquiries that were already subject to the suspension of liquidation and to apply the cash deposit rate that would be applicable if the products were determined to be covered by the scope of the *Orders.* Should Commerce issue preliminary or final circumvention determinations, Commerce will follow the suspension of liquidation rules under 19 CFR 351.226(l)(2)–(4).

Notification to Interested Parties

In accordance with 19 CFR 351.226(d) and section 781(b) of the Act, Commerce has determined that Edsal's request for a circumvention inquiry satisfies the requirements of 19 CFR 351.226(c). Accordingly, Commerce is notifying all interested parties of the initiation of a circumvention inquiry to determine whether U.S. imports of boltless steel shelving that have been completed or assembled in, and exported from, Malaysia using certain components manufactured in China, are circumventing the *Orders.* We included a description of the products that are subject to the circumvention inquiry, and an explanation of the reasons for Commerce's decision to initiate these inquiries, in the accompanying Initiation Memorandum.[9] In accordance with 19 CFR 351.226(e)(2), Commerce intends to issue its preliminary determination in these circumvention proceedings no later than 150 days from the date of publication of this notice in the **Federal Register**.

This notice is published in accordance with section 781(b) of the Act and 19 CFR 351.226(d)(1)(ii).

Dated: December 5, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Circumvention Initiation Memorandum

I. Summary
II. Background
III. Scope of the *Orders*
IV. Merchandise Subject to the Circumvention Inquiry
V. Statutory and Regulatory Framework for Circumvention Inquiries
VI. Statutory Analysis for the Circumvention Inquiry
VII. Country-Wide Circumvention Inquiry
VIII. Recommendation

[FR Doc. 2022–26788 Filed 12–8–22; 8:45 am]

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[7] *See* 19 CFR 351.226(m)(2).

[8] *Id.*

[9] *See* Initiation Memorandum.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–523–810]

Polyethylene Terephthalate Resin From the Sultanate of Oman: Final Results of Antidumping Duty Administrative Review; 2020–2021

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

SUMMARY: The U.S. Department of Commerce (Commerce) has determined that OCTAL SAOC—FZC (OCTAL), the sole respondent subject to this antidumping duty (AD) 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.

DATES: Applicable December 9, 2022.

FOR FURTHER INFORMATION CONTACT: Jonathan Hill, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3518.

SUPPLEMENTARY INFORMATION:

Background

On June 7, 2022, Commerce published the *Preliminary Results* in the **Federal Register** and invited interested parties to comment on those results.[1] On July 14, 2022, DAK Americas LLC, Indorama Ventures USA, Inc., and Nan Ya Plastics Corporation, America (collectively, the petitioners) filed a case brief and OCTAL filed a letter in lieu of a case brief.[2] On July 22, 2022, OCTAL filed a rebuttal brief.[3] For a complete description of the events that occurred since publication of the *Preliminary Results, see* the Issues and Decision Memorandum.[4]

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 merchandise covered by this order is PET resin having an intrinsic viscosity of at least 0.70, but not more than 0.88, deciliters per gram. The merchandise subject to this *Order* is properly classified under subheadings 3907.60.00.30, 3907.61.0000, 3907.61.0010, 3907.61.0050, 3907.69.0000, 3907.69.0010, and 3907.69.0050 of the Harmonized Tariff Schedule of the United States (HTSUS).[5] Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise covered by this *Order* is dispositive. For a complete description of the scope of the order, *see* Issues and Decision Memorandum.

Analysis of Comments Received

We listed all the issues that interested parties raised in their case and rebuttal briefs, and which we addressed in the Issues and Decision Memorandum, in

[1] *See Polyethylene Terephthalate Resin from the Sultanate of Oman: Preliminary Results of Antidumping Duty Administrative Review; 2020–2021,* 87 FR 34643 (June 7, 2022), and accompanying Preliminary Decision Memorandum (*Preliminary Results*).

[2] *See* Petitioners' Letter, ''Polyethylene Terephthalate Resin from the Sultanate of Oman: Petitioners' Case Brief,'' dated July 14, 2022; *see also* OCTAL's Letter, ''OCTAL's Letter in Lieu of Case Brief: Certain Polyethylene Terephthalate (PET) Resin from the Sultanate of Oman,'' dated July 14, 2022.

[3] *See* OCTAL's Letter, ''OCTAL's Rebuttal Brief Certain Polyethylene Terephthalate (PET) Resin from the Sultanate of Oman,'' dated July 22, 2022.

[4] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2020–2021 Administrative Review of the Antidumping Duty Order on Polyethylene Terephthalate Resin from the Sultanate of Oman,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[5] On January 27, 2017, Commerce added HTSUS subheadings 3907.61.0000 and 3907.69.0000 to the Case Reference File. *See* Memorandum, ''Request from Customs and Border Protection to Update the ACE Case Reference File: Polyethylene Terephthalate Resin form the Sultanate of Oman (A–523–810),'' dated January 31, 2017. Further, on February 28, 2019, Commerce added HTSUS subheadings 3907.61.0010, 3907.61.0050, 3907.69.0010, and 3907.69.0050 to the Case Reference File. *See* Memorandum, ''Request from U.S. Customs and Border Protection to Update the ACE Case Reference File: Polyethylene Terephthalate Resin form the Sultanate of Oman (A–523–810),'' dated February 28, 2019.

the Appendix to this notice. The Issues and Decision Memorandum is a public document that 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 *http://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties, we made certain changes to the *Preliminary Results. See* the Issues and Decision Memorandum for a description of those changes.

Final Results of Review

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

Producers/exporters	Weighted average dumping margin (percent)
OCTAL SAOC–FZC	3.96

Disclosure

Commerce intends to disclose the calculations performed in connection with these final results to interested parties 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

Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries in this review, in accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b). 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).

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 importer to the total entered value of those sales. Where the respondent did not report entered value, we calculated importer-specific per-unit duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the importer to the total quantity of those sales. To determine whether an importer-specific per-unit duty assessment rate was *de minimis,* we calculated an estimated entered value. Where an importer-specific assessment rate is *de minimis* (*i.e.,* less than 0.5 percent), the entries by that importer will be liquidated without regard to dumping duties.[6]

For entries of subject merchandise during the POR produced by OCTAL for which it did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate such entries at the all-others rate (*i.e.,* 7.62 percent)[7] if there is no rate for the intermediate company(ies) involved in the transaction.[8]

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 this notice in the **Federal Register**, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for OCTAL will be equal to the weighted-average dumping margin listed in the above table; (2) for subject merchandise exported by producers or exporters not covered in this review, but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the rate established for the producer or exporter in the most recently completed segment of this proceeding in which it participated; (3) if the exporter of the subject merchandise does not have a company-specific cash deposit rate, but the producer does, then the cash deposit rate will be the cash deposit rate established for the producer in the most recently completed segment of this proceeding; and (4) the cash deposit rate for all other producers or exporters will continue to be 7.62 percent, the all-others rate established in the less-than-fair-value investigation. These 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 and/or countervailing 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 and/or countervailing duties occurred and the subsequent assessment of double antidumping duties and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

Administrative Protective Order

This notice also serves as a 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

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: December 2, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Sections in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Changes Since the Preliminary Results
V. Discussion of the Issues
  Comment 1: The Appropriate Date of Sale
  Comment 2: Whether to Adjust the Reported General and Administrative Expenses
VI. Recommendation

[FR Doc. 2022–26787 Filed 12–8–22; 8:45 am]

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[6] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101, 8102 (February 14, 2012).

[7] *See Certain Polyethylene Terephthalate Resin from Canada, the People's Republic of China, India, and the Sultanate of Oman: Amended Final Affirmative Antidumping Determination (Sultanate of Oman) and Antidumping Duty Orders,* 81 FR 27979, 27981 (May 6, 2016).

[8] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–501]

Circular Welded Carbon Steel Standard Pipe and Tube Products From Turkey: 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 sales of circular welded carbon steel standard pipe and tube products from Turkey were made at less than normal value (NV) during the period of review (POR) May 1, 2020, through April 30, 2021.

DATES: Applicable December 9, 2022.

FOR FURTHER INFORMATION CONTACT: Magd Zalok, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4162.

SUPPLEMENTARY INFORMATION:

Background

On June 6, 2022, Commerce published the *Preliminary Results* and invited interested parties to comment.[1] These final results cover 20 companies for which an administrative review was initiated and not rescinded. The sole mandatory respondent in this administrative review is Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (Borusan Mannesmann) and Borusan Istikbal Ticaret T.A.S. (Istikbal) (collectively, Borusan).[2] The producers/exporters not selected for individual examination are listed in the ''Final Results of the Review'' section of this notice. On July 6, 2022, Borusan and Wheatland Tube Company (Wheatland), the petitioner, submitted case briefs.[3] On July 13, 2022, Borusan and Wheatland submitted their rebuttal briefs.[4] On September 20, 2022, we extended the deadline for the final results by 59 days to December 2, 2022.[5] Commerce conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [6]

The scope of the *Order* covers circular welded carbon steel standard pipe and tube products from Turkey. A full description of the scope of the *Order* is contained in the Issues and Decision Memorandum.[7]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs filed by parties in this review are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is in the appendix to this notice. 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 at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on our analysis of the comments received, and for the reasons explained in the Issues and Decision Memorandum, we made certain changes from the *Preliminary Results.*

Determination of No Shipments

In the *Preliminary Results,* we found that the following 13 companies made no shipments of the subject merchandise to the United States during the POR: (1) Toscelik Profil ve Sac Endustrisi A.S.; (2) Tosyali Dis Ticaret A.S.; (3) Toscelik Metal Ticaret A.S.; (4) Cayirova Boru Sanayi ve Ticaret A.S.;(5) Yucel Boru ve Profil Endustrisi A.S.; (6) Yucelboru Ihracat ve Pazarlama A.S.; (7) Cinar Boru Profil San. Ve Tic. AS; (8) Erbosan Erciyas Boru Sanayi ve Ticaret A.S.; (9) Borusan Birlesik Boru Fabrikalari San ve Tic; (10) Borusan Gemlik Boru Tesisleri A.S.; (11) Borusan Ihracat Ithalat ve Dagitim A.S.; (12) Tubeco Pipe and Steel Corporation; (13) and Borusan Ithicat ve Dagitim A.S. No parties commented on this determination.[8] For the final results of review, we continue to find that these companies made no shipments of subject merchandise to the United States during the POR.

With respect to Istikbal, one of the companies that certified no shipments during the POR, we continue to find Istikbal to be part of the single entity, Borusan, and we find no record evidence that warrants altering this treatment. Therefore, because we find that Borusan had shipments during this POR, we have not made a determination of no shipments with respect to Istikbal.

Rate for Non-Selected Respondents

For the rate for non-selected respondents in an administrative review, generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted-average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.'' In this segment of the proceeding, we calculated a margin for Borusan that was not zero, *de minimis,* or based on facts available. Accordingly, we have applied the margin calculated for Borusan to the non-individually examined respondents.

Final Results of Review

For these final results, we determine that the following weighted-average dumping margins exist for the period May 1, 2020, through April 30, 2021:

[1] *See Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2020–2021,* 87 FR 34242 (June 6, 2022) (*Preliminary Results*).

[2] *See* Memorandum, ''Respondent Selection,'' dated August 11, 2021.

[3] *See* Borusan's Letter, ''BMB's Case Brief,'' dated July 6, 2022 (Borusan's Case Brief); *see also* Wheatland's Letter, ''Case Brief,'' dated July 6, 2022 (Wheatland's Case Brief); and Nucor Tubular Products Inc.'s (Nucor Tubular) Letter, ''Case Brief,'' dated July 6, 2022. Nucor Tubular is a domestic producer and interested party under 19 U.S.C. 1677(9)(C). Its letter concurs with and adopts by reference the arguments set forth in Wheatland's Case Brief.

[4] *See* Borusan's Letter, ''BMB's Rebuttal Brief,'' dated July 13, 2022 (Borusan's Rebuttal Brief); *see also* Wheatland's Letter, ''Rebuttal Brief,'' dated July 13, 2022 (Wheatland's Rebuttal Brief); and Nucor Tubular's Letter, ''Rebuttal Brief,'' dated July 13, 2022, in which Nucor Tubular states that it concurs with and adopts by reference the arguments set forth in Wheatland's Rebuttal Brief.

[5] *See* Memorandum, ''Extension of Deadline for Final Results of Antidumping Duty Administrative Review; 2020–2021,'' dated September 20, 2022.

[6] *See Antidumping Duty Order; Welded Carbon Steel Standard Pipe and Tube Products from Turkey,* 51 FR 17784 (May 15, 1986) (*Order*).

[7] *See* Memorandum, ''Issues and Decisions Memorandum for the Final Results of the Antidumping Duty Administrative Review: Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey; 2020–2021,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[8] One of the companies that filed a no-shipments claim, Toscelik Spiral Boru Uretim A.S. (Toscelik Uretim), is not subject to this review and has voluntarily submitted a no-shipment certification via Toscelik Profil's No-Shipment Certification Letter. However, as explained in the *Preliminary Results,* because this company is not subject to this review (*i.e.,* no party requested a review of Toscelik Uretim), we have not evaluated its no-shipments claim.

Exporter/manufacturer	Weighted-average dumping margin (percent)
Borusan Mannesmann Boru Sanayi ve Ticaret A.S./Borusan Istikbal Ticaret T.A.S	15.56
Rate Applicable to the Following Non-Selected Companies	
Borusan Holding	15.56
Borusan Mannesmann Yatirim Holding	15.56
Kale Baglanti Teknolojileri San. ve Tic. A.S	15.56
Kale Baglann Teknolojileri San. Ve Tic. A.S	15.56
Noksel Celik Boru Sanayi A.S	15.56

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

Commerce shall determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. For Borusan, we calculated importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of those sales in accordance with 19 CFR 351.212(b)(1). Where an importer-specific assessment rate is *de minimis* (*i.e.,* less than 0.5 percent), the entries by that importer will be liquidated without regard to antidumping duties. For entries of subject merchandise during the POR produced by Borusan for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[9] For the companies identified above that were not selected for individual examination, we will instruct CBP to liquidate entries at the rates established in these final results of review.

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

Cash Deposit Requirements

The following cash deposit requirements for estimated antidumping duties will be effective upon publication of this notice for all shipments of circular welded carbon steel standard pipe and tube products from Turkey entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) the cash deposit rate for the companies subject to this review will be equal to the company-specific weighted-average dumping margin established in the final results of the review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior completed segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the producer has been covered in a prior completed segment of this proceeding, then the cash deposit rate will be the rate established in the completed segment for the most recent period for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 14.74 percent, the all-others rate established in the less-than-fair-value investigation of this proceeding.[10] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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

Notification to Interested Parties Regarding Administrative Protective Order

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

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

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
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IV. Changes Since the Preliminary Results
V. Discussion of the Issues
  Comment 1: Particular Market Situation
  Comment 2: Section 232 Duties
  Comment 3: Differential Pricing
  Comment 4: Allocation of Indirect Selling Expenses
  Comment 5: Correction of Errors

[9] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[10] *See Order,* 51 FR 17784.

VI. Recommendation

[FR Doc. 2022–26746 Filed 12–8–22; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–809]

Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation: Continuation of the Antidumping Duty Order

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

SUMMARY: As a result of the determinations by the Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that revocation of the antidumping duty (AD) order on hot-rolled flat-rolled carbon-quality steel products (hot-rolled steel) from the Russian Federation (Russia) would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, Commerce is publishing a notice of continuation of this AD order.

DATES: Applicable December 9, 2022.

FOR FURTHER INFORMATION CONTACT: Brian Davis, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–7924.

SUPPLEMENTARY INFORMATION:

Background

On July 19, 1999, Commerce published the *Suspension Agreement* on hot-rolled steel from Russia.[1] On December 24, 2014, Commerce terminated the *Suspension Agreement* and issued the *Order.*[2] On September 1, 2021, Commerce initiated, and the ITC instituted, the second five-year (sunset) review of the *Order,*[3] pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[4] As a result of its review, pursuant to sections 751(c)(1) and 752(c) of the Act, Commerce determined that revocation of the *Order* on hot-rolled steel from Russia would likely lead to continuation or recurrence of dumping, and notified the ITC of the magnitude of the margins of dumping likely to prevail should the orders be revoked.[5]

On December 2, 2022, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Order* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[6]

Scope of the Order

For the purposes of this *Order,* ''hot-rolled steel'' means certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this *Order.* Specifically subject to the scope of this *Order* are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum. Steel products subject to the scope of this *Order,* regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated: 1.80 Percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.012 percent of boron, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent of zirconium. All products that meet the physical and chemical description provided above are within the scope of this *Order* unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this *Order:*

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including *e.g.,* ASTM specifications A543, A387, A514, A517, and A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.14%	0.90% Max	0.025% Max	0.005% Max	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max

Width = 44.80 inches maximum; Thickness = 0.063–0.198 inches; Yield Strength = 50,000 ksi minimum; Tensile Strength = 70,000–88,000 psi.

[1] *See Suspension of Antidumping Duty Investigation: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation,* 64 FR 38642 (July 19, 1999) (*Suspension Agreement*).

[2] *See Termination of the Suspension Agreement on Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation, Rescission of the 2013–2014 Administrative Review, and Issuance of Antidumping Duty Order,* 79 FR 77455 (December 24, 2014) (*Order*).

[3] *Initiation of Five-Year (Sunset) Reviews,* 86 FR 48983 (September 1, 2021) (*Initiation of Sunset*); *and Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, Korea, the Netherlands, Russia, Turkey, and the United Kingdom; Institution of Five-Year Reviews,* 86 FR 49057 (September 1, 2021) (*Institution of Sunset*).

[4] *See Initiation of Five-Year (''Sunset'') Reviews,* 84 FR 25741 (June 4, 2019).

[5] *See Hot-Rolled Flat-Rolled Carbon-Quality Steel from the Russian Federation: Final Results of the Expedited Sunset Review of the Antidumping Duty Order,* 86 FR 72577 (December 22, 2021).

[6] *See Hot-Rolled Steel from Australia, Brazil, Japan, Netherlands, Russia, South Korea, Turkey, and the United Kingdom,* 87 FR 74167 (December 2, 2022).

• Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Mo
0.10–0.16%	0.70–0.90%	0.025% Max	0.006% Max	0.30–0.50%	0.50–0.70%	0.25% Max	0.20% Max	0.21% Max

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum; Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

• Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	V(wt.)	Cb
0.10–0.14%	1.30–1.80%	0.025% Max	0.005% Max	0.30–0.50%	0.50–0.70%	0.20–0.40% Max	0.20% Max	0.10% Max	0.08% Max

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum; Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

• Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Nb	Ca	Al
0.15% Max	1.40% Max	0.025% Max	0.010% Max	0.50%	1.00% Max	0.50% Max	0.20% Max	0.005% Max	Treated	0.01–0.07%

Width = 39.37 inches; Thickness = 0.181 inches maximum; Yield Strength = 70,000 psi minimum for thicknesses ≤0.148 inches and 65,000 psi minimum for thicknesses >0.148 inches; Tensile Strength = 80,000 psi minimum.

• Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by either (i) tensile strength between 540 N/mm2 and 640 N/mm2 and an elongation percentage ≥26 percent for thicknesses of 2mm and above, or (ii) a tensile strength between 590 N/mm2 and 690 N/mm2 and an elongation percentage 25 percent for thicknesses of 2mm and above.

• Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.

• Grade ASTM A570–50 hot-rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (0.119 inches nominal), mill edge and skin passed, with a minimum copper content of 0.20 percent.

The covered merchandise is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00.

Certain hot-rolled flat-rolled carbon-quality steel covered include: Vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the covered merchandise is dispositive.

Continuation of the Order

As a result of the determinations by Commerce and the ITC that revocation of the *Order* would likely lead to continuation or recurrence of dumping, as well as material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the *Order.*

U.S. Customs and Border Protection will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of this order will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, Commerce intends to initiate the next five-year review of the *Order* no later than 30 days prior to the fifth anniversary of the effective date of continuation.

Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return, destruction, or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

Notification to Interested Parties

This five-year sunset review and this notice are in accordance with section 751(c) and (d)(2) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: December 5, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–26781 Filed 12–8–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID: 0648–XC600]

Fisheries of the South Atlantic; National Marine Fisheries Service—Public Meetings

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

ACTION: Notice of dolphin management strategy stakeholder workshops.

SUMMARY: The National Marine Fisheries Service will hold a series of in-person workshops on January 23, January 24, January 25, and January 26, 2023.

DATES: The workshop will be held on Monday, January 23, 2023 from 5:30 p.m. until 8:30 p.m. EDT, on Tuesday, January 24, 2023 from 5:30 p.m. until 8:30 p.m. EDT, on Wednesday, January 25, 2023 from 5:30 p.m. until 8:30 p.m. EDT, and on Thursday, January 26, 2023 from 5:30 p.m. until 8:30 p.m. EDT.

ADDRESSES: *Meeting address:* The meeting is open to members of the public. The workshop on January 23 will be held at the South Carolina Department of Natural Resources, Marine Resources Research Institute, Room 145, 217 Ft. Johnson Road, Charleston, SC 29412. The workshop on January 24 will be held at the UNCW—Center for Marine Science, 5600 Marvin Moss Lane, Wilmington, NC 28409. The workshop on January 25 will be held at the Coastal Studies Institute, Room 242, 850 NC–345, Wanchese, NC 27981. The workshop on January 26 will be held at the Brock Environmental Center, 3663 Marlin Bay Drive, Virginia Beach, VA 23455. Those interested in participating should contact Cassidy Peterson (see **FOR FURTHER INFORMATION CONTACT** below).

FOR FURTHER INFORMATION CONTACT: Cassidy Peterson, Management Strategy Evaluation Specialist, NMFS Southeast Fisheries Science Center, phone (910) 708–2686; email: *Cassidy.Peterson@noaa.gov*.

SUPPLEMENTARY INFORMATION: In collaboration with the South Atlantic Fishery Management Council, NMFS is embarking on a Management Strategy Evaluation (MSE) to guide dolphin (*i.e.* dolphinfish or mahi mahi) management in the jurisdiction. The MSE will be used to develop a management procedure that best achieves the suite of management objectives for the U.S. Atlantic dolphin fishery. Stakeholder input is necessary for characterizing the management objectives of the fishery and stock, identifying any uncertainties in the system that should be built into the MSE analysis, and providing guidance on the acceptability of the proposed management procedures.

Agenda items for the meeting include: developing an understanding of management procedures and management strategy evaluation, developing conceptual management objectives, and clarifying uncertainties that should be addressed within the framework.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to Cassidy Peterson (see contact information above) five (5) days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: December 6, 2022.

Jennifer M. Wallace,

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

[FR Doc. 2022–26851 Filed 12–8–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC556]

Takes of Marine Mammals Incidental To Specified Activities; Taking Marine Mammals Incidental to the Replacement of Pier 3 at Naval Station Norfolk in Norfolk, Virginia

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

ACTION: Notice; proposed modification of an Incidental Harassment Authorization (IHA); request for comments.

SUMMARY: NMFS is proposing to modify an incidental harassment authorization (IHA) that was issued to the United States Navy (Navy) on March 15, 2022 in association with construction activities related to the replacement of Pier 3 at Naval Station Norfolk in Norfolk, Virginia. As a result of necessary changes to the Navy's construction plan, NMFS is proposing to modify the Navy's IHA to increase authorized take by Level B harassment for bottlenose dolphins and take by Level A harassment for harbor seals. NMFS is also proposing to include appropriate, additional shutdown mitigation provisions for all species in the modified IHA. The monitoring and reporting measures remain the same as prescribed in the initial IHA. NMFS will also consider public comments on the requested modification prior to making any final decision and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than December 27, 2022.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Written comments should be submitted via email to *ITP.Corcoran@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. Attachments to comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Kim Corcoran, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the original application and supporting documents (including **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. sections 101(a)(5)(A) and (D) of the 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 incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

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 (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action remains consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) 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. Accordingly, NMFS has preliminarily determined that the issuance of the proposed modified IHA continues to qualify to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

History of Request

On March 15, 2022, NMFS issued an incidental harassment authorization (IHA) to the Navy to incidentally harass, by Level A and Level B harassment only, marine mammals during construction activities associated with the Pier 3 Replacement Project at Naval Station (NAVFAC) Norfolk in Norfolk, Virginia (87 FR 15945; March 21, 2022). Species authorized for take included humpback whale (*Megaptera novaeangliae*), bottlenose dolphin (*Tursiops truncatus*), harbor porpoise (*Phocoena phocoena*), harbor seal (*Phoca vitulina*), and gray seal (*Halichoerus grypus*). The effective dates of this IHA are April 1, 2022 through March 31, 2023.

On July 29, 2022, NMFS received a request from the Navy for a modification to the Pier 3 Replacement project IHA due to a change in the construction contractor's plan, to include concurrent pile driving and drilling activities. During consultation for the initial IHA, the Navy did not anticipate the need for concurrent activities in the first year of work. This IHA covers 1 year of a larger project for which the Navy has submitted a request for a Letter of Authorization (LOA) (87 FR 60998; October 7, 2022) for additional work occurring from April 1, 2023 through March 31, 2028. However, the construction contractor has since determined that in order to meet the scope requirements and dates to complete the pier, concurrent activities would be necessary within the first year of construction. Therefore, the Navy is requesting, and NMFS is proposing, to modify the 2022 IHA to include concurrent pile driving and drilling activities. This change may increase both Level A and Level B harassment isopleths and result in an increased estimate of exposures by Level B harassment for bottlenose dolphin and by Level A harassment for harbor seal. NMFS has determined that the changes also necessitate revised shutdown mitigation provisions for concurrent pile driving scenarios for all species. The monitoring and reporting measures remain the same as prescribed in the initial IHA, and no additional take is requested or proposed for other species.

Description of the Proposed Activity and Anticipated Impacts

The modified IHA would include the same construction activities (*i.e.,* impact pile driving, vibratory pile driving and removal, and drilling) in the same locations that were described in the initial IHA. The monitoring and reporting measures remain the same as prescribed in the initial IHA, while revisions to the required mitigation measures have been proposed. NMFS refers the reader to relevant documents related to issuance of the initial IHA, including the Navy's application, the notice of proposed IHA and request for comments (87 FR 3976; January 26, 2022), and notice of issued IHA (87 FR 15945; March 21, 2022) (available at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-replacement-pier-3-naval-station-norfolk-norfolk-virginia*) for more detailed description of the project activities.

Detailed Description of the Action

A detailed description of the construction activities is found in the aforementioned documents associated with issuance of the initial IHA. The location, time of year, and nature of the activities, including the types of piles and methods of installation and removal are identical to those described in the previous documents. However, as noted in the History of Request section, the Navy anticipates that concurrent pile driving would be necessary to complete year one activities on time. Potential concurrent activity scenarios for year one can be found in Table 1. For individual pile driving activities, the Level A and Level B harassment zones remain unchanged (see initial IHA (87 FR 3976; January 26, 2022)), however for concurrent pile driving scenarios harassment zones increased. Therefore, the larger harassment zone for each scenario was used to calculate exposure estimates as well as to determine appropriate shutdown zones.

TABLE 1—POTENTIAL CONCURRENT ACTIVITY SCENARIOS

Scenario locations	Concurrent scenarios	Total equipment quantity	Equipment (quantity)	Number of days
Pier 3T and Pier 4	Vibratory extract 14-inch timber or 18-inch concrete piles at Pier 3T and vibratory extract 14-inch timber piles at Pier 4.	2	Vibratory Hammer (2)	16
Pier 3T and Pier 4	Vibratory extract 14-inch timber or 18-inch concrete piles at Pier 3T and impact install 24-inch concrete piles.	3	Vibratory Hammer (2), Impact Hammer (1).	41
Pier 3T and Pier 4	Vibratory extract 14-inch timber or 18-inch concrete piles at Pier 3T and rotary drill 24-inch concrete piles.	3	Vibratory Hammer (2), Rotary Drill (1).	30
Pier 3T, CEP–176, and CEP–102.	Vibratory extract 14-inch timber or 18-inch concrete piles at Pier 3T, vibratory or impact install 42-inch pipe piles at CEP–176 and CEP–102.	3	Vibratory Hammer (2), Impact Hammer (1).	34
Pier 3T and CEP–176	Vibratory extract 14-inch timber or 18-inch concrete piles at Pier 3T, vibratory or impact install 42-inch pipe piles at CEP–176, and vibratory or impact install 28-inch sheet pile at CEP–176.	3	Vibratory Hammer (2), Impact Hammer (1).	67
Pier 3T and Pier 3	Vibratory extract 14-inch timber and or 18-inch concrete piles at Pier 3T and impact hammer 24-inch concrete.	2	Vibratory Hammer (1), Impact Hammer (1).	13
Pier 3T and Pier 3	Vibratory extract 14-inch timber or 18-inch concrete piles at Pier 3T and rotary drill 24-inch concrete.	2	Vibratory Hammer (1), Rotary Drill (1).	33

Description of Marine Mammals

A description of the marine mammals in the area of the activities is found in these previous documents, which remains applicable to this modified IHA as well. In addition, NMFS has reviewed the 2021 Stock Assessment Reports (Hayes *et al.,* 2022), information on relevant Unusual Mortality Events, and recent scientific literature, and determined that no new information affects our original analysis of impacts under the initial IHA. (Note that the Potential Biological Removal of the gray seal Western North Atlantic stock increased from 1,389 to 1,458, and annual mortality and serious injury of the harbor porpoise Gulf of Maine/Bay of Fundy stock decreased from 217 to 164).

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activities on marine mammals and their habitat may be found in the documents supporting the initial IHA, which remains applicable to the issuance of this modified IHA. NMFS is not aware of new information regarding potential effects.

Estimated Take

A detailed description of the methods and inputs used to estimate authorized take for the specified activity are found in the notice of issuance of the initial Pier 3 Replacement IHA (87 FR 15945; March 21, 2022). The types and sizes of piles, installation methods, and marine mammal stocks taken remain unchanged from the initial IHA. The proposed modification includes concurrent pile driving activities which could result in increased SPLs and harassment zone sizes given the proximity of the component driving sites and the physical rules of decibel addition. The Navy anticipates that concurrent use of up to three hammers producing continuous noise could occur on 70 days. Given that the use of more than one hammer for pile installation and removal on the same day (whether simultaneous or not) would increase the number of piles installed per day, this would be anticipated to result in a reduction in total number of days of pile installation. Table 1 shows potential scenarios for concurrent pile driving. However, as described further below, the Navy has conservatively calculated take for both individual and concurrent pile driving scenarios and requested authorization of take for the most conservative scenario.

NMFS (2018b) analyzes overlapping sound fields created by the use of more than one hammer differently for impulsive (impact hammer and Level A harassment zones for drilling with a DTH hammer) and continuous sound sources (vibratory hammer and Level B harassment zones for drilling with a DTH hammer; Table 7) and differently for impulsive sources with rapid impulse rates of multiple strikes per second (DTH) and slow impulse rates (impact hammering) (NMFS 2021). It is unlikely that the two impact hammers would strike at the same instant, and therefore, the SPLs would not be adjusted regardless of the distance between impact hammers. In this case, each impact hammer would be considered to have its own independent harassment zones.

When two continuous noise sources, such as vibratory hammers and drills, have overlapping sound fields, there is potential for higher sound levels than for non-overlapping sources. When two or more vibratory hammers are used simultaneously, and the isopleth of one sound source encompasses the isopleth of another sound source, the sources are considered additive and source levels are combined using the rules in Table 2.

TABLE 2—RULES FOR COMBINING SOUND SOURCE LEVELS GENERATED DURING PILE INSTALLATION

Hammer types	Difference in SSL	Level A zones	Level B zones
Vibratory, Impact	Any	Use impact zones	Use largest zones.
Impact, Impact	Any	Use zones for each pile size and number of strikes.	Use zone for each pile size.

TABLE 2—RULES FOR COMBINING SOUND SOURCE LEVELS GENERATED DURING PILE INSTALLATION—Continued

Hammer types	Difference in SSL	Level A zones	Level B zones
Vibratory, Vibratory or Vibratory, Drilling	0 or 1 dB	Add 3 dB to the higher source level	Add 3 dB to the higher source level.
	2 or 3 dB	Add 2 dB to the higher source level	Add 2 dB to the higher source level.
	4 to 9 dB	Add 1 dB to the higher source level	Add 1 dB to the higher source level.
	10 dB or more	Add 0 dB to the higher source level	Add 0 dB to the higher source level.

During pile driving, it is common for pile installation to start and stop multiple times as each pile is adjusted and its progress is measured and documented, though as stated above, for short durations, it is anticipated that multiple hammers could be in use simultaneously. Following the rules for combining sound source levels, decibel addition calculations were carried out for each possible concurrent pile driving scenario. The source levels included in Table 3 are used to estimate the Level A harassment zones and Level B harassment zones. No addition is warranted for impact pile driving in combination with vibratory.

TABLE 3—REVISED PROXY VALUES FOR SIMULTANEOUS USE OF NON-IMPULSIVE SOURCES

Scenario location	Activity and proxy	Revised proxy
Pier 3T and Pier 4	Vibratory Extract 14-inch timber at Pier 3T—162 dB RMS Vibratory extract 14-inch timber Pier 4—162 dB RMS.	165 dB RMS.
	Vibratory Extract 18-inch concrete piles at Pier 3T—162 dB RMS Vibratory Extract 14-inch timber piles at Pier 4—162 dB RMS.	165 dB RMS.
	Vibratory extract 14-inch timber piles at Pier 3T—162 dB RMS Vibratory extract 18-inch concrete Piles at Pier 3T—162 dB RMS. Rotary drill 24-inch concrete piles at Pier 4—154 dB RMS.	166 dB RMS.
Pier 3T, CEP–176, and CEP–102	Vibratory extract 14-inch timber at Pier 3T—162 dB RMS Vibratory install 42-inch pipe at CEP–176 or CEP–102—168 dB RMS.	169 dB RMS.
	Vibratory extract 18-inch concrete at Pier 3T—162 dB RMS Vibratory install 42-inch pipe at CEP–176 or CEP–102—168 dB RMS.	169 dB RMS.
Pier 3T and Pier 3	Vibratory extract 14-inch timber at Pier 3T—162 dB RMS Rotary drill 24-inch concrete piles at Pier 4—154 dB RMS.	163 dB RMS.
	Vibratory extract 18-inch concrete at Pier 3T—162 dB RMS Rotary drill 24-inch concrete piles at Pier 4—154 dB RMS.	163 dB RMS.

The size of the Level A harassment zones and Level B harassment zones using the source levels in Table 3 result in larger isopleths (see Table 4 for isopleth distances) compared to individual activities.

TABLE 4—LEVEL A AND LEVEL B HARASSMENT ISOPLETHS FOR CONCURRENT PILE DRIVING SCENARIOS

Activity	Pile location	Scenario	Source level	Level A (m)				Level B (m/km2)
				LF	MF	HF	Phocids	
Vibratory Pile Extraction	Pier 3T and pier 4	Remove two 14-inch timber piles	165	51	5	75	31	10,000
Vibratory Pile Extraction	Pier 3T and pier 4	Remove 18-inch concrete and 14-inch timber piles.	165	51	5	75	31	10,000
Vibratory Pile Extraction and Drilling.	Pier 3T and pier 4	Remove 14-inch timber and 18-inch concrete piles at Pier 3T and rotary drill for 24-inch concrete piles at Pier 4.	166	59	5	87	36	11,659
Vibratory Pile Extraction and Drilling.	Pier 3T, CEP–176, and CEP–102.	Remove 14-inch timber at Pier 3T and install 42-inch pipe at either CEP–176 or CEP–102.	169	194	17	287	118	18,479
Vibratory Pile Extraction and Drilling.	Pier 3T, CEP–176, and CEP–102.	Remove 18-inch concrete at Pier 3T and install 42-inch pipe at either CEP–176 or CEP–102.	169	194	17	287	118	18,479
Vibratory Pile Extraction and Drilling.	Pier 3T and Pier 3	Remove 14-inch timber piles at Pier 3T and rotary drill for 24-inch concrete piles at new Pier 3.	163	43	4	64	26	7,356
Vibratory Pile Extraction and Drilling.	Pier 3T and Pier 3	Remove 18-inch concrete piles at Pier 3T and rotary drill for 24-inch concrete piles at new Pier 3.	163	43	4	64	26	7,356

With the exception of bottlenose dolphins, which is the only species where densities and harassment isopleths are used to determine take estimates as opposed to local occurrence data, the total taking by Level B harassment of all species is predicted to be the same or lower with concurrent activity scenarios due to a decrease in number of construction days (see Table 5 for calculated take estimate comparison), therefore the authorized take for these species remains unchanged from the initial IHA to account for the most conservative

scenario. As stated in the initial Pier 3 IHA (87 FR 15945; March 21, 2022), the total take number for all species, except bottlenose dolphin, were estimated using local occurrence data, therefore take estimates were determined by multiplying the number of pile driving days by assumed daily occurrence for each species. As the number of pile driving days under concurrent scenarios is lower than the number of days anticipated for individual activities, the calculated takes were lower than what was originally authorized through the initial IHA. Please see the notice of issuance for the initial Pier 3 IHA (87 FR 15945; March 21, 2022) for a detailed explanation of how take estimates were calculated for individual pile driving activities for these species.

The total take number for bottlenose dolphin was estimated using inshore seasonal densities provided in Engelhaupt *et al.* (2016) from vessel line-transect surveys near NAVSTA Norfolk and adjacent areas near Virginia Beach, Virginia from August 2012 through August 2015. This density includes sightings inshore of the Chesapeake Bay from NAVSTA Norfolk west to the Thimble Shoals Bridge, and is the most representative density for the project area. NMFS multiplied the density of 1.38 dolphins per square kilometer by the Level B harassment zone area for each activity for the project, and then by the number of days associated with that activity (see Table 1). The Level B harassment zones increased as a result of concurrent pile driving activities; therefore, calculated Level B harassment exposure estimates also increased as a result. As described in the notice of the initial proposed and issued IHA, there is insufficient information on relative abundance to apportion the takes precisely to each of the three stocks in the area. Therefore, the same approach as used in previous projects (*e.g.,* Hampton Roads Bridge Tunnel project (86 FR 17458; April 2, 2021), and the U.S. Navy Norfolk Maintenance Rule (86 FR 24340; May 6, 2021)) was used to estimate the appointment of takes to each of the three bottlenose dolphin stocks that may be present in the area. Given that most of the Northern North Carolina Estuarine Stock (NNCES) are found in the Pamlico Sound Estuary, over 160 kilometers from Norfolk, we conservatively estimated that no more than 200 of the requested takes will be from this stock. Since members of the northern migratory coastal and southern migratory coastal stocks are thought to occur in or near the Bay in greater numbers, we conservatively assume that no more than half of the remaining takes will accrue to either of these stocks. Additionally, a subset of these takes would likely be comprised of the Chesapeake Bay resident dolphins, although the size of that population is unknown.

With the exception of harbor seals, the total taking by Level A harassment of all species is predicted to be the same or lower with the concurrent activity scenario given the decreased number of pile driving days anticipated and therefore the authorized take by Level A harassment remains unchanged from the initial IHA to be conservative. To remain consistent with the calculations used to determine take by Level A harassment for harbor seals in the proposed rulemaking for years two through five of the Navy's Pier 3 Replacement project (87 FR 60998; October 7, 2022), the Navy has requested to increase the number of takes by Level A harassment for harbor seals to reflect the potential of one seal per day (of 13.6 seals per day occurrence), or 20 percent of the total taking, to remain within the Level A harassment area and within the shutdown zone for sufficient prior to detection that Level A harassment would actually occur. Similar methodologies were applied for gray seal which resulted in no estimated change in the number of takes by Level A harassment.

The total numbers of incidental takes by Level A harassment and Level B harassment, including proposed updated Level A harassment numbers for harbor seal and Level B harassment numbers for bottlenose dolphin, are shown in Table 5. The total number of takes (Level A harassment and Level B harassment combined) has not changed for harbor seal because the additional takes by Level A harassment are assumed to occur to animals that would have previously been counted as taken by Level B harassment. Therefore, NMFS is proposing to reduce the authorized Level B harassment take of harbor seal by the same amount that the Level A harassment estimate is increased.

TABLE 5—PROPOSED TOTAL NUMBERS OF AUTHORIZED TAKES BY LEVEL A AND LEVEL B HARASSMENT AND AS A PERCENTAGE OF THE STOCK

Species	Stock	Level A harassment	Level B harassment	Total taking	Percent of stock
Humpback whale	Gulf of Maine [a]	0	12	12	0.9
Bottlenose dolphin [b c d]	WNA Coastal, Northern Migratory	0	14,841	14,841	223.5
	WNA Coastal, Southern Migratory	0	14,841	14,841	395.7
	Northern NC Estuarine	0	200	200	24.3
Harbor porpoise	Gulf of Maine/Bay of Fundy	10	12	22	0.0
Harbor seal	WNA	152	1,092	1,244	2.0
Gray seal	WNA	1	2	3	0.0

[a] West Indies DPS. Please see the Description of Marine Mammals in the Area of Specified Activities section in the initial IHA for further discussion.

[b] Takes estimates are weighted based on calculated percentages of population for each distinct stock, assuming animals present would follow the same probability of presence in the project area. Please see the Small Numbers section for additional information.

[c] Assumes multiple repeated takes of the same individuals from a small portion of each stock as well as repeated takes of Chesapeake Bay resident population (size unknown). Please see the Small Numbers section for additional information.

[d] Total proposed authorized takes by Level B harassment increased from 14,989 in the initial IHA to 29,882.

[e] Total proposed authorized takes by Level A harassment increased from 16 in the initial IHA to 152, however the total take (1244) has not increased.

Description of Proposed Mitigation, Monitoring and Reporting Measures

With the exception of the revised shutdown provisions for concurrent pile driving scenarios discussed below, the monitoring and reporting measures described here are identical to those included in the initial Pier 3 IHA (87 FR 15945; March 21, 2022).

In addition to the measures described later in this section, the Navy will

employ the following mitigation measures:

• Avoid direct physical interactions with marine mammals during construction activity. If a marine mammal comes within 10 meters of such activity, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions, as necessary to avoid direct physical interaction;

• The Navy will conduct trainings between construction supervisors and crews and the marine mammal monitoring team prior to the start of all activities subject to this IHA and when new personnel join the work, to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures; and

• Pile driving activity must be halted upon observation of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met, entering or within the harassment zone.

The following monitoring measures apply to the Navy's in water construction activities:

• *Protected Species Observers (PSOs)*—The placement of PSOs during all pile driving, removal, and drilling activities will ensure that the entire shutdown zone is visible. Should environmental conditions deteriorate such that the entire shutdown zone would not be visible (*e.g.,* fog, heavy rain), pile driving, removal, and drilling must be delayed until the PSO is confident marine mammals within the shutdown zone could be detected.

• *Monitoring for Level A and Level B Harassment*—The Navy will monitor the Level B harassment zones to the extent practicable, and all of the Level A harassment zones. The Navy will monitor at least a portion of the Level B harassment zone on all pile driving, removal, or drilling days. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential cessation of activity should the animal enter the shutdown zone.

• *Pre-Activity Monitoring*—Prior to the start of daily in water construction activity, or whenever a break in pile driving/removal of 30 minutes or longer occurs, PSOs will observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone will be considered cleared when a marine mammal has not been observed within the zone for that 30 minute period. If a marine mammal is observe within the shutdown zones listed in Table 6, pile driving, removal, and drilling activities must be delayed or halted. If pile driving, removal, and/or drilling is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zones or 15 minutes have passed without re-detection of the animal. When a marine mammal for which Level A harassment take is authorized is present in the Level B harassment zone, activities may begin and Level B harassment take will be recorded. If work ceases for more than 30 minutes, the pre-activity monitoring of the shutdown zones will commence. A determination that the shutdown zone is clear must be made during a period of good visibility (*i.e.,* the entire shutdown zone and surrounding waters must be visible to the naked eye).

• *Soft Start*—Soft start procedures are used to provide additional protection to marine mammals by providing and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors will be required to provide an initial set of three strikes from the hammer at reduced energy, followed by a 30-second waiting period, then two subsequent reduced energy strike sets. Soft start will be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer.

• *Reporting*—PSOs must record specific information as described in the **Federal Register** notice of the issuance of the initial IHA (87 FR 15945; March 21, 2022). Within 90 days after completion of pile driving and removal activities, the Navy must provide NMFS with a monitoring report which includes summaries of recorded takes and estimates of the number of marine mammals that may have been harassed. If no comments are received by NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

• *Establishment of Shutdown Zones*—The Navy will establish shutdown zones for all pile driving, removing, and drilling activities. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones will vary based on the activity type and marine mammal hearing group (Table 6). For every pile driving activity, shutdown is mandatory whenever an animal is within 10 m of a pile driving location. In such instances, in-water pile driving operations may only continue after 15 minutes have passed or the animal is seen heading away from the 10 m shutdown zone.

TABLE 6—PROPOSED SHUTDOWN ZONES (m) DURING CONCURRENT PILE DRIVING SCENARIOS

[Shutdown zones for Individual pile driving activities remain unchanged from the initial IHA.]

Activity	Shutdown zones		
	Humpback whale *	Harbor porpoise	Dolphins and seals
Vibratory Remove two 14-inch timber piles	55	55	35
Vibratory Remove 18-inch concrete and 14-inch timber piles	55	55	35
Vibratory Remove 14-inch timber and 18-inch concrete piles at Pier 3T and rotary drill for 24-inch concrete piles at Pier 4	60	60	35
Vibratory Remove 14-inch timber at Pier 3T and Vibratory install 42-inch pipe at either CEP–176 or CEP–102	200	200	50
Vibratory Remove 18-inch concrete at Pier 3T and Vibratory install 42-inch pipe at either CEP–176 or CEP–102	200	200	50
Vibratory Remove 14-inch timber piles at Pier 3T and rotary drill for 24-inch concrete piles at new Pier 3	45	45	30

TABLE 6—PROPOSED SHUTDOWN ZONES (m) DURING CONCURRENT PILE DRIVING SCENARIOS—Continued

[Shutdown zones for Individual pile driving activities remain unchanged from the initial IHA.]

Activity	Shutdown zones		
	Humpback whale *	Harbor porpoise	Dolphins and seals
Vibratory Remove 18-inch concrete piles at Pier 3T and rotary drill for 24-inch concrete piles at new Pier 3	45	45	30

* Shutting down to the maximum distance to the Level A harassment threshold. No takes by Level A harassment are expected to occur or proposed for authorization.

Based on our evaluation of the applicant's measures in consideration of the increased estimated take for bottlenose dolphin, as well as the modified shutdown provisions for concurrent pile driving scenarios, NMFS has re-affirmed the determination that the required mitigation measures, as proposed to be modified here, provide the means of effecting the least practicable impact on the affected species and their habitat.

Preliminary Determinations

With the exception of the revised take numbers and shutdown procedures, the Navy's in water construction activities as well as monitoring and reporting requirements are unchanged from those in the initial IHA. The effects of the activity on the affected species and stocks, taking into consideration the modified mitigation and related monitoring measures, remain unchanged, notwithstanding the increase to the authorized amount of harbor seal take by Level A harassment, and to the authorized amount of bottlenose dolphin take by Level B harassment.

The takes from Level A and Level B harassment would be due to potential behavioral disturbance, temporary threshold shift (TTS), and potentially but unlikely, permanent threshold shift (PTS). No serious injury or mortality is anticipated given the nature of the activity and measures designed to minimize the possibility of injury to marine mammals. The potential for harassment is minimized through the construction method and the implementation of the planned mitigation measures (see Description of Mitigation, Monitoring and Reporting Measures section).

The Level A harassment zones identified in Table 4 are based upon an animal exposed to pile driving or drilling multiple concurrent piles per day. Considering the short duration to drive each pile and breaks between pile installations (to reset equipment and move pile into place), means an animal would have to remain within the area estimated to be ensonified above the Level A harassment threshold for multiple hours. With the addition of concurrent pile driving, the Navy anticipates fewer construction days than with individual pile driving which will ultimately reduce exposure time for all species. Additionally, no Level A harassment is anticipated for humpback whales due to the proposed mitigation measures to shutdown to the full extent of the Level A harassment zone, which we expect the Navy will be able to effectively implement given the reasonable Level A harassment zone sizes and high visibility of humpback whales. If an animal was exposed to accumulated sound energy, the resulting PTS would likely be small (*e.g.,* PTS onset) at lower frequencies where pile driving energy is concentrated, and unlikely to result in impacts to individual fitness, reproduction, or survival.

The Navy's proposed pile driving project precludes the likelihood of serious injury or mortality. For all species and stocks, take would occur within a limited, confined area (immediately surrounding NAVSTA Norfolk in the Chesapeake Bay area) of the stock's range. Level A and Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein. Furthermore, the amount of take proposed to be authorized is extremely small when compared to stock abundance.

There are three bottlenose dolphin stocks that could occur in the project area. Therefore, the estimated 29,882 incidents of dolphin take by Level B harassment would likely be split among the western North Atlantic northern migratory coastal stock, the western North Atlantic southern migratory coastal stock, and the northern North Carolina Estuarine stock (NNCES), and is expected to involve repeated takes of a limited subset of individuals of these stocks. Based on the stocks' respective occurrence in the area, NMFS estimates that there would be no more than 200 takes from the NNCES stock, representing 24 percent of that population, with the remaining takes split evenly between the northern and southern migratory coastal stocks. Based on the consideration of various factors as described below, we have determined the number of individuals taken would comprise less than one-third of the best available population abundance estimate of either coastal migratory stocks. Detailed descriptions of the stocks' ranges have been provided in the Description of Marine Mammals in the Area of Specified Activities section of the initial IHA.

Both the northern migratory coastal and southern migratory coastal stocks have expansive ranges and they are the only dolphin stocks thought to make broad-scale, seasonal migrations in coastal waters of the western North Atlantic. Given the large ranges associated with these two stocks it is unlikely that large segments of either stock would approach the project area and enter into the Chesapeake Bay. The majority of both stocks are likely to be found widely dispersed across their respective habitat ranges and unlikely to be concentrated in or near the Chesapeake Bay

Furthermore, the Chesapeake Bay and nearby offshore waters represent the boundaries of the ranges of each of the two coastal stocks during migration. The northern migratory coastal stock is found during warm water months from coastal Virginia, including the Chesapeake Bay and Long Island, New York. The stock migrates south in late summer and fall. During cold water months, dolphins may be found in coastal waters from Cape Lookout, North Carolina, to the North Carolina/Virginia border. During January–March, the southern Migratory coastal stock appears to move as far south as northern Florida. From April–June, the stock moves back north to North Carolina. During the warm water months of July–August, the stock is presumed to occupy the coastal waters north of Cape Lookout, North Carolina, to Assateague, Virginia, including the Chesapeake Bay. There is likely some overlap between

the northern and southern migratory stocks during spring and fall migrations, but the extent of overlap is unknown.

The Chesapeake Bay and waters offshore of the mouth are located on the periphery of the migratory ranges of both coastal stocks (although during different seasons). Additionally, each of the migratory coastal stocks are likely to be located in the vicinity of the Bay for relatively short timeframes. Given the limited number of animals from each migratory coastal stock likely to be found at the seasonal migratory boundaries of their respective ranges, in combination with the short time periods (~2 months) animals might remain at these boundaries, it is reasonable to assume that takes are likely to occur only within some small portion of either of the migratory coastal stocks.

Many of the dolphin observations in the Bay are likely repeated sightings of the same individuals. The Potomac-Chesapeake Dolphin Project has observed over 1,200 unique animals since observations began in 2015. Re-sightings of the same individual can be highly variable. Some dolphins are observed once per year, while others are highly regular with greater than 10 sightings per year (Mann, Personal Communication). Similarly, using available photo-identification data, Engelhaupt *et al.* (2016) determined that specified individuals were often observed in close proximity to their original sighting locations and were observed multiple times in the same season or same year. Ninety-one percent of re-sighted individuals (100 of 110) in the study area were recorded less than 30 kilometers from the initial sighting location. Multiple sightings of the same individual would considerably reduce the number of individual animals that are taken by harassment. Furthermore, the existence of a resident dolphin population in the Bay would increase the percentage of dolphin takes that are actually re-sightings of the same individuals.

The increase in Level A harassment for harbor seal take corresponds to a commensurate decrease in the predicted number of Level B harassment, and the total number of takes remains unchanged. Therefore, in consideration of this, the harbor seal stock abundance information discussed in the initial IHA and in the Estimated Take section above, we re-affirm that small numbers of harbor seals will be taken relative to the population size of the stock. Even in consideration of the increased numbers of take by Level A harassment, the impacts of these exposures may result in moderate injury to a limited number of harbor seals.

In conclusion, 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 preliminarily 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 proposed authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the proposed 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, and (5) appropriate monitoring and reporting requirements are included.

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 whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to modify an IHA to the Navy for conducting construction activities related to year one of the Pier 3 replacement project, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed modified IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Request for Public Comments

We request comment on our analyses (included in both this document and the referenced documents supporting the 2022 IHA), the proposed modifications to the authorization, and any other aspect of this notice. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: December 6, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–26830 Filed 12–8–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC602]

Marine Mammals and Endangered Species

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

ACTION: Notice; issuance of permits and permit amendments.

SUMMARY: Notice is hereby given that permits and permit amendments have been issued to the following entities under the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA), as applicable.

ADDRESSES: The permits and related documents are available for review upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Shasta McClenahan, Ph.D., (Permit Nos. 21585–02 and 26696), Amy Hapeman (Permit No. 26226), and Carrie Hubard (Permit Nos. 25754 and Permit No. 26562); at (301) 427–8401.

SUPPLEMENTARY INFORMATION: Notices were published in the **Federal Register** on the dates listed below that requests for a permit or permit amendment had been submitted by the below-named applicants. To locate the **Federal Register** notice that announced our receipt of the application and a complete description of the activities, go to *www.federalregister.gov* and search on the permit number provided in Table 1 below.

TABLE 1—ISSUED PERMITS AND PERMIT AMENDMENTS

Permit No.	RTID	Applicant	Previous **Federal Register** notice	Issuance date
21585–02	0648–XC011	Oregon State University, Marine Mammal Institute, 2030 Southeast Marine Science Drive, Newport, OR 97365 (Responsible Party: Lisa Ballance, Ph.D.).	87 FR 27989, May 10, 2022.	November 14, 2022.
25754	0648–XC036	NMFS Pacific Islands Fisheries Science Center, 1845 Wasp Boulevard, Building 176, Honolulu, HI 96818 (Responsible Party: Charles Littnan, Ph.D.).	87 FR 31210, May 23, 2022.	November 16, 2022.
26226	0648–XC363	Robert DiGiovanni, Jr., Atlantic Marine Conservation Society, P.O. Box 932, Hampton Bays, NY 11946.	87 FR 56001, September 13, 2022.	November 10, 2022.
26562	0648–XC233	James Hain, Ph.D., Associated Scientists at Woods Hole, Box 721, Woods Hole, MA 02543.	87 FR 48471, August 9, 2022.	November 9, 2022.
26696	0648–XC418	Dennis Clegg, Ph.D., University of California at Santa Barbara, Neuroscience Research Institute, Mail Code 5060, Santa Barbara, CA 93106.	87 FR 60126, October 4, 2022.	November 22, 2022.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

As required by the ESA, as applicable, issuance of these permit was based on a finding that such permits: (1) were applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) are consistent with the purposes and policies set forth in Section 2 of the ESA.

Authority: The requested permits have been issued under the MMPA of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), as applicable.

Dated: December 5, 2022.

Amy C. Sloan,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–26780 Filed 12–8–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–P–2022–0038]

Cancer Moonshot Expedited Examination Pilot Program

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO or Office) is implementing the Cancer Moonshot Expedited Examination Pilot Program to replace the Cancer Immunotherapy Pilot Program, which expedited examination for eligible patent applications pertaining to methods of treating a cancer using immunotherapy. The new pilot program broadens the scope of qualifying technologies. Applications accepted into the new pilot program will be advanced out of turn (accorded special status) for examination until a first Office action. The new pilot program supports the renewed national Cancer Moonshot initiative that aims to reduce the cancer mortality rate by at least 50% within 25 years. This notice outlines the conditions, eligibility requirements, and guidelines of the new pilot program.

DATES: *Pilot Duration:* The Cancer Moonshot Expedited Examination Pilot Program will accept petitions to make special beginning on February 1, 2023, until either January 31, 2025, or the date the USPTO accepts a total of 1,000 grantable petitions under the pilot program, whichever is earlier. The USPTO may, at its sole discretion, terminate the pilot program depending on factors such as workload and resources needed to administer the program, feedback from external stakeholders, and the program's effectiveness. If the pilot program is terminated, the USPTO will notify the public. The USPTO will publish on its website an ongoing count of the number of petitions filed and the number of petitions granted under the pilot program.

ADDRESSES: Petitions to make special under the Cancer Moonshot Expedited Examination Pilot Program must use form PTO/SB/465 and must be filed electronically using the USPTO's Patent Center (at *https://patentcenter.uspto.gov*). Form PTO/SB/465 is available at *www.uspto.gov/PatentForms.*

FOR FURTHER INFORMATION CONTACT: For general questions regarding this pilot program, please contact Susy Tsang-Foster, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy, at 571–272–7711 or *susy.tsang-foster@uspto.gov.* For questions on electronic filing, please contact the Electronic Business Center (EBC) at 866–217–9197 (during its operating hours of 6 a.m. to midnight ET, Monday–Friday) or *ebc@uspto.gov.* For questions related to a particular petition, please contact Gary B. Nickol, Supervisory Patent Examiner, at 571–272–0835 or *gary.nickol@uspto.gov;* or Brandon J. Fetterolf, Supervisory Patent Examiner, at 571–272–2919 or *brandon.fetterolf@uspto.gov,* both of Technology Center 1600.

SUPPLEMENTARY INFORMATION:

I. Background

New patent applications are normally taken up for examination in the order of their U.S. filing date or national stage entry date. See §§ 708 and 1893.03(b) of the Manual of Patent Examining Procedure (MPEP) (9th ed., rev. 10.2019, June 2020). The USPTO has procedures under which an application will be advanced out of turn (accorded special status) for examination if the applicant files (1) a petition to make special under 37 CFR 1.102(c) or (d) with the appropriate showing, or (2) a request for prioritized examination under 37 CFR 1.102(e). See 37 CFR 1.102(c)–(e) and MPEP §§ 708.02, 708.02(a), and 708.02(b).

In 2016, the USPTO published a notice on the implementation of the Cancer Immunotherapy Pilot Program. *See* Cancer Immunotherapy Pilot Program, 81 FR 42328 (June 29, 2016) (Cancer Immunotherapy Notice). The pilot program was implemented to support the 2016 National Cancer Moonshot initiative to accelerate technological progress to eliminate cancer. The Cancer Immunotherapy Notice indicated that an applicant could have an application advanced out of turn (accorded special status) for examination without meeting all of the current requirements of the accelerated examination program that are set forth in section 708.02(a) of the MPEP if the application contained at least one claim to a method of treating a cancer using immunotherapy and the applicant met other requirements specified in the notice.

The Cancer Immunotherapy Notice established that the pilot program would run for 12 months, beginning on June 29, 2016. Since then, the USPTO has extended the Cancer Immunotherapy Pilot Program multiple times through notices published in the **Federal Register**. The most recent notice (87 FR 58772, September 28, 2022) extended the program until January 31, 2023, to enable the USPTO to continue with its ongoing evaluation of whether to expand the program and to what extent. Recently, the White House renewed the Cancer Moonshot initiative and set a new goal of reducing the cancer death rate by at least 50% over the next 25 years. *See* White House statement at *www.whitehouse.gov/briefing-room/statements-releases/2022/02/02/fact-sheet-president-biden-reignites-cancer-moonshot-to-end-cancer-as-we-know-it/.*

II. Termination of the Cancer Immunotherapy Pilot Program and Implementation of the New Cancer Moonshot Expedited Examination Pilot Program

In view of the continued interest in and success of the Cancer Immunotherapy Pilot Program and to support the renewed national Cancer Moonshot initiative by providing a broader scope of qualifying technologies, the USPTO is implementing the Cancer Moonshot Expedited Examination Pilot Program, which is an expansion of the Cancer Immunotherapy Pilot Program and replaces that program. Any compliant petition to make special under the Cancer Immunotherapy Pilot Program filed in an application on or before January 31, 2023, will be granted, and the application will be examined in accordance with the provisions of the Cancer Immunotherapy Pilot Program. Any petition to make special under the Cancer Immunotherapy Pilot Program filed in an application after January 31, 2023, will not be accepted.

In contrast to the Cancer Immunotherapy Pilot Program, which required the application to contain a claim to a method of treating a cancer using immunotherapy and the election of that method claim for examination, the Cancer Moonshot Expedited Examination Pilot Program covers a wider range of eligible technologies. Under the new program, applications must be in the field of oncology or smoking cessation and must contain at least one of the following method claims that meet the eligibility requirements of the program as set forth in section V of this notice (''eligible method claims''):

(1) A method of treating or reducing the incidence of a cancer using an immunotherapeutic compound or composition (cancer immunotherapy method);

(2) A method of treating a cancer by targeting specific genetic markers or mutations using a specific pharmaceutical composition;

(3) A method of treating a rare or childhood cancer using a specific pharmaceutical composition;

(4) A method of detecting or treating a cancer using a medical device specifically adapted to detect or treat the cancer;

(5) A method of treating a cancer by administering a specific pharmaceutical composition wherein the method comprises a step to diagnose the cancer; and

(6) A method of treating a nicotine dependency and promoting smoking cessation by administering a specific pharmaceutical composition.

Furthermore, if the application contains eligible product or apparatus claims as set forth in section V of this notice (that is, claims to the immunotherapeutic compound or composition, the pharmaceutical composition, or the medical device used in an eligible method claim), the eligible method claims must depend from or be commensurate in scope with the eligible product or apparatus claims in the application (that is, the eligible method claims must contain all of the limitations of the eligible product or apparatus claims).

III. How To Participate in the Cancer Moonshot Expedited Examination Pilot Program

Applicants may participate in the Cancer Moonshot Expedited Examination Pilot Program without meeting all of the requirements of the accelerated examination program set forth in MPEP 708.02(a) (for example, providing an examination support document) by filing a petition to make special, under 37 CFR 1.102(d), in an application that meets all of the requirements set forth in this notice. All other requirements of the accelerated examination program that are not required by this notice, including the 37 CFR 1.17(h) fee for a petition to make special under 37 CFR 1.102(d), are hereby waived based on the special procedure specified in this notice.

If the petition is granted, the application will be treated as special on the examiner's docket and will be accorded special status until a first Office action (which may be an Office action containing only a restriction requirement) is issued. After the first Office action is issued, the application will no longer be treated as special during examination. For example, if an amendment is filed, it will be placed on the examiner's regular amended docket. The USPTO will periodically evaluate the pilot program to determine whether and to what extent its coverage should be expanded or limited.

IV. Requirements for Petitions To Make Special Under the Cancer Moonshot Expedited Examination Pilot Program

A petition to make special under the Cancer Moonshot Expedited Examination Pilot Program may be granted in an application provided the eligibility requirements set forth in section V of this notice and the following conditions are satisfied:

(A) Types of Applications

The application must be a non-reissue (original), nonprovisional utility application filed under 35 U.S.C. 111(a), or an international application that has entered the national stage under 35 U.S.C. 371.

(B) Claim Limits and No Multiple Dependent Claims

The application must contain no more than 3 independent claims and no more than 20 total claims (''program claim limits'') and must not contain any multiple dependent claims. If an application exceeds 3 independent claims or 20 total claims, or if it contains any multiple dependent claims, the applicant should file a preliminary amendment in compliance with 37 CFR 1.121 to cancel any excess claims or multiple dependent claims no later than the date the petition to make special is filed. Throughout pendency, an application granted special status under the pilot program must meet the

program claim limits and must not contain any multiple dependent claims. The petition must include a statement that the applicant agrees not to exceed the program claim limits or add any multiple dependent claims throughout the pendency of the application. The examiner may refuse entry of any amendment filed in reply to an Office action that, if entered, would result in a set of pending claims that exceeds the program claim limits or adds any multiple dependent claims. *See* section IX of this notice.

(C) Inclusion of at Least One Method Claim That Meets the Eligibility Requirements of the Pilot Program

The application must include at least one method claim that meets the eligibility requirements set forth in section V of this notice.

(D) Statements Regarding a Method Claim and Any Product Claim or Apparatus Claim That Meet the Eligibility Requirements of the Pilot Program

The petition to make special must include a statement that special status under this program is being sought because the application is limited to the field of oncology or smoking cessation and contains at least one method claim that meets the eligibility requirements of the pilot program, which are discussed in section V of this notice. The petition must also identify the eligible method claim(s). In addition, the petition must include a statement that the applicant agrees not to cancel all method claims that meet the eligibility requirements of the pilot program throughout the pendency of the application.

Furthermore, the petition must include a statement that if the application contains eligible product or apparatus claims as set forth in section V of this notice (that is, claims to the immunotherapeutic compound or composition, the pharmaceutical composition, or the medical device used in eligible method claims), the eligible method claims depend from or are commensurate in scope with the eligible product or apparatus claims (that is, the eligible method claims contain all of the limitations of the eligible product or apparatus claims).

(E) Statements Regarding Restriction Requirement and Elected Invention

The petition must include a statement that, if a requirement for restriction or unity of invention is made, the applicant will agree to make an election without traverse to an invention that meets the eligibility requirements of the pilot program. The petition must also include a statement that the applicant agrees not to cancel all claims to the elected invention throughout the pendency of the application.

(F) Statement That Special Status Was Not Previously Granted Under Any Program

The petition must include a statement that the application was not previously granted special status under any program. A petition to make special under this pilot program may not be filed in an application in which special status was previously granted under this pilot program or any other program (for example, for reasons of age or health, Patent Prosecution Highway, Accelerated Examination, Prioritized Examination, etc.).

(G) Time for Filing a Petition

The petition to make special under the Cancer Moonshot Expedited Examination Pilot Program must be filed prior to a first Office action (which may be an Office action containing only a restriction requirement). A petition under the pilot program may not be filed in any application in which a request for continued examination under 37 CFR 1.114 has been filed.

(H) Required USPTO Form for Filing a Petition

Form PTO/SB/465, titled ''CERTIFICATION AND PETITION TO MAKE SPECIAL UNDER THE CANCER MOONSHOT EXPEDITED EXAMINATION PILOT PROGRAM,'' must be used to file the petition to make special under the pilot program. The form is available at *www.uspto.gov/PatentForms.* Form PTO/SB/465 contains the necessary certifications for qualification to participate in the pilot program. Use of the form will enable the USPTO to quickly identify and timely process the petition. In addition, use of the form will help applicants understand and comply with the petition requirements of the pilot program. Under 5 CFR 1320.3(h), form PTO/SB/465 does not collect ''information'' within the meaning of the Paperwork Reduction Act of 1995.

(I) Required Electronic Filing of an Application and Petition

The petition to make special may only be made by filing form PTO/SB/465, which must be filed electronically using the USPTO's Patent Center (at *https://patentcenter.uspto.gov*). Applicants must file the petition using the document description (''Petition for Cancer Moonshot Pilot'') indicated on form PTO/SB/465. In addition, the application or national stage entry must be filed electronically using Patent Center.

(J) Required Use of DOCX Format for Specification, Claim(s), and Abstract on Filing or on National Stage Entry

The specification, claim(s), and abstract of the application must be submitted in DOCX format at the time of filing or national stage entry. Prior to submitting the application for filing in DOCX format, applicants will receive a feedback document. Applicants may find it beneficial to review the feedback document and make corrections to the application before filing the application. By making the necessary corrections before filing, applicants may avoid delays that can occur in the pre-examination process. For more information on DOCX filing in Patent Center, please *see www.uspto.gov/patents/docx.* Applicants can direct any inquiries concerning electronic filing of the petition and application to the EBC at 866–217–9197 or *ebc@uspto.gov.*

(K) Publication Requirement for Applications

If an applicant files the petition to make special on the date of filing of the application, the application may not be filed with a nonpublication request. If the applicant previously filed a nonpublication request in the application, the applicant must file a rescission of the nonpublication request no later than the date the petition to make special is filed. The applicant may use form PTO/SB/36 to rescind the nonpublication request.

(L) Statement Concerning Filing Limitations

An applicant may file a petition to participate in the pilot program if the inventor or any joint inventor has not been named as the inventor or a joint inventor on more than nine other nonprovisional patent applications in which a petition to make special under this program has been filed. In other words, the inventor or any joint inventor named on the application can only be named as the inventor or a joint inventor on a maximum of 10 nonprovisional applications in which a petition under the pilot program has been filed. Therefore, if the inventor or any one of the joint inventors of the instant application has been named as the inventor or a joint inventor on more than nine other nonprovisional applications in which petitions under this pilot program have been filed, then the petition for the instant application may not be appropriately filed. Petitions filed under the Cancer Immunotherapy Pilot Program do not count toward the

filing limits in the Cancer Moonshot Expedited Examination Pilot Program.

The petition must include the following statement: ''The inventor or any joint inventor has not been named as the inventor or a joint inventor on more than nine other nonprovisional applications in which a petition to make special under this program has been filed.''

V. Eligibility Requirements

To be eligible for the Cancer Moonshot Expedited Examination Pilot Program, patent applications must be in the field of oncology or smoking cessation. The applications must claim an invention in at least one of the following technologies:

(A) Cancer Immunotherapies

The program will consider the following claims pertaining to cancer immunotherapy:

(i) Method claims to treat or reduce the incidence of a cancer using an immunotherapeutic compound or composition (''cancer immunotherapy method claims'').

These claims encompass a method of ameliorating, treating, or reducing the incidence of a malignancy in a human subject wherein the steps of the method assist or boost the immune system in eradicating cancerous cells. Examples include:

(a) Claims drawn to the administration of cells, antibodies, proteins, or nucleic acids that invoke an active (or achieve a passive) immune response to destroy cancerous cells;

(b) Claims drawn to the co-administration of biological adjuvants (for example, interleukins, cytokines, Bacillus Calmette-Guerin, monophosphoryl lipid A, etc.) in combination with conventional therapies for treating cancer such as chemotherapy, radiation, or surgery;

(c) Claims drawn to the administration of any vaccine that works by activating the immune system to destroy or reduce the incidence of cancer cell growth; and

(d) Claims drawn to *in vivo, ex vivo,* and adoptive immunotherapies for treating a cancer, including those using autologous and/or heterologous cells or immortalized cell lines.

(ii) Product claims to the immunotherapeutic compound or composition used in a cancer immunotherapy method eligible under section V(A)(i) of this notice that is also claimed in the application.

Immunotherapeutic compounds and compositions work by invoking an immune response to destroy or reduce the incidence of cancer cell growth. The petition under the program must include a statement that the applicant has a good faith belief that the specification contains evidence that the compound or composition used in the method claim to treat or reduce the incidence of a cancer is immunotherapeutic, and the statement must also identify the specific page(s) of the specification containing the evidence.

If product claims to immunotherapeutic compounds or compositions are presented in the application, claims to an eligible method of treating or reducing the incidence of a cancer using these immunotherapeutic compounds or compositions must also be presented in the same application and must depend from or be commensurate in scope with the product claims (that is, the method claims must contain all of the limitations of the product claims) throughout the pendency of the application. The eligible method claims to treating or reducing the incidence of a cancer using an immunotherapeutic compound or composition are required in the application throughout pendency because the immunotherapeutic compound or composition claimed may have an additional use not related to the treatment of cancer. The requirement for the eligible method claims to be commensurate in scope with the eligible product claims in the application facilitates rejoinder of these method claims in the event that there is a restriction requirement between the eligible product claims and eligible method claims and the product claims are elected.

(B) Personalized Medicine To Treat a Cancer by Targeting Specific Genetic Markers or Mutations Using a Specific Pharmaceutical Composition

The program will consider method claims to treat a cancer by targeting specific genetic markers or mutations using a specific pharmaceutical composition and any product claims to the pharmaceutical composition used in these method claims. The petition under the program must include a statement that the applicant has a good faith belief that the specification contains evidence that the pharmaceutical composition used in the method claim targets the specific genetic markers or mutations to treat the cancer, and the statement must also identify the specific page(s) of the specification containing the evidence.

If product claims to the pharmaceutical composition are presented in the application, claims to a method to treat a cancer by targeting specific genetic markers or mutations using the pharmaceutical composition must also be presented in the same application and must depend from or be commensurate in scope with the product claims to the pharmaceutical composition (that is, the method claims must contain all of the limitations of the product claims) throughout the pendency of the application. The method claims to treat a cancer by targeting specific genetic markers or mutations using the pharmaceutical composition are required in the application throughout pendency because the pharmaceutical composition claimed may have an additional use not related to the treatment of cancer. The requirement for all eligible method claims to be commensurate in scope with the eligible product claims presented in the application facilitates rejoinder of these method claims in the event that there is a restriction requirement between the eligible product claims and eligible method claims and the product claims are elected.

(C) Cancer Treatments for Rare Cancers, Including All Childhood Cancers, Using a Specific Pharmaceutical Composition

The program will consider method claims to treat rare cancers, including all childhood cancers, using a specific pharmaceutical composition, and any product claims to the pharmaceutical composition used to treat the cancer in these method claims. Rare cancers, which include all childhood cancers, are defined by the National Institutes of Health (*see www.cancer.gov/pediatric-adult-rare-tumor/rare-tumors/about-rare-cancers*). If product claims to the pharmaceutical composition are presented in the application, claims to a method to treat a rare or childhood cancer using this pharmaceutical composition must also be presented in the same application and must depend from or be commensurate in scope with the product claims (that is, the method claims must contain all of the limitations of the product claims) throughout the pendency of the application. The method claims to treat a rare or childhood cancer using the pharmaceutical composition are required in the application throughout pendency because the pharmaceutical composition claimed may have an additional use not related to the treatment of cancer. The requirement for the eligible method claims to be commensurate in scope with the eligible product claims in the application facilitates rejoinder of these method claims in the event that there is a restriction requirement between the eligible product claims and eligible

method claims and the product claims are elected.

(D) Detecting or Treating a Cancer Using a Medical Device Specifically Adapted To Detect or Treat the Cancer

The program will consider method claims to detect or treat a cancer using a medical device that is specifically adapted to detect or treat the cancer and any claims to the medical device used to detect or treat the cancer in these method claims if the only use disclosed in the specification for the medical device is to treat or detect a cancer. Applications disclosing any use for the medical device claimed or used in the method to treat or detect a cancer that is not related to the treatment or detection of a cancer are not eligible for the program.

For the purposes of this program, a medical device and a medical device specifically adapted to detect or treat a cancer are defined as follows: A medical device is defined as an instrument, apparatus, machine, or implant used in the diagnosis or treatment of a disease. A medical device specifically adapted to detect or treat a cancer is a medical device that is modified or adapted in some way that enables it to detect or treat a cancer.

If claims to the medical device are presented in the application, claims to a method to detect or treat a cancer using the medical device must also be presented in the same application and must depend from or be commensurate in scope with the claims to the medical device (that is, the method claims must contain all of the limitations of the claims to the medical device) throughout the pendency of the application.

The requirement for the eligible method claims to be commensurate in scope with the claims to the medical device in the application facilitates rejoinder of these method claims in the event that there is a restriction requirement between the claims to the medical device and the eligible method claims and the claims to the medical device are elected. The eligible method claims to detect or treat a cancer using the medical device are required in the application throughout pendency because the medical device claimed may have an additional use (not disclosed in the specification) that is not related to the treatment of a cancer.

(E) Treating a Cancer by Administering a Specific Pharmaceutical Composition After Diagnosing the Cancer

The program will consider method claims to treat a cancer by administering a specific pharmaceutical composition wherein the method comprises a step to diagnose the cancer and any product claims to the pharmaceutical composition used to treat the cancer in these method claims. If product claims to the pharmaceutical composition are presented in the application, claims to a method to treat a cancer using this pharmaceutical composition must also be presented in the same application and must depend from or be commensurate in scope with the product claims (that is, the method claims must contain all of the limitations of the product claims) throughout the pendency of the application. The method of treatment claims using the pharmaceutical composition are required in the application throughout pendency because the pharmaceutical composition claimed may have an additional use not related to the treatment of cancer. The requirement for the eligible method claims to be commensurate in scope with the eligible product claims in the application facilitates rejoinder of these method claims in the event that there is a restriction requirement between the eligible product claims and eligible method claims and the product claims are elected.

(F) Treating a Nicotine Dependency and Promoting Smoking Cessation by Administering a Specific Pharmaceutical Composition

The program will consider method claims to treat a nicotine dependency and promote smoking cessation by administering a specific pharmaceutical composition and any product claims to the pharmaceutical composition used to treat the nicotine dependency in these method claims. If product claims to the pharmaceutical composition are presented in the application, claims to a method to treat the nicotine dependency using this pharmaceutical composition must also be presented in the same application and must depend from or be commensurate in scope with the product claims (that is, the method claims must contain all of the limitations of the product claims) throughout the pendency of the application. The method of treatment claims using the pharmaceutical composition are required in the application throughout pendency because the pharmaceutical composition claimed may have an additional use not related to the treatment of a nicotine dependency. The requirement for the eligible method claims to be commensurate in scope with the eligible product claims in the application facilitates rejoinder of these method claims in the event that there is a restriction requirement between the eligible product claims and eligible method claims and the product claims are elected.

VI. Internal Processing of the Petition Under the Pilot Program

If an applicant files a petition to make special under the pilot program, the USPTO will not render a decision on the petition until the application is in condition for examination. Any inquiries concerning a particular petition to make special should be directed to the appropriate Technology Center handling the petition. If the petition is granted, the application will be accorded special status under the pilot program. The application will then be placed on an examiner's special docket until a first Office action is issued. After the first Office action, the application will no longer be treated as special during examination. For example, if an amendment is filed, it will be placed on the examiner's regular amended docket.

The applicant will be notified of the decision on the petition by the deciding official. If the application does not comply with the sequence requirements as set forth in 37 CFR 1.821–1.825 or 1.831–1.835, as applicable, such that the application is not in condition for examination, or if the application and/or petition do not meet all the requirements set forth in this notice, the USPTO may notify the applicant of the deficiency by issuing a notice. The notice will give the applicant only *one opportunity* to correct the deficiency.

If the applicant still wishes to participate in the pilot program, the applicant must file a reply via Patent Center that includes appropriate corrections and a properly signed petition form PTO/SB/465 within 1 month or 30 days, whichever is longer, from the mail/notification date of the notice informing the applicant of the deficiency. The time period for reply is *not* extendable under 37 CFR 1.136(a). If the applicant fails to correct the deficiency indicated in the notice within the time period set forth therein, the application will not be accepted into the pilot program and will be taken up for examination in regular turn.

In addition, the petition will be dismissed without an opportunity for correction if any of the following deficiencies exist: (1) the petition was not filed prior to the first Office action (including an Office action containing only a restriction requirement); (2) the specification, abstract, and claim(s) of the application were not submitted in DOCX format at the time of filing or

national stage entry; (3) the application or national stage entry was not filed electronically in Patent Center; (4) the application is not an original (non-reissue), nonprovisional utility application filed under 35 U.S.C. 111(a), or an international application that has entered the national stage under 35 U.S.C. 371; (5) the application was previously granted special status; (6) the application does not contain at least one method claim that complies with the eligibility requirements set forth in section V of this notice; or (7) the application pertains to a medical device adapted to detect or treat a cancer and discloses a use for the medical device that is not related to the treatment or detection of a cancer.

VII. Requirement for Restriction or Unity of Invention

If the claims in the application are directed to multiple inventions, the examiner may make a requirement for restriction or unity of invention in accordance with current restriction practice. If such a requirement is made, the applicant must make an election without traverse to an invention that meets the eligibility requirements of this program.

If the applicant elects the product or apparatus, claims to the qualifying method will be withdrawn but must remain pending and depend from or be commensurate in scope with the examined product or apparatus claims (that is, the qualifying method claims must contain all of the limitations of the examined product or apparatus claims). Any reply to an Office action that cancels all of the method claims that meet the eligibility requirements for the pilot program or does not present eligible method claims that are commensurate in scope with or depend from the product or apparatus claims under examination will be treated as not fully responsive. The petition must include a statement that if the applicant elects a product or an apparatus for examination, the applicant agrees to present eligible method claims that are commensurate in scope with or depend from the claims to the elected product or apparatus throughout the pendency of the application.

Where the applicant elects claims directed to an eligible product or apparatus, and all product or apparatus claims are subsequently found allowable, withdrawn eligible method claims that include all the limitations of the allowable product or apparatus claims will be considered for rejoinder in accordance with sections 806.05 *et seq.* and 821.04 *et seq.* of the MPEP. In the event of rejoinder, the requirement for restriction between the product or apparatus claims and the rejoined method claims will be withdrawn, and the rejoined method claims will be fully examined for patentability in accordance with 37 CFR 1.104.

VIII. Period for Reply by the Applicant

The time periods set for reply in Office actions for an application granted special status under the pilot program will be the same as those set forth in section 710.02(b) of the MPEP.

IX. Replies by the Applicant Under the Pilot Program

Throughout the pendency of an application granted special status under the pilot program, the applicant's replies to Office actions must be fully responsive to the rejections, objections, and requirements made by the examiner. Any amendment filed in reply to an Office action may be treated as not fully responsive if it attempts to: (1) add claims that would result in more than 3 independent claims or more than 20 total claims pending in the application; (2) add any multiple dependent claim(s); (3) cancel all method claims that meet the eligibility requirements of the pilot program; or (4) cancel all claims to the elected invention. The amendment may also be treated as not fully responsive if it does not present eligible method claims that are commensurate in scope with or depend from the claims to the elected product or apparatus. If a reply to a non-final Office action is not fully responsive for the reasons set forth above but is a *bona fide* attempt to advance the application to final action, the examiner may, at their discretion, issue a notice of nonresponsive amendment and provide a shortened statutory period of two months for the applicant to supply a fully responsive reply. Extensions of this time period under 37 CFR 1.136(a) to the notice of nonresponsive amendment will be permitted, but in no case can any extension carry the date for reply to this notice beyond the maximum period of *six months* set by statute (35 U.S.C. 133). However, any further nonresponsive amendment typically will not be treated as *bona fide;* therefore, the time period set in the prior notice will continue to run.

X. After-Final and Appeal Procedures

Any amendment, affidavit, or other evidence after a final Office action and prior to appeal must comply with 37 CFR 1.116. During the appeal process, the application will be treated in accordance with the normal appeal procedure (*see* MPEP Chapter 1200).

XI. Withdrawal From the Pilot Program

There is no provision for withdrawal from the pilot program. The applicant may abandon an application that has been granted special status under the pilot program in favor of a continuing application. However, a continuing application will not automatically be granted special status based on the petition filed in the parent application. Each application (including each continuing application) must, on its own, meet all requirements for special status under the pilot program, and be accompanied by its own petition as detailed in section IV above.

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2022–26776 Filed 12–8–22; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Deletions from the Procurement List.

SUMMARY: This action deletes service(s) from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date deleted from the Procurement List:* January 8, 2023.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 785–6404 or email *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION:

Deletions

On 8/19/2022 and 9/9/2022, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the relevant matter presented, the Committee has determined that the product(s) and service(s) listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product(s) and service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) and service(s) deleted from the Procurement List.

End of Certification

Accordingly, the following service(s) are deleted from the Procurement List:

Service(s)

Service Type: IT Support Services
Mandatory for: Defense Health Agency, Solution Delivery Division, 7700 Arlington Blvd., Falls Church, VA
Designated Source of Supply: Global Connections to Employment, Inc., Pensacola, FL
Contracting Activity: DEFENSE HEALTH AGENCY (DHA), DEFENSE HEALTH AGENCY

Service Type: Custodial service
Mandatory for: FAA, Multiple Locations, 3491 S. Roosevelt Blvd., Key West, FL
Designated Source of Supply: Mavagi Enterprises, Inc., San Antonio, TX
Contracting Activity: FEDERAL AVIATION ADMINISTRATION, 697DCK REGIONAL ACQUISITIONS SVCS

Service Type: Grounds Maintenance
Mandatory for: US Army Corps of Engineers, Bonneville Lock and Dam, Interstate 84, Exit 40, Cascade Locks, OR
Designated Source of Supply: Relay Resources, Portland, OR
Contracting Activity: DEPT OF THE ARMY, W071 ENDIST PORTLAND

Service Type: Janitorial/Custodial
Mandatory for: Veterans Outreach Center: 2001 Lincoln Way, Oak Park Mall
Contracting Activity: VETERANS AFFAIRS, DEPARTMENT OF, NAC

Service Type: Catering Service
Mandatory for: Seattle Military Entrance Processing Station (MEPS), 4735 E Marginal Way South, Seattle, WA
Designated Source of Supply: Northwest Center, Seattle, WA
Contracting Activity: DEPT OF THE ARMY, W6QM MICC–FT KNOX

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2022–26810 Filed 12–8–22; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add product(s) and service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes product(s) and service(s) previously furnished by such agencies.

DATES: Comments must be received on or before: January 8, 2023.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the product(s) and service(s) listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following product(s) and service(s) are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Product(s)

NSN(s)—Product Name(s):
8465–01–082–6449—Cap Strap, Water Canteen, Olive Drab
8465–00–NIB–0290—Cap Strap, Water Canteen, 483 Green
Designated Source of Supply: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA
Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA TROOP SUPPORT
Distribution: C-List
Mandatory for: 100% of the requirement of the Department of Defense

Service(s)

Service Type: Base Supply Center
Mandatory for: United States Naval Academy, Annapolis, MD
Designated Source of Supply: Winston-Salem Industries for the Blind, Inc, Winston-Salem, NC
Contracting Activity: DEPT OF THE NAVY, NAVSUP FLT LOG CTR NORFOLK

Service Type: Patient Access and Referral Accountability Service
Mandatory for: U.S. Air Force, Colorado Military Health System, Colorado Springs, CO
Designated Source of Supply: Global Connections to Employment, Inc., Pensacola, FL
Contracting Activity: DEPT OF THE AIR FORCE, FA7000 10 CONS LGC

Deletions

The following product(s) and service(s) are proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s):
7520–00–139–4869—File, Horizontal Desk, 12″ × 8 ½″ × 15″, 6 Shelf, Beige
7520–00–728–5761—File, Horizontal Desk, 12″ × 8 ½″ × 15″, 6 Shelf, Gray
7520–01–445–0733—File, Horizontal Desk, 12″ × 8 ½″ × 17 ⅛″, 7 Shelf, Beige
7520–01–445–0735—File, Horizontal Desk, 12″ × 8 ½″ × 12 ½″, 5 Shelf, Beige
7520–01–445–0736—File, Horizontal Desk, 12″ × 8 ½″ × 19 ⅝″, 8 Shelf, Beige
7520–01–445–0739—File, Horizontal Desk, 12″ × 8 ½″ × 7 ⅛″, 3 Shelf, Beige
7520–01–445–0741—File, Horizontal Desk, 12″ × 8 ½″ × 10″ 4 Shelf, Beige
7520–01–452–1558—File, Vertical Desk, 8″ × 11″ × 14 ¼″, 8 Shelf, Black
7520–01–452–1562—File, Vertical Desk, 8″ × 11″ × 14 ¼″, 8 Shelf, Beige
7520–01–452–1563—File, Combination Desk, 7 ¾″ × 14″ × 11″, Beige
7520–01–452–1564—File, Combination Desk, 7 ¾″ × 14″ × 11″, Black
7520–01–457–0719—File, Horizontal Desk, 12″ × 8 ½″ × 15″, 6 Shelf, Black
7520–01–457–0721—File, Horizontal Desk, 12″ × 8 ½″ × 10″, 4 Shelf, Black
7520–01–457–0723—File, Horizontal Desk, 12″ × 8 ½″ × 12 ½″, 5 Shelf, Black
7520–01–457–0724—File, Horizontal Desk, 12″ × 8 ½″ × 7 ⅛″, 3 Shelf, Black
7520–01–457–0725—File, Horizontal Desk, 12″ × 8 ½″ × 17 ⅛″, 7 Shelf, Black
7520–01–457–0726—File, Horizontal Desk, 12″ × 8 ½″ × 19 ⅝″, 8 Shelf, Black
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

NSN(s)—Product Name(s):
8415–01–364–3320—Suit, Contamination Avoidance Suit, Hooded Poncho and Trousers, Army, Green, S
8415–01–364–3321—Suit, Contamination Avoidance Suit, Hooded Poncho and Trousers, Army, Green, M/L
8415–01–364–3322—Suit, Contamination Avoidance Suit, Hooded Poncho and Trousers, Army, Green, XL/XXL
Designated Source of Supply: ORC Industries, Inc., La Crosse, WI
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s):
7510–01–590–1503—Laser Toner Cartridge, 12X
Designated Source of Supply: TRI Industries NFP, Vernon Hills, IL
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

Service(s)

Service Type: Mattress & Box Spring Rehabilitation
Designated Source of Supply: Mississippi Industries for the Blind, Jackson, MS
Contracting Activity: GENERAL SERVICES ADMINISTRATION, FPDS AGENCY COORDINATOR

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2022–26809 Filed 12–8–22; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

Negotiation of a Reciprocal Defense Procurement Agreement With the Ministry of Defense of Austria

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for public comments.

SUMMARY: On behalf of the U.S. Government, DoD is contemplating negotiating and concluding a new Reciprocal Defense Procurement Agreement with the Ministry of Defense of Austria. DoD is requesting industry feedback regarding its experience in public defense procurements conducted by or on behalf of the Austrian Ministry of Defense or Armed Forces.

DATES: Comments must be received January 9, 2023.

ADDRESSES: Submit comments by email to *jeffrey.c.grover.civ@mail.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Grover, telephone 703–380–9783.

SUPPLEMENTARY INFORMATION: DoD has concluded Reciprocal Defense Procurement (RDP) Agreements with 28 qualifying countries, as defined in the Defense Federal Acquisition Regulation Supplement (DFARS) 225.003, at the level of the Secretary of Defense and his counterpart. The purpose of an RDP Agreement is to promote rationalization, standardization, and interoperability of conventional defense equipment with allies and other friendly governments. These Agreements provide a framework for ongoing communication regarding market access and procurement matters that enhance effective defense cooperation.

RDP Agreements generally include language by which the Parties agree that their defense procurements will be conducted in accordance with certain implementing procedures. These procedures relate to—

- Publication of notices of proposed purchases;
- The content and availability of solicitations for proposed purchases;
- Notification to each unsuccessful offeror;
- Feedback, upon request, to unsuccessful offerors concerning the reasons they were not allowed to participate in a procurement or were not awarded a contract; and
- Provision for the hearing and review of complaints arising in connection with any phase of the procurement process to ensure that, to the extent possible, complaints are equitably and expeditiously resolved.

Based on the Agreement, each country affords the other country certain benefits on a reciprocal basis consistent with national laws and regulations. The benefits that the United States accords to the products of qualifying countries include—

- Offers of qualifying country end products are evaluated without applying the price differentials otherwise required by the Buy American statute and the Balance of Payments Program;
- The chemical warfare protection clothing restrictions in 10 U.S.C. 2533a and the specialty metals restriction in 10 U.S.C. 2533b do not apply to products manufactured in a qualifying country; and
- Customs, taxes, and duties are waived for qualifying country end products and components of defense procurements.

If DoD (for the U.S. Government) concludes a new RDP Agreement with the Ministry of Defense of Austria and DoD executes a blanket public interest determination, as intended, Austria will be listed as one of the qualifying countries at DFARS 225.872–1(a), removing the purchase-by-purchase requirement at DFARS 225.872–1(b) and individual determination procedures at DFARS 225.872–4.

While DoD is evaluating Austria's laws and regulations in this area, DoD would benefit from U.S. industry's experience in participating in Austrian public defense procurements. DoD is, therefore, asking U.S. firms that have participated or attempted to participate in procurements by or on behalf of Austria's Ministry of Defense or Armed Forces to let us know if the procurements were conducted with transparency, integrity, fairness, and due process in accordance with published procedures, and if not, the nature of the problems encountered.

DoD is also interested in comments relating to the degree of reciprocity that exists between the United States and Austria when it comes to the openness of defense procurements to offers of products from the other country.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2022–26712 Filed 12–8–22; 8:45 am]

BILLING CODE 5001–06–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: PR23–15–000.
Applicants: Hope Gas, Inc.
Description: § 284.123(g) Rate Filing: HGI—2022 PGA Filing to be effective 12/1/2022.
Filed Date: 12/5/22.
Accession Number: 20221205–5041.
Comment Date: 12/23/2022.
184.123(g) Protest: 2/3/2023.

Docket Numbers: RP23–251–000.
Applicants: UGI Mt. Bethel Pipeline Company, LLC.
Description: Annual Report of Operational Purchases and Sales of UGI Mt. Bethel Pipeline, LLC.
Filed Date: 11/30/22.
Accession Number: 20221130–5539.
Comment Date: 5 p.m. ET 12/12/22.

Docket Numbers: RP23–263–000.
Applicants: NEXUS Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Enbridge Gas to DTE Energy 962849 eff 12–3–22 to be effective 12/3/2022.
Filed Date: 12/2/22.
Accession Number: 20221202–5099.
Comment Date: 5 p.m. ET 12/14/22.

Docket Numbers: RP23–264–000.
Applicants: Midwestern Gas Transmission Company.
Description: § 4(d) Rate Filing: Update to Remove Non-Conforming Agreements to be effective 1/7/2023.
Filed Date: 12/2/22.
Accession Number: 20221202–5114.
Comment Date: 5 p.m. ET 12/14/22.

Docket Numbers: RP23–265–000.
Applicants: Rockies Express Pipeline LLC.

Description: § 4(d) Rate Filing: 2022–12–02 Negotiated Rate Agreement to be effective 12/3/2022.

Filed Date: 12/5/22.

Accession Number: 20221205–5000.

Comment Date: 5 p.m. ET 12/19/22.

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: RP19–57–005.

Applicants: Algonquin Gas Transmission, LLC.

Description: Compliance filing: New York Delivery Surcharge Verplank Fire eff 1–1–23 to be effective 1/1/2023.

Filed Date: 12/2/22.

Accession Number: 20221202–5118.

Comment Date: 5 p.m. ET 12/14/22.

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 5, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–26772 Filed 12–8–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–18–000]

Columbia Gas Transmission, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that November 21, 2022, Columbia Gas Transmission, LLC (Columbia) filed a prior notice request for authorization, in accordance with 18 CFR 157.205 and 157.208 of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act and Columbia's blanket certificate issued in Docket No. CP83–76–000 to perform various modifications of the existing 18-inch and 20-inch Line D420 Pipeline in Ohio to enable the in-line inspection or pigging of Line D420. Specifically, Columbia proposes to: (1) install one new 24'' × 20'' bi-directional launcher/receiver station, valves, fitting, and pipe at Mod Point 1 in Sandusky County, Ohio; (2) install one new 24'' × 20'' bi-directional launcher/receiver at Mod Point 5 in Sandusky County, Ohio; (3) install one new 24'' × 18'' bi-directional launcher/receiver at Mod Point 6 in Lucas County, Ohio; (4) install, replace, and/or remove appurtenances, including valves, stopples, and pipe, at the remaining three (3) Mod Points within Sandusky and Ottawa Counties, Ohio. Columbia estimates that the cost of the project will be about $13 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 Allison Wells, Legal Counsel, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700 at (832) 320–5376; or email at *allison_wells@tcenergy.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 30, 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 regulations,[4] and must be submitted by the protest deadline, which is January 30, 2023. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

[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).

[4] 18 CFR 157.205(e).

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 30, 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 30, 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.

[5] 18 CFR 385.214.

[6] 18 CFR 157.10.

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 CP23–18–000 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 CP23–18–000.

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To mail 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: Allison Wells, Legal Counsel, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700; or email at *allison_wells@tcenergy.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*.

[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.

Dated: December 1, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–26844 Filed 12–8–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15282–000]

White Rapids, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On July 6, 2022, White Rapids, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Slater Hydroelectric Project No. 15282 (project), to be located on the Blackstone River in Providence County, Rhode Island. 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 stone masonry dam (Ashton Dam) that includes: (a) an approximately 10-foot-long west abutment; (b) an approximately 250-foot-long spillway that would be retrofitted to include a new crest gate; (c) a 25-foot-long, 20-foot high gate structure with two 10-foot-long, 10-foot-high openings; (d) a 40-foot-long spillway that would be replaced with a new 40-foot-long, 60-foot-wide concrete powerhouse that includes two 420-kilowatt Kaplan

turbine-generator units; and (e) an approximately 10-foot-long east abutment; (2) an existing impoundment with a surface area of 35 acres at an elevation of 74.0 feet national geodetic vertical datum of 1929; (3) a new intake structure with a 70- to 100-foot-long angled trashrack with 0.75-inch clear bar spacing; (4) two new 10-foot-long, 10-foot-high steel headgates; (5) a new 40-foot-long, 60-foot-wide tailrace; (6) a new 850-foot-long, 13.8-kilovolt transmission line connecting the turbine-generator units to the regional grid; and (7) appurtenant facilities. The estimated annual generation of the Slater Hydroelectric Project would be 3,500 megawatt-hours.

Applicant Contact: Mr. William Fay, White Rapids, LLC, 4145 Church Street, P.O. Box 193, Palmer, Massachusetts 01079; phone: (413) 362–5410; email: *fayengineeringservices@gmail.com.*

FERC Contact: Erin Kimsey; phone: (202) 502–8621; email: *Erin.Kimsey@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/eFiling.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–15282–000.

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. For assistance, contact FERC Online Support.

Dated: December 5, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–26774 Filed 12–8–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13–042]

Green Island Power Authority; Albany Engineering Corporation; Notice of Application for Partial Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

On October 21, 2022, Green Island Power Authority (transferor) and Albany Engineering Corporation (transferee) co-licensees for the Green Island Hydroelectric Project No. 13, filed jointly an application for a partial transfer of license. The project is located at the U.S. Army Corps of Engineers (Corps) Green Island-Troy Lock and Dam on the Hudson River, in Albany County, New York. The project occupies federal land under the jurisdiction of the Corps.[1]

The applicants seek Commission approval to partially transfer the license for the Green Island Hydroelectric Project from the Green Island Power Authority and Albany Engineering Power Corporation as co-licensees to Albany Engineering Corporation as the sole licensee.

Applicants Contact: For the transferor: Ms. Kristin Swinton, Green Island Power Authority, 69 Hudson Avenue, Green Island, NY 12183, Phone: (518) 271–9397, Email: *kristin@greenislandpowerauthority.com.*

For the transferee: Mr. James A. Besha, P.E., and Ms. Wendy Jo Carey, P.E., Albany Engineering Corporation, 5 Washington Square, Albany, NY 12205, Phone: (518) 456–7712, Emails: *jim@albanyengineering.com wendy@albanyengineering.com.*

FERC Contact: Anumzziatta Purchiaroni, Phone: (202) 502–6191, Email: *Anumzziatta.purchiaroni@ferc.gov.*

[1] *Green Island Power Authority,* 140 FERC ¶ 62,133 (2012).

Deadline for filing comments, motions to intervene, and protests: 30 days from the date that the Commission issues this notice. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

In lieu of electronic filing, you may submit a paper copy. Submissions sent via 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–13–042. Comments emailed to Commission staff are not considered part of the Commission record.

Dated: December 1, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–26842 Filed 12–8–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2354–152]

Georgia Power Company; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for a non-capacity amendment of license for the North Georgia Project and has prepared an Environmental Assessment (EA). The licensee proposes to amend the license to replace and upgrade four generating units in the Tugalo powerhouse. The licensee proposes at the Tugalo Development to: remove all turbine

components to refurbish and upgrade, replace the existing generators, replace control panels and instrumentation in the control room, balance plant electrical and mechanical systems, upgrade the cooling system, and replace the spillway gates and trash racks. The project is located in the Savannah River basin on the Tallulah, Chattooga, and Tugalo rivers, in Rabun, Habersham, and Stephens counties, Georgia, and Oconee County, South Carolina. The project does not occupy federal lands.

The EA contains Commission staff's analysis of the potential environmental effects of the proposed amendment and concludes that, it would not constitute a major federal action that would significantly affect the quality of the human environment.

The Commission provides all interested persons with an opportunity to view and/or print the EA via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at *https://ferconline.ferc.gov/eSubscription.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice. The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *https://ferconline.ferc.gov/eFiling.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. In lieu of electronic filings, 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–2354–152.

For further information, contact Aneela Mousam at (202) 502–8357 or *aneela.mousam@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–26841 Filed 12–8–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator and Foreign Utility Company Status

	Docket Nos.
Eastover Solar LLC	EG22–215–000
PGR 2021 Lessee 17, LLC	EG22–216–000
Yellow Pine Solar, LLC	EG22–217–000
Mesquite Solar 4, LLC	EG22–218–000
Mesquite Solar 5, LLC	EG22–219–000
Fall River Solar, LLC	EG22–220–000
DLS—Jean Duluth Project Co, LLC	EG22–221–000
DLS—Laskin Project Co, LLC	EG22–222–000
DLS—Sylvan Project Co, LLC	EG22–223–000
GulfStar Power, LLC	EG22–224–000
Yellowbud Solar, LLC	EG22–225–000
Jicarilla Solar 1 LLC	EG22–226–000
Jicarilla Storage 1 LLC	EG22–227–000
Colice Hall Solar, LLC	EG22–228–000
I Squared Capital	FC22–3–000

Take notice that during the month of November 2022, the status of the above-captioned entities as Exempt Wholesale Generators or Foreign Utility Companies became effective by operation of the Commission's regulations. 18 CFR 366.7(a) (2021).

Dated: December 1, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–26843 Filed 12–8–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER21–2698–000.

Applicants: Portland General Electric Company.

Description: Puget Sound Energy, Inc. submits Average System Cost Rate Filing for Sales of Electric Power to the Bonneville Power Administration, FY 2024–2025.

Filed Date: 12/1/22.

Accession Number: 20221201–5315.

Comment Date: 5 p.m. ET 12/22/22.

Docket Numbers: ER22–2344–001.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: Deficiency Response—Storage Facilities as Transmission Only Assets to be effective 12/31/9998.

Filed Date: 12/2/22.

Accession Number: 20221202–5142.

Comment Date: 5 p.m. ET 12/23/22.

Docket Numbers: ER23–557–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Revisions to OATT & OA on Emission Adders and Calculation of Cost-Based Offers to be effective 2/1/2023.

Filed Date: 12/2/22.

Accession Number: 20221202–5123.

Comment Date: 5 p.m. ET 12/23/22.

Docket Numbers: ER23–558–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original NSA, Service Agreement No. 6720; Queue No. AE1–100 to be effective 11/3/2022.

Filed Date: 12/5/22.

Accession Number: 20221205–5008.

Comment Date: 5 p.m. ET 12/27/22.

Docket Numbers: ER23–559–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 6705; Queue No. AE1–056 to be effective 11/3/2022.

Filed Date: 12/5/22.

Accession Number: 20221205–5023.

Comment Date: 5 p.m. ET 12/27/22.

Docket Numbers: ER23–560–000.

Applicants: New York Independent System Operator, Inc., Niagara Mohawk Power Corporation.

Description: § 205(d) Rate Filing: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: NYISO-National Grid Joint 205 Amended SGIA SA No. 2573 Grissom Solar to be effective 11/18/2022.

Filed Date: 12/5/22.

Accession Number: 20221205–5050.

Comment Date: 5 p.m. ET 12/27/22.

Docket Numbers: ER23–561–000.

Applicants: Black Hills Power, Inc.

Description: § 205(d) Rate Filing: Filing of Second Amended and Restated Standard LGIA with Fall River Solar, LLC to be effective 12/6/2022.

Filed Date: 12/5/22.

Accession Number: 20221205–5085.

Comment Date: 5 p.m. ET 12/27/22.

Docket Numbers: ER23–562–000.

Applicants: TGP Energy Management II, LLC.

Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 2/4/2023.

Filed Date: 12/5/22.

Accession Number: 20221205–5097.

Comment Date: 5 p.m. ET 12/27/22.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES23–10–000.

Applicants: DTE Electric Company.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of DTE Electric Company.

Filed Date: 12/2/22.

Accession Number: 20221202–5217.

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 5, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–26773 Filed 12–8–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL23–9–000]

Idaho Power Company; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On December 2, 2022, the Commission issued an order in Docket No. EL23–9–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation into whether Idaho Power Company's market-based rate authority in the Idaho Power balancing authority area is unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful and to establish a refund effective date.[1] *Idaho Power Company,* 181 FERC ¶ 61,180 (2022).

The refund effective date in Docket No. EL23–9–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL23–9–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2021), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact 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 ''eFile'' link at *http://www.ferc.gov.* In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Dated: December 5, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–26771 Filed 12–8–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15021–000]

Bard College, New York; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for an exemption from licensing for the Annandale Micro Hydropower Project, located on the Saw Kill in the Town of Red Hook, Dutchess County, New York, and has prepared an Environmental Assessment (EA) for the project. The project does not occupy federal land.

[1] The section 206 investigation will extend to any affiliate of Idaho Power with market-based rate authorization.

The EA contains staff's analysis of the potential environmental impacts of the project and concludes that issuing an exemption for the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

The Commission provides all interested persons with an opportunity to view and/or print the EA via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. 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 Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at *https://ferconline.ferc.gov/eSubscription.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice.

The Commission strongly encourages electronic filings. Please file comments using the Commission's eFiling system at *https://ferconline.ferc.gov/eFiling.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/Quick* Comment.aspx. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. 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–15021–000.

For further information, contact Laurie Bauer at (202) 502–6519 or by email at *laurie.bauer@ferc.gov.*

Dated: December 1, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–26840 Filed 12–8–22; 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: RP23–230–000.
Applicants: Wyoming Interstate Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Filing (Black Hills) to be effective 12/1/2022.
Filed Date: 11/30/22.
Accession Number: 20221130–5197.
Comment Date: 5 p.m. ET 12/12/22.

Docket Numbers: RP23–231–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Non-Conforming Negotiated Rate Agreement Filing (APS) to be effective 1/1/2023.
Filed Date: 11/30/22.
Accession Number: 20221130–5205.
Comment Date: 5 p.m. ET 12/12/22.

Docket Numbers: RP23–232–000.
Applicants: Northern Natural Gas Company.
Description: § 4(d) Rate Filing: 20221130 Negotiated Rate to be effective 12/1/2022.
Filed Date: 11/30/22.
Accession Number: 20221130–5259.
Comment Date: 5 p.m. ET 12/12/22.

Docket Numbers: RP23–233–000.
Applicants: Rockies Express Pipeline LLC.
Description: § 4(d) Rate Filing: REX 2022–11–30 Negotiated Rate Agreements to be effective 12/1/2022.
Filed Date: 11/30/22.
Accession Number: 20221130–5305.
Comment Date: 5 p.m. ET 12/12/22.

Docket Numbers: RP23–234–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: Compliance filing: AGT New York Delivery Surcharge 2022 Filing to be effective 1/1/2023.
Filed Date: 12/1/22.
Accession Number: 20221201–5002.
Comment Date: 5 p.m. ET 12/13/22.

Docket Numbers: RP23–235–000.
Applicants: Texas Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Neg Rate Agmt Amendments (TVA 35339, 35340, 35341, 35342) to be effective 12/1/2022.
Filed Date: 12/1/22.
Accession Number: 20221201–5016.
Comment Date: 5 p.m. ET 12/13/22.

Docket Numbers: RP23–236–000.
Applicants: Texas Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Jay-Bee 34446 to Macquarie 54042) to be effective 12/1/2022.
Filed Date: 12/1/22.
Accession Number: 20221201–5017.
Comment Date: 5 p.m. ET 12/13/22.

Docket Numbers: RP23–237–000.
Applicants: Alliance Pipeline L.P.
Description: § 4(d) Rate Filing: Hess 2023 Tioga Usage Charge Filing to be effective 1/1/2023.
Filed Date: 12/1/22.
Accession Number: 20221201–5019.
Comment Date: 5 p.m. ET 12/13/22.

Docket Numbers: RP23–238–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Neg Rate Agmt (Methanex 52142) & Releases (NextEra 55771, Tenaska 55772, 55777) to be effective 12/1/2022.
Filed Date: 12/1/22.
Accession Number: 20221201–5020.
Comment Date: 5 p.m. ET 12/13/22.

Docket Numbers: RP23–239–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Osaka 46429 to Spotlight 55778, Texla 55779) to be effective 12/1/2022.
Filed Date: 12/1/22.
Accession Number: 20221201–5021.
Comment Date: 5 p.m. ET 12/13/22.

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.

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: RP22–1155–001.
Applicants: Northwest Pipeline LLC.
Description: Compliance filing: NWP RP22-xxx Settlement Rates Compliance Filing to be effective 1/1/2023.
Filed Date: 11/30/22.
Accession Number: 20221130–5273.
Comment Date: 5 p.m. ET 12/12/22.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

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 1, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–26837 Filed 12–8–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–4033–002]

Pizarro, Pedro J.; Notice of Filing

Take notice that on December 1, 2022, Pedro J. Pizzarro submitted for filing, application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d (b) and Part 45.8 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR part 45.8.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. 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://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

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: 5:00 p.m. Eastern Time on December 22, 2022.

Dated: December 5, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–26770 Filed 12–8–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD22–12–000]

Joint FERC–DOE Supply Chain Risk Management Technical Conference; Third Supplemental Notice of Technical Conference

Take notice that the Federal Energy Regulatory Commission (Commission) will convene a Joint Technical Conference with the U.S. Department of Energy in the above-referenced proceeding on December 7, 2022, from approximately 8:30 a.m. to 5 p.m. Eastern Time. The conference will be held in-person at the Commission's headquarters at 888 First Street NE, Washington, DC 20426 in the Commission Meeting Room.

The purpose of this conference is to discuss supply chain security challenges related to the Bulk-Power System, ongoing supply chain-related activities, and potential measures to secure the supply chain for the grid's hardware, software, computer, and networking equipment. FERC Commissioners and DOE's Office of Cybersecurity, Energy Security, and Emergency Response (CESER) Director will be in attendance, and panels will involve multiple DOE program offices, the North American Electric Reliability Corporation (NERC), trade associations, leading vendors and manufacturers, and utilities.

The conference will be open for the public to attend, and there is no fee for attendance. Information on this technical conference will also be posted on the Calendar of Events on the Commission's website, *www.ferc.gov,* prior to the event.

Attached to this Supplemental Notice is an agenda for the technical conference, which includes the technical conference program and expected panelists.

The conference will also be transcribed. Transcripts will be available for a fee from Ace Reporting, (202) 347–3700.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov,* call toll-free (866) 208–3372 (voice) or (202) 208–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For more information about this technical conference, please contact Simon Slobodnik at *Simon.Slobodnik@ferc.gov* or (202) 502–6707. For information related to logistics, please contact Lodie White at *Lodie.White@ferc.gov* or (202) 502–8453.

Dated: December 1, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–26839 Filed 12–8–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC23–35–000.
Applicants: RWE Aktiengesellschaft, Baron Winds LLC, Boiling Springs Wind Farm, LLC, Cassadaga Wind LLC, Hardin Wind LLC, Hickory Park Solar, LLC, Iron Horse Battery Storage, LLC, Munnsville Wind Farm, LLC, Pioneer Trail Wind Farm, LLC, Radford's Run Wind Farm, LLC, RWE Renewables O&M, LLC, RWE Renewables QSE, LLC, RWE Supply & Trading Americas, LLC, RWE Supply & Trading US, LLC, Settlers Trail Wind Farm, LLC, Stony Creek Wind Farm, LLC, Wildcat Wind Farm I, LLC.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of RWE Aktiengesellschaft, et al.
Filed Date: 11/30/22.
Accession Number: 20221130–5533.
Comment Date: 5 p.m. ET 12/21/22.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG23–27–000.
Applicants: Myrtle Solar, LLC.
Description: Myrtle Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status of Myrtle Solar, LLC.
Filed Date: 11/30/22.
Accession Number: 20221130–5358.
Comment Date: 5 p.m. ET 12/21/22.

Docket Numbers: EG23–28–000.
Applicants: Prairie Switch Wind, LLC.
Description: Prairie Switch Wind, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 12/1/22.
Accession Number: 20221201–5162.
Comment Date: 5 p.m. ET 12/22/22.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL23–13–000.
Applicants: Roy J. Shanker v. PJM Interconnection LLC.
Description: Complaint of Roy J. Shanker v. PJM Interconnection LLC.
Filed Date: 11/30/22.
Accession Number: 20221130–5523.
Comment Date: 5 p.m. ET 12/20/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–2101–002.
Applicants: Fern Solar LLC.
Description: Supplement to July 26, 2022, Notice of Non-Material Change in Status of Fern Solar LLC.
Filed Date: 11/21/22.
Accession Number: 20221121–5214.
Comment Date: 5 p.m. ET 12/12/22.

Docket Numbers: ER21–2456–000.
Applicants: Rainbow Energy Marketing Corporation.
Description: Refund Report: Refund Report to be effective N/A.
Filed Date: 12/1/22.
Accession Number: 20221201–5104.
Comment Date: 5 p.m. ET 12/22/22.

Docket Numbers: ER21–2464–000.
Applicants: Avangrid Renewables, LLC.
Description: Refund Report: Refund Report to be effective N/A.
Filed Date: 12/1/22.
Accession Number: 20221201–5057.
Comment Date: 5 p.m. ET 12/22/22.

Docket Numbers: ER22–1170–000; ER22–1170–001.
Applicants: Southern Company Services, Inc.
Description: Southern Companies submits an Amendment to its March 2, 2022 Waiver Request for the NAESB business practice standards.
Filed Date: 4/6/22.
Accession Number: 20220406–5255.
Comment Date: 5 p.m. ET 12/22/22.

Docket Numbers: ER22–2901–000; ER22–2902–000.
Applicants: Power City Partners, L.P., Carthage Energy, LLC.
Description: Supplement to November 18, 2022, Carthage Energy, LLC, et al. tariff filing.
Filed Date: 11/30/22.
Accession Number: 20221130–5514.
Comment Date: 5 p.m. ET 12/21/22.

Docket Numbers: ER23–518–000.
Applicants: New England Power Pool Participants Committee.
Description: § 205(d) Rate Filing: Dec 2022 Membership Filing to be effective 12/1/2022.
Filed Date: 11/30/22.
Accession Number: 20221130–5223.
Comment Date: 5 p.m. ET 12/21/22.

Docket Numbers: ER23–519–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: November 2022 Western WDT Service

Agreement Biannual Filing (SA 17) to be effective 2/1/2023.

Filed Date: 11/30/22.

Accession Number: 20221130–5229.

Comment Date: 5 p.m. ET 12/21/22.

Docket Numbers: ER23–520–000.

Applicants: Pacific Gas and Electric Company.

Description: § 205(d) Rate Filing: November 2022 Western Interconnection Biannual Filing (TO SA 59) to be effective 2/1/2023.

Filed Date: 11/30/22.

Accession Number: 20221130–5231.

Comment Date: 5 p.m. ET 12/21/22.

Docket Numbers: ER23–521–000.

Applicants: RWE Supply & Trading Americas, LLC.

Description: § 205(d) Rate Filing: Notice of Succession to Market Based Rate Tariff to be effective 12/1/2022.

Filed Date: 11/30/22.

Accession Number: 20221130–5233.

Comment Date: 5 p.m. ET 12/21/22.

Docket Numbers: ER23–522–000.

Applicants: RWE Renewables Energy Marketing, LLC.

Description: § 205(d) Rate Filing: Notice of Succession to be effective 12/1/2022.

Filed Date: 11/30/22.

Accession Number: 20221130–5237.

Comment Date: 5 p.m. ET 12/21/22.

Docket Numbers: ER23–523–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2022–11–30_Schedule 2 MISO TOs to be effective 12/1/2022.

Filed Date: 11/30/22.

Accession Number: 20221130–5239.

Comment Date: 5 p.m. ET 12/21/22.

Docket Numbers: ER23–524–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Rate Schedule No. 217, Exhibit B.BKE–LIB, Revisions to Attachment No. 1 to be effective 10/1/2021.

Filed Date: 11/30/22.

Accession Number: 20221130–5270.

Comment Date: 5 p.m. ET 12/21/22.

Docket Numbers: ER23–525–000.

Applicants: Public Service Company of Colorado.

Description: § 205(d) Rate Filing: 2022–11–30 PSCo Concurrence-TSGT Intercon of Milk Creek-719–0.0.0 to be effective 11/17/2022.

Filed Date: 11/30/22.

Accession Number: 20221130–5277.

Comment Date: 5 p.m. ET 12/21/22.

Docket Numbers: ER23–526–000.

Applicants: Public Service Company of New Mexico.

Description: § 205(d) Rate Filing: Fourth Revised Service Agreement No. 278 to be effective 1/1/2023.

Filed Date: 11/30/22.

Accession Number: 20221130–5312.

Comment Date: 5 p.m. ET 12/21/22.

Docket Numbers: ER23–527–000.

Applicants: 64NB 8me LLC.

Description: Tariff Amendment: Cancellation entire tariff to be effective 12/1/2022.

Filed Date: 11/30/22.

Accession Number: 20221201–5000.

Comment Date: 5 p.m. ET 12/21/22.

Docket Numbers: ER23–528–000.

Applicants: 91MC 8me, LLC.

Description: Tariff Amendment: Cancellation entire tariff to be effective 12/1/2022.

Filed Date: 12/1/22.

Accession Number: 20221201–5001.

Comment Date: 5 p.m. ET 12/22/22.

Docket Numbers: ER23–529–000.

Applicants: Pacific Gas and Electric Company.

Description: Notice of Termination of Small Generator Interconnection Agreement of Pacific Gas and Electric Company.

Filed Date: 11/30/22.

Accession Number: 20221130–5493.

Comment Date: 5 p.m. ET 12/21/22.

Docket Numbers: ER23–530–000.

Applicants: Pacific Gas & Electric Company.

Description: Notice of Termination of Service Agreement of Pacific Gas and Electric Company.

Filed Date: 11/29/22.

Accession Number: 20221129–5232.

Comment Date: 5 p.m. ET 12/20/22.

Docket Numbers: ER23–531–000.

Applicants: Harry Allen Solar Energy LLC.

Description: § 205(d) Rate Filing: Harry Allen Solar Energy LLC to be effective 12/30/2022.

Filed Date: 12/1/22.

Accession Number: 20221201–5035.

Comment Date: 5 p.m. ET 12/22/22.

Docket Numbers: ER23–532–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2022–12–01_CMMPA Attachment O Rate Protocol Revisions to be effective 2/1/2023.

Filed Date: 12/1/22.

Accession Number: 20221201–5044.

Comment Date: 5 p.m. ET 12/22/22.

Docket Numbers: ER23–533–000.

Applicants: Public Service Company of Colorado.

Description: Notice of Cancellation of Energy Exchange Agreement of Public Service Company of Colorado.

Filed Date: 11/30/22.

Accession Number: 20221130–5535.

Comment Date: 5 p.m. ET 12/21/22.

Docket Numbers: ER23–534–000.

Applicants: ISO New England Inc., New England Power Pool.

Description: ISO New England Inc. and New England Power Pool filing of Installed Capacity Requirements, Hydro-Quebec Interconnection Capability Credits and Related Values for 2023–2024, 2024–2025 and 2025–2026 Annual Reconfiguration Auction.

Filed Date: 11/30/22.

Accession Number: 20221130–5536.

Comment Date: 5 p.m. ET 12/21/22.

Docket Numbers: ER23–535–000.

Applicants: Alabama Power Company, Mississippi Power Company, Georgia Power Company.

Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Conez Solar (Solar & Battery) LGIA Filing to be effective 11/23/2022.

Filed Date: 12/1/22.

Accession Number: 20221201–5111.

Comment Date: 5 p.m. ET 12/22/22.

Docket Numbers: ER23–536–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2022–12–01_Updates to the Default Technology Specific Avoidable Costs Filing to be effective 1/31/2023.

Filed Date: 12/1/22.

Accession Number: 20221201–5135.

Comment Date: 5 p.m. ET 12/22/22.

Docket Numbers: ER23–537–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 1313R16 Oklahoma Gas and Electric Company NITSA and NOA to be effective 11/1/2022.

Filed Date: 12/1/22.

Accession Number: 20221201–5141.

Comment Date: 5 p.m. ET 12/22/22.

Docket Numbers: ER23–538–000.

Applicants: Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.

Description: § 205(d) Rate Filing: Niagara Mohawk Power Corporation submits tariff filing per 35.13(a)(2)(iii: NYISO Joint 205: Amended SGIA NYISO, National Grid, Darby Solar, SA2556 to be effective 11/16/2022.

Filed Date: 12/1/22.

Accession Number: 20221201–5142.

Comment Date: 5 p.m. ET 12/22/22.

Docket Numbers: ER23–539–000.

Applicants: Morongo Transmission LLC.

Description: § 205(d) Rate Filing: Annual Operating Cost Update Filing 2023 to be effective 1/1/2023.

Filed Date: 12/1/22.

Accession Number: 20221201–5146.

Comment Date: 5 p.m. ET 12/22/22.

Docket Numbers: ER23–540–000.

Applicants: Duke Energy Florida, LLC.

Description: § 205(d) Rate Filing: DEF–SECI Dynamic Transfer Agmt RS No. 380 to be effective 2/1/2023.

Filed Date: 12/1/22.

Accession Number: 20221201–5170.

Comment Date: 5 p.m. ET 12/22/22.

Docket Numbers: ER23–541–000.

Applicants: Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.

Description: § 205(d) Rate Filing: Niagara Mohawk Power Corporation submits tariff filing per 35.13(a)(2)(iii: NYISO Joint 205: Amended SGIA NYISO, National Grid, Branscomb Solar (SA2557) to be effective 11/16/2022.

Filed Date: 12/1/22.

Accession Number: 20221201–5174.

Comment Date: 5 p.m. ET 12/22/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 1, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–26838 Filed 12–8–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–047]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed November 28, 2022 10 a.m. EST Through December 5, 2022 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search.*

EIS No. 20220180, Final, NMFS, AK, Bering Sea and Aleutian Islands Halibut Abundance-Based Management of Amendment 80 Prohibited Species Catch Limit—Amendment 123 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area, Review Period Ends: 01/09/2023, Contact: Bridget Mansfield 907–586–7221.

EIS No. 20220181, Final, TVA, TN, Cumberland Fossil Plant Retirement, Review Period Ends: 01/09/2023, Contact: Ashley Pilakowski 865–632–2256.

EIS No. 20220182, Final, WDFW, WA, ADOPTION—Puget Sound Nearshore Ecosystem Restoration, Review Period Ends: 01/09/2023, Contact: Lisa Wood 260–902–2260.

The Washington Department of Fish and Wildlife (WDFW) has adopted the United States Army Corps of Engineers' Final EIS No. 20160161, filed 7/8/2016 with the Environmental Protection Agency. The WDFW was not a cooperating agency on this project. Therefore, republication of the document is necessary under Section 1506.3(c) of the CEQ regulations.

Amended Notice:

EIS No. 20220156, Draft, BOEM, CA, Programmatic Environmental Impact Statement for Oil and Gas Decommissioning Activities on the Pacific Outer Continental Shelf, Comment Period Ends: 01/10/2023, Contact: Richard Yarde 805–384–6379. Revision to FR Notice Published 10/28/2022; Extending the Comment Period from 12/12/2022 to 01/10/2023.

Dated: December 5, 2022.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2022–26806 Filed 12–8–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ORD–2022–0831; FRL–10465–01–ORD]

Call for Information on the Integrated Science Assessment for Oxides of Nitrogen—Health Criteria

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; call for information.

SUMMARY: The Environmental Protection Agency (EPA) is preparing an Integrated Science Assessment (ISA) as part of the review of the primary (health-based) National Ambient Air Quality Standards (NAAQS) for oxides of nitrogen. For gaseous oxides of nitrogen (*i.e.,* oxidized nitrogen compounds), which also include nitric oxide (NO) and gases produced from reactions involving NO and NO_2, the primary NAAQS are specified in terms of nitrogen dioxide (NO_2). The ISA will be developed by EPA's Center for Public Health and Environmental Assessment (CPHEA) within the Office of Research and Development. When final, this ISA is intended to update the previous Integrated Science Assessment for Oxides of Nitrogen—Health Criteria (EPA/600/R–15/068, 2016), published on January 28, 2016 (2016 ISA). Interested parties are invited to assist EPA in developing and refining the scientific information base for the review of the primary NO_2 NAAQS by submitting research studies and data that have been published in the peer-reviewed scientific literature, accepted for publication, or presented at a public scientific meeting since May 15, 2015.

DATES: All communications and information should be received by EPA February 7, 2023.

ADDRESSES: Information may be submitted electronically, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions as provided in the section of this notice entitled **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: For information on the period of submission, contact the Office of Research and Development (ORD) Docket; telephone: 202–566–1752; facsimile: 202–566–1753; or email *ORD.Docket@epa.gov.* For technical information, contact Christine Alvarez; phone: 919–541–3881; fax: 919–541–5078 or email: *Alvarez.christine@epa.gov,* or Stephanie DeFlorio-Barker; phone 919–541–4621; fax: 919–541–5078 or email: *DeFlorio-Barker.Stephanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Document

Section 108(a) of the Clean Air Act directs the Administrator to identify certain air pollutants which, among other things, ''cause or contribute to air pollution which may reasonably be anticipated to endanger public health or

welfare''; [1] and to issue air quality criteria for them. These air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air. . . .''. Under section 109 of the Act, EPA is then to establish NAAQS for each pollutant for which EPA has issued criteria. Section 109(d)(1) of the Act subsequently requires periodic review and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. EPA is also required to review and, if appropriate, revise the NAAQS, based on the revised air quality criteria (for more information on the NAAQS review process, see *https://www.epa.gov/naaqs*).

EPA has established NAAQS for six criteria pollutants including oxides of nitrogen. Periodically, EPA reviews the scientific basis for these standards by preparing an ISA. In conjunction with additional technical and policy assessments conducted by EPA's Office of Air Quality Planning and Standards (OAQPS), the ISA provides the scientific and technical basis for EPA decisions on the adequacy of the current NAAQS and the appropriateness of possible alternative standards.

Early steps in this process include announcing the beginning of this periodic NAAQS review and the development of the ISA, and EPA requesting that the public submit scientific literature that they want to bring to the attention of the Agency for consideration as it begins this review process. The Clean Air Scientific Advisory Committee (CASAC), whose review and advisory functions are mandated by section 109(d)(2) of the Clean Air Act, is charged (among other things) with independent scientific review of the Agency's air quality criteria. In conjunction with the CASAC review, the public will have an opportunity to review and comment on the draft ISA. These opportunities will be announced in the **Federal Register**.

The next ISA for Oxides of Nitrogen—Health Criteria will build on the 2016 ISA used in the previous review,[2] focusing on assessing newly available information. The public is encouraged to assist in identifying relevant scientific information for the review by submitting research studies that were not part of the prior review and have been published or accepted for publication in a peer-reviewed journal May 15, 2015. The Agency is interested in obtaining information from new and emerging toxicological studies examining the effects of controlled exposures to oxides of nitrogen in laboratory animals, humans and in-vitro systems, as well as epidemiologic (observational) studies examining associations between health effects and exposures to ambient oxides of nitrogen in human populations. In addition to studies that provide information on health outcomes, EPA also seeks recent information in other areas of research relevant to oxides of nitrogen such as sources and emissions, analytical methods, transport and transformation in the environment, and ambient concentrations. This and other literature relevant to a review of the primary (health-based) NO_2 NAAQS will be considered for inclusion in the assessment in the forthcoming ISA.

The Agency seeks information regarding the design and scope of the review of the air quality criteria to ensure that the ISA addresses key policy-relevant issues and considers the new science that is relevant to informing our understanding of these issues. The Agency also seeks new scientific information that may address key uncertainties identified in the last review of the primary NO_2 NAAQS, which are provided in the Policy Assessment (EPA–452/R–17–003, April 2017).[3] Additional opportunities for submission of new peer-reviewed, published (or in-press) papers will be possible as part of public comment on the draft ISA that will be reviewed by the CASAC.

II. How To Submit Technical Comments to the Docket at www.regulations.gov

We encourage the public to submit comments to Docket ID No. ORD–2022–0831 by one of the following methods:

- The web at *https://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: Docket_ORD@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* EPA Docket Center, ORD Docket (Mail Code: 28221T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460. The phone number is 202–566–1752. Due to COVID–19, there may be a delay in processing comments submitted by mail.
- *Hand Delivery or Courier (by scheduled appointment only):* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal holidays).

Instructions: Direct your comments to Docket ID No. ORD–2022–0831. Please ensure that your comments are submitted within the specified comment period, so that EPA has adequate time to consider them. Comments received after the closing date will be marked ''late,'' and may not be considered if time does not permit. It is EPA's policy to include all materials it receives in the public docket without change and to make the materials available online at *www.regulations.gov,* including any personal information provided, unless materials include information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the materials that are placed in the public docket and made available on the internet. If you submit electronic materials, EPA recommends that you include your name and other contact information in the body of your materials and with any disk or CD–ROM you submit. CD–ROM and disks can only be accepted via UPS/FedEx/hand delivery and not through regular mail. If EPA cannot read your materials due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider the materials you submit. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EPA's Docket Center homepage at *www.epa.gov/epahome/dockets.htm.*

Docket: Documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some

[1] Under Clean Air Act section 302(h), welfare effects include, but are not limited to, ''effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being.''

[2] The scientific assessment for the last review is documented in the Integrated Science Assessment for Oxides of Nitrogen—Health Criteria (Final Report EPA/600/R–15/068, 81 FR 4910, January 28, 2016).

[3] The 2014 Policy Assessment is available at: *https://www3.epa.gov/ttn/naaqs/standards/NO2/data/140501_pa_NO2_fin.pdf.*

information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or at EPA's Docket Center.

Wayne Cascio,

Director, Center for Public Health and Environmental Assessment, Office of Research and Development.

[FR Doc. 2022–26786 Filed 12–8–22; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL SPACE COUNCIL

Notice of In-Space Authorization and Supervision Policy, Additional Listening Session; Correction

AGENCY: Executive Office of the President (EOP) National Space Council.

SUMMARY: The National Space Council published a document in the **Federal Register** of 29 November 2022 concerning a third virtual listening session. The document contained incorrect times.

FOR FURTHER INFORMATION CONTACT: Diane Howard at *MBX.NSpC.IASP@ovp.eop.gov* or by calling 202.456.7831.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of 29 November 2022, in FR Doc. 2022–25961, on page 73299, in the third column, correct the **DATES** caption to read:

Dates

1. Approaches for Authorization & Supervision continued:
Thursday, 15 December 2022 10:00 a.m.–11:30 a.m. ET

Dated: 6 December 2022.

Diane Howard,

Director of Commercial Space Policy, National Space Council.

[FR Doc. 2022–26826 Filed 12–8–22; 8:45 am]

BILLING CODE 3395–F2–P

FEDERAL COMMUNICATIONS COMMISSION

[IB Docket No. 20–205; DA 22–1202; FR 116562]

Notice of 90-Day Period To Submit Affirmation of Operational Status of Identified Earth Station Antennas To Avoid Losing Incumbent Status or File To Remove Identified Antennas From IBFS if No Longer Operational

AGENCY: Federal Communications Commission (FCC).

ACTION: Notice.

SUMMARY: In this document, the International Bureau (Bureau) provides the following notice to operators of certain incumbent FSS C-band earth station antennas recently reported to the Bureau by RSM US LLP (RSM), the C-band Relocation Coordinator, on behalf of incumbent C-band satellite operators: Failure to submit a filing affirming the continued operation of the earth station antennas reported to the Bureau as inactive and the intent to participate in the C-band transition will result in a Bureau announcement that those authorizations identified as inactive in the Appendix attached to the Public Notice document (PN) have automatically terminated by operation of rule, and that those authorizations will be terminated in IBFS and removed from the incumbent earth station list. According to RSM, each antenna included in the Appendix to the PN document was reported by their earth station operator to RSM or a satellite operator as no longer receiving service from a C-band satellite even though the FCC's International Bureau Filing System (IBFS) continues to include the antenna as active.

DATES: Identified earth station operators must provide notice of operational status by February 16, 2023.

FOR FURTHER INFORMATION CONTACT: Kerry Murray, International Bureau, Satellite Division, at (202) 418–0734, *Kerry.Murray@fcc.gov* or *IBFSINFO@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, DA 22–1202, released November 18, 2022. The full text of this document, along with the Appendix identifying the specific earth station antennas subject to automatic termination, is available for public inspection and can be downloaded at *https://www.fcc.gov/document/ib-identifies-inactive-c-band-incumbent-earth-station-antennas* or by using the search function for IB Docket No. 20–205 on the Commission's ECFS page at *www.fcc.gov/ecfs.*

Background. Under the Commission's *3.7 GHz Band Report and Order,* RSM is responsible for coordinating with the five incumbent C-band satellite operators—Eutelsat, Intelsat, SES, StarOne, and Telesat—to ensure that all incumbent earth stations are accounted for in the transition.[1] The overwhelming majority of incumbent earth stations have been claimed by the satellite operator(s) from which they receive service, included in the relevant satellite operators' transition plans to the Commission, and will be transitioned to the upper 200 megahertz of the band.[2] RSM, as the C-band Relocation Coordinator, and the satellite operators have conducted outreach and research to determine whether incumbent earth station antennas are still operational in the 3.7 GHz band and, if so, from which satellite(s) the earth station receives its service.[3] RSM has advised the Commission that it and the incumbent satellite operators regularly share the results of their respective outreach efforts to better coordinate the transition of incumbent earth stations.

In the course of their outreach, the satellite operators and RSM have identified certain entries on the incumbent list that they report include antennas that are not active C-band antennas in the 3.7 GHz band. According to RSM, these entries include: (1) C-band antennas that are inactive or non-operational, (2) authorizations that list more C-band antennas than are currently operational at a site,[4] (3) duplicate authorizations by the same entity for the same C-band antennas, and (4) operational antennas that do not receive in the 3.7 GHz band.[5] RSM represents that these earth station operators have failed to make filings in the FCC's IBFS to reflect the correct status of those antennas.

On October 28, 2022, RSM submitted a letter identifying these individual earth station antennas that fall into one of the three categories listed above, which are included on the latest incumbent earth station list and

[1] *See Expanding Flexible Use of the 3.7 to 4.2 GHz Band,* Report and Order and Order of Proposed Modification, 85 FR 22804, 22818–22820 (2020) (*3.7 GHz Band Report and Order*). As a reminder, the Commission decided in the *3.7 GHz Band Report and Order* that it will no longer accept applications for registration and licenses for FSS operations in the 3.7–4.0 GHz band in the contiguous United States and that it will not accept applications for new earth stations in the 4.0–4.2 GHz band in the contiguous United States for the time being, during the C-band transition. *3.7 GHz Band Report and Order,* 85 FR 22823.

[2] 47 CFR 27.1412(d) (transition plan requirements). The satellite operators also file quarterly status reports in GN Docket No. 20–173. 47 CFR 27.1412(f).

[3] *3.7 GHz Band Report and Order,* 85 FR 22838.

[4] According to RSM, in these cases an authorization holder has included in IBFS, in one or more callsigns, more C-band receive antennas at a site than exist at that site—*e.g.,* 10 antennas registered when there are only six antennas at the site.

[5] For instance, RSM has represented that certain antennas on the Incumbent List do not receive in the 3.7 GHz band, but are instead antennas operating on Ku band or Ka band frequencies.

continue to be listed in IBFS.[6] RSM explains that it compiled this group of antennas—which were not included in the January 19 PN, May 14 PN, July 23 PN, or September 27 PN—from representations made to RSM by the satellite operators. We have attached to this PN an Appendix listing the antennas submitted by RSM that fall into the four categories.

We hereby presume as a factual matter, on a rebuttable basis, that earth station antennas included in the Appendix are not active antennas receiving in the 3.7 GHz band, or that the C-band earth station antennas associated with a given site, as reflected on the incumbent list, exceed the actual number of such antennas located at that site. Absent factual rebuttal from the earth station operator by February 16, 2023, these antennas would not satisfy the Commission's C-band transition rules that antennas must be operational C-band antennas entitled to interference protection in the 3.7 GHz band to qualify for incumbent status.[7] For inactive earth stations, section 25.161(c) of the Commission's rules provides that an earth station authorization is automatically terminated if the station is not operational for more than 90 days.[8] Where a registration lists more antennas than have been observed to exist at a site, the apparently non-existent antennas will be deemed never to have existed and, accordingly, will fail to qualify for incumbent status under the C-band transition rules. Similarly, antennas that operate in other bands but do not receive in the 3.7 GHz band would not qualify for incumbent status under the C-band transition rules.[9]

Incumbent earth station operators who need to affirm the continued operation of the identified earth station antennas. We direct earth station operators with incumbent earth station antennas that appear on the appended list to make either of two filings no later than 90 days after release of this document (*i.e.,* by February 16, 2023): (1) file to correct the IBFS filings for the affected antennas,[10] or (2) file in ECFS IB Docket No. 20–205 affirming that those antennas are operational antennas receiving in the 3.7 GHz band. An earth station operator may contact Bureau staff at *IBFSINFO@fcc.gov* if it has questions about the above or if it needs instructions on how to surrender entire Callsigns in IBFS, how to remove an inactive earth station antenna from a Callsign that includes other operational earth station antennas, or how to modify its Callsign to accurately reflect the bands used by an antenna.

Earth station operators with earth station antenna(s) on the attached list that do not respond by February 16, 2023, affirming operation of the identified earth station antennas in the 3.7 GHz band [11] will be deemed, based on the above presumptions, to have had either their authorizations to use the 3.7 GHz band for those antennas or their interference protection in the use of the 3.7 GHz band automatically terminated by rule. In those cases, the Bureau also will, as needed, terminate in IBFS those portions of the authorizations relating to the 3.7 GHz band and/or make changes in IBFS necessary to accurately reflect actual use of and interference protection for the relevant facilities. In addition, the Bureau will correct the incumbent earth station list by removing terminated earth station antennas and amending the list to no longer include any antennas in the list that are not operational C-band antennas, including over-registered antennas or antennas receiving in bands other than the 3.7 GHz band. Protection from interference from the network deployments of new wireless licenses and eligibility for reimbursement of any transition costs, including the cost of any filters, will be limited to those earth station antennas on the updated list.

Incumbent earth station operators who need to provide additional information to avoid harmful interference. As a reminder, while not subject to 90-days' notice, earth station operators that have not provided the necessary information to the Relocation Coordinator or satellite operators may not be successfully transitioned before terrestrial wireless licensees initiate service in the band.

Unless those earth station operators provide the necessary information, they will risk losing their rights to receive relocation assistance prior to the initiation of service in the band by the incoming terrestrial wireless licensees, as well as any rights to operate in the lower C-band at their current locations free of harmful interference that may occur as these licensees deploy their networks.

Federal Communications Commission.

Nese Guendelsberger,

Deputy Chief, International Bureau.

[FR Doc. 2022–26494 Filed 12–8–22; 8:45 am]

BILLING CODE 6712–01–P

[6] *See* October 28 RSM filing. The October 28 RSM filing, with its attachment, can be found in ECFS. *See also* November 18, 2022, DA 22–1202.

[7] 47 CFR 25.138(c)(1). *See* note 4 *supra.* As noted above, note 2 *supra,* the earth station antennas listed in the Appendix hereto do not include those that are subject to lump sum elections. Those elections may include C-band antennas whose operators have decided to discontinue all use of the C-band by the end of the C-band transition.

[8] 47 CFR 25.161(c). The Bureau has delegated authority to enforce the part 25 rules. 47 CFR 0.261(a)(15).

[9] For the latter two groups of antennas, we note that the following rules would apply: (1) section 25.162(c) and (e) of the Commission's rules provide that the interference protection of a receiving earth station is automatically terminated in certain circumstances, including when a station has been used less than 50% of the time during any 12-month period or when actual use of the facility is inconsistent with what is in a registrant's application, 47 CFR 25.162(c) & (e), and (2) section 25.115(b)(8) of the Commission's rules require earth station operators to take the steps necessary to remove non-operational antennas from the active records in the IBFS, 47 CFR 25.115(b)(8).

[10] In addition to the required filings in IBFS, those earth station operators may also make a filing in ECFS IB Docket No. 20–205 confirming the extent to which they are surrendering callsigns, removing antennas, or modifying callsigns in IBFS.

[11] Notwithstanding an affirmation of continued operation, the Bureau retains the authority to eliminate an earth station antenna's incumbent status if the Bureau receives additional evidence that the antenna has failed to satisfy applicable requirements for maintaining operation or is otherwise ineligible to be considered an incumbent.

FEDERAL MARITIME COMMISSION

[Docket No. 22–33]

CCMA, LLC, Complainant v. Mediterranean Shipping Company S.A. and Mediterranean Shipping Company (USA) Inc., Respondent; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission (Commission) by CCMA, LLC., hereinafter ''Complainant,'' against Mediterranean Shipping Company S.A. and Mediterranean Shipping Company (USA) Inc. (hereinafter ''Respondent.'') Complainant states that it is organized under the laws of the State of Delaware. Complainant identifies the Respondent as an ocean common carrier incorporated in New York with its principal place of business located in Switzerland conducting business in the United States through Mediterranean Shipping Company (USA) Inc., a company located in New York, New York.

Complainant alleges that Respondent violated 46 U.S.C. 41102(c), regarding its practices and the billing and assessment of charges on the shipments of the Complainant's container cargo, including demurrage, detention, and dwell charges. An answer to the complaint is due to be filed with the Commission within twenty-five (25) days after the date of service. The full text of the complaint can be found in the Commission's Electronic Reading Room at *https://www2.fmc.gov/readingroom/proceeding/22-33/.*

This proceeding has been assigned to Office of Administrative Law Judges. The initial decision of the presiding officer in this proceeding shall be issued by December 5, 2023, and the final decision of the Commission shall be issued by June 19, 2024.

Served: December 5, 2022.

William Cody,

Secretary.

[FR Doc. 2022–26750 Filed 12–8–22; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL MARITIME COMMISSION

Agency Information Collection Activities: 30-Day Public Comment Request

AGENCY: Federal Maritime Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Maritime Commission (Commission) is giving public notice that the agency has submitted to the Office of Management and Budget (OMB) for approval a new data collection concerning containerized vessel imports and exports to and from the United States described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before January 9, 2023.

ADDRESSES: Comments should be addressed to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Rita Young, Desk Officer for Federal Maritime Commission, *OIRA_Submission@OMB.EOP.GOV,* and to: Lucille L. Marvin, Managing Director, Office of the Managing Director, Federal Maritime Commission, *omd@fmc.gov.*

Please send separate comments for each specific information collection listed below and reference the information collection's title and OMB number in your comments.

FOR FURTHER INFORMATION CONTACT: Copies of the information collections and instructions, or copies of any comments received, may be obtained by contacting Tara Nielsen at 202–523–5800 or *omd@fmc.gov.*

SUPPLEMENTARY INFORMATION:

Request for Comments

The Commission, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing information collections listed in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). On August 8, 2022, the Commission published a notice and request for comments in the **Federal Register** (87 FR 48182) regarding collection of information on Container Vessel Imports and Exports. The Commission received six comments from the Maritime Exchange for the Delaware River and Bay, World Shipping Council, American Cotton Shippers Association, BassTech International, National Industrial Transportation League, and National Fisheries Institute. The American Cotton Shippers Association, National Fisheries Institute, BassTech, and National Industrial Transportation League supported the data collection. Both the American Cotton Shippers Association and the National Industrial Transportation League identified benefits to the shipping public from this data collection due to increased transparency and insight. BassTech International recommended that information collected should include equipment type and port. This information is included in the current data collection template.

The Maritime Exchange for the Delaware River and Bay opposed the data collection as redundant with existing Customs and Border Protection (CBP) collections, though they noted that the CBP automated collection of export data is still in a pilot program. The World Shipping Council likewise opposed the data collection noting the CBP data collection, and also suggested supplementing data gaps with information from the Army Corps of Engineers, Bureau of Transportation Statistics, and commercial sources. They further contended that the PRA requires the FMC to utilize data being provided to other Federal agencies.

The Commission acknowledges that the CBP has a rich source of data on U.S. imports and intends to use CBP data to validate the import data that it collects. Additionally, the Commission notes that the commercial sources of data referenced by the World Shipping Council are largely derived from government data and will be helpful in verifying the accuracy of the data submitted to the Commission. None of these data sources (government or commercial) even if used in concert, provide the level and scope of information required to meet the Congressional requirements under the Ocean Shipping Reform Act of 2022 (OSRA 2022). The Commission, however, intends to minimize the data reporting burden as much as possible by using definitions and terminology in its data collection that align with other Federal agency data collections. This will allow carriers to use and leverage their existing systems to generate the reports for items that have overlap.

Comments submitted in response to this notice will be included or summarized in our request for the Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please do not include any confidential or inappropriate material in your comments. We invite comments on the value of collecting information on cargo loaded and off-loaded outside of the U.S. on service strings that include U.S. port calls.

Information Collections Open for Comment

Title: Container vessel imports and exports.

OMB Approval Number: 3072–XXXX.

Abstract: The Ocean Shipping Reform Act of 2022 (OSRA 2022) includes the following language, ''The Federal Maritime Commission shall publish on its website a calendar quarterly report that describes the total import and export tonnage and the total loaded and empty 20-foot equivalent units per vessel (making port in the United States, including any territory or possession of the United States) operated by each ocean common carrier covered under this chapter. Ocean common carriers under this chapter shall provide to the Commission all necessary information, as determined by the Commission, for completion of this report.'' 46 U.S.C. 41110. The FMC will request information on containerized imports and exports from each identified common carrier on a monthly basis. The data elements will include both tonnage and empty and laden 20-foot, 40-foot, and 45-foot containers discharged and loaded. The scope will include each port of call on service strings that include U.S. calls by vessel-operating common carriers operating in the U.S. foreign oceanborne commerce.

The information will be used to compile and publish a quarterly report on total U.S. export and import tonnage deployed and total loaded and empty 20-foot equivalent units per vessel operated by vessel-operating common carriers. The universe will be vessel-operating common carriers that transport 1,500 or more 20-foot equivalent units per month (total across imports and exports, regardless of whether they are laden or empty) in or out of the U.S., in the U.S. oceanborne foreign commerce. The Commission estimates that approximately 70 of the

154 currently registered vessel-operating common carriers transport 1,500 or more 20-foot equivalent units per month, totaling over 99 percent of imported and exported containerized cargo.

Current Actions: This information being submitted contains a new data collection.

Type of Review: New data collection.

Needs and Uses: The Commission will use collected data to publish a quarterly report as directed by OSRA 2022.

Frequency: This information will be collected monthly.

Type of Respondents: The universe will be carriers who transport 1,500 20-foot equivalent units or more per month (total across imports and exports, regardless of whether they are laden) in or out of the U.S., in the U.S. oceanborne foreign commerce.

Number of Annual Respondents: The Commission estimates an annual respondent universe of 70. The Commission expects the estimated number of annual respondents to remain at 70 in the future.

Estimated Time per Response: The time per response is estimated at 80 person-hours for reporting.

Total Annual Burden: For the 70 annual respondents, the burden is calculated as 70 × 80 hours = 5,600 hours.

William Cody,

Secretary.

[FR Doc. 2022–26804 Filed 12–8–22; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Senior Executive Service; Performance Review Board

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) for the Federal Mine Safety and Health Review Commission. The PRB reviews the performance appraisals of career and non-career senior executives. The PRB makes recommendations regarding proposed performance appraisals, ratings, bonuses, pay adjustments, and other appropriate personnel actions.

DATES: Applicable on December 9, 2022.

FOR FURTHER INFORMATION CONTACT: Tammy Russell, Acting Executive Director, Federal Mine Safety and Health Review Commission, (202) 434–9977.

SUPPLEMENTARY INFORMATION: This Notice announces the appointment of the following primary and alternate members to the Federal Mine Safety and Health Review Commission PRB:

Primary Members

Arturo Cardenas, Director of Programs, Railroad Retirement Board
James Biggins, General Manager, Defense Nuclear Facilities Safety Board
Christopher Roscetti, Technical Director, Defense Nuclear Facilities Safety Board.

Alternate Members

None.

Authority: 5 U.S.C. 4313(c)(4).

Tammy Russell,

Acting Executive Director, Federal Mine Safety and Health Review Commission.

[FR Doc. 2022–26792 Filed 12–8–22; 8:45 am]

BILLING CODE 6735–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–PBS–2022–07; Docket No. 2022–0002; Sequence No. 28]

Notice of Intent To Prepare a Supplemental Environmental Impact Statement (SEIS) for the International Falls Land Port of Entry Modernization and Expansion Project in International Falls, Minnesota

AGENCY: Public Buildings Service (PBS), General Services Administration (GSA).

ACTION: Notice of Intent (NOI); Announcement of meeting.

SUMMARY: The GSA intends to prepare a Supplemental Environmental Impact Statement (SEIS) and conduct the Section 106 Process of the National Historic Preservation Act (NHPA) to address proposed improvements at the International Falls Land Port of Entry (LPOE), including site expansion (up to 20.5 acres), demolition, and new construction. This NOI also announces the public scoping process for the SEIS.

DATES: *Public Scoping Period*—Interested parties are invited to provide comments regarding the scope of the SEIS. The public scoping period begins with the publication of this NOI in the **Federal Register** and continues until Friday, January 13, 2023. Written comments must be received by the last day of the scoping period (see **ADDRESSES** section of this NOI on how to submit comments).

Meeting Date—GSA will host a hybrid virtual and in-person public and stakeholder meeting on Tuesday, December 13, 2022, from 6 p.m. to 8 p.m., Central Standard Time (CST). The purpose of the meeting is to provide information on the project and to encourage public feedback on the scope of the SEIS. The meeting will be primarily virtual in nature, although members of the public may attend at the Koochiching County Court Administration Building to view an online broadcast of the meeting in person (see **ADDRESSES** section for location address). Refer to the VIRTUAL PUBLIC MEETING INFORMATION section of this NOI on how to access the online public meeting.

ADDRESSES: *Meeting Location*—The public may attend the virtual meeting at the Koochiching County Court Administration building at 715 4th Street, 3rd floor, International Falls, MN, 56649, to view the online presentation in-person. A GSA staff member will be available (in-person and virtually) to assist the public in providing public comments via the virtual platform.

Public Scoping Comments

In addition to oral comments and written comments provided at the public meeting, members of the public may also submit comments by one of the following methods. All oral and written comments will be considered equally and will be part of the public record.

- *Email: michael.gonczar@gsa.gov.* Please include '*International Falls LPOE SEIS'* in the subject line of the message.
- *Mail: ATTN: Michael Gonczar, International Falls LPOE SEIS;* U.S. General Services Administration, Region 5; 230 S. Dearborn Street, Suite 3600, Chicago, IL 60604.

Virtual Public Meeting Information

The hybrid virtual public meeting will begin with presentations on the NEPA and NHPA processes and the proposed project. A copy of the presentation slideshow will be made available prior to the meeting at: *https://www.gsa.gov/real-estate/gsa-properties/land-ports-of-entry-and-the-bil/bipartisan-infrastructure-law-construction-project/minnesota.* Following the presentation, there will be a moderated session during which members of the public can provide oral comments on the SEIS. Members participating virtually or attending in-person will be able to comment. Commenters will be allowed 3 minutes to provide comments. Comments will be recorded. Attendees can also provide written comments at the public meeting should they not wish to speak.

Members of the public may join the SEIS virtual public meeting by entering

the Meeting ID: 817 8441 8631, using any of the below methods, or by using the following link *https://us06web.zoom.us/j/81784418631.* Note that the meeting is best viewed through the Zoom app. Attendees are encouraged to download the Zoom app at the Zoom website (*https://zoom.us*) on their personal computer or on their mobile device and test their connection prior to the meeting to ensure best results.

- By personal computer (via the Zoom app)—Install the Zoom app at the Zoom website (*https://zoom.us*) and launch the Zoom app. Click '*Join a Meeting'* and enter the above Meeting ID. Follow the prompts to enter your name and email address to access the meeting; or
- By personal computer (via the Zoom website)—Using your computer's browser, go to the Zoom website at *http://zoom.us/join* and enter the above Meeting ID. Click '*Join from your browser'* and follow the prompts to enter your name; or
- By mobile device (via the Zoom mobile app)—Install and launch the Zoom app. Enter the above Meeting ID.

Whether joining through the Zoom app or web browser, attendees should follow the prompts to connect their computer audio. Attendees are encouraged to connect through the '*Computer Audio'* tab and click '*Join Audio by Computer'* under the '*Join Audio'* button on the bottom of their screen. Users who do not have a computer microphone and wish to provide a comment during the meeting may connect by following the prompts under the '*Phone Call'* tab under the '*Join Audio'* button.

For members of the public who do not have access to a personal computer, they may join the meeting audio by dialing the following number: 646 931 3860. When prompted, enter the following information: Meeting ID–817 8441 8631, followed by the pound (#) key; then press pound (#) again when prompted for a participant ID. Note, dialing in to the meeting is only necessary if you are not accessing the meeting through a personal computer or mobile app, or if you would like to provide oral comments during the meeting but do not have a computer microphone.

The public meeting will be recorded, and all comments provided will become part of the formal record.

FOR FURTHER INFORMATION CONTACT: Michael Gonczar, NEPA Program Manager, GSA, 312–810–2326, *michael.gonczar@gsa.gov.*

SUPPLEMENTARY INFORMATION:

Scoping Process

The purpose of the public scoping process is to identify relevant issues that will influence the scope of analysis of the human and natural environment including cultural resources. The scoping process will be accomplished through a hybrid virtual and in-person public scoping meeting, direct mail correspondence to appropriate federal, state, and local agencies, and to private organizations and citizens who have previously expressed, or are known to have, an interest in the project. The SEIS will include public input on alternatives and impacts.

The public scoping meeting will also initiate GSA's public consultation required by NHPA. GSA seeks input at this meeting that will assist the agency in planning for the Section 106 consultation process. This includes identifying consulting parties, determining the area of the undertaking's potential effects on cultural resources (Area of Potential Effects), and seeking agreement regarding ways to avoid, minimize, or mitigate adverse effects. Federal, state, and local agencies, along with members of the public, are invited to participate in the NEPA scoping and Section 106 consultation process.

The NHPA and NEPA are two separate laws which require federal agencies to consider the impacts to historic properties and the human environment before making decisions. NHPA and NEPA are independent statutes, yet may be executed concurrently to optimize efficiencies, transparency, and accountability to better understand the effects to the human, natural, and cultural environment. The SEIS will be prepared pursuant to the requirements of the NEPA of 1969, the Council on Environmental Quality NEPA regulations, and the GSA Public Buildings Service *NEPA Desk Guide.* GSA will also consult with appropriate parties in accordance with Section 106 of the NHPA of 1966.

Opportunities for members of the public to become a consulting party during the NHPA Section 106 process will be presented during the public scoping meeting. You may submit a comment to express your interest in being a consulting party if you cannot attend the meeting.

Background

The existing 1.6-acre LPOE is located on the south bank of the Rainy River and serves as the port of entry to people and vehicles crossing the International Bridge that connects International Falls, Minnesota to the town of Fort Frances, Ontario, Canada. The International Falls Land Port of Entry Improvements Study Final EIS, released in 2011, assessed the potential environmental impacts associated with the proposed action of replacing the undersized International Falls LPOE with a new LPOE facility ''to improve safety, security, and functionality.'' A total of ten build alternatives were considered, and a preferred action alternative was identified. This alternative would consist of demolishing the existing building, constructing new facilities at the existing LPOE, and expanding the LPOE to meet the required space standards and increased security requirements of the Federal Inspection Services. This alternative would move the majority of the LPOE improvements and operations to an approximately 20-acre site southeast of the existing site between 4th Street and Rainy River. GSA signed and released a Record of Decision in January 2012 that identified a preferred alternative as it best satisfied the purpose and needs of the project with the least overall adverse impacts to the environment. The ROD stated that the preferred alternative would have less-than-significant impacts on the natural and social environment of the study area and International Falls, including minor changes or impacts to surface water, surface water runoff, traffic, increased lighting, and hazardous substances.

Since 2011, GSA has identified the following changes to the project, which differ from the preferred alternative described in the 2011 EIS:

- There have been proposed changes in tenants and use of the space. U.S. Food and Drug Administration (FDA) no longer requires space at the LPOE; however, the U.S. Department of Agriculture/Animal Plant Health Inspection Services/-Plant Protection and Quarantine (USDA/APHIS–PPQ), and U.S. Fish and Wildlife Service (USFWS) will need space and facilities at the LPOE.
- The Packaging Corporation of America (PCA) has acquired Boise, Inc. and has a different timber unloading operation occurring adjacent to the proposed acquisition parcel, which will require modifications to the original site plan.
- PCA's proposed trailer parking lot was shifted further east (beyond First Creek) and includes a paved 90-trailer parking lot for PCA, which will modify traffic patterns for the LPOE.
- A section of First Creek between Route 11 and the Rainy River that was previously contained in a culvert was identified following the 2011 EIS. The

culvert has been removed and is now daylighted, requiring impacts analysis.

- There has been an increase in the proposed usable square feet (USF) for overall building space needed from 42,282 to 80,611, based on the addition of a maintenance building and expansion in the sizes of all other buildings per updated agency requirements.
- Stormwater management would be redesigned in the 300-foot section of First Creek due to two new areas of pavement crossing the creek.
- The Resolute Paper Mill in Fort Frances, Ontario has since closed and has decreased rail traffic.

GSA is preparing an SEIS to assess the potential impacts of these updates, which were not assessed in the 2011 EIS.

Alternatives Under Consideration

GSA has preliminarily identified one action alternative that may be assessed in the SEIS:

- Alternative 1: Full Build—Construct the facilities as described in the Preferred Action Alternative assessed in the 2011 EIS and modified by the 2018 project updates.

The No Action Alternative will also be considered to satisfy federal requirements for analyzing ''no action'' under NEPA. Analysis of this alternative will provide a baseline for comparison with impacts from Alternative 1.

The SEIS will address the potential environmental impacts of the proposed alternatives on environmental resources including geology and soils, water resources, biological resources, air quality and climate change, noise, traffic and transportation, land use and visual resources, cultural resources, utilities, and human health and safety. The EIS will also address the socioeconomic effects of the project, as well as impacts on environmental justice populations. Impacts may occur from air emissions, noise, and traffic delays associated with construction; as well as soil disturbance from earth moving activities and resultant sedimentation of nearby waterways. Long term benefits to traffic and transportation, air quality, and the local economy are expected from operations of the expanded and modernized LPOE and associated improved traffic flows.

William Renner,

Director, Facilities Management and Services Programs Division, Great Lakes Region 5, U.S. General Services Administration.

[FR Doc. 2022–26834 Filed 12–8–22; 8:45 am]

BILLING CODE 6820–CF–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

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, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA–OH–22–001, Panel B, Occupational Safety and Health Education and Research Centers (ERC).

Dates: February 23–24, 2023.

Times: 12:00 p.m.–5:00 p.m. EST.

Place: Video-Assisted Meeting.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Dan Hartley, Ed.D., Scientific Review Officer, Office of Extramural Programs, National Institute for Occupational Safety and Health, CDC, 1095 Willowdale Road, Morgantown, West Virginia 26505; Telephone: (304) 285–5812; Email: *DHartley@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022–26749 Filed 12–8–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

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, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—DP23–002, Improving Health Outcomes for Patients with Inflammatory Bowel Disease.

Date: March 8, 2023.

Time: 11:00 a.m.–3:00 p.m., EST.

Place: Teleconference.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Catherine Barrett, Ph.D., Scientific Review Officer, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, Mailstop S107–3, Atlanta, Georgia 30341–3717; Telephone: (404) 718–7664; Email: *CBarrett@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022–26747 Filed 12–8–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

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, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA–OH–22–001, Panel A, Occupational Safety and Health Education and Research Centers (ERC).

Dates: February 21–22, 2023.

Times: 12:00 p.m.–5:00 p.m. EST.

Place: Video-Assisted Meeting.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Michael Goldcamp, Ph.D., Scientific Review Officer, Office of Extramural Programs, National Institute for Occupational Safety and Health, CDC, 1095 Willowdale Road, Morgantown, West Virginia 26505; Telephone: (304) 285–5951; Email: *MGoldcamp@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022–26748 Filed 12–8–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10141]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by February 7, 2023.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10141—Medicare Prescription Drug Benefit Program

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Prescription Drug Benefit Program; *Use:* Plan sponsor and State information is used by CMS to approve contract applications, monitor compliance with contract requirements, make proper payment to plans, and ensure that correct information is disclosed to potential and current enrollees. *Form Number:* CMS–10141 (OMB control number: 0938–0964); *Frequency:* Annually; *Affected Public:* Private Sector, State, Local, or Tribal Governments; *Number of Respondents:* 4,631,393; *Total Annual Responses:* 95,802,400; *Total Annual Hours:* 25,506,943. (For policy questions

regarding this collection contact Shelly Winston at 410–786–3694.)

Dated: December 6, 2022.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2022–26807 Filed 12–8–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–D–2873]

Voluntary Malfunction Summary Reporting Program for Manufacturers; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the draft guidance entitled ''Voluntary Malfunction Summary Reporting (VMSR) Program for Manufacturers.'' We are publishing this notice of availability for this draft guidance document to help manufacturers better understand and use the VMSR Program. It is intended to further explain, but not change, the conditions of the VMSR Program. This draft guidance is not final nor is it for implementation at this time.

DATES: Submit either electronic or written comments on the draft guidance by February 7, 2023 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–D–2873 for ''Voluntary Malfunction Summary Reporting (VMSR) Program for Manufacturers.'' 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)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled ''Voluntary Malfunction Summary Reporting (VMSR) Program for Manufacturers'' to the Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Michelle Rios, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1116, Silver Spring, MD 20993–0002, 301–796–6107 or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

Each year, FDA receives over 2 million medical device reports (MDRs) of suspected device-related deaths, serious injuries, and malfunctions. The MDR Program is one of the postmarket surveillance tools that FDA uses to monitor device performance, detect potential device-related safety issues, and contribute to benefit-risk assessments. Malfunction reports represent most of the MDRs received by FDA on an annual basis. As part of FDA's postmarket surveillance for

devices, the Agency reviews the MDRs submitted by both mandatory and voluntary reporters.

The VMSR Program (the Program) began in 2018 when FDA issued a notification in the **Federal Register** of August 17, 2018 (83 FR 40973) of an order granting an alternative under 21 CFR 803.19 that permits manufacturers of devices in eligible product codes to report certain device malfunction MDRs in summary form on a quarterly basis, subject to the conditions of the alternative. The Program is intended to streamline reporting for device malfunctions as outlined in the Medical Device User Fee Amendments of 2017 (MDUFA IV) Commitment Letter. As such, it is intended to yield benefits for FDA, the public, and manufacturers, such as increasing transparency for the public, helping FDA to process certain malfunction reports more efficiently, allowing both FDA and the public to identify malfunction trends more readily, and reducing the burden on manufacturers. FDA implemented the Program only after the Agency had conducted a pilot program [1] that demonstrated the value of a program for summary medical device reporting on malfunctions to public health, better use of Agency resources, and promotion of public transparency.

This draft guidance describes and clarifies several aspects of the Program. The draft guidance includes information on FDA's approach to determining the eligibility of product codes for the Program and the conditions for submitting MDRs for device malfunctions in summary format under the Program. The draft guidance also includes information on how manufacturers may submit information in the summary reporting format, including instructions on how to complete applicable sections of Form FDA 3500A.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Voluntary Malfunction Summary Reporting (VMSR) Program for Manufacturers.'' 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. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products.* This guidance document is also available at *https://www.regulations.gov, https://www.fda.gov/regulatory-information/search-fda-guidance-documents* or *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics.* Persons unable to download an electronic copy of ''Voluntary Malfunction Summary Reporting (VMSR) Program for Manufacturers'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 21007 and complete title to identify the guidance you are requesting.

III. Paperwork Reduction Act of 1995

While this guidance contains no new 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 the following FDA regulations, guidance, and forms have been approved by OMB as listed in the following table:

21 CFR part; guidance; or FDA form	Topic	OMB control No.
803	Medical Devices; Medical Device Reporting; Manufacturer reporting, importer reporting, user facility reporting, distributor reporting.	0910–0437
820	Current Good Manufacturing Practice (CGMP); Quality System (QS) Regulation	0910–0073

Dated: December 5, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–26729 Filed 12–8–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–4599]

Content of Human Factors Information in Medical Device Marketing Submissions; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the draft guidance entitled ''Content of Human Factors Information in Medical Device Marketing Submissions.'' This draft guidance provides a risk-based framework to guide manufacturers and FDA staff on the human factors information that should be included in a marketing submission to the Center for Devices and Radiological Health to facilitate the efficiency of the FDA review process. This draft guidance is not final nor is it for implementation at this time.

DATES: Submit either electronic or written comments on the draft guidance by March 9, 2023 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a

[1] See Pilot Program for Medical Device Reporting on Malfunctions, 80 FR 50010.

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–2015–D–4599 for ''Content of Human Factors Information in Medical Device Marketing Submissions.'' 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)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled ''Content of Human Factors Information in Medical Device Marketing Submissions'' to the Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Tania Reina, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2502, Silver Spring, MD 20993–0002, 301–221–7499.

SUPPLEMENTARY INFORMATION:

I. Background

A unique aspect of medical devices is the critical role of device-user interface interactions for their safe use. Manufacturers routinely perform human factors assessments of the human-device interface during device development. This draft guidance provides a risk-based framework to guide manufacturers and FDA staff on the human factors information that should be included in a marketing submission to the Center for Devices and Radiological Health (CDRH) to facilitate the efficiency of the FDA review process.

On February 3, 2016, FDA announced in the **Federal Register** a draft guidance entitled ''List of Highest Priority Devices for Human Factors Review'' (81 FR 5756). FDA is issuing a revised draft guidance, now entitled ''Content of Human Factors Information in Medical Device Marketing Submissions,'' after considering stakeholder feedback on the draft guidance that issued February 3, 2016. This draft guidance provides FDA's risk-based policy regarding submission of human factors information for the purposes of premarket review in response to stakeholder feedback.

When finalized, this draft guidance is intended to be used to complement the FDA guidance ''Applying Human Factors and Usability Engineering to Medical Devices'' (*https://www.fda.gov/regulatory-information/search-fda-guidance-documents/applying-human-factors-and-usability-engineering-medical-devices*) (hereafter referred to as the Human Factors Guidance). After reviewing public comment on this draft guidance and upon its finalization, FDA intends to concurrently revise the Human Factors Guidance to incorporate the definitions included in this guidance, superseding the definitions in section 3 of the Human Factors Guidance. FDA also intends to concurrently revise the Human Factors Guidance by replacing Section 9 ''Documentation'' and Appendix A ''Human Factors and Usability Engineering Report'' of the Human Factors Guidance with cross-references to section V of this guidance, and by making any other revisions to the Human Factors Guidance as appropriate.

FDA recognizes and anticipates that the Agency and industry may need up to 60 days to perform activities to operationalize the policies within this guidance. If new information regarding the content of human factors information for marketing submissions is not included in a marketing submission received by FDA before or up to 60 days after the publication of the final guidance, CDRH staff does not generally intend to request such information during the review of the submission. CDRH does, however, intend to review any such information, if submitted.

This draft guidance is being issued consistent with FDA's good guidance practices (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on the topic thereof. 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. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products.* This draft guidance document is also available at *https://www.regulations.gov, https://www.fda.gov/regulatory-information/search-fda-guidance-documents.* Persons unable to download an electronic copy of ''Content of Human Factors Information in Medical Device Marketing Submissions'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1500052 and complete title to identify the guidance you are requesting.

III. Paperwork Reduction Act of 1995

While this guidance contains no new 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 the following FDA regulations have been approved by OMB as listed in the following table:

21 CFR part; guidance; or FDA form	Topic	OMB control No.
807, subpart E	Premarket notification	0910–0120
814, subparts A through E	Premarket approval	0910–0231
814, subpart H	Humanitarian Device Exemption	0910–0332
860, subpart D	De Novo classification process	0910–0844
800, 801, and 809	Medical Device Labeling Regulations	0910–0485
820	Current Good Manufacturing Practice (CGMP); Quality System (QS) Regulation	0910–0073

Dated: December 5, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–26767 Filed 12–8–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Ending the HIV Epidemic Initiative Triannual Report, OMB No. 0915–0051—Extension

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with of the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30-day comment period for this notice has closed.

DATES: Comments on this ICR should be received no later than January 9, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Samantha Miller, the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 594–4394.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Ending the HIV Epidemic (EHE) Initiative Triannual Report OMB No. 0915–0051—Extension.

Abstract: HRSA's Ryan White HIV/AIDS Program (RWHAP) funds and coordinates with cities, states, and local clinics/community-based organizations to deliver efficient and effective HIV care, treatment, and support services to low-income people with HIV. Since 1990, the RWHAP has developed a comprehensive system of safety net providers who deliver high quality direct health care and support services to over half a million people with HIV—more than 50 percent of all people with diagnosed HIV in the United States. Nearly two-thirds of clients (patients) live at or below 100 percent of the Federal poverty level and approximately three-quarters of RWHAP clients are racial/ethnic minorities.[1]

The Federal Ending the HIV Epidemic in the U.S. (EHE) initiative focuses on reducing the number of new HIV infections in the United States by at least 90 percent by 2030, which would be fewer than 3,000 per year.[2] Authorized by section 311(c) and title XXVI of the Public Health Service Act, this 10-year initiative beginning in fiscal year (FY) 2020 focuses on 48 counties; Washington, DC; San Juan, Puerto Rico; and seven states that have a substantial rural HIV burden. EHE initiative efforts focus on the following four key strategies that together can end the HIV epidemic in the United States:

1. Diagnose all people with HIV as early as possible.
2. Treat people with HIV rapidly and effectively to reach sustained viral suppression.
3. Prevent new HIV transmissions by using proven interventions, including pre-exposure prophylaxis and syringe services programs.
4. Respond quickly to potential HIV outbreaks to get needed prevention and treatment services to people who need them.

The EHE initiative is a collaborative effort among key Department of Health and Human Services agencies, primarily HRSA, the Centers for Disease Control and Prevention, the National Institutes of Health, the Indian Health Service,

[1] HRSA. Ryan White HIV/AIDS Program Data Report, 2020.

[2] HRSA. Ending the HIV Epidemic in the U.S. *https://www.hrsa.gov/ending-hiv-epidemic.* Accessed July 12, 2022.

and the Substance Abuse and Mental Health Services Administration. Through HRSA's RWHAP and Health Center Program, the agency has a leading role in helping diagnose, treat, prevent, and respond to end the HIV epidemic in the United States.

In June 2022, HRSA awarded nearly $115 million to RWHAP recipients to help implement the EHE initiative to support innovative strategies that help people with HIV access care, support, and treatment services to live longer, healthier lives. EHE initiative funding was awarded to 39 metropolitan areas (RWHAP part A) and eight states (RWHAP part B) to implement strategies and interventions for the provision of core medical and supportive services to reduce new HIV infections.[3]

In September 2022, HRSA published a Notice seeking public comment on this ICR in the **Federal Register**, 87 FR 59443–44 (September 30, 2022). There were no public comments.

Need and Proposed Use of the Information: To support Federal requirements to monitor and report on funds distributed through the EHE Initiative, HRSA created a reporting module, the EHE Triannual Report, an aggregate data report submitted three times a year by EHE recipients and providers of services. EHE-funded providers report aggregate information on the number of clients receiving specific services and the number of clients who were prescribed antiretroviral medications in the 4-month reporting period. This module will provide HRSA with frequent and timely data on EHE Initiative progress by providing information on the number of clients who are reached through the EHE Initiative. In addition, HRSA can calculate the number of clients who did not receive services in the previous year by subtracting the number of clients who received services in the previous year and the number of new clients from the total number of clients. This will provide valuable information on the scope of outreach to new clients and clients who have had a lapse in service, which could be an indication of reengagement in care. This module will support project officer monitoring and HRSA's understanding of service provision. Finally, the information collected in the EHE Triannual Report will complement the annual information collected through the RWHAP Services Report and other reporting mechanisms and support HRSA in its ability to monitor EHE initiative activities and assess progress toward meeting national goals for ending the HIV epidemic.

Likely Respondents: RWHAP part A and part B recipients and subrecipients funded by the EHE initiative.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
EHE Module	47	3	141	2	282
	47		141		282

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2022–26779 Filed 12–8–22; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: The Rural Health Network Development Planning Performance Improvement and Measurement System Database, OMB No. 0915–0384—Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than February 7, 2023.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N39, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Samantha Miller, the HRSA Information Collection Clearance Officer at (301) 594–4394.

[3] FY 2022 EHE Awards. *https://ryanwhite.hrsa.gov/about/parts-and-initiatives/fy-2022-ending-hiv-epidemic-awards.* Accessed August 19, 2022.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the ICR title for reference.

Information Collection Request Title: The Rural Health Network Development Planning Performance Improvement and Measurement System Database, OMB No. 0915–0384—Revision.

Abstract: The purpose of the Rural Health Network Development Planning Program (Network Planning Program) is to promote the planning and development of integrated health care networks to address the following legislative aims: (i) achieve efficiencies; (ii) expand access to, coordinate, and improve the quality of basic health care services and associated health outcomes; and (iii) strengthen the rural health care system as a whole. This program supports 1 year of planning and brings together key parts of a rural health care delivery system, particularly those entities that may not have collaborated in the past, to establish and/or improve local capacity in order to strengthen rural community health interventions and enhance care coordination. HRSA collects information from the Network Planning Program award recipients using approved performance measures. HRSA seeks to revise its approved information collection by increasing the total estimated annual burden hours, due to an increase in the number of program award recipients.

Need and Proposed Use of the Information: Performance measures for the Network Planning Program serve the purpose of quantifying awardee-level data that conveys the successes and challenges associated with the grant award. These measures and aggregate data substantiate and inform the focus and objectives of the grant program. The approved measures encompass the following principal topic areas: network infrastructure, network collaboration, sustainability, and network assessment. The total estimated annual burden is increasing by 2 hours from the previously approved collection, due to an increase in the number of award recipients from 21 to 23.

Likely Respondents: The respondents for these measures are Rural Health Network Development Planning Program award recipients.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS:

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Rural Health Network Development Planning Program Performance Improvement Measurement System	23	1	23	1	23
Total	23		23		23

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2022–26847 Filed 12–8–22; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Rural Public Health Workforce Training Network Program Data Collection—OMB No. 0915–xxxx–NEW

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than February 7, 2023.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N39, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Samantha Miller, the HRSA Information Collection Clearance Officer at (301) 594–4394.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the ICR title for reference.

Information Collection Request Title: Rural Public Health Workforce Training Network (RPHWTN) Program Data Collection—OMB No. 0915–xxxx–NEW.

Abstract: The RPHWTN program is authorized by Section 330A(f) of the Public Health Service Act (42 U.S.C.

254c(f)). Furthermore, section 2501 of the American Rescue Plan Act of 2021 (ARP, Pub. L. 117–2) provides funding for the Department of Health and Human Services to carry out activities related to expanding and sustaining a public health workforce, including to respond to COVID–19.

The RPHWTN program, which is managed by the Federal Office of Rural Health Policy at HRSA, intends to expand public health capacity by supporting health care job development, training, and placement in rural communities. This grant program intends to address the ongoing critical need for trained public health professionals in health care facilities serving rural communities by establishing networks that will develop formal training/certification programs. The long-term objective of this program is to enhance clinical and operational capacity to adequately address population health needs of rural communities negatively impacted by COVID–19, including long COVID–19. The HRSA Office of Planning, Analysis, and Evaluation will work with the Federal Office of Rural Health Policy to design and distribute surveys to RPHWTN grantees and trainees, which will serve as program data collection tools. Grantees will establish networks that support health care job development, training, and placement in rural communities. Trainees are individuals participating in the training programs made possible through the RPHTWN-supported networks established by program grantees.

To accomplish RPHWTN program goals, HRSA would like to collect the following type of information from respondents:

- *From grantees:* training content, count of trainings and attendees, specific strategies in supporting patients with long COVID–19 and behavioral health needs, and trainee retention/completion.
- *From trainees:* limited demographic information (age, ZIP code, race, and ethnicity), skills needed to fulfill roles in specific tracks selected, skill assessment, professional and/or educational experience, and career goals/intentions.

Need and Proposed Use of the Information: Per OMB memo M–21–20, the ARP provides funding for critical resources to respond to the public health crisis the nation faces resulting from the COVID–19 pandemic. The memo emphasizes the need for a swift government-wide response, underscoring the need to ensure the public's trust in how the Federal Government implements ARP programs and distributes ARP funding. Accountability and transparency of Federal Government spending and achieving results are necessary for effective stewardship of these funds. To this end, Federal awarding agencies must collect recipient performance reports in a manner that enables the Federal Government to articulate the outcomes of Federal financial assistance to the American people. HRSA seeks to collect performance information that measures progress in achieving program goals and objectives, ensures payment integrity, and demonstrates equity-oriented results—all while minimizing the reporting burden to Federal financial assistance recipients.

Data from grantees is necessary for understanding programmatic activities supported by this HRSA investment, providing program monitoring and oversight, assessing the sustainability of program-supported activities, and ultimately affording HRSA the insights and ability to make specific, evidence-informed policy and program recommendations moving forward. To successfully accomplish the goals of this program in supporting job development and training, it is also crucial that HRSA receives a clear understanding of trainees' existing and needed skillsets, their reception to/feedback about the trainings they receive, and a sense of their potential career trajectories as they pertain to the workforce training tracks specified by HRSA in the program Notice of Funding Opportunity (HRSA–22–117).

There are several consequences of the Federal Government not collecting the data for the RPHWTN program as described herein. These include: (1) the inability to monitor grant activities and therefore inability to ensure sufficient oversight of and accountability for this HRSA investment, (2) a lost opportunity to better understand the workforce capacity-building needs of the rural communities that HRSA serves, and (3) a failure to gather key information that could ultimately lead to more evidence-informed policy and program recommendations in the future.

Likely Respondents: Respondents of these surveys will be RPHWTN grantees and trainees.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing, and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Grantee Surveys	32	4	128	0.25	32
Trainee Surveys	500	4	2,000	0.25	500
Total	532		2,128		532

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2022–26846 Filed 12–8–22; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Avenir Award Program for Genetics or Epigenetics of Substance Use Disorders.

Date: February 15, 2023.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ipolia R Ramadan, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 827–4471, *ramadanir@mail.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Avenir Award Program for Genetics or Epigenetics of Substance Use Disorders.

Date: February 17, 2023.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ipolia R Ramadan, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 827–4471, *ramadanir@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: December 6, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–26832 Filed 12–8–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council for Complementary and Integrative Health.

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.

The meeting will be open to the public as indicated below and held as a virtual meeting. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session can be accessed at the following NIH Videocast URL link *https://videocast.nih.gov.*

Name of Committee: National Advisory Council for Complementary and Integrative Health.

Date: January 20, 2023.

Closed: 10:00 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Democracy 2, 6707 Democracy Boulevard, Bethesda, MD 20817, (Virtual Meeting).

Open: 11:40 a.m. to 5:00 p.m.

Agenda: A report from the Director of the Center and Other Staff.

Place: National Institutes of Health, Democracy 2, 6707 Democracy Boulevard, Bethesda, MD 20817, (Virtual Meeting).

Contact Person: Martina Schmidt, Ph.D., Director, Division of Extramural Activities, National Center for Complementary & Integrative Health, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, (301) 594–3456, *schmidma@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. Any member of the public may submit written comments no later than 15 days after the meeting.

Information is also available on the Institute's/Center's home page: *https://www.nccih.nih.gov/news/events/advisory-council-83rd-meeting,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: December 6, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–26833 Filed 12–8–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–0022–0047; OMB No. 1660–0118]

Agency Information Collection Activities: Proposed Collection; Comment Request; Homeland Security Exercise and Evaluation Program (HSEEP) Documentation

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 currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the After Action Report/Improvement Plans, Integrated Preparedness Plans, and Support Request Forms to the National Exercise Program which are used to validate current preparedness capabilities and support future national exercise efforts.

DATES: Comments must be submitted on or before February 7, 2023.

ADDRESSES: To avoid duplicate submissions to the docket, please submit comments at

www.regulations.gov under Docket ID FEMA–0022–0047. 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 *http://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: 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* or Kristen Fish, Supervisory Emergency Management Specialist at *Kristen.Fish@fema.dhs.gov* or (202) 412–0882.

SUPPLEMENTARY INFORMATION: Presidential Policy Directive 8 (PPD–8: National Preparedness), issued on March 30, 2011, establishes a National Preparedness Goal (NPG) that identifies the core capabilities necessary for preparedness and a National Preparedness System (NPS) which guides activities to enable the Nation to achieve the NPG. The NPS allows the Nation to track the progress of our ability to build and improve the capabilities necessary to prevent, protect against, mitigate the effects of, respond to, and recover from those threats that pose the greatest risk to the security of the Nation.

The NPS provides an integrated approach to preparedness that can be implemented and measured at all levels of government. This system is an all-of-Nation and whole community approach to preparedness, from neighborhood organizations to civic groups and private businesses. It contains a methodical approach integrated across the preparedness cycle and links together programs and requirements into a comprehensive system, driving rational decision-making and allowing for a direct and defensible assessment of progress against clearly defined objectives.

The NPS is based on a consistent methodology for assessing the threats and hazards facing a given jurisdiction. The findings of the assessment drive planning factors and all other components of the preparedness cycle including resource requirements, existing capabilities and capability gaps, driving investments to close those gaps, making and validating improvements in capabilities through training and exercising, and continually assessing progress.

Section 648(b)(1) of the Post-Katrina Emergency Management Reform Act of 2006 (6 U.S.C. 748(b)(1)) also provides for these exercises and states the Administrator ''shall carry out a national exercise program to test and evaluate the national preparedness goal, National Incident Management System, National Response, and other related plans and strategies.'' The Homeland Security Exercise and Evaluation Program (HSEEP) provides the program structure, multi-year planning system, tools, and guidance necessary for entities to build and sustain exercise programs that enhance homeland security capabilities, and ultimately, preparedness. The HSEEP After Action Report Improvement, Integrated Preparedness Plan, and National Exercise Program Support Request Forms provide the standardized methods for reporting the results of exercises, identifying exercise program priorities, and submitting exercise nominations necessary to validate national preparedness capabilities.

Collection of Information

Title: Homeland Security Exercise and Evaluation Program (HSEEP) Documentation.

Type of Information Collection: Extension, with change, of a currently approved information collection.

OMB Number: 1660–0118.

FEMA Forms: FEMA Form FF–008–FY–21–102 (formerly 091–0–1), After Action Report/Improvement Plan (AAR/IP); FEMA Form FF–008–FY–21–100 (formerly 008–0–26), Integrated Preparedness Plan (IPP); FEMA Form FF–008–FY–21–101 (formerly 008–0–27), National Exercise Program (NEP) Support Request Form.

Abstract: The Homeland Security Exercise and Evaluation Program (HSEEP) Documentation collection provides reporting on the results of preparedness exercises and provides assessments of the respondents' capabilities so that strengths and areas for improvement are identified, corrected, and shared as appropriate prior to a real incident. This information is also required to be submitted as part of certain FEMA grant programs.

Affected Public: State, Local, or Tribal Governments.

Estimated Number of Respondents: 253.

Estimated Number of Responses: 471.

Estimated Total Annual Burden Hours: 14,458.

Estimated Total Annual Respondent Cost: $794,901.

Estimated Respondents' Operation and Maintenance Costs: 0.

Estimated Respondents' Capital and Start-Up Costs: 0.

Estimated Total Annual Cost to the Federal Government: $70,218.

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. 2022–26732 Filed 12–8–22; 8:45 am]

BILLING CODE 9111–1A–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2022–0052; OMB No. 1660–0069]

Agency Information Collection Activities: Proposed Collection; Comment Request; National Fire Incident Reporting System (NFIRS) Version 5.0

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 currently

approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the National Fire Incident Reporting System (NFIRS) Version 5.0. The program provides a well-established mechanism, using standardized reporting methods, to collect and analyze fire incident data at the Federal, State, and local levels with a myriad of life and property saving uses and benefits. This revision involves the reduction in burden hours associated with this collection due to modernization of NFIRS Version 5.0.

DATES: Comments must be submitted on or before February 7, 2023.

ADDRESSES: To avoid duplicate submissions to the docket, please submit comments at *www.regulations.gov* under Docket ID FEMA–2022–0052. 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 *http://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: David Millstein, Branch Chief National Fire Data Center, at (301) 447–1841 or *david.millstein@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: The National Commission on Fire Prevention and Control conducted a comprehensive study of the Nation's fire problem and recommended to Congress actions to mitigate the fire problem, reduce loss of life and property, and educate the public on fire protection and prevention. As a result of the study, Congress enacted Public Law 93–498, Federal Fire Prevention and Control Act of 1974, which establishes the U.S. Fire Administration (USFA) to administer fire prevention and control programs, supplement existing programs of research, training, and education, and encourage new and improved programs and activities by state and local governments. Section 9(a) of the Act authorizes the USFA Administrator to operate directly or through contracts or grants an integrated, comprehensive method to select, analyze, publish, and disseminate information related to prevention, occurrence, control, and results of fires of all types. The National Fire Incident Reporting Systems (NFIRS) was established in the mid-1970s and is mandated by the Federal Fire Prevention and Control Act of 1974 which authorizes the National Fire Data Center to gather and analyze information such as (1) the frequency, causes, spread, and extinguishment of fires; (2) injuries and deaths resulting from fires; (3) information on injuries sustained by a firefighter; and (4) information on firefighting activities. The act further authorizes USFA to develop uniform data reporting methods, and to encourage and assist Federal, state, local and other agencies in developing and reporting information. NFIRS is a reporting standard that fire departments use to uniformly report on the full range of their activities, from fire to emergency medical services to severe weather and natural disasters. This reporting allows fire departments, as well as many other government and non-government agencies, to quantify their actions and identify incident and response trends. Recent modernization to the data collection improved and therefore reduced the burden hours for reporting data to NFIRS. FEMA is requesting a revision of this information collection.

Collection of Information

Title: National Fire Incident Reporting System (NFIRS) Version 5.0.

Type of Information Collection: Extension, with change, of a currently approved information collection.

OMB Number: 1660–0069.

FEMA Forms: FEMA Form FF–USFA–FY–21–109, National Fire Incident Reporting System (NFIRS) Version 5.0.

Abstract: The purpose of this revision is to provide the reduction of burden hours recently achieved by modernizing and improving the application's interface. NFIRS is the USFA's system authorized under Public Law 93–498 to collect fire related data to identify and define the fire problem in the U.S., and to reduce fire related casualties and losses. Operating since 1999, the system provides an electronic, web-based application for users to input their incident response information in a uniform manner.

Affected Public: Individuals or households; State, local or Tribal government.

Estimated Number of Respondents: 23,500.

Estimated Number of Responses: 28,059,000.

Estimated Total Annual Burden Hours: 9,820,650.

Estimated Total Annual Respondent Cost: $420,225,614.

Estimated Respondents' Operation and Maintenance Costs: $1,974,000.

Estimated Respondents' Capital and Start-Up Costs: $1,128,000.

Estimated Total Annual Cost to the Federal Government: $3,386,107.

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. 2022–26766 Filed 12–8–22; 8:45 am]

BILLING CODE 9111–76–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0053; OMB No. 1660–0107]

Agency Information Collection Activities: Proposed Collection; Comment Request; FEMA Public Assistance Program Customer Satisfaction Survey

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 currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the collection of Public Assistance customer satisfaction survey responses and information for assessment and improvement of the delivery of disaster assistance to States, Local and Tribal governments, and eligible non-profit organizations.

DATES: Comments must be submitted on or before February 7, 2023.

ADDRESSES: Please submit comments at *www.regulations.gov* under Docket ID FEMA–2022–0053. 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 *http://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: Jason Salazar, Program Analyst, Recovery Directorate, *Jason.Salazar@FEMA.dhs.gov,* 940.268.9245. 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: This collection is in accordance with Executive Orders 12862 and 13571 requiring all Federal agencies to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. The Government Performance and Results Act of 1993 (GPRA) requires Federal agencies to set missions and goals and to measure agency performance against them. See Public Law 103–62, 107 Stat 285 (1993). The GPRA Modernization Act of 2010 requires quarterly performance assessments of government programs for the purposes of assessing agency performance and improvement. See Public Law 111–352, 124 Stat 3875 (2011). FEMA fulfills these requirements by collecting customer satisfaction program information through surveys of States, Local and Tribal governments, and eligible non-profit organizations.

Collection of Information

Title: FEMA Public Assistance Program Customer Satisfaction Survey.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0107.

FEMA Forms: FEMA Form FF–104–FY–21–155 (formerly 519–0–32), Public Assistance Initial Customer Satisfaction Survey (Telephone); FEMA Form FF–104–FY–21–156 (formerly 519–0–33), Public Assistance Initial Customer Satisfaction Survey (internet); FEMA Form FF–104–FY–21–157 (formerly 519–0–34), Public Assistance Assessment Customer Satisfaction Survey (Telephone); FEMA Form FF–104–FY–21–158 (formerly 519–0–35), Public Assistance Assessment Customer Satisfaction Survey (internet); FEMA Manual FM–104–FY–22–102, Customer Survey and Analysis Qualitative Research Protocol.

Abstract: Federal agencies are required to survey their customers to determine the kind and quality of services customers want and their level of satisfaction with those services. The FEMA Public Assistance Customer Satisfaction Surveys are used to monitor program performance and assess service delivery. Survey results are used to ensure the Agency is meeting the needs of FEMA applicants.

Affected Public: Not-for-profit institutions, State, Local or Tribal Government.

Estimated Number of Respondents: 3,885.

Estimated Number of Responses: 3,885.

Estimated Total Annual Burden Hours: 1,839.

Estimated Total Annual Respondent Cost: $86,459.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $13,500.

Estimated Total Annual Cost to the Federal Government: $862,324.

Comments

Comments may be submitted as indicated in the **ADDRESS** 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. 2022–26784 Filed 12–8–22; 8:45 am]

BILLING CODE 9111–24–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6369–N–01]

Waivers and Alternative Requirements for Community Development Block Grant Disaster Recovery (CDBG–DR) and Community Development Block Grant Mitigation (CDBG–MIT) Grantees

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice governs Community Development Block Grant disaster recovery (CDBG–DR) and Community Development Block Grant mitigation (CDBG–MIT) funds awarded under several appropriations acts identified in the Table of Contents. Specifically, this notice provides waivers and establishes alternative requirements for certain CDBG–DR and CDBG–MIT grantees that have submitted requests for waivers and alternative requirements for grants provided under the public laws cited in this notice.

DATES: *Applicability Date:* December 14, 2022.

FOR FURTHER INFORMATION CONTACT: Jessie Handforth Kome, Director, Office of Block Grant Assistance, U.S. Department of Housing and Urban Development, 451 7th Street SW, Room 7282, Washington, DC 20410, telephone number 202–708–3587 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Email inquiries may be sent to *disaster_recovery@hud.gov.*

SUPPLEMENTARY INFORMATION:

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I. Authority To Grant Waivers
II. Public Law 115–56, 115–123, and 116–20 Waivers and Alternative Requirements
III. Public Law 116–20 Waivers and Alternative Requirements
IV. Finding of No Significant Impact (FONSI)

I. Authority To Grant Waivers

Each of the appropriations acts cited in the Table of Contents authorize the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or use by the recipient of grant funds, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment. HUD may also exercise its regulatory waiver authority under 24 CFR 5.110, 91.600, and 570.5.

All waivers and alternative requirements authorized in this notice are based upon a determination by the Secretary that good cause exists, and that the waiver or alternative requirement is not inconsistent with the overall purposes of title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*) (HCDA). The good cause for each waiver and alternative requirement is summarized in this notice.

II. Public Law 115–56, 115–123, and 116–20 Waivers and Alternative Requirements

Waiver To Allow Assistance to Privately Owned Utilities (Commonwealth of Puerto Rico Only)

The **Federal Register** notice published on February 9, 2018 (83 FR 5844) (''February 2018 Notice'') announced an allocation of $1,507,179,000 of CDBG–DR funds under Public Law 115–56 for the Commonwealth of Puerto Rico (the ''Commonwealth'') for disasters occurring in 2017. Under Public Law 115–123, the following **Federal Register** notices were published that announced additional funding for the Commonwealth: the **Federal Register** notice published on August 14, 2018 (83 FR 40314) (''August 2018 Notice'') announced an additional allocation of $8,220,783,000 of CDBG–DR funds for disasters occurring in 2017; the **Federal Register** notice published on January 27, 2020 (85 FR 4676) (''PR CDBG–MIT Notice'') announced an allocation of $8,285,284,000 of Community Development Block Grant mitigation (CDBG–MIT) funds; and the **Federal Register** notice published on June 22, 2021 (86 FR 32681) (''June 2021 Notice'') announced an allocation of $1,932,347,000 of CDBG–DR funds for enhanced or improved electrical power systems. An additional **Federal Register** notice published on January 27, 2020 (85 FR 4681) (the ''January 2020 Notice'') announced the allocation of $277,853,230 of CDBG–DR funds under Public Law 116–20 for unmet infrastructure needs from disasters that occurred in 2017. Finally, the **Federal Register** notice published on January 6, 2021 (86 FR 569) (''January 2021 Notice'') announced an allocation of $36,424,000 of CDBG–DR funds under Public Law 116–20 for disasters occurring in 2019.

The Commonwealth is subject to additional notices incorporated by the notices announcing allocations. The PR CDBG–MIT Notice directs the Commonwealth to follow the requirements in the **Federal Register** notice published on August 30, 2019 (84 FR 45838) (''CDBG–MIT Main Notice'') in addition to the requirements of the PR CDBG–MIT Notice; and both the January 2020 Notice and the January 2021 Notice requires grantees to adhere to ''Prior Notices'' (For the January 2020 Notice and January 2021 notice, ''Prior Notices'' include the following **Federal Register** notices: February 9, 2018 at 83 FR 5844; August 14, 2018 at 83 FR 40314; February 19, 2019 at 84 FR 4836; June 20, 2019 at 84 FR 28848. The January 2021 Notice also includes the January 27, 2020 at 85 FR 4681; August 17, 2020 at 85 FR 50041; and September 28, 2020 at 85 FR 60821 as ''Prior Notices'').

This waiver and alternative requirement modifies the requirements for CDBG–DR and CDBG–MIT funds awarded to the Commonwealth under Public Laws 115–123, 115–56, and 116–20. HUD is granting this waiver and alternative requirement based in part on the consideration of the Commonwealth's request and justification that the waiver will facilitate the use of the funds.

In paragraph VI.D.50. of the February 2018 Notice (83 FR 5867), paragraph V.C.4 of the CDBG–MIT Main Notice (84 FR 45868), and paragraph V.B.5 of the June 2021 Notice (86 FR 32699) (together, the ''Private Utility Prohibitions''), CDBG–DR grantees in receipt of funds under Public Laws 115–123, 115–56, and 116–20 are prohibited from using funds to assist privately owned utilities. The Commonwealth has requested a waiver of this prohibition to allow it to use CDBG–DR and CDBG–MIT funds for activities that are eligible under title I of the HCDA, to be carried out by nonprofit and for-profit organizations that are considered privately-owned utilities.

As indicated in the Commonwealth's CDBG–DR and CDBG–MIT action plans, these funds will be provided for infrastructure and physical assets, including for electrical power system and other energy or utility related improvements. These investments of CDBG–DR and CDBG–MIT funds will enable the continuous operation of critical government and business functions and are essential to human health and safety and economic security for the residents of the Commonwealth. In its request, the Commonwealth indicates that it is encouraging projects that integrate energy assets and contribute to the diversification of the grantee's energy resources. The Commonwealth also indicates that it will evaluate proposed projects that entail assistance to private utilities in order to identify opportunities for alignment with its efforts to increase energy efficiency.

For example, the Commonwealth has determined that funding microgrids is one important strategy to foster renewable energy integration and community-level resilience and is consistent with Federal and Commonwealth clean energy policy. The Commonwealth indicates that small and moderately sized microgrids developed pursuant to this waiver will provide much-needed energy resilience at the community level. The Commonwealth will prioritize targeted services to vulnerable populations, underserved communities, and low- and moderate-income (LMI) areas, including protected classes and racially and ethnically concentrated areas of poverty, which are usually the most impacted during a disaster.

Based on the critical role that the electrical power system and other utility improvements will fulfill in ensuring long-term resilience in LMI areas, the Department finds good cause to waive the requirements in the **Federal Register** notices that prohibit CDBG–DR or CDBG–MIT assistance to be used for private utilities and, as a condition of the waiver, HUD is imposing the alternative requirements described below. Accordingly, the Private Utility Prohibitions identified above shall be made inapplicable for the Commonwealth's CDBG–DR and CDBG–MIT grants awarded under Public Laws 115–123, 115–56, and 116–20.

To ensure consistency in the implementation of CDBG–DR and CDBG–MIT funds for private utility assistance, HUD is imposing the same alternative requirements on the Commonwealth's CDBG–DR or CDBG–MIT funds under Public Laws 115–123, 115–56, and 116–20 as were established

for CDBG–DR funds provided pursuant to Public Law 117–43.

While it is possible that not every CDBG–DR or CDBG–MIT assisted utility will serve predominantly LMI populations, HUD recognizes that LMI populations would benefit especially from the increased resilience and recovery of private utilities. HUD also recognizes that privately-owned, for-profit utilities have a means of obtaining private investment or otherwise recapturing costs from ratepayers. Therefore, HUD's alternative requirement below includes basic safeguards that HUD has determined are necessary to ensure that costs comply with the certification to give maximum feasible priority to activities that benefit LMI persons and that costs are necessary and reasonable and do not duplicate other financial assistance. The following modified alternative requirement also makes clear that assistance to utilities is subject to all other requirements that apply to the use of funds and must be for an eligible activity under section 105(a):

The Commonwealth may assist private for-profit, non-profit, or publicly owned utilities as part of disaster-related activities that are eligible under Section 105(a) of the HCDA, or otherwise made eligible through a waiver or alternative requirement, provided that the grantee complies with the following:

1. The funded activity must comply with applicable CDBG–DR or CDBG–MIT requirements, including the requirements that the assisted activity will meet a national objective, the activity will address an electrical power system unmet need, unmet recovery need or a risk identified in the grantee's mitigation needs assessment, and if the assistance is provided to a for-profit entity for an economic development project under section 105(a)(17), the grantee must first comply with the underwriting requirements found at Appendix A of 24 CFR part 570.

2. The grantee must carry out the grant consistent with the grantee's certification that.

''With respect to activities expected to be assisted with CDBG–DR funds, the action plan has been developed so as to give the maximum feasible priority to activities that will benefit low- and moderate-income families.'' or

''with respect to activities expected to be assisted with CDBG–MIT funds, the relevant action plan has been developed to give priority to activities that will benefit low- and moderate-income families.''

To fortify compliance with the existing certifications, if the grantee carries out activities that assist privately-owned, for-profit utilities, the grantee must prioritize assistance to for-profit utilities that will benefit areas where at least 51 percent of the residents are LMI persons and demonstrate how assisting the private, for-profit utility will benefit those areas.

3. The grantee must determine that the costs of the activity to assist a utility are necessary and reasonable and that they do not duplicate other financial assistance. To fortify these requirements and achieve a targeted use of funds and to safeguard against the potential over-subsidization when assistance is used to carry out activities that benefit private, for-profit utilities, the grantee must document that the level of assistance provided to a private, for-profit utility addresses only the actual identified needs of the utility. Additionally, the grantee must establish policies and procedures to ensure that the CDBG–DR and CDBG–MIT funds that assist private, for-profit utilities reflect the actual identified financing needs of the assisted businesses by establishing a mix of financing terms (loan, forgivable loan, and/or grant) for each assisted private, for-profit utility, based on the business's financial capacity, in order to ensure that assistance is based on actual identified need.

III. Public Law 116–20 Waivers and Alternative Requirements

Waiver To Allow Assistance to Privately Owned Utilities (State of Iowa Only)

The **Federal Register** notice published on January 27, 2020 (85 FR 4681) (the ''January 2020 Notice'') announced the allocation of $96,741,000 of CDBG–DR funds under Public Law 116–20 (the ''2019 Appropriations Act'') to the State of Iowa for recovery from disasters occurring in 2019. These funds have been provided for necessary expenses related to disaster relief, long term recovery, restoration of infrastructure and housing, economic revitalization, and mitigation due to a qualified disaster. The January 2020 Notice requires grantees to adhere to the requirements published in ''Prior Notices'' (defined in the January 2020 Notice to include the following **Federal Register** notices: February 9, 2018 at 83 FR 5844; August 14, 2018 at 83 FR 40314; February 19, 2019 at 84 FR 4836; and June 20, 2019 at 84 FR 28848). The waiver and alternative requirement in this section modifies the requirements for CDBG–DR funds awarded to Iowa under Public Law 116–20. Iowa has submitted a request and justification for the waiver provided herein to facilitate the use of the funds.

The incorporation of ''Prior Notices'' subjects Iowa to the requirements in paragraph VI.D.50. of the February 2018 Notice (83 FR 5867), which prohibit the State from using funds under Public Law 116–20 to assist privately owned utilities (the ''Private Utility Prohibition''). Iowa has requested a waiver of this prohibition to allow it to fund activities that are eligible under title I of the HCDA, to be carried out by a nonprofit cooperative that will supply solar electricity to LMI residents in the Harvest Hills housing development. In 2022, the Iowa Economic Development Authority awarded $18,951,673 to the City of Woodbine for the construction of up to 40 LMI homes and infrastructure in support of housing development. Rather than install solar panels on each home, the city proposes to construct a solar array to be operated by the local electricity provider, Harrison County Rural Electric Cooperative (REC) to support the added electrical capacity needs associated with the large-scale development in the small community. Panels for the solar array will save customers the cost of installing and maintaining individual solar panels on their homes and businesses. By allowing Harrison County REC to construct and operate the solar array, LMI households in the Harvest Hills housing development will have reduced electric bills and more disposable income.

Harrison County REC is the electric utility provider for Harvest Hills and is a nonprofit cooperative. As a nonprofit entity, excess capital is not considered profit; rather it is reinvested into the utility or returned to members as dividends. Additionally, the infrastructure improvements would otherwise be eligible if CDBG–DR grantees in receipt of funds under Public Law 116–20 were not prohibited from providing funds to privately owned utilities.

In recognition of the circumstances outlined in Iowa's request, the Department finds good cause to waive the Private Utility Prohibition and, as a condition of the waiver, HUD is imposing the alternative requirements described below.

To ensure consistency in the implementation of CDBG–DR funds for private utility assistance, HUD is imposing the same alternative requirements on Iowa's use of CDBG–DR for private utility assistance under Public Law 116–20 as were established for CDBG–DR funds provided pursuant to Public Law 117–43.

While it is possible that not every CDBG–DR assisted utility will serve predominantly LMI populations, HUD recognizes that LMI populations would

benefit especially from the increased resilience and recovery of private utilities. HUD also recognizes that privately-owned, for-profit utilities have a means of obtaining private investment or otherwise recapturing costs from ratepayers. Therefore, HUD's alternative requirement below includes basic safeguards that HUD has determined are necessary to ensure that costs comply with the certification to give maximum feasible priority to activities that benefit LMI persons and that costs are necessary and reasonable and do not duplicate other financial assistance. The following alternative requirement also makes clear that assistance to utilities is subject to all other requirements that apply to the use of funds and must be for an eligible activity under section 105(a):

Iowa may assist private for-profit, non-profit, or publicly owned utilities as part of disaster-related activities that are eligible under Section 105(a) of the HCDA, or otherwise made eligible through a waiver or alternative requirement, provided that the grantee complies with the following:

1. The funded activity must comply with applicable CDBG–DR requirements, including the requirements that the assisted activity will meet a national objective, the activity will address an unmet recovery need, and if the assistance is provided to a for-profit entity for an economic development project under Section 105(a)(17), the grantee must first comply with the underwriting requirements found at Appendix A of 24 CFR part 570.

2. The grantee must carry out the grant consistent with the grantee's certification that

''With respect to activities expected to be assisted with CDBG–DR funds, the action plan has been developed so as to give the maximum feasible priority to activities that will benefit low- and moderate-income families.''

To fortify compliance with the existing certification, if the grantee carries out activities that assist privately-owned, for-profit utilities, the grantee must prioritize assistance to for-profit utilities that will benefit areas where at least 51 percent of the residents are LMI persons and demonstrate how assisting the private, for-profit utility will benefit those areas.

3. The grantee must determine that the costs of the activity to assist a utility are necessary and reasonable and that they do not duplicate other financial assistance. To fortify these requirements and achieve a targeted use of funds and to safeguard against the potential over-subsidization when assistance is used to carry out activities that benefit private, for-profit utilities, the grantee must document that the level of assistance provided to a private, for-profit utility addresses only the actual identified needs of the utility. Additionally, the grantee must establish policies and procedures to ensure that the CDBG–DR funds that assist private, for-profit utilities reflect the actual identified financing needs of the assisted businesses by establishing a mix of financing terms (loan, forgivable loan, and/or grant) for each assisted private, for-profit utility, based on the business's financial capacity in order to ensure that assistance is based on actual identified need.

IV. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available online on HUD's CDBG–DR website at *https://www.hud.gov/program_offices/comm_planning/cdbg-dr* and for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Adrianne Todman,

Deputy Secretary.

[FR Doc. 2022–26823 Filed 12–8–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7050–N–64]

30-Day Notice of Proposed Information Collection: COVID–19 Supplemental Payment Requests, OMB Control No.: 2502–0619

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* January 9, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_submission@omb.eop.gov* or *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on October 7, 2022, at 87 FR 61095.

A. Overview of Information Collection

Title of Information Collection: COVID–19 Supplemental Payment Requests.

OMB Approval Number: 2502–0619.

OMB Expiration Date: December 31, 2022.

Type of Request: Extension of a currently approved collection.

Form Number: HUD Form 52671–E.

Description of the need for the information and proposed use: Form 52671–E, will continue to be completed by owners of properties with Section 8 Housing Assistance Payment contracts, Section 202 and Section 811 Project Rental Assistance contracts, Section 202/162 Project Assistance contracts, and Section 202 Senior Preservation Rental Assistance contacts, who wish to receive a supplemental payment to offset operating cost increases to prevent, prepare, and respond to the effects of COVID–19. HUD expects to reissue the form in 2022 with minor updates to reflect additional funding periods and other Housing Notice cross-references. Similar updates may be made in subsequent years should funding for the activity remain available and again be offered to owners. HUD anticipates continuing use of DocuSign to complete targeted follow-up with respondents for the portion of HUD 52671–E submissions that involve delayed certification of completed installation for capital equipment purchases. DocuSign templates used under this collection may be updated periodically with new dates and to improve clarity about the requirements, as needed.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 23,200.

Estimated Number of Responses: 46,400.

Frequency of Response: 1.

Average Hours per Response: .55 hours per response.

Total Estimated Burden: 25,520.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2022–26775 Filed 12–8–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY9250000–L14400000–ET0000; WYW–132601]

Public Land Order No. 7916; Extension of Public Land Order No. 7546; Withdrawal for Protection of Sweetwater River Recreational, Scenic, Riparian, Historic, and Wildlife Resources, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order extends the duration of the withdrawal created by Public Land Order (PLO) No. 7546, which would otherwise expire on December 8, 2022, for an additional 20-year term. PLO No. 7546 withdrew 4,943.13 acres of public lands from settlement, sale, location, or entry under general land laws, including the United States mining laws. The withdrawal extension is necessary to continue protecting the Sweetwater River, Wyoming.

DATES: This Public Land Order takes effect on December 8, 2022.

FOR FURTHER INFORMATION CONTACT: Keesha Clay, Realty Specialist, Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Rd., Cheyenne, Wyoming 82009, telephone: (307) 775–6189, email: *kclay@blm.gov;* or you may contact the BLM office at the address listed above. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The purpose for which the withdrawal was first made requires an extension to continue the protection of the Sweetwater River and the resources associated with it.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), it is ordered as follows:

1. Subject to valid existing rights, PLO No. 7546 (67 FR 72970 (2002)), which withdrew 4,943.13 acres of public lands from settlement, sale, location, or entry under general land laws, including the United States mining laws, for the protection of Sweetwater River Recreational, Scenic, Riparian, Historic, and Wildlife Resources, is hereby extended for an additional 20-year period.

2. This withdrawal extended by this order will expire on December 8, 2042, unless, as a result of a review conducted prior to the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be further extended.

(Authority: 43 U.S.C. 1714(f))

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2022–26829 Filed 12–8–22; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#-34959; 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 26, 2022, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by December 27, 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 26, 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.

KANSAS

Atchison County

Chicago, Burlington & Quincy Railroad Freight Depot, (Railroad Resources of Kansas MPS), 118 South 2nd St., Atchison, MP100008521

Douglas County

Waters, Henry, House, (Lawrence, Kansas MPS), Address Restricted, Lawrence vicinity, MP100008522

Osage County

Luther Severy & Son Stock Farm, (Agriculture-Related Resources of Kansas MPS), 11506 West 285th St., Reading vicinity, MP100008526

Riley County

Yuma Street Historic District, (African American Resources in Manhattan, Kansas MPS), 931 Yuma St, and 900 blk. of Yuma St., Manhattan, MP100008518

Saline County

Pioneer Hall, Kansas Wesleyan University, 100 East Claflin Ave., Salina, SG100008519

Shawnee County

Ritchie Cemetery, 1900–1948 SW 27th St., Topeka, SG100008523

Wyandotte County

Whittier School, (Public Schools of Kansas MPS), 290 South 10th St., Kansas City, MP100008520

MICHIGAN

Wayne County

Immaculata High School, 16661 Greenlawn Avenue, Detroit, SG100008529

NEW HAMPSHIRE

Hillsborough County

Goodell Company Mill, 42 Main St., Antrim, SG100008525

SOUTH CAROLINA

Beaufort County

Lady's Island Bridge, US 21-Bus over Beaufort R. between Carteret St. and Sea Island Pkwy., Beaufort, SG100008530

Lexington County

Oliver, Peter M. and Alice, House, 295 West 1st St., Swansea, SG100008531

Richland County

Chapel of Hope, 2145 Pickens St., Columbia, SG100008527

Spartanburg County

Startex Finishing Company, 21–23 North Main St., Startex, SG100008528

Additional documentation has been received for the following resources:

ARIZONA

Pima County

Broadmoor Historic District (Additional Documentation), 2734 East Exeter St., Tucson, AD100006151

MICHIGAN

Marquette County

Savings Bank Building (Additional Documentation), 101 South Front St., Marquette, AD78001507

Authority: Section 60.13 of 36 CFR part 60.

Dated: November 30, 2022.

Sherry A. Frear,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2022–26836 Filed 12–8–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0034984; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: New York State Museum, Albany, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the New York State Museum (NSYM) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Bronx, Dutchess, Orange, Sullivan, and Ulster Counties, NY.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after January 9, 2023.

ADDRESSES: Lisa Anderson, New York State Museum, 3049 Cultural Education Center, Albany, NY 12230, telephone (518) 486–2020, email *lisa.anderson@nysed.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the NYSM. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the NYSM.

Description

In 1957–1958, human remains representing, at minimum, two individuals were removed from the Archery Range site in Pelham Bay Park, Bronx County, NY, during excavations conducted by Mr. Edward Kaeser. These human remains were identified among a collection of animal bones Kaeser donated to the NYSM in 2008. They

include a single hand bone belonging to an adult and a tibia fragment belonging to a second adult. No known individuals were identified. No associated funerary objects are present. Based on archeological evidence, these human remains date to the Late Woodland period.

In 1939, human remains representing, at minimum, two individuals were removed from the Goat Island site in the Hudson River, Dutchess County, NY, during excavations conducted by Dr. Mary Butler as part of the Hudson Valley Archaeological Survey sponsored by Vassar College. In 1950, the collections were donated to the NYSM. The human remains include fragmentary skeletal elements belonging to an adult male and a metatarsal belonging to an adolescent 12–14 years old. No known individuals were identified. The six associated funerary objects are three projectile points and fragments of three pottery vessels. Archeological evidence suggests the burials date from the late Early Woodland to early Middle Woodland periods.

Sometime prior to 2011, human remains representing, at minimum, one individual were removed from the Turtle Pond Hill site in Armenia, Dutchess County, NY, during excavations conducted by Mr. Kenneth Hoadley. In 2012, these human remains were donated to the NYSM as part of a larger collection. They consist of a cranial fragment belonging to a child. No known individual was identified. No associated funerary objects are present. Although the context of these human remains is unknown, archeological evidence indicates the Turtle Pond Hill site was occupied intermittently from the Late Archaic through Late Woodland periods.

Between 1965 and 1967, human remains representing, at minimum, one individual were removed from the Dutchess Quarry Cave 1 site near Middletown, Orange County, NY, during excavations conducted by Orange County Chapter of the New York State Archaeological Association. No burials were identified during the excavations. These human remains were found among a collection of animal bones removed from disturbed refuse deposits at the site that the NYSM acquired through a series of donations. The fragmentary, incomplete human remains belong to an adult of unknown sex. No known individual was identified. No associated funerary objects are present. Archeological evidence indicates the Dutchess Quarry Cave 1 site was visited intermittently from the late Paleo-Indian to Late Pre-contact periods.

In 1934 and 1940, human remains representing, at minimum, three individuals were removed from the O'Rourke site in Moodna, Orange County, NY, during excavations conducted by the Bear Mountain Trailside Historical Museum following their disturbance by construction. In 2007, the NYS Office of Parks, Recreation, and Historic Preservation transferred these human remains to the NYSM. The fragmentary remains belong to an adult female, a child 7–11 years old, and a child 6–11 years old. No known individuals were identified. The two associated funerary objects are one chert flake and one deer bone. Archeological evidence indicates long-term use of the O'Rourke site. These burials are associated with its main occupation, during the Late Woodland period.

In 1909, human remains representing, at minimum, 25 individuals were removed from the Van Etten site near Port Jervis, Orange County, NY, during excavations by Mr. Everett R. Burmaster on behalf of the NYSM. The fragmentary human remains represent three children 2-to-8 years old, one juvenile, seven adult females or possible females, 10 adult males or possible males, and four adults of unknown age and sex. No known individuals were identified. The 639 associated funerary objects are 581 glass beads, 44 brass buttons, seven Jesuit rings, one brass finger ring with a glass setting, one kaolin pipe, one leather pouch fragment, two small textile fragments, and two small fragments of wood.

In 1962, human remains representing, at minimum, one individual were removed from Horn Road also known as the Van Etten site near Port Jervis, Orange County, NY, by Mr. Lyman Vandermark following an accidental disturbance. In 2022, they were transferred to the NYSM by Mr. Douglas Wahl, who had acquired them as part of a larger collection. The human remains consist of a mandible fragment belonging to an adult male 40–50 years old. No known individual was identified. The 12 associated funerary objects are one pewter button, one lead musket ball, three gunflints, four iron nail fragments, fragments of one turtle shell rattle, and two tubular glass beads. Archeological evidence indicates the burials from the Van Etten site date to the first half of the 18th century, when the area was known to be the traditional territory of the Munsee or Lenape.

Between 1968 and 1970, human remains representing, at minimum, one individual were removed from the Ten Mile River Rockshelter in Tusten, Sullivan County, NY, during excavations conducted by the Orange County Chapter of the New York State Archaeological Association and assisted by Dr. Robert E. Funk of the NYSM. No burials were identified during excavation. These human remains were found among animal bones collected from the surface of the site and their context may have been the result of disturbances caused by earlier collectors. The human remains consist of cranial fragments belonging to an adult of unknown sex. No known individual was identified. No associated funerary objects are present. While the original context of the human remains is uncertain, archeological evidence indicates the Ten Mile River Rockshelter was used from the Late Archaic to early Contact periods.

In 1968 and 1969, human remains representing, at minimum, four individuals were removed from the Simpson 2 site, Ulster County, NY, during excavations conducted by avocational archeologists Mr. Seward Osborne and Mr. James Burggraf. In 2014, Dr. Joseph Diamond of the State University of New York at New Paltz transferred these human remains to the NYSM. The fragmentary postcranial remains belong to one male 40–50 years old, one possible older female, one adult of unknown sex, and one child 4–5 years old. No known individuals were identified. No associated funerary objects are present. Archeological evidence indicates repeated use of the Simpson 2 site from the Late Archaic to early Contact periods with the main occupation associated with the later periods.

In 1937, human remains representing, at minimum, one individual were removed from the Stone Ridge site, also known as Guido site in Marbletown, Ulster County, NY, by Mr. Harold Fuller following an accidental disturbance. Mr. Fuller donated these human remains to the NYSM that same year. The human remains represent a male 35–45 years old. No known individual was identified. The one associated funerary object is a stone celt.

Between 1975 and 1985, human remains representing, at minimum, one individual were removed from the Guido site, also known as the Stone Ridge site in Marbletown, Ulster County, NY, during excavations conducted by avocational archeologists Mr. George Van Sickle and Mr. James Burggraf. Subsequently, Dr. Joseph Diamond of the State University of New York at New Paltz transferred these human remains to the NYSM. The fragmentary human remains belong to

an individual of unknown age and sex. No known individual was identified. The 12 associated funerary objects are one fragment of animal bone, four small pottery sherds, three chert flakes, and four pieces of chert shatter. Archeological evidence indicates the Stone Ridge/Guido site was occupied repeatedly, beginning in the Late Archaic period, with a primary occupation during the Late Woodland through early Contact periods.

Between 1971 and 1974, human remains representing, at minimum, 10 individuals were removed from the Grapes site near Marbletown, Ulster County, NY, during excavations conducted by avocational archeologists Mr. George Van Sickle and Mr. James Burggraf. In 2002, Dr. Joseph Diamond of the State University of New York transferred these human remains to the NYSM . The human remains belong to a child about 2 years old, a young adult 16–20 years old, five adult males 20–45 years old, an adult female 35–45 years old, and two adults of unknown age and sex. No known individuals were identified. The 701 associated funerary objects are 73 chert flakes, 23 pieces of chert shatter, one possible biface, 77 pottery sherds, eight bear claws, 25 fragments of shell, 482 fragments of animal bone, seven charcoal samples, and five soil samples. Archeological evidence indicates the Grapes site dates to the early Contact period, ca. A.D. 1580–1620.

Between 1957 and 1972, human remains representing, at minimum, 28 individuals were removed from the Hurley site in Hurley, Ulster County, NY, during excavations conducted by avocational archeologist Mr. James Burggraf. In 1994 these human remains were donated to the NYSM as part of a larger collection. The fragmentary, incomplete remains belong to three children, eight adult males, 15 adult females, and two adults of unknown sex. No known individuals were identified. The 1,295 associated funerary objects are 30 projectile points and fragments, 219 pottery sherds, one pottery vessel, 745 animal bone fragments, 35 stone bifaces and fragments, eight stone biface blanks, five stone end scrapers, 138 stone flakes, one stone core, one stone pestle, one stone muller, 11 hammerstones and pitted stones, one stone celt, 27 unmodified stones, eight fire-cracked rocks, four botanical samples, 16 charcoal samples, 31 shell fragments, seven soil samples, one fossil, two fragments of yellow ocher, one brick fragment, one kaolin pipe fragment, and one leather fragment. Archeological evidence indicates the Hurley site was occupied repeatedly from the Late Archaic to Late Woodland periods with a primary occupation during the Late Woodland period.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: archeological information and geographical information.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the NYSM has determined that:

- The human remains described in this notice represent the physical remains of 80 individuals of Native American ancestry.
- The 2,668 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Stockbridge Munsee Community, Wisconsin.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after January 9, 2023. If competing requests for repatriation are received, the NYSM must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The NYSM is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: November 30, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–26790 Filed 12–8–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0034985; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: New York State Museum, Albany, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the New York State Museum (NYSM), intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural items were removed from Orange and Ulster Counties, NY.

DATES: Repatriation of the cultural items in this notice may occur on or after January 9, 2023.

ADDRESSES: Lisa Anderson, New York State Museum, 3049 Cultural Education Center, Albany, NY 12230, telephone (518) 486–2020, email *lisa.anderson@nysed.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the NYSM. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by the NYSM.

Description

In 1909, Everett R. Burmaster removed two unassociated funerary

objects from a Native American grave at the Van Etten site near Port Jervis, in Orange County, NY, during excavations conducted for the NYSM. The unassociated funerary objects are one brass lion sejant spoon and one bronze bell. Archeological evidence indicates the burials from the Van Etten site date to the first half of the 18th century, when the area was known as traditional Munsee or Lenape territory.

Between 1957 and 1972, James R. Burggraf removed two unassociated funerary objects from a Native American grave at the Hurley site in Hurley, Ulster County, NY. The objects were donated to the NYSM in 1994 as part of a larger collection. The unassociated funerary objects are one bannerstone and one projectile point. Archeological evidence indicates the Hurley site was occupied repeatedly from the Late Archaic to Late Woodland periods, with a primary occupation during the Late Woodland period.

Cultural Affiliation

The cultural items in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: archeological and geographical.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the NYSM has determined that:

- The four cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items and the Stockbridge Munsee Community, Wisconsin.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after January 9, 2023. If competing requests for repatriation are received, the NYSM must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The NYSM is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, 10.10, and 10.14.

Dated: November 30, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–26791 Filed 12–8–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0034979; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: North Carolina Office of State Archaeology, Raleigh, NC

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The North Carolina Office of State Archaeology, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural item listed in this notice meets the definition of an object of cultural patrimony. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request to the North Carolina Office of State Archaeology. If no additional claimants come forward, transfer of control of the cultural item to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request with information in support of the claim to the Office of State Archaeology at the address in this notice by January 9, 2023.

FOR FURTHER INFORMATION CONTACT: Emily McDowell, North Carolina Office of State Archaeology, 215 West Lane Street, Raleigh, NC 27616, telephone (919) 715–5599, email *emily.mcdowell@ncdcr.gov*.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item under the control of the North Carolina Office of State Archaeology, Raleigh, NC, that meet the definition of an object of cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Item

In 2009, a single, intentional domestic dog burial was removed from 31MA77, the Iotla site, in Macon County, NC, during archeological data recovery conducted by TRC Environmental Corporation. These excavations were conducted on behalf of the Macon County Airport Authority to mitigate adverse effects to the site by a planned runway expansion, in consultation with the Federal Aviation Authority as part of the review process under 54 U.S.C. 306108 (also known as Section 106 of the National Historic Preservation Act).

In May of 2021, representatives from the Cherokee Tribes expressed interest in repatriation of the dog burial. In October of 2021, the burial remains were transferred to the North Carolina Office of State Archaeology Research Center, whereupon Research Center staff began collecting information and conducting consultation on this item.

The object of cultural patrimony is a single, adult male domestic dog burial. The skeleton was well preserved and mostly complete. The dog burial is associated with the Late Qualla Historic Cherokee occupation at the Iotla site. Given the importance of dogs in Cherokee culture and the intention with which these remains were placed in the ground, this dog was of importance to the community that buried him.

Determinations Made by the North Carolina Office of State Archaeology

Officials of the North Carolina Office of State Archaeology have determined that:

• Pursuant to 25 U.S.C. 3001(3)(D), the one cultural item described above has ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.

• Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the object of cultural patrimony and the Cherokee Nation; Eastern Band of Cherokee Indians; and the United Keetoowah Band of Cherokee Indians in Oklahoma (hereafter referred to as ''The Tribes'').

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request with information in support of the claim to Emily McDowell, North Carolina Office of State Archaeology, 215 West Lane Street, Raleigh, NC 27616, telephone (919) 715–5599, email *emily.mcdowell@ncdcr.gov,* by January 9, 2023. After that date, if no additional claimants have come forward, transfer of control of the object of cultural patrimony to The Tribes may proceed.

The North Carolina Office of State Archaeology is responsible for notifying The Tribes that this notice has been published.

Dated: November 30, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–26801 Filed 12–8–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0034980; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: North Carolina Office of State Archaeology, Raleigh, NC

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The North Carolina Office of State Archaeology has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the North Carolina Office of State Archaeology. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the North Carolina Office of State Archaeology at the address in this notice by January 9, 2023.

FOR FURTHER INFORMATION CONTACT: Emily McDowell, Office of State Archaeology, 215 West Lane Street, Raleigh, NC 27616, telephone (919) 715–5599, email *emily.mcdowell@ncdcr.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the North Carolina Office of State Archaeology, Raleigh, NC. The human remains were removed from the Iotla site (31MA77) in Macon County, NC.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the North Carolina Office of State Archaeology professional staff in consultation with representatives of the Cherokee Nation; Eastern Band of Cherokee Indians; and the United Keetoowah Band of Cherokee Indians in Oklahoma (hereafter referred to as ''The Tribes'').

History and Description of the Remains

In 2009, human remains representing, at minimum, five individuals were removed from 31MA77, the Iotla site, in Macon County, NC. These human remains were removed during excavations conducted by TRC Environmental Corporation on behalf of the Macon County Airport Authority pursuant to 54 U.S.C. 306108 (also known as Section 106 of the National Historic Preservation Act), prior to a runway expansion project.

In February of 2009, TRC Environmental Corporation conducted archeological data recovery excavations for the airport runway expansion and improvements project. During those excavations, 97 probable human burials were identified and avoided. Five human cremations (Features 6010, 8286, 8971, 10860 [probable], and 11213) believed by TRC to be non-burial, burnt faunal features were removed during these excavations. In 2012, during analysis of the faunal assemblage, the analyst identified these burned features as human cremations, at which point TRC contacted the State Archaeologist and the Eastern Band of Cherokee Indians Tribal Historic Preservation Officer for guidance. The State Archaeologist, in turn, notified the Executive Director of the Commission of Indian Affairs of the discovery. Not until January of 2020 were the human remains received by the North Carolina Office of State Archaeology pursuant to North Carolina General Statute 70 Article 3, the Unmarked Human Burial and Human Skeletal Remains Protection Act. Upon receiving the human remains, staff from the North Carolina Office of State Archaeology Research Center, began collecting information on the human remains and consulting on them. No known individuals were identified. No associated funerary objects are present.

Data recovery at 31MA77, the Iotla site, provided archeological evidence of a long occupation extending from the Early Archaic period to the Late Qualla phase Historic Cherokee. Based on archeological information, these cremations are associated with the Middle Woodland, Connestee phase village. It is well known that the Cherokee occupied this area long before European contact, and the Late Qualla phase Historic Cherokee component of the site supports this affiliation.

Determinations Made by the Office of State Archaeology

Officials of the North Carolina Office of State Archaeology has determined that:

• Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of five individuals of Native American ancestry.

• Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and The Tribes.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Emily McDowell, North Carolina Office of State Archaeology, 215 West Lane Street, Raleigh, NC 27616, telephone (919) 715–5599, email *emily.mcdowell@ncdcr.gov,* by January 9, 2023. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

The North Carolina Office of State Archaeology is responsible for notifying The Tribes that this notice has been published.

Dated: November 30, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–26802 Filed 12–8–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0034975; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Robert S. Peabody Institute of Archaeology, Andover, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Robert S. Peabody Institute of Archaeology intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural items were removed from Jackson and Yazoo Counties, MS.

DATES: Repatriation of the cultural items in this notice may occur on or after January 9, 2023.

ADDRESSES: Ryan J. Wheeler, Robert S. Peabody Institute of Archaeology, Phillips Academy, 180 Main Street, Andover, MA 01810, telephone (978) 749–4490, email *rwheeler@andover.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Robert S. Peabody Institute of Archaeology. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by the Robert S. Peabody Institute of Archaeology.

Description

The cultural items were removed from Jackson and Yazoo Counties, MS. The two unassociated funerary objects are one pottery sherd and one cast of a stone pipe. The pottery sherd (catalog no. 41801) was removed by Clarence B. Moore in 1905 from the Mounds near Graveline Bayou in Jackson County, MS (22Ja503) and was transferred to the Robert S. Peabody Institute of Archaeology at some point thereafter. The cast of the stone pipe (catalog no. 20795) was obtained from J. Amiet around 1901, and represents a funerary object from Yazoo County MS.

Cultural Affiliation

The cultural items in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological, archeological, geographical, historical, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Robert S. Peabody Institute of Archaeology has determined that:

• The two cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.

• There is a relationship of shared group identity that can be reasonably traced between the cultural items and The Choctaw Nation of Oklahoma.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after January 9, 2023. If competing requests for repatriation are received, the Robert S. Peabody Institute of Archaeology must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The Robert S. Peabody Institute of Archaeology is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, 10.10, and 10.14.

Dated: November 30, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–26796 Filed 12–8–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0034986; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion Amendment: Robert S. Peabody Institute of Archaeology, Andover, MA

AGENCY: National Park Service, Interior.

ACTION: Notice; amendment.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Robert S. Peabody Institute of Archaeology (RSPI) has amended a Notice of Inventory Completion published in the **Federal Register** on October 31, 2007. This notice amends the minimum number of individuals, number of associated funerary objects, and cultural affiliation of human remains and associated funerary objects removed from Bolivar County, MS.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after January 9, 2023.

ADDRESSES: Dr. Ryan J. Wheeler, Robert S. Peabody Institute of Archaeology, Phillips Academy, 180 Main Street, Andover, MA 01810, telephone (978) 749–4490, email *rwheeler@andover.edu*.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the RSPI. The National Park Service is not responsible for the determinations in this notice. Additional information on the amendments and determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the RSPI.

Amendment

This notice amends the determinations published in a Notice of Inventory Completion in the **Federal Register** (72 FR 61674, October 31, 2007). Repatriation of the items in the original Notice of Inventory Completion has not occurred. Additional human remains and associated funerary objects from Bolivar County, MS, held by the RSPI were identified during an inventory project. Review of RSPI records indicates that consultation did not occur prior to the publication of the Notice of Inventory Completion in 2007. Consultation was conducted in 2021 and 2022, providing evidence for reassessment of cultural affiliation. This notice amends the minimum number of individuals and the number of associated funerary objects as listed in the original notice. Human remains representing, at minimum, one individual removed from Bolivar County, MS, were added to the inventory. In addition, 751 associated funerary objects removed from Bolivar County, MS, were added to the inventory. Also, the cultural affiliation of the human remains and associated funerary objects in this notice are amended.

From Alligator Mounds in Bolivar County, MS, eight individuals were removed (previously identified as seven individuals). The 775 associated funerary objects (previously identified as 24 associated funerary objects) are 24 bone awls, 44 bifaces, 199 faunal remains, two carbon samples, four chipped stone objects, 14 cobbles, three concretions, 24 cores, two fragments of daub, one drill, four fragments of fire cracked rock, 71 flakes, one unknown cylindrical object, one game piece, one broken stone fragment, one flat stone, two sharpening stones, one pitted stone, six fragments of a pill-shaped ceramic object, four modified animal bones, two pecked stones, nine charred seeds or nuts, 26 pebbles, one pendant, one perforator, two pieces petrified wood, two pigment stones, one pipe fragment, one plummet fragment, four rectangular polishing stones, six projectile point preforms, two scrapers, 34 shell fragments, 269 ceramic sherds, four unmodified stones, and two quartz fragments.

Determinations (As Amended)

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the RSPI has determined that:

- The human remains described in this amended notice represent the physical remains of eight individuals of Native American ancestry.
- The 775 objects described in this amended notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Quapaw Nation (*previously* listed as The Quapaw Tribe of Indians); The Muscogee (Creek) Nation; and the Tunica-Biloxi Indian Tribe.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after January 9, 2023. If competing requests for repatriation are received, the RSPI must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The RSPI is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, 10.13, and 10.14.

Dated: November 30, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–26798 Filed 12–8–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0034973; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Sam Noble Oklahoma Museum of Natural History, University of Oklahoma, Norman, OK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Sam Noble Oklahoma Museum of Natural History has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Delaware and Le Flore Counties, OK.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after January 9, 2023.

ADDRESSES: Dr. Marc Levine, Associate Curator of Archaeology, Sam Noble Oklahoma Museum of Natural History, University of Oklahoma, 2401 Chautauqua Avenue, Norman, OK 73072–7029, telephone (405) 325–1994, email *mlevine@ou.edu*.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Sam Noble Oklahoma Museum of Natural History. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice,

including the results of consultation, can be found in the inventory or related records held by the Sam Noble Oklahoma Museum of Natural History.

Description

In 1940, human remains representing, at minimum, seven individuals were removed from the Bennet-Monroe site (34Lf26) in Le Flore County, OK. The site was excavated by the Works Progress Administration (WPA) in April and May of 1940, and the associated finds were transferred to the Museum in 1947. The human remains include one child, four adult males, one adult female, and one adult of indeterminate sex. No known individuals were identified. The eight associated funerary objects are five faunal bone fragments, two projectile points, and one grog-tempered sherd. The human remains and associated funerary objects from site 34Lf26 were interred during the Woodland Period (300 B.C.–A.D. 1000).

In 1938, human remains representing, at minimum, three individuals were removed from the Ballard 1 site (34Dl27) in Delaware County, OK. This is a rock shelter site located along a tributary of the Neosho River. It was excavated by the WPA in 1938, and the associated finds were donated to the Museum that same year. The fragmentary human remains include two children, both 4–6 years old, and one adult of indeterminate sex. No known individuals were identified. The 192 associated funerary objects are 132 animal bone fragments and 60 shell fragments. The human remains and associated funerary objects from site 34Dl27 were interred during the Woodland Period (300 B.C.–A.D. 1000).

In 1939, human remains representing, at minimum, two individuals were removed from the Phillips site (34Lf34) in Le Flore County, OK. The human remains were discovered in the Museum collection in 1995, and no other information about them is available. The human remains include one adult female 35–50 years old and one adult male at least 50 years old. No known individuals were identified. The 16 associated funerary objects are 15 faunal bones and one mussel shell. The human remains and associated funerary objects from 34Lf34 were interred during the Woodland Period (300 B.C.–A.D. 1000).

In 1947, human remains representing, at minimum, three individuals were removed from the Ward site (34Lf10) in Le Flore County, OK. The site was excavated by the University of Oklahoma in 1947, and the associated finds were transferred to the Museum that same year. This type of site, often referred to as a ''black midden site,'' represents the remains of a village. It includes low mounds with dense accumulations of occupational debris, dark sediment, and burials. The human remains include two adult males and one adult of indeterminate sex. No known individuals were identified. The 18 associated funerary objects are one undecorated ceramic sherd, three chipped stone bifaces, three straight stem projectile points, five contracting stem projectile points, one expanding stem projectile point, one unidentified worked stone, one antler fragment, and three animal bone fragments. The human remains and associated funerary objects from site 34Lf10 were interred during the Woodland Period (300 B.C.–A.D. 1000).

In 1940, human remains representing, at minimum, 19 individuals were removed from the Redwine 2 site (34Lf15) in Le Flore County, OK. This mound site, located on the north and south banks of Fourche Maline Creek, was excavated by the WPA in 1940. In 1947, the site was recorded by the University of Oklahoma and the human remains and archeological materials were transferred to the Museum. The human remains include one fetus, one infant, five children, four adolescents, and eight adults. No known individuals were identified. The 26 associated funerary objects are eight animal bone beads, nine animal bone fragments, three stone projectile points, one bag of burned clay, two ceramic sherds, and three unmodified shell fragments. The Redwine 2 site dates to the Woodland Period (300 B.C. to A.D. 1000), more specifically, to the Fourche Maline phase (A.D. 300–800) according to the chronology established for eastern Oklahoma.

In 1965, human remains representing, at minimum, one individual were removed from the Sugar Creek site (34Lf1) in Le Flore County, OK. The site had been disturbed by agricultural activities, bulldozing, and looting. Excavations at 34Lf1 were carried out by the University of Oklahoma in 1965 and by the Oklahoma Archeological Survey in 1981. The associated finds were brought to the Museum immediately following both projects. The human remains include one adult of indeterminate sex, 20 years or older. No known individual was identified. The 103 associated funerary objects are one quartz crystal, three projectile points, one chipped stone core, 80 stone flakes, one small bag of highly fragmented copper, one potsherd, nine animal bone fragments, and seven shell fragments. The Sugar Creek site dates to the Woodland (300 B.C.–A.D. 1000) and Mississippian (A.D. 1000–1500) Periods.

In 1939, human remains representing, at minimum, two individuals were removed from the Jones site (34Lf75) in Le Flore County, OK. The site was excavated by the WPA in 1939 and the excavated finds were transferred to the Museum that same year. The human remains include an adult male and an adult female. No known individuals were identified. The 20 associated funerary objects are 18 ceramic potsherds, one charred turtle shell fragment, and one piece of charred corn. The human remains and associated funerary objects from site 34Lf75 were interred during the Mississippian Period (A.D. 1000–1500).

In 1937, human remains representing, at minimum, three individuals were removed from the Ward Mound 2 site (34Lf37) in Le Flore County, OK. This mound, located immediately south of Craig Mound (34Lf40), is associated with the larger Spiro Mounds complex. The mound was excavated by the WPA in 1937 and the associated finds were turned over to the museum that same year. The human remains include three adults over 20 years of age and of indeterminate sex. No known individuals were identified. The 15 associated funerary objects are two fragments of red pigment, one fragment of white pigment, and 12 unmodified stone pebbles. The Ward Mound 2 site dates to the Mississippian Period (A.D. 1000–1500), more specifically, to the Evans and Harlan phases (A.D. 1000–1250) according to the chronology established for eastern Oklahoma.

In 1938, human remains representing, at minimum, five individuals were removed from the Littlefield 1 site (34Lf60) in Le Flore County, OK. This village site was excavated by the WPA in 1938, and the associated finds were brought to the museum that same year. The human remains include two males, one female, one late adolescent of indeterminate sex, and one adult of indeterminate sex. No known individuals were identified. The 72 associated funerary objects are one partially complete ceramic vessel, 32 potsherds, two burned clay fragments, one hammerstone, one bone awl, 34 turtle bones, and one deer jawbone. The human remains and associated funerary objects from site 34Lf60 were interred during the Mississippian Period (A.D. 1000–1500), more specifically, during the Spiro (A.D. 1350–1450) and Fort Coffee (A.D. 1450–1600) phases according to the chronology established for eastern Oklahoma.

In 1939, human remains representing, at minimum, 20 individuals were removed from the Braden School House site (34Lf77) in Le Flore County, OK.

This site was excavated in 1939 by the WPA and the finds were turned over to the museum that same year. The human remains include two children and 18 adults of indeterminate sex. No known individuals were identified. The 48 associated funerary objects are 10 ceramic vessels, one ceramic pipe, and 37 potsherds. The human remains and associated funerary objects from site 34Lf77 were interred during the Spiro (A.D. 1350–1450) and Fort Coffee (A.D. 1450–1600) phases.

In 1938, human remains representing, at minimum, two individuals were removed from the Bowman 1 site (34Lf42) in Le Flore County, OK. This village site was located on the south bank of the Arkansas River, about one and a half miles west of the Spiro Mounds group. Prior to excavation by the WPA in 1938, the site had been subject to extensive looting. The finds from the 1938 excavation were turned over to the Museum that same year. The human remains include two adults of indeterminate sex. No known individuals were identified. The 932 associated funerary objects are one decorated bowl with one bird effigy on each handle, one decorated bowl with four pinched nodes and a decorated neck, one decorated bowl with a scalloped rim, one decorated bottle incised with circles, one decorated jar with incised triangles on the neck, one decorated bottle, 22 undecorated bowls, three undecorated bottles, one dipper without the handle, three undecorated vessels, one pipe, 877 potsherds, one daub fragment, seven projectile points, one stone knife, one chipped stone axe, three stone bifaces, two groundstone mano fragments, one animal bone bead, one turtle bone shell fragment, and two animal bones. The human remains and associated funerary objects from site 34Lf42 were interred during the Spiro (A.D. 1350–1450) and Fort Coffee (A.D. 1450–1600) phases.

In 1938, human remains representing, at minimum, 11 individuals were removed from the Choates 2 site (34Lf62) in Le Flore County, OK. This site was excavated by the WPA in 1938 and the associated finds were brought to the museum later that year. The human remains include two neonates, three infants, five children, and one adult. No known individuals were identified. The 251 associated funerary objects are 16 Woodward Plain potsherds, 11 Poteau Plain potsherds, one decorated rim potsherd, 122 undecorated potsherds, two daub fragments, one ceramic pipe fragment, one hammerstone, one complete projectile point, three projectile point fragments, 28 turtle bone fragments, one antler fragment, three burned animal bone fragments, 45 animal bone fragments, one lead ore fragment, seven modified mussel shell fragments, and eight unmodified mussel shell fragments. The Choates 2 site dates to the Mississippian Period (A.D. 1000–1400), more specifically, to the Norman phase (A.D. 1250–1350) according to the chronology developed for eastern Oklahoma.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: archeological, geographical, and historical, as well as information provided through tribal consultation.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Sam Noble Oklahoma Museum of Natural History has determined that:

- The human remains described in this notice represent the physical remains of 78 individuals of Native American ancestry.
- The 1,701 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Caddo Nation of Oklahoma and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco, & Tawakonie), Oklahoma.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after January 9, 2023. If competing requests for repatriation are received, the Sam Noble Oklahoma Museum of Natural History must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The Sam Noble Oklahoma Museum of Natural History is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: November 30, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–26794 Filed 12–8–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0034983; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: New York State Museum, Albany, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the New York State Museum (NYSM), intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural items were removed from Albany, Greene, Rensselaer, Saratoga, and Washington Counties, NY.

DATES: Repatriation of the cultural items in this notice may occur on or after January 9, 2023.

ADDRESSES: Lisa Anderson, New York State Museum, 3049 Cultural Education Center, Albany, NY 12230, telephone (518) 486–2020, email *lisa.anderson@nysed.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative

responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the NYSM. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by the NYSM.

Description

In 1967, Dr. Robert E. Funk of the NYSM removed 18 unassociated funerary objects from several Native American graves eroding from the bank of the Hudson River at the Goes site in Cedar Hill, Albany County, NY. The 18 unassociated funerary objects are six pottery sherds, one chert knife, and 11 chert flakes. Archeological evidence indicates long-term use of the Goes site from the Late Archaic to Contact periods. The unassociated funerary objects suggest the graves date to the Late Woodland period.

Around 1899, Dr. A.H. Getty removed 313 unassociated funerary objects from a Native American grave at the Saunders Farm site near Athens, in Greene County, NY, after it was exposed by mining for molding sand. Getty later gave the items to the Reverend W.N.P. Dailey, who in turn donated them to the NYSM in 1904. The 313 unassociated funerary objects are 295 copper beads, 17 shell beads, and one stone gorget. The type of unassociated funerary objects from the Saunders Farm site suggests the grave dates to the Early Woodland period.

In 1963, Dr. Robert E. Funk of the NYSM removed two unassociated funerary objects from the Tufano site in Greene County, NY. The two unassociated funerary objects are one pottery sherd and one chipped stone tool. Archeological evidence indicates the Tufano site dates to the late Middle Woodland period.

In 1956, Mr. Carl S. Sundler removed 21 unassociated funerary objects from a Native American grave at the Van Orden site in Greene County, NY, after the site was disturbed by construction. Sundler donated the items to the NYSM in 1974 as part of a larger collection. The 21 unassociated funerary objects are four projectile points, four chert tools, one fragment of animal bone, seven pottery sherds, two charcoal samples, two mineral samples, and one shell fragment. Archeological evidence indicates the Van Orden site dates to the Early-to-Middle Woodland period.

In 1986, Dr. Robert E. Funk of the NYSM removed eight unassociated funerary objects from a Native American grave eroding from the bank of the Hoosic River at the Knickerbocker site in Rensselaer County, NY. The eight unassociated funerary objects are two pottery rim sherds, five chert flakes, and one charcoal sample. The type of unassociated funerary objects from the Knickerbocker site suggests the grave dates to the Late Woodland period.

In 1976, the NYSM acquired one unassociated funerary object from Mr. J.W. Bouchard, who recovered it from a Native American grave at the Reynolds site in Saratoga County, NY, after it had eroded from the bank of Fish Creek. The one unassociated funerary object is a perforated brass thimble that dates to the mid-17th century.

In 1965, Drs. Robert E. Funk and William A. Ritchie of the NYSM removed one unassociated funerary object from the Barton site in Washington County, NY, after the site was disturbed by construction. The one unassociated funerary object is a sample of red ocher. Archeological evidence suggests the Barton site dates to the Early Woodland period.

Cultural Affiliation

The cultural items in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: archeological, geographical, and linguistic.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the NYSM has determined that:

- The 364 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from specific burial sites of Native American individuals.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items and the Stockbridge Munsee Community, Wisconsin.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after January 9, 2023. If competing requests for repatriation are received, the NYSM must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The NYSM is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, 10.10, and 10.14.

Dated: November 30, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–26789 Filed 12–8–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0034974; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: University of Georgia, Laboratory of Archaeology, Athens, GA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Georgia, Laboratory of Archaeology intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural items were removed from Pemiscott, Missouri and an unknown location.

DATES: Repatriation of the cultural items in this notice may occur on or after January 9, 2023.

ADDRESSES: Amanda Roberts Thompson, University of Georgia, Laboratory of Archaeology, 1125 Whitehall Road, Athens, GA 30605,

telephone (706) 542–8737, email *arobthom@uga.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of Georgia, Laboratory of Archaeology. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by the University of Georgia, Laboratory of Archaeology.

Description

The sole provenance information possessed by the University of Georgia, Laboratory of Archaeology for these two cultural items is a tag on one of them labeled Pemiscott, MO. The two cultural items are intact plain, shell tempered ceramic jars.

Cultural Affiliation

The cultural items in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: geographical, historical, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the University of Georgia, Laboratory of Archaeology has determined that:

- The two cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items and the Quapaw Nation (*previously* listed as The Quapaw Tribe of Indians).

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after January 9, 2023. If competing requests for repatriation are received, the University of Georgia, Laboratory of Archaeology must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The University of Georgia, Laboratory of Archaeology is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, 10.10, and 10.14.

Dated: November 30, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–26795 Filed 12–8–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0034982; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: New York State Museum, Albany, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the New York State Museum (NYSM) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Albany, Greene, Rensselaer, Saratoga, Schenectady, Warren, and Washington Counties, NY, and Rutland County, VT.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after January 9, 2023.

ADDRESSES: Lisa Anderson, New York State Museum, 3049 Cultural Education Center, Albany, NY 12230, telephone (518) 486–2020, email *lisa.anderson@nysed.gov*.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the NYSM. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the NYSM.

Description

In 1982, human remains representing, at minimum, four individuals were removed from the Abele site in Menands, Albany County, NY, during excavations conducted by the University at Albany, State University of New York. The human remains were transferred to the NYSM in 2004. The human remains belong to one possible male over the age of 50, two adults of unknown sex (represented by partial hand bones), and one infant (represented by fragmentary vertebrae). No known individuals were identified. No associated funerary objects are present. Based on their archeological context, the human remains may date to the Middle Woodland period or later.

In 1959, human remains representing, at minimum, one individual were removed from the Barren Island site in Albany County, NY, during excavations conducted by avocational archeologists Mr. R. Arthur Johnson and Mr. E.B. Christman. The human remains were donated to the NYSM in the same year. The human remains belong to one, probably male, adult. No known individual was identified. No associated funerary objects are present. Based on their archeological context, the human remains have been associated with the Middle Woodland period.

In the 1960s, human remains representing, at minimum, seven individuals were removed from the Dennis site in Menands, Albany County, NY, during salvage excavations conducted by Mr. R. Arthur Johnson and others after the site was disturbed by mining activity. The human remains were donated to the NYSM in the 1960s and 2000. The fragmentary remains belong to one male 35–50 years old, one female 15–17 years old, two young adults of unknown sex, one adult who is probably female, and two adults of unknown sex. No known individuals

were identified. No associated funerary objects are present. Archeological evidence indicates the Dennis site was occupied intermittently from the Late Archaic through Late Woodland periods; these human remains are thought to date to the later occupation.

In 1962, human remains representing, at minimum, two individuals were removed from the Fish Club Cave site in Coeymans, Albany County, NY, during excavations conducted by Dr. Robert E. Funk of the NYSM and avocational archeologist Mr. R. Arthur Johnson. No burials were identified during the excavation. The human remains were subsequently identified during an examination of the animal bones recovered from refuse deposits. They belong to one possible adult female (represented by cranial fragments and a tooth) and one adult of unknown sex. No known individuals were identified. No associated funerary objects are present. Archeological evidence indicates the Fish Club Cave site was occupied intermittently from the Late Archaic to late Middle Woodland period; the human remains are believed to date to the later period of occupation.

In 1967, human remains representing, at minimum, one individual were removed during construction on the South Mall or Empire State Plaza in Albany County, NY, and transferred by the Albany County Coroner to the NYSM. They belong to a female 25–35 years old (represented by the skull and a tibia). No known individual was identified. No associated funerary objects are present. No information on the archeological context of these human remains is available.

In 1973, human remains representing, at minimum, four individuals were removed from the vicinity of Selkirk in Albany County, NY, during construction of a water filtration plant. The human remains were probably transferred to the NYSM by local law enforcement. They include the commingled cranial remains of one female and two males 30–50 years old, and one adult of unknown sex. No known individuals were identified. No associated funerary objects are present. The human remains have been dated to the Late Woodland period.

Between 1933 and 1938, human remains representing, at minimum, two individuals were removed from the Van Schaick's Island site in Albany County, NY, by avocational archeologist Mr. Homer Folger after they were found eroding from the riverbank. In 2012, Folger's family donated these human remains to the NYSM. They include the extremely fragmentary and commingled remains of a male 35–55 years old and an individual of unknown age and sex. No known individuals were identified. The 38 associated funerary objects are 20 dark blue faceted glass beads, 14 white glass seed beads, one fragment of turtle shell, and three chert flakes. Based on the glass beads in the collection, the human remains date to ca A.D. 1725–1750.

In 1935, human remains representing, at minimum, two individuals were removed from the Black Rock site in Greene County, NY, during excavations conducted by Mr. Noah T. Clarke of the NYSM. The human remains belong to a female over the age of 60 years and a male 40–44 years old. No known individuals were identified. The two associated funerary objects are one dog skeleton and one bone awl.

In 1964, human remains representing, at minimum, two individuals were removed from the Black Rock site in Greene County, NY, during excavations conducted by Dr. Robert E. Funk of the NYSM. The human remains belong to two adults of unknown sex. No known individuals were identified. No funerary objects are present. Archeological evidence from the Black Rock site indicates the human remains and associated funerary objects date to the late Middle Woodland period, ca. A.D. 850.

In 1931, human remains representing, at minimum, one individual were removed from the Lefurgy site in Greene County, NY, by Mr. Noah T. Clarke of the NYSM after they were accidentally disturbed. The human remains belong to a possible male 35–45 years old. No known individual was identified. The 11 associated funerary objects are one ground wolf mandible and maxilla, one chert projectile point, one chert flake, and eight animal bone fragments. The artifacts suggest the burial dates sometime between the Late Archaic and Middle Woodland periods.

In 1963 and 1964, human remains representing, at minimum, 32 individuals were removed from the Tufano site in Greene County, NY, during excavations conducted by Dr. Robert E. Funk of the NYSM. The fragmentary human remains belong to two infants, eight children 7–15 years old, eight females 17–50 years old, nine males 24–60 years old, and five adults of unknown sex. No known individuals were identified. The 217 associated funerary objects are one two-holed gorget, one rubbing stone, three box turtle carapace fragments, one pottery elbow pipe, 24 pottery sherds, 13 projectile points, one projectile point base, two drills, 22 bifaces, one flake knife, 117 flakes, two hammerstones, one pitted stone, 11 unmodified stones, one redware fragment, one rough stone tool, one bone fishhook, five samples of animal bone, two shell samples, three soil samples, three charcoal samples, and one red ocher sample. Archeological evidence indicates the Tufano site dates to the late Middle Woodland period, ca A.D. 700.

Between 1955 and 1957, human remains representing, at minimum, six individuals were removed from the Van Orden site in Greene County, NY, during excavations conducted by Dr. William A. Ritchie of the NYSM and avocational archeologist Mr. Carl S. Sundler after the site was disturbed by construction. In 1974, items from the site that had been retained by Mr. Sundler were donated to the NYSM as part of a larger collection. The extremely fragmentary human remains belong to one possible adult female, four adults of unknown sex, and one individual of unknown age and sex. No known individuals were identified. The 161 associated funerary objects are 46 rolled copper beads, 11 projectile points, two preforms, six chert tools, 88 chert flakes, two pottery sherds, one steatite sherd, two charcoal samples, and three turtle shell fragments. Archeological evidence indicates the Van Orden site dates to the Early to Middle Woodland period.

In 1959, human remains representing, at minimum, one individual were removed from the Burden Estate in Troy, Rensselaer County, NY, and transferred by law enforcement to the NYSM. The human remains represent a female 40–50 years old. No known individual was identified. No associated funerary objects are present.

In 1962, human remains representing, at minimum, one individual were removed from an unknown location on Third Avenue Extension in East Greenbush, Rensselaer County, NY, and transferred by law enforcement to the NYSM. The human remains—a fragmentary skull—belong to an adult female. No known individual was identified. No associated funerary objects are present.

In 1973, human remains representing, at minimum, one individual were removed from the Town of Schodack in Rensselaer County, NY, during highway construction. In 1996, they were transferred by the New York State Police to the NYSM after being identified as Native American by Dr. William R. Maples of the C.A. Pound Human Identification Laboratory at the Florida Museum of Natural History. The human remains—a fragmentary skull and humerus—belong to a male 40–50 years old. No known individual was identified. No associated funerary objects are present.

In 1978, human remains representing, at minimum, three individuals were removed from property owned by the General Electric Company in Waterford, Saratoga County, NY, after they were discovered during construction. They were transferred to the NYSM that same year. The fragmentary, commingled human remains belong to one female 55–70 years old, one possible female 25–35 years old, and one child 10–16 years old. No known individuals were identified. The 18 associated funerary objects are 14 chert flakes, two deer bone fragments, one sturgeon bone, and one charcoal sample. Archeological evidence suggests the human remains date to the Late Woodland period.

In 1954, human remains representing, at minimum, one individual were removed from the Winney's Rift site, also known as Lewandowski, on Fish Creek, in Saratoga County, NY, during excavations conducted by Dr. William A. Ritchie of the NYSM. The human remains—a molar tooth—belong to a young adult of unknown sex. No known individual was identified. No associated funerary objects are present.

Sometime prior to 1968, human remains representing, at minimum, one individual were removed from the Lewandowski site, also known as Winney's Rift, in Saratoga County, NY, during excavations conducted by avocational archeologist Mr. Louis Follett. In 1968, Follett donated these human remains to the NYSM. The human remains belong to a male 25–30 years old. No known individual was identified. No associated funerary objects are present.

Sometime prior to 1976, human remains representing, at minimum, two individuals were removed from the vicinity of Fish Creek, possibly the Lewandowski site, also known as Winney's Rift, in Saratoga County, NY, by avocational archeologist Mr. Joseph Furey. In 1976, Furey donated these human remains to the NYSM. The fragmentary human remains belong to a female 25–35 years old and an infant. No known individuals were identified. No associated funerary objects are present.

Sometime prior to the 1970s, human remains representing, at minimum, one individual were removed from the vicinity of Fish Creek in Saratoga County, NY, by avocational archeologist Mr. William Rice. In 2006, Rice's family donated his collection, including these human remains, to the NYSM. Although no documentation accompanied the collection, Rice is known to have conducted excavations at the Lewandowski site, also known as Winney's Rift, on Fish Creek in 1968 and 1969. The human remains—a skull—belong to a male 40–50 years old. No known individual was identified. No associated funerary objects are present. Archeological evidence indicates long-term use of the Lewandowski/Winney's Rift site, with increasingly intensive occupation through the Late Woodland period.

In 1954, human remains representing, at minimum, three individuals were removed from the Campbell Ave site in Rotterdam, Schenectady County, NY, by Schenectady Museum staff after being discovered during sand and gravel mining activity. In 1974, the items removed from the site were transferred to the NYSM. The fragmentary, commingled human remains belong to one female 50–60 years old, one possible female 25–35 years old, and one infant. No known individuals were identified. The 34 associated funerary objects are one Levanna-type projectile point and 33 animal bone fragments. Artifacts recovered from the site suggest the human remains date to the Late Woodland period.

In 1926, human remains representing, at minimum, one individual were removed from the Dunham's Bay site in Lake George, Warren County, NY, during excavations conducted by Mr. Noah T. Clarke of the NYSM. The human remains—three maxillary teeth—belong to a child 9–10 years old. The 12 associated funerary objects are five rolled copper beads, six olivella and columella shell beads, and one charcoal sample. Archeological evidence suggests the human remains date to the Early Woodland period.

In 1965, human remains representing, at minimum, five individuals were removed from the Barton site in Easton, Washington County, NY, during salvage excavations conducted by Dr. Robert E. Funk and Dr. William A. Ritchie of the NYSM after being discovered during construction activity. The fragmentary human remains belong to one child, three possible adult males, and one adult of unknown sex. No known individuals were identified. The 127 associated funerary objects are 53 copper beads, 46 columella shell beads, four projectile points, 12 chipped stone tools, two stone flakes, one animal bone fragment, one antler fragment, five galena nodules, two charcoal samples, and one soil sample. Archeological evidence suggests the human remains date to the Early Woodland period.

In 1977, human remains representing, at minimum, seven individuals were removed from the Otter Creek 2 site in Rutland County, VT, during excavations conducted by Mr. Richard T. Passino. In 1978, Passino donated the items recovered from the site to the NYSM. The fragmentary, commingled human remains belong to four children and three males 25–45 years old. No known individuals were identified. The one associated funerary object is a dog skeleton. Archeological evidence suggests the Otter Creek 2 site dates to the Late Archaic period; the human remains may be associated with a later occupation.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: archeological, geographical, and linguistic.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the NYSM has determined that:

- The human remains described in this notice represent the physical remains of 91 individuals of Native American ancestry.
- The 621 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Stockbridge Munsee Community, Wisconsin.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after January 9, 2023. If competing requests for repatriation are received, the NYSM must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The NYSM is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: November 30, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–26803 Filed 12–8–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0034976; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Robert S. Peabody Institute of Archaeology, Andover MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Robert S. Peabody Institute of Archaeology (RSPI) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Jefferson County, MS.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after January 9, 2023.

ADDRESSES: Dr. Ryan J. Wheeler, Robert S. Peabody Institute of Archaeology, Phillips Academy, 180 Main Street, Andover, MA 01810, telephone (978) 749–4490, email *rwheeler@andover.edu*.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the RSPI. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the RSPI.

Description

In February of 1924, human remains representing, at minimum, two individuals were removed from Jefferson County, MS. Warren K. Moorehead, working under the auspices of the Department of Archaeology at Phillips Academy (now the RSPI), removed these human remains from Mounds C and/or D at Ferguson Mounds, 22JE500, also known as Feltus Mounds and the Judge Truly site. (In March of 1924, Moorehead transferred additional human remains and funerary objects from this site to Aleš Hrdlička at what is now the Smithsonian Institution's National Museum of Natural History.) The Ferguson Mounds date to the Coles Creek period (700–1,100 CE). The fragmentary human remains belong to two adult males. No known individuals were identified. The 573 associated funerary objects are 123 bifaces, seven faunal remains, one abrading stone, five chunks of ash, one bag of ashy bone matrix, 27 celts, nine fragments of daub, one effigy figurine fragment, one hammerstone, 110 points, 20 fragments of shatter, eight edge tools, 11 knives, 10 flakes, five perforators, one scraper, one axe, five unfinished objects, nine fragments of debitage, 213 ceramic sherds, one pigment stone, one pipe fragment, and three plummets.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological, archeological, biological, historical, linguistic, other relevant information, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the RSPI has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- The 573 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and The Choctaw Nation of Oklahoma and The Muscogee (Creek) Nation.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after January 9, 2023. If competing requests for repatriation are received, the RSPI must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The RSPI is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: November 30, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–26797 Filed 12–8–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0034977; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: The Children's Museum of Indianapolis, Indianapolis, IN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), The Children's Museum of Indianapolis intends to repatriate certain cultural items that meet the definition of sacred objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural items were removed from Arizona.

DATES: Repatriation of the cultural items in this notice may occur on or after January 9, 2023.

ADDRESSES: Jennifer Noffze, The Children's Museum of Indianapolis, 3000 N Meridian Street, Indianapolis, IN 46208, telephone (317) 334–3722, email *jenn@childrensmuseum.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of The Children's Museum of Indianapolis. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by The Children's Museum of Indianapolis.

Description

The three sacred objects are a Chapayeka mask, sword, and knife. The mask was donated to the museum in 1969, and the sword and knife were purchased in 1969 from the same individual who donated the mask.

Cultural Affiliation

The cultural items in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: geographical information, historical information, and consultation.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, The Children's Museum of Indianapolis has determined that:

- The three cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items and the Pascua Yaqui Tribe of Arizona.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after January 9, 2023. If competing requests for repatriation are received, The Children's Museum of Indianapolis must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The Children's Museum of Indianapolis is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, 10.10, and 10.14.

Dated: November 30, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–26799 Filed 12–8–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0034978; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: The Children's Museum of Indianapolis, Indianapolis, IN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), The Children's Museum of Indianapolis intends to repatriate a cultural item that meets the definition of a sacred object and that has a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural item was removed from Arizona.

DATES: Repatriation of the cultural item in this notice may occur on or after January 9, 2023.

ADDRESSES: Jennifer Noffze, The Children's Museum of Indianapolis, 3000 N Meridian Street, Indianapolis, IN 46208, telephone (317) 334–3722, email *jenn@childrensmuseum.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of The Children's Museum of Indianapolis. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by The Children's Museum of Indianapolis.

Description

The sacred object is a feathered prayer stick that was purchased by the museum in 1964.

Cultural affiliation

The cultural items in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: geographical, historical, and oral traditional.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, The Children's Museum of Indianapolis has determined that:

- The one cultural item described above is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- There is a relationship of shared group identity that can be reasonably traced between the cultural item and the Navajo Nation, Arizona, New Mexico, & Utah.

Requests for Repatriation

Additional, written requests for repatriation of the cultural item in this notice must be sent to the Responsible Official identified in **ADDRESSES.** Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural item in this notice to a requestor may occur on or after January 9, 2023. If competing requests for repatriation are received, The Children's Museum of Indianapolis must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural item are considered a single request and not competing requests. The Children's Museum of Indianapolis is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, 10.10, and 10.14.

Dated: November 30, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–26800 Filed 12–8–22; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Components for Certain Environmentally-Protected LCD Digital Displays and Products Containing Same, DN 3658;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Katherine M. Hiner, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Samsung Electronics Co., Ltd.; Samsung Electronics America, Inc.; Samsung Research America, Inc.; and Samsung International, Inc. on December 5, 2022. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of regarding components for certain environmentally-protected LCD digital displays and products containing same. The complainant names as respondent: Manufacturing Resources International, Inc. of Alpharetta, GA. The complainant requests that the Commission issue a permanent limited exclusion order a cease and desist order, and impose a bond upon respondent's alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third-party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3658'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing

Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: December 6, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–26845 Filed 12–8–22; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

[OMB Number 1125–0012]

Agency Information Collection Activities; Proposed eCollection; eComments Requested; Revision of a Currently Approved Collection; Request for New Recognition, Renewal of Recognition, Extension of Recognition of a Non-Profit Religious, Charitable, Social Service, or Similar Organization (Form EOIR–31)

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

ACTION: 30-Day notice.

SUMMARY: The Executive Office for Immigration Review (EOIR), 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. This proposed information collection was previously published in the **Federal Register** on November 3, 2022, allowing for a 30-day comment period, however the email address for comments was incorrect. This notice corrects the email address and extends the period for comment.

DATES: Comments are encouraged and will be accepted for an additional 30 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. Written comments and/or suggestions can also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submission@omb.eop.gov.*

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:* Revision of a currently approved collection.

2. *The Title of the Form/Collection:* Request for New Recognition, Renewal of Recognition, Extension of Recognition of a Non-profit Religious, Charitable, Social Service, or Similar Organization.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form EOIR–31. The applicable component within the Department of Justice is the Office of Legal Access Programs, Executive Office for Immigration Review.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Non-profit organizations seeking new recognition, renewal of recognition, or extension of recognition to be recognized as legal service providers by the Office of Legal Access Programs of the Executive Office for Immigration Review (EOIR).

Abstract: This information collection will allow an organization to request, renew, and extend recognition of the organization to appear before EOIR and/or the Department of Homeland Security. This information collection is necessary to determine whether an organization meets the eligibility requirements for recognition. Requests can be made using a fillable pdf. application or electronic submission.

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 131 respondents will complete the form annually for initial recognition with an average of 2 hours per response, for a total of 262 hours. It is estimated that 190 respondents will complete the form annually for renewal of recognition with

an average of 7 hours per response, with a total of 1,330 hours.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,592 total annual burden hours associated with this collection.

If additional information is required contact: Robert Houser, Department Clearance Officer, Policy and Planning Staff, Office of the Chief Information Officer, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, Suite 3E.206, Washington, DC 20530.

Dated: December 5, 2022.

Robert Houser,

Department Clearance Officer, Policy and Planning Staff, Office of the Chief Information Officer, U.S. Department of Justice.

[FR Doc. 2022–26742 Filed 12–8–22; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2012–0013]

Lead in General Industry Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget (OMB) approval of the information collection requirements specified in its Standard on Lead in General Industry.

DATES: Comments must be submitted (postmarked, sent, or received) by February 7, 2023.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA–2012–0013) for the Information Collection Request (ICR). OSHA will place all comments and requests to speak, including personal information you provide, in the public docket without change, which may be available online at *http://www.regulations.gov.* Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates. For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection and copying through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627) for assistance in locating docket submissions.

FOR FURTHER INFORMATION CONTACT: Seleda Perryman or Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (See 29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining information (See 29 U.S.C. 657).

The Standard on Lead in General Industry (29 CFR 1910.1025) requires initial and periodic exposure monitoring and measurements, medical surveillance by physicians through biological monitoring and examinations, and recordkeeping and notification obligations. These requirements help protect workers from the adverse health effects that may result from their occupational involvement with lead, and provide access to these records by OSHA, the National Institute for Occupational Safety and Health, the affected workers, and designated representatives. The major information collection requirements of this standard include the following elements of the Standard.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply. For example, by using automated or other technological information collection, and transmission techniques.

III. Proposed Actions

The agency is requesting an adjusted increase in burden hours, from 1,071,602 hours to 1,134,438 hours, a difference of 62,836 hours. The increase in burden is due to the increase in the number of professional establishments, going from 53,469 to 56,906, which increased the number of exposed employees by 46,166, from 767,878 employees to 814,044 employees. Also, due to the decrease in the estimated initial exposure monitoring, initial medical examinations, as well as decreased costs to perform biological monitoring and medical examinations under the standard, there is a decrease in total operation and maintenance costs of $21,775,260 (from $166,855,380 to $145,080,120).

OSHA will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements.

Type of Review: Extension of a currently approved collection.

Title: Lead in General Industries Standard (29 CFR 1910.1025).

OMB Control Number: 1218–0092.

Affected Public: Business or other for-profits; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 56,906.

Number of Responses: 3,886,840.

Frequency of Responses: On occasion.

Average Time per Response: Varies.

Estimated Total Burden Hours: 1,134,438.

Estimated Cost (Operation and Maintenance): $145,080,120.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. *Please note:* While OSHA's Docket Office is continuing to accept and process submissions by hand, express mail, messenger, and courier service, all comments, attachments, and other material must identify the agency name and the OSHA docket number for the ICR (Docket No. OSHA–2012–0013). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or a facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so that the agency can attach them to your comments.

Due to security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5672).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed in Washington, DC, on December 2, 2022.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2022–26755 Filed 12–8–22; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0042]

TUV Rheinland of North America, Inc.: Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of TUV Rheinland of North America, Inc., for expansion of the scope of recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant the application.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before December 27, 2022.

ADDRESSES: Comments may be submitted as follows:

Electronically: You may submit comments, including attachments, electronically at *http://www.regulations.gov,* the Federal eRulemaking Portal. Follow the online instructions for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Docket: To read or download comments or other material in the docket, go to *https://www.regulations.gov* or the OSHA Docket Office. All documents in the docket (including this **Federal Register** notice) are listed in the *https://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and the OSHA docket number (OSHA–2007–0042). OSHA places comments and other materials, including any personal information, in the public docket without revision, and these materials will be available online at *http://www.regulations.gov.* Therefore, the agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data. For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Extension of comment period: Submit requests for an extension of the comment period on or before December 27, 2022 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of the Application for Expansion

OSHA is providing notice that TUV Rheinland of North America, Inc. (TUVRNA), is applying for an expansion of current recognition as a NRTL. TUVRNA requests the addition of two test sites to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by the applicable test standard and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition, as well as for an expansion or renewal of recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides the preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including TUVRNA, which details that NRTL's scope of recognition. These pages are available from the OSHA website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

TUVRNA currently has eight facilities (sites) recognized by OSHA for product testing and certification, with the headquarters located at: TUV Rheinland of North America, Inc., 12 Commerce Road, Newtown, Connecticut 06470. A complete list of TUVRNA sites recognized by OSHA is available at *https://www.osha.gov/nationally-recognized-testing-laboratory-program/tuv.*

II. General Background on the Application

TUVRNA submitted an application, dated February 8, 2018 (OSHA–2007–0042–0061), to expand recognition as a NRTL to include two additional test sites located at: 295 Foster Street, Suite 100, Littleton, Massachusetts 01460 (TUVRNA Littleton) and 710 Resende Road, Bldg. 199, Webster, New York 14580 (TUVRNA Webster). OSHA staff performed an on-site review of TUVRNA's testing facilities at TUVRNA Littleton on July 12, 2022, and at TUVRNA Webster on July 14, 2022, in which assessors found some nonconformances with the requirements of 29 CFR 1910.7. TUVRNA has addressed these issues sufficiently, and OSHA staff has preliminarily determined that OSHA should grant the application.

III. Preliminary Finding on the Application

TUVRNA submitted an acceptable application for expansion of the scope of recognition. OSHA's review of the application file and pertinent documentation preliminarily indicates that TUVRNA can meet the requirements prescribed by 29 CFR 1910.7 for expanding its recognition to include the addition of the two additional test sites for NRTL testing and certification. This preliminary finding does not constitute an interim or temporary approval of TUVRNA's application.

OSHA seeks public comment on this preliminary determination.

IV. Public Participation

OSHA welcomes public comment as to whether TUVRNA meets the requirements of 29 CFR 1910.7 for expansion of recognition as a NRTL. Comments should consist of pertinent written documents and exhibits.

Commenters needing more time to comment must submit a request in writing, stating the reasons for the request by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer time period. OSHA may deny a request for an extension if it is not adequately justified.

To review copies of the exhibit identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. These materials also are generally available online at *https://www.regulations.gov* under Docket No. OSHA–2007–0042 (for further information, see the ''*Docket*'' heading in the section of this notice titled **ADDRESSES**).

OSHA staff will review all comments to the docket submitted in a timely manner. After addressing the issues raised by these comments, staff will make a recommendation to the Assistant Secretary of Labor for Occupational Safety and Health on whether to grant TUVRNA's application for expansion of the scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of the final decision in the **Federal Register**.

IV. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393; Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on December 2, 2022.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2022–26756 Filed 12–8–22; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

Agency Information Collection Activities; Comment Request: Required Components of the Jobs for Veterans State Grants State Plans

ACTION: Notice of availability; request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), DOL is soliciting public comments regarding the proposed revision of this Office of the Assistant Secretary for Veterans' Employment and Training Service (VETS) sponsored information collection for the authority to collect information requirements under a new information collection request (ICR) titled ''Required Components of the Jobs for Veterans State Grants State Plans''.

DATES: Consideration will be given to all written comments received by February 7, 2023.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained for free by contacting Rebekah Haydin by telephone at (240) 867–2302 (this is not a toll-free number) or by email at *JVSG@dol.gov.*

Submit written comments about this ICR by email to: *JVSG@dol.gov.* Include ''JVSG State Plan ICR Comments'' in the subject line.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and included in the request for the Office of Management and Budget approval of the information collection request. Comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Rebekah Haydin, by telephone at (240) 867–2302 (this is not a toll-free number) or by email at *JVSG@dol.gov.*

SUPPLEMENTARY INFORMATION: The Department of Labor, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

The Department of Labor's Veterans' Employment and Training Service (VETS) administers funds for the Jobs for Veterans State Grant (JVSG) to each state, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands on an annual fiscal year basis. These non-competitive, formula-driven grants are codified under Title 38, United States Code, (38 U.S.C.) section 4102A(b)(5):

''Subject to subsection (c) make available for use in each state by grant or contract such funds as may be necessary to support—(A) disabled veterans' outreach program specialists appointed under section 4103A(a)(1) of this title, (B) local veterans' employment representatives assigned under section 4104(b) of this title, and (C) the reasonable expenses of such specialists and representatives described in subparagraphs (A) and (B), respectively, for training, travel, supplies, and other business expenses . . .''

Conditions for the receipt of funds are outlined in Section 4102A(c)(2)(A):

''A State shall submit to the Secretary an application for a grant or contract under subsection (b)(5). The application shall contain the following information:

(i) A plan that describes the manner in which the State shall furnish employment, training, and placement services required under this chapter for the program year, including a description of—(I) duties assigned by the State to disabled veterans' outreach program specialists and local veterans' employment representatives consistent with the requirements of sections 4103A and 4104 of this title; (II) the manner in which such specialists and representatives are integrated in the employment service delivery systems in the State; and (III) the program of performance incentive awards described in section 4112 of this title in the State for the program year.

(ii) The veteran population to be served.''

In addition, section 4102A(f) requires performance accountability for services provided under the JVSG, and VETS has determined that states' performance goals for participant outcomes are an appropriate component of the state plan.

This ICR collects the required information for the submission of JVSG State Plans and Modifications. The information covered includes the state's plan for furnishing employment, training, and placement services under 38 U.S.C. chapter 41, including their performance goals for Disabled Veterans Outreach Program staff services to eligible veterans and other eligible persons.

This information collection is subject to the Paperwork Reduction Act (PRA). A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

The DOL seeks PRA authorization for this information collection for three years. OMB authorization for an Information Collection Review cannot be for more than three years without renewal.

Agency: DOL–VETS.

Type of Review: Existing collection in use without an OMB Control Number.

Title of Collection: Required Components of the Jobs for Veterans State Grants State Plans.

Forms: N/A.

OMB Control Number: 1293–0NEW.

Affected Public: State, Local, and Tribal Governments.

Estimated Number of Respondents: 36.

Frequency: Once.

Total Estimated Annual Responses: 36.

Estimated Average Time per Response: 25 hours.

Total Estimated Annual Burden Hours: 936.

Total Estimated Annual Other Burden Costs (Operating and Maintenance): $0.

(Authority: 44 U.S.C. 3506(c)(2)(A)).

James D. Rodriguez,

Assistant Secretary, Veterans' Employment and Training Service, U.S. Department of Labor.

[FR Doc. 2022–26757 Filed 12–8–22; 8:45 am]

BILLING CODE 4510–79–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (22–099)]

Notice of Intent To Grant an Exclusive, Co-Exclusive or Partially Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant exclusive, co-exclusive or partially exclusive patent license.

SUMMARY: NASA hereby gives notice of its intent to grant an exclusive, co-exclusive or partially exclusive patent license to practice the inventions described and claimed in the patents and/or patent applications listed in **SUPPLEMENTARY INFORMATION** below.

DATES: The prospective exclusive, co-exclusive or partially exclusive license

may be granted unless NASA receives written objections including evidence and argument, no later than December 27, 2022 that establish that the grant of the license would not be consistent with the requirements regarding the licensing of federally owned inventions as set forth in the Bayh-Dole Act and implementing regulations. Competing applications completed and received by NASA no later than December 27, 2022 will also be treated as objections to the grant of the contemplated exclusive, co-exclusive or partially exclusive license. Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act.

ADDRESSES: Written objections relating to the prospective license or requests for further information may be submitted to Agency Counsel for Intellectual Property, NASA Headquarters at email: *hq-patentoffice@mail.nasa.gov.* Questions may be directed to Phone: (202) 358–3437.

SUPPLEMENTARY INFORMATION: NASA intends to grant an exclusive, co-exclusive, or partially exclusive patent license in the United States to practice its undivided interest in the jointly-owned inventions described and claimed in: U.S. Patent 11,406,867 B1, ''Portable System and Apparatus for Dynamometry, Exercise, and Rehabilitation'' to Biodex Medical Systems, a Mirion Medical Company, having its principal place of business in Shirley, New York. The fields of use may be limited. NASA has not yet made a final determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

This notice of intent to grant an exclusive, co-exclusive or partially exclusive patent license is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). The patent rights in these inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective license will comply with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Information about other NASA inventions available for licensing can be found online at *https://technology.nasa.gov.*

Helen M. Galus,

Agency Counsel for Intellectual Property.

[FR Doc. 2022–26825 Filed 12–8–22; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request: Survey of Earned Doctorates

AGENCY: National Science Foundation; National Center for Science and Engineering Statistics.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to renew this collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comments, NSF will prepare the submission requesting OMB clearance of this collection for three years.

DATES: Written comments on this notice must be received by February 7, 2023 to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to the address below.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite E7400, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: Survey of Earned Doctorates.

OMB Control Number: 3145–0019.

Expiration Date of Current Approval: April 30, 2024.

Type of Request: Intent to seek approval to extend an information collection for three years.

Abstract: Established within the NSF by the America COMPETES Reauthorization Act of 2010 § 505, codified in the NSF Act of 1950, as amended, the National Center for Science and Engineering Statistics (NCSES) serves as a central Federal clearinghouse for the collection, interpretation, analysis, and dissemination of objective data on science, engineering, technology, and research and development for use by practitioners, researchers, policymakers, and the public.

The Survey of Earned Doctorates (SED) is part of NCSES' survey system that collects data on individuals in an effort to provide information on science and engineering education and careers in the United States. The SED has been conducted annually since 1958 and is jointly sponsored by four Federal agencies (NSF/NCSES, National Institutes of Health, U.S. Department of Education/National Center for Education Statistics, and National Endowment for the Humanities) to avoid duplication of effort in collecting such data. It is an accurate, timely source of information on one of our Nation's most important resources—highly educated individuals. This request to extend the information collection for three years is to cover the 2024 and 2025 SED survey cycles.

Data are obtained via Web survey from each person earning a research doctorate at the time they receive the degree. Data are collected on their field of specialty, educational background, sources of support in graduate school, debt level, postgraduation plans, and demographic characteristics. NCSES publishes statistics from the survey in several reports. The survey will be collected in conformance with the Privacy Act of 1974. Responses from individuals are voluntary. NCSES will ensure that all individually identifiable information collected will be kept strictly confidential and will be used only for research or statistical purposes.

Use of the Information: The Federal government, universities, researchers, policy makers, and others use the information extensively. Results from the SED are used to assess characteristics of the doctorate population and trends in doctoral education and degrees. Data from the survey are published annually on the NCSES website in a publication series reporting on all fields of study, titled *Doctorate Recipients from U.S. Universities* (*https://www.nsf.gov/statistics/doctorates).* Information from the SED is also included in other series available online: *Science and Engineering Indicators* (*https://ncses.nsf.gov/indicators*); and *Women, Minorities, and Persons with Disabilities in Science and Engineering* (*https://www.nsf.gov/statistics/women*). In addition, access to tabular data from selected variables is available through the NCSES online data tool (*https://ncsesdata.nsf.gov/builder/sed*) and the SED Restricted Data System (*https://ncsesdata.nsf.gov/rdas*).

Expected Respondents: The SED is a census of all individuals receiving a research doctorate from an accredited U.S. academic institution in the academic year beginning 1 July and ending 30 June of the subsequent year. As such, the population for the 2024 SED consists of all individuals receiving a research doctorate in the 12-month period beginning 1 July 2023 and

ending 30 June 2024. Likewise, the population for the 2025 SED consists of all individuals receiving a research doctorate in the 12-month period beginning 1 July 2024 and ending 30 June 2025. A research doctorate is a doctoral degree that (1) requires completion of an original intellectual contribution in the form of a dissertation or an equivalent culminating project (*e.g.,* musical composition) and (2) is not primarily intended as a degree for the practice of a profession. The most common research doctorate degree is the Ph.D. Recipients of professional doctoral degrees, such as MD, DDS, JD, DPharm, and PsyD, are not included in the SED. The 2024 and 2025 SED are expected to include about 620 separately reporting schools with eligible research doctoral programs from among about 460 doctorate-granting institutions. Based on the historical trend, NCSES expects that approximately 57,000 individuals will receive a research doctorate from U.S. institutions in 2024, and approximately 58,000 in 2025.

In addition to the questionnaire for individuals receiving their research doctorates, the SED requires the collection of administrative data such as graduation lists from participating academic institutions. The Institutional Coordinator at the institution helps distribute the Web survey link, track survey completions, and submit information to the SED survey contractor.

Estimate of Burden: An average overall response rate of 92% of the persons who earned a research doctorate from a U.S. institution was obtained in the academic years 2019, 2020, and 2021. Using the past response rate, the number of SED respondents in 2024 is estimated to be 52,440 (57,000 doctorate recipients × 0.92 response rate). Similarly, the number of respondents in 2025 is estimated to be 53,360 (58,000 × 0.92).

Based on the average Web survey completion time for the 2021 SED (19 minutes), NCSES estimates that, on average, 20 minutes per respondent, with a few potential new questions, will be required to complete the 2024 or 2025 SED Web survey. The annual respondent burden for completing the SED is therefore estimated at 17,480 hours in 2024 (52,440 respondents × 20 minutes) and 17,787 hours in 2025 (based on 53,360 respondents).

Based on focus groups conducted with Institutional Coordinators, it is estimated that the SED demands no more than 1% of the Institutional Coordinator's time over the course of a year, which computes to 20 hours per year per Institutional Coordinator (40 hours per week × 50 weeks per year × .01). With about 620 schools expected to participate in the SED in 2024 and 2025, the estimated annual burden to Institutional Coordinators of administering the SED is 12,400 hours per survey cycle.

Therefore, the total information burden for the SED is estimated to be 29,880 (17,480 + 12,400) hours in the 2024 survey cycle and 30,187 (17,787 + 12,400) hours in the 2025 survey cycle. NCSES estimates that the average annual burden for the 2024 and 2025 survey cycles over the course of the three-year OMB clearance period will be no more than 20,022 hours [(29,880 hours + 30,187 hours)/3 years].

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the NSF, including whether the information shall have practical utility; (b) the accuracy of the NSF's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, use, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) 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.

Dated: December 6, 2022.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2022–26835 Filed 12–8–22; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0204]

Relocation of Draft and Regulatory Guide Notices in the Federal Register

AGENCY: Nuclear Regulatory Commission.

ACTION: Categorization of notice.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is notifying the public that documents regarding draft and final Regulatory Guides that historically have been published in the ''Notices'' section of the **Federal Register** will now be published in the ''Proposed Rules'' and ''Rules and Regulations'' sections of the **Federal Register**. The Office of the Federal Register recently informed the NRC that under their guidelines, these documents fall into the ''Proposed Rules'' and ''Rules and Regulations'' categories and requested that the NRC reclassify these notices.

ADDRESSES: Please refer to Docket ID NRC–2022–0204 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–2022–0204. 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.*
- *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: Stacy Schuman, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC issues Draft Guides (DGs) and Regulatory Guides (RGs) to gather input and provide guidance to licensees and applicants on implementing specific parts of the NRC's regulations, techniques used by NRC staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits or licenses, as noted in chapter I of Title 10 of the *Code of Federal Regulations* (CFR). DGs and RGs

historically have been published in the ''Notices'' section of the **Federal Register**.

Under the Federal Register Act (44 U.S.C. chapter 15), the Administrative Committee of the **Federal Register** issues regulations regarding publishing documents in the **Federal Register** (see 1 CFR 1). Based on these governing regulations, the Office of the Federal Register (OFR) classifies agency documents published in the **Federal Register** in one of three categories: rules and regulations, proposed rules, and notices. The regulation establishing document types is available in 1 CFR 5.9.

In accordance with the OFR's request that the NRC reclassify DGs and RGs, these documents will henceforth be published in the ''Proposed Rules'' or ''Rules and Regulations'' section of the **Federal Register**. This change is effective immediately.

Dated: December 5, 2022.

For the Nuclear Regulatory Commission.

Cindy K. Bladey,

Federal Register Liaison Officer, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2022–26743 Filed 12–8–22; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF SPECIAL COUNSEL

[OMB Control No. 3255–0005]

Form OSC–14

AGENCY: Office of Special Counsel.

ACTION: Notice of proposed information collection activity.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, Office of Management and Budget (OMB) implementing regulations, and the Government Paperwork Elimination Act, OSC obtained approval from OMB on September 18, 2017, for a new, dynamic electronic form to be used for filing complaints and disclosures with OSC. OSC revised the previously-approved form, known as Form OSC–14, in July 2019 to reflect interim statutory changes and sought and obtained emergency OMB/OIRA processing of the new information collection. The final rule authorizing use of Form OSC–14 went into effect on August 26, 2019, and OMB approval on February 3, 2020, allows use of the form, as revised, through March 2023. This proposed information collection seeks to extend OSC's period of using the form through 2026.

DATES: Written comments should be received on or before February 7, 2023. Note, however, that OMB is required to act on the collection of information discussed in this proposed rule between 30 and 60 days after this notice's publication in the **Federal Register**. Therefore, comments are best assured of having full effect if received by OMB within 30 days of this notice's publication in the **Federal Register**.

ADDRESSES: You may submit comments online at this website:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments;
- *In writing, by mail, to:* Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for OSC, New Executive Office Building, Room 10235, Washington, DC 20503; or by email via: *oira_submission@omb.eop.gov.*

Comments received may be posted to *http://www.regulations.gov.*

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

SUPPLEMENTARY INFORMATION: OSC is a permanent independent federal investigative and prosecutorial agency. OSC's basic authorities come from four federal statutes: The Civil Service Reform Act, the Whistleblower Protection Act, the Hatch Act, and the Uniformed Services Employment & Reemployment Rights Act (USERRA). OSC's primary mission is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing, and to serve as a safe channel for allegations of wrongdoing.

Procedural Determinations

Paperwork Reduction Act (PRA): OSC submits this proposed collection to OMB for review pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

Title of Collection: Updated Form OSC–14: Electronic Submission of Allegations and Disclosures.

The updated electronic form is available on the OSC website at *http://www.osc.gov.*

Type of Information Collection Request: Approval of a collection of information from individuals who choose to file complaints or disclosures with OSC. The proposed collection is the same as the collection that was approved on February 3, 2020 and replaces three separate forms OSC previously used to collect the information.

Affected Public: Current and former Federal employees, applicants for Federal employment, state and local government employees, and their representatives, and the general public.

Respondent's Obligation: Voluntary.

Estimated Annual Number of Form OSC–14 Respondents: 6,000 (estimate based on a review of recent OSC Annual Reports and Congressional Budget Justifications, and trends).

Frequency of Use of Updated Form OSC–14: Daily.

Estimated Average Amount of Time for a Person to Respond Using Form OSC–14: For prohibited personnel practice and other prohibited activities allegations, one hour and 15 minutes; for whistleblower disclosures, one hour; and for Hatch Act allegations, 30 minutes to complete the form. OSC based these estimates on testing completed by OSC employees during the development of the collection form.

Estimated Annual Burden for Filing Form OSC–14: 6917.5 hours.

Abstract: The electronic form must be used to submit allegations of possible prohibited personnel practices or other prohibited activity for investigation and possible prosecution by OSC and is recommended for filing disclosures of covered wrongdoing for review and possible referral to heads of agencies. The form may also be used by individuals to file complaints under the Hatch Act.

Dated: December 5, 2022.

Travis Millsaps,

Deputy Special Counsel for Policy.

[FR Doc. 2022–26754 Filed 12–8–22; 8:45 am]

BILLING CODE 7405–01–P

PEACE CORPS

Information Collection Request; Submission for OMB Review

AGENCY: Peace Corps.

ACTION: 30-Day notice of request for public comments and submission to OMB for proposed collection of information.

SUMMARY: The Peace Corps is 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, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 30 days for public comment.

DATES: Submit comments on or before January 5, 2022.

ADDRESSES: Address written comments and recommendations for the proposed

information collection to Brianna Johnson, Acting FOIA/Privacy Act Officer, by email at *pcfr@peacecorps.gov.* Email comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: Brianna Johnson, Acting FOIA/Privacy Act Officer, at (202) 692–1236, or *PCFR@peacecorps.gov.*

SUPPLEMENTARY INFORMATION:

Title: Peace Corps Application Form.

OMB Control Number: 0420–0005.

Type of Request: Reinstatement with change.

Affected Public: Individuals.

Respondents Obligation to Reply: Voluntary.

Respondents: Potential Volunteers.

Burden to the Public:

- Peace Corps Application Form

(a) *Estimated number of applicants:* 15,000.

(b) *Frequency of response:* one time.

(c) *Estimated average burden per response:* 55–60. minutes.

(d) *Estimated total reporting burden:* 15,000 hours.

(e) *Estimated annual cost to respondents:* 0.00.

General Description of Collection: The information collected by the Peace Corps Volunteer Application form is used by the Peace Corps to collect essential information from individual applicants, including technical and language skills, and availability for Peace Corps service. The Peace Corps Office of Volunteer Recruitment and Selection (VRS) uses the information in its assessment of an individual's qualifications to serve as a Peace Corps Volunteer, including practical and cross-cultural experience, maturity, motivation and commitment. Selection for Peace Corps service is based on that assessment.

Request for Comment: Peace Corps invites comments on whether the proposed collections of information are necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity 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 automated collection techniques, when appropriate, and other forms of information technology.

This notice is issued in Washington, DC, on December 6, 2022.

Brianna Johnson,

Acting FOIA/Privacy Act Officer, Management.

[FR Doc. 2022–26761 Filed 12–8–22; 8:45 am]

BILLING CODE 6051–01–P

POSTAL SERVICE

Transfer of Post Office Box Service in Selected Locations to the Competitive Product List

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service hereby provides notice that 291 locations providing Post Office Box service will be reassigned from their market-dominant fee groups to competitive fee groups.

DATES: Applicable date: January 22, 2023.

FOR FURTHER INFORMATION CONTACT: For additional information, please contact: Joshua Crawford at (207) 694–9309.

SUPPLEMENTARY INFORMATION: Locations providing Post Office Box service are classified as competitive or market dominant and assigned to fee groups based upon the Post Office location and other criteria. Competitive fee groups provide more services than market dominant ones and have somewhat higher fees. Competitive Post Office Box service includes several enhancements such as: electronic notification of the receipt of mail, use of an alternate street address format, signature on file for delivery of certain accountable mail, and additional hours of access and/or earlier availability of mail in some locations.

On July 21, 2022, the Postal Regulatory Commission issued Order No. 6234, approving the Postal Service's request to expand the Postal Regulatory Commission's previous five-mile criterion for assessing competitiveness by an additional three miles, extending the mileage range from five miles to eight miles.[1] The transfer originally covered 297 Post Office Box service locations, each of which was listed in the Postal Service's original Request.[2] The Postal Service likewise provided notice of its intent to transfer these 297 locations in the **Federal Register** at the time of the Request.[3]

The Postal Service hereby provides further notice that Post Office Box service for locations within eight miles of a competitor will be reassigned from market dominant fee groups to competitive fee groups effective January 22, 2023.

This notice also updates the Request list to exclude 6 locations from the originally proposed list of 297 which, upon further review, were found to have limited or no public access. There are no other changes to the original list. The remaining 291 locations are the same and are still properly classified as competitive based on their proximity to a private sector competitor within eight miles.

Documents pertinent to this request are available at *http://www.prc.gov,* Docket No. MC2022–46. Communications are being sent to the identified Postmasters of the locations; and PO Box customers in the identified 291 Post Office locations will receive an email and/or letter notifying them that their PO Boxes are now competitive locations and include the additional services. Additional internal and external communications will be sent as well. A list of affected locations, with the associated ZIP Codes, is provided in the Appendix to this notice.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

Appendix

Transfer of Additional Post Office Box Locations to Competitive Fee Group—ZIP Code Listing

The following is a revised list of the locations the Postal Service intends to transfer based on the eight-mile criterion established in Order No. 6234. The list is sorted by ZIP Code in ascending numerical order with geographical breaks and headers. As indicated by the column headings, this list provides the ZIP Code of the affected PO Boxes (ZIP), the office name of the location (OFFICE NAME), the city where the PO Boxes are located (CITY), the current market dominant fee group (CFG), and the new competitive fee group (NFG). Please note that there are more ZIP Codes than locations covered by the request, because some locations serve more than one ZIP Code. These locations can be identified whenever multiple ZIP Codes are listed for a single office name.

[1] Docket No. MC2022–46, Order Approving Request to Transfer Additional Post Office Box Service Locations to the Competitive Product List, July 21, 2022 (Order No. 6234).

[2] Docket No. MC2022–46, Request of the United States Postal Service to Transfer Post Office Box Service in Selected Locations to the Competitive Product List, March 16, 2022 (Request).

[3] *See* 87 FR 16255–16261 (March 22, 2022).

ZIP	Facilities name	City	St	CFG	NFG
		ALABAMA			
36064	PIKE ROAD	PIKE ROAD	AL	5	35
35903	EAST GADSDEN	GADSDEN	AL	4	34
36350	MIDLAND CITY	MIDLAND CITY	AL	5	35
35954	ATTALLA		AL	3	33
35645	KILLEN	KILLEN	AL	5	35
36877	SMITHS STATION	SMITHS STATION	AL	5	35
35661	MUSCLE SHOALS	MUSCLE SHOALS	AL	4	34
36549	LILLIAN	LILLIAN	AL	4	34
35660	SHEFFIELD	SHEFFIELD	AL	4	34
35673	TRINITY	TRINITY	AL	5	35
		ARKANSAS			
72718	CAVE SPRINGS	CAVE SPRINGS	AR	5	35
72858	POTTSVILLE	POTTSVILLE	AR	6	36
72053	COLLEGE STATION	COLLEGE STATION	AR	5	35
		ARIZONA			
86325	CORNVILLE	CORNVILLE	AZ	5	35
86351	SEDONA VILLAGE OF OAK CREEK	SEDONA	AZ	5	35
85616	HUACHUCA CITY	HUACHUCA CITY	AZ	5	35
		CALIFORNIA			
93223	FARMERSVILLE	FARMERSVILLE	CA	3	33
93601	AHWAHNEE	AHWAHNEE	CA	5	35
95693	WILTON	WILTON	CA	4	34
93227	GOSHEN	GOSHEN	CA	5	35
94037	MONTARA	MONTARA	CA	3	33
93614	COARSEGOLD	COARSEGOLD	CA	6	36
94511	BETHEL ISLAND	BETHEL ISLAND	CA	3	33
93604	BASS LAKE	BASS LAKE	CA	5	35
93606	BIOLA	BIOLA	CA	5	35
93924	CARMEL VALLEY	CARMEL VALLEY	CA	4	34
95315	DELHI	DELHI	CA	5	35
95418	CALPELLA	CALPELLA	CA	4	34
95465	OCCIDENTAL	OCCIDENTAL	CA	4	34
95245	MOKELUMNE HILL	MOKELUMNE HILL	CA	5	35
94038	MOSS BEACH	MOSS BEACH	CA	4	34
95519	MC KINLEYVILLE	MCKINLEYVILLE	CA	1	31
95462	MONTE RIO	MONTE RIO	CA	3	33
95379	TUOLUMNE	TUOLUMNE	CA	5	35
96064	MONTAGUE	MONTAGUE	CA	5	35
93434	GUADALUPE	GUADALUPE	CA	3	33
95452	KENWOOD	KENWOOD	CA	4	34
		COLORADO			
80513	BERTHOUD	BERTHOUD	CO	5	35
81526	PALISADE	PALISADE	CO	5	35
80454	INDIAN HILLS	INDIAN HILLS	CO	5	35
80136	STRASBURG	STRASBURG	CO	5	35
80809	CASCADE	CASCADE	CO	3	33
		CONNECTICUT			
06238	COVENTRY	COVENTRY	CT	5	35
06798	WOODBURY	WOODBURY	CT	4	34
06088	EAST WINDSOR	EAST WINDSOR	CT	5	35
06029	ELLINGTON	ELLINGTON	CT	3	33
		FLORIDA			
33849	KATHLEEN	KATHLEEN	FL	5	35
32187	SAN MATEO	SAN MATEO	FL	5	35
32130	DE LEON SPRINGS	DE LEON SPRINGS	FL	4	34
33825	AVON PARK	AVON PARK	FL	4	34
33042	SUMMERLAND KEY	SUMMERLAND KEY	FL	5	35
33851	LAKE HAMILTON	LAKE HAMILTON	FL	5	35
32764	OSTEEN	OSTEEN	FL	4	34
32179	OCKLAWAHA	OCKLAWAHA	FL	5	35
32643	HIGH SPRINGS	HIGH SPRINGS	FL	4	34

ZIP	Facilities name	City	St	CFG	NFG
32732	GENEVA	GENEVA	FL	7	37
33920	ALVA	ALVA	FL	4	34
32658	LA CROSSE	LA CROSSE	FL	4	34
33834	BOWLING GREEN	BOWLING GREEN	FL	4	34
32754	MIMS	MIMS	FL	3	33
GEORGIA					
31008	BYRON	BYRON	GA	5	35
31213	MACON	MACON	GA	4	34
31326	RINCON	RINCON	GA	5	35
30436	LYONS	LYONS	GA	4	34
31333	WALTHOURVILLE	WALTHOURVILLE	GA	5	35
30813	GROVETOWN	GROVETOWN	GA	3	33
30179	TEMPLE	TEMPLE	GA	6	36
31201	MULBERRY	MACON	GA	4	34
30107	BALL GROUND	BALL GROUND	GA	6	36
30541	EPWORTH	EPWORTH	GA	5	35
30183	WALESKA	WALESKA	GA	6	36
ILLINOIS					
62236	COLUMBIA	COLUMBIA	IL	2	32
60081	SPRING GROVE	SPRING GROVE	IL	7	37
61802	URBANA	URBANA	IL	3	33
62966	MURPHYSBORO	MURPHYSBORO	IL	4	34
61568	TREMONT	TREMONT	IL	5	35
62948	HERRIN	HERRIN	IL	4	34
INDIANA					
47803	ROSE	TERRE HAUTE	IN	4	34
46507	BRISTOL	BRISTOL	IN	6	36
KANSAS					
67052	GODDARD	GODDARD	KS	5	35
67216	RIVER CITY	WICHITA	KS	5	35
66104	ROBERT L ROBERTS	KANSAS CITY	KS	3	33
66007	BASEHOR	BASEHOR	KS	4	34
67060	HAYSVILLE	HAYSVILLE	KS	4	34
KENTUCKY					
42440	MORTONS GAP	MORTONS GAP	KY	5	35
42345	GREENVILLE	GREENVILLE	KY	4	34
40067	SIMPSONVILLE	SIMPSONVILLE	KY	6	36
LOUISIANA					
70075	MERAUX	MERAUX	LA	6	36
70127	LAKE FOREST STATION	NEW ORLEANS	LA	6	36
71047	KEITHVILLE	KEITHVILLE	LA	5	35
70039	BOUTTE	BOUTTE	LA	4	34
70719	BRUSLY	BRUSLY	LA	6	36
70711	ALBANY	ALBANY	LA	6	36
70462	SPRINGFIELD	SPRINGFIELD	LA	5	35
71281	SWARTZ	SWARTZ	LA	5	35
70734	GEISMAR	GEISMAR	LA	5	35
MASSACHUSETTS					
02720	HIGHLAND	FALL RIVER	MA	1	31
01519	GRAFTON	GRAFTON	MA	4	34
01516	DOUGLAS	DOUGLAS	MA	4	34
02768	RAYNHAM CENTER	RAYNHAM CENTER	MA	5	35
01541	PRINCETON	PRINCETON	MA	4	34
01085	WESTFIELD	WESTFIELD	MA	4	34
02653	ORLEANS	ORLEANS	MA	5	35
02333	EAST BRIDGEWATER	EAST BRIDGEWATER	MA	1	31
01056	LUDLOW	LUDLOW	MA	3	33
01543	RUTLAND	RUTLAND	MA	4	34

ZIP	Facilities name	City	St	CFG	NFG
		MARYLAND			
20688	SOLOMONS	SOLOMONS	MD	4	34
21921	ELKTON	ELKTON	MD	3	33
21811	BERLIN	BERLIN	MD	3	33
20650	LEONARDTOWN	LEONARDTOWN	MD	4	34
20711	LOTHIAN	LOTHIAN	MD	5	35
		MAINE			
04963	OAKLAND	OAKLAND	ME	2	32
04090	WELLS	WELLS	ME	5	35
04858	SOUTH THOMASTON	SOUTH THOMASTON	ME	3	33
04694	BAILEYVILLE	BAILEYVILLE	ME	4	34
		MICHIGAN			
48601	CUMBERLAND	SAGINAW	MI	3	33
48139	HAMBURG	HAMBURG	MI	7	37
48174	ROMULUS	ROMULUS	MI	3	33
49071	MATTAWAN	MATTAWAN	MI	7	37
		MISSOURI			
65740	ROCKAWAY BEACH	ROCKAWAY BEACH	MO	6	36
65441	BOURBON	BOURBON	MO	6	36
63825	BLOOMFIELD	BLOOMFIELD	MO	7	37
		MISSISSIPPI			
38826	BELDEN	BELDEN	MS	5	35
39272	BYRAM	BYRAM	MS	4	34
39212	CANDLESTICK PARK	JACKSON	MS	4	34
38862	PLANTERSVILLE	PLANTERSVILLE	MS	5	35
39209	WESTLAND	JACKSON	MS	4	34
38879	VERONA	VERONA	MS	6	36
		MONTANA			
59828	CORVALLIS	CORVALLIS	MT	5	35
		NORTH CAROLINA			
27358	SUMMERFIELD	SUMMERFIELD	NC	6	36
27505	BROADWAY	BROADWAY	NC	5	35
28715	CANDLER	CANDLER	NC	5	35
28723	CULLOWHEE	CULLOWHEE	NC	5	35
27593	WILSONS MILLS	WILSONS MILLS	NC	4	34
28355	LEMON SPRINGS	LEMON SPRINGS	NC	5	35
27807	BAILEY	BAILEY	NC	5	35
27299	LINWOOD	LINWOOD	NC	5	35
27921	CAMDEN	CAMDEN	NC	4	34
28749	LITTLE SWITZERLAND	LITTLE SWITZERLAND	NC	4	34
28638	HUDSON	HUDSON	NC	2	32
28630	GRANITE FALLS	GRANITE FALLS	NC	3	33
28766	PENROSE	PENROSE	NC	5	35
27568	PINE LEVEL	PINE LEVEL	NC	5	35
28787	WEAVERVILLE	WEAVERVILLE	NC	4	34
27243	EFLAND	EFLAND	NC	5	35
28716	CANTON	CANTON	NC	2	32
28666	ICARD	ICARD	NC	5	35
27868	RED OAK	RED OAK	NC	4	34
28371	PARKTON	PARKTON	NC	6	36
27043	PINNACLE	PINNACLE	NC	6	36
28748	LEICESTER	LEICESTER	NC	5	35
27370	TRINITY	TRINITY	NC	5	35
28730	FAIRVIEW	FAIRVIEW	NC	5	35
27263	ARCHDALE	ARCHDALE	NC	4	34
28618	DEEP GAP	DEEP GAP	NC	5	35
28368	OLIVIA	OLIVIA	NC	5	35
28463	TABOR CITY	TABOR CITY	NC	3	33
28443	HAMPSTEAD	HAMPSTEAD	NC	5	35

ZIP	Facilities name	City	St	CFG	NFG
		NEBRASKA			
68731	DAKOTA CITY	DAKOTA CITY	NE	5	35
68028	GRETNA	GRETNA	NE	4	34
		NEW HAMPSHIRE			
03755	HANOVER	HANOVER	NH	3	33
03226	CENTER HARBOR	CENTER HARBOR	NH	5	35
03469	WEST SWANZEY	WEST SWANZEY	NH	5	35
03033	BROOKLINE	BROOKLINE	NH	4	34
		NEW JERSEY			
08733	LAKEHURST	LAKEHURST	NJ	3	33
		NEW MEXICO			
87060	TOME	TOME	NM	5	35
87311	CHURCH ROCK	CHURCH ROCK	NM	4	34
87059	TIJERAS	TIJERAS	NM	6	36
		NEVADA			
89439	VERDI	VERDI	NV	3	33
		NEW YORK			
14738	FREWSBURG	FREWSBURG	NY	5	35
12962	MORRISONVILLE	MORRISONVILLE	NY	5	35
11947	JAMESPORT	JAMESPORT	NY	4	34
12571	RED HOOK	RED HOOK	NY	1	31
13607	ALEXANDRIA BAY	ALEXANDRIA BAY	NY	3	33
10969	PINE ISLAND	PINE ISLAND	NY	5	35
11940	EAST MORICHES	EAST MORICHES	NY	4	34
11949	MANORVILLE	MANORVILLE	NY	4	34
12414	CATSKILL	CATSKILL	NY	3	33
11948	LAUREL	LAUREL	NY	4	34
12491	WEST HURLEY	WEST HURLEY	NY	4	34
13029	BREWERTON	BREWERTON	NY	4	34
11959	QUOGUE	QUOGUE	NY	4	34
		OHIO			
44119	BEACHLAND	CLEVELAND	OH	2	32
43606	KENWOOD	TOLEDO	OH	3	33
44266	RAVENNA	RAVENNA	OH	4	34
43023	GRANVILLE	GRANVILLE	OH	4	34
45122	GOSHEN	GOSHEN	OH	5	35
45050	MONROE	MONROE	OH	3	33
44028	COLUMBIA STATION	COLUMBIA STATION	OH	5	35
45387	YELLOW SPRINGS	YELLOW SPRINGS	OH	3	33
		OKLAHOMA			
73066	NICOMA PARK	NICOMA PARK	OK	5	35
74039	KELLYVILLE	KELLYVILLE	OK	6	36
74033	GLENPOOL	GLENPOOL	OK	7	37
73443	LONE GROVE	LONE GROVE	OK	5	35
74021	COLLINSVILLE	COLLINSVILLE	OK	3	33
73065	NEWCASTLE	NEWCASTLE	OK	5	35
		OREGON			
97362	MOUNT ANGEL	MOUNT ANGEL	OR	5	35
97305	BROOKS	SALEM	OR	4	34
97044	ODELL	ODELL	OR	4	34
97368	OTIS	OTIS	OR	4	34
		PENNSYLVANIA			
19374	TOUGHKENAMON	TOUGHKENAMON	PA	4	34
18917	DUBLIN	DUBLIN	PA	5	35
19518	DOUGLASSVILLE	DOUGLASSVILLE	PA	4	34
17038	JONESTOWN	JONESTOWN	PA	5	35

ZIP	Facilities name	City	St	CFG	NFG
18428	HAWLEY	HAWLEY	PA	3	33
18321	BARTONSVILLE	BARTONSVILLE	PA	5	35
18337	MILFORD	MILFORD	PA	3	33
19311	AVONDALE	AVONDALE	PA	5	35
17550	MAYTOWN	MAYTOWN	PA	5	35
19501	ADAMSTOWN	ADAMSTOWN	PA	5	35
18328	DINGMANS FERRY	DINGMANS FERRY	PA	5	35
PUERTO RICO					
00720	OROCOVIS	OROCOVIS	PR	2	32
RHODE ISLAND					
02871	PORTSMOUTH	PORTSMOUTH	RI	3	33
02837	LITTLE COMPTON	LITTLE COMPTON	RI	3	33
SOUTH CAROLINA					
29816	BATH	BATH	SC	5	35
29673	PIEDMONT	PIEDMONT	SC	4	34
29439	FOLLY BEACH	FOLLY BEACH	SC	4	34
29677	SANDY SPRINGS	SANDY SPRINGS	SC	6	36
29040	DALZELL	DALZELL	SC	5	35
29016	BLYTHEWOOD	BLYTHEWOOD	SC	4	34
29809	NEW ELLENTON	NEW ELLENTON	SC	4	34
29851	WARRENVILLE	WARRENVILLE	SC	5	35
29349	INMAN	INMAN	SC	4	34
29669	PELZER	PELZER	SC	4	34
29829	GRANITEVILLE	GRANITEVILLE	SC	2	32
SOUTH DAKOTA					
57064	TEA	TEA	SD	6	36
57718	BLACK HAWK	BLACK HAWK	SD	5	36
TENNESSEE					
37341	HARRISON	HARRISON	TN	5	35
37865	SEYMOUR	SEYMOUR	TN	5	35
37658	HAMPTON	HAMPTON	TN	6	36
37329	ENGLEWOOD	ENGLEWOOD	TN	6	36
37330	ESTILL SPRINGS	ESTILL SPRINGS	TN	6	36
37826	NIOTA	NIOTA	TN	6	36
37877	TALBOTT	TALBOTT	TN	6	36
37764	KODAK	KODAK	TN	5	35
TEXAS					
77484	WALLER	WALLER	TX	6	36
75076	POTTSBORO	POTTSBORO	TX	6	36
75791	WHITEHOUSE	WHITEHOUSE	TX	6	36
77639	ORANGEFIELD	ORANGEFIELD	TX	6	36
77445	HEMPSTEAD	HEMPSTEAD	TX	5	35
75158	SCURRY	SCURRY	TX	5	35
76061	LILLIAN	LILLIAN	TX	4	34
78147	POTH	POTH	TX	7	37
78123	MC QUEENEY	MC QUEENEY	TX	5	35
76058	JOSHUA	JOSHUA	TX	3	33
77447	HOCKLEY	HOCKLEY	TX	6	36
78559	LA FERIA	LA FERIA	TX	5	35
77640	PORT ARTHUR	PORT ARTHUR	TX	5	35
78583	RIO HONDO	RIO HONDO	TX	6	36
75688	SCOTTSVILLE	SCOTTSVILLE	TX	6	36
77590	TEXAS CITY	TEXAS CITY	TX	6	36
78362	INGLESIDE	INGLESIDE	TX	5	35
77611	BRIDGE CITY	BRIDGE CITY	TX	4	34
UTAH					
84655	SANTAQUIN	SANTAQUIN	UT	5	35
VIRGINIA					
23805	WALNUT HILL	PETERSBURG	VA	5	35

ZIP	Facilities name	City	St	CFG	NFG
22060	FORT BELVOIR	FORT BELVOIR	VA	2	32
23234	AMPTHILL	NORTH CHESTERFIELD	VA	5	35
23062	GLOUCESTER POINT	GLOUCESTER POINT	VA	5	35
23075	HIGHLAND SPRINGS	HENRICO	VA	4	34
22963	PALMYRA	PALMYRA	VA	5	35
24330	FRIES	FRIES	VA	5	35
24064	BLUE RIDGE	BLUE RIDGE	VA	5	35
22655	STEPHENS CITY	STEPHENS CITY	VA	4	34
22821	DAYTON	DAYTON	VA	5	35
22947	KESWICK	KESWICK	VA	4	34
24482	VERONA	VERONA	VA	5	35
22945	IVY	IVY	VA	5	35
24574	MONROE	MONROE	VA	5	35
22642	LINDEN	LINDEN	VA	4	34
23005	ASHLAND	ASHLAND	VA	3	33
22553	SPOTSYLVANIA	SPOTSYLVANIA	VA	5	35
23875	PRINCE GEORGE	PRINCE GEORGE	VA	7	37
VERMONT					
05829	DERBY	DERBY	VT	5	35
05059	QUECHEE	QUECHEE	VT	3	33
05055	NORWICH	NORWICH	VT	4	34
WASHINGTON					
98546	GRAPEVIEW	GRAPEVIEW	WA	4	34
98384	SOUTH COLBY	SOUTH COLBY	WA	3	33
98239	COUPEVILLE	COUPEVILLE	WA	4	34
98840	OKANOGAN	OKANOGAN	WA	4	34
99005	COLBERT	COLBERT	WA	4	34
WISCONSIN					
53157	PELL LAKE	PELL LAKE	WI	5	35
53191	WILLIAMS BAY	WILLIAMS BAY	WI	5	35
54650	ONALASKA	ONALASKA	WI	4	34
WEST VIRGINIA					
25526	HURRICANE	HURRICANE	WV	4	34
26301	DOWNTOWN CLARKSBURG	CLARKSBURG	WV	4	34
25313	CROSS LANES	CHARLESTON	WV	4	34
25177	SAINT ALBANS	SAINT ALBANS	WV	4	34
25143	NITRO	NITRO	WV	4	34
25547	PECKS MILL	PECKS MILL	WV	5	35
25535	LAVALETTE	LAVALETTE	WV	5	35
25427	HEDGESVILLE	HEDGESVILLE	WV	4	34

[FR Doc. 2022–26752 Filed 12–8–22; 8:45 am]

BILLING CODE 7710–12–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

National Nanotechnology Initiative Meetings

AGENCY: Office of Science and Technology Policy (OSTP).

ACTION: Notice of public meetings.

SUMMARY: The National Nanotechnology Coordination Office (NNCO), on behalf of the Nanoscale Science, Engineering, and Technology (NSET) Subcommittee of the Committee on Technology, National Science and Technology Council (NSTC), will facilitate stakeholder discussions of targeted nanotechnology topics through workshops and webinars, as well as community of research and network meetings between the publication date of this Notice and December 31, 2023.

DATES: The NNCO will hold one or more workshops and webinars, as well as community of research and network meetings between the publication date of this Notice and December 31, 2023.

ADDRESSES: Event information, including addresses, will be posted on *https://www.nano.gov/*. For information about upcoming workshops and webinars, please visit *https://www.nano.gov/get-involved/research-community/meetings-and-events* and *https://www.nano.gov/PublicWebinars*. For more information on the networks and communities of research, please visit *https://www.nano.gov/get-involved/research-community/networks-and-communities*.

FOR FURTHER INFORMATION CONTACT: Patrice Pages at *info@nnco.nano.gov* or 202–517–1041.

SUPPLEMENTARY INFORMATION: These public meetings address the charge in the 21st Century Nanotechnology Research and Development Act for NNCO to provide ''for public input and outreach . . . by the convening of regular and ongoing public discussions.'' Workshop and webinar topics may include technical subjects; environmental, health, and safety issues related to nanomaterials (nanoEHS); business case studies; or other areas of potential interest to the nanotechnology community. Areas of focus for the communities of research may include research on nanoEHS; nanotechnology

education; nanomedicine; nanomanufacturing; or other areas of potential interest to the nanotechnology community. The communities of research are not intended to provide any government agency with advice or recommendations; such action is outside of their purview.

Registration: Due to space limitations, pre-registration for workshops is required. Workshop registration is on a first-come, first-served basis. Registration information will be available at *https://www.nano.gov/get-involved/research-community/meetings-and-events.* Registration for the webinars will open approximately two weeks prior to each event and will be capped at 500 participants or as space limitations dictate. Individuals planning to attend a webinar can find registration information at *https://www.nano.gov/PublicWebinars.* Written notices of participation for workshops, webinars, networks, or communities of research should be sent by email to *info@nnco.nano.gov.*

Meeting Accommodations: Individuals requiring special accommodation to access any of these public events should contact *info@nnco.nano.gov* at least 10 business days prior to the meeting so that appropriate arrangements can be made.

Dated: December 5, 2022.

Rachel Wallace,

Deputy General Counsel.

[FR Doc. 2022–26740 Filed 12–8–22; 8:45 am]

BILLING CODE 3270–F2–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96447; File No. SR–CboeEDGX–2022–053]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

December 5, 2022.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 1, 2022, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*) [sic], at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule applicable to its equities trading platform (''EDGX Equities'') to (1) define the term ''Step-Up ADV'', and (2) introduce a new Retail Growth Tier 1 and renumber the existing Retail Growth Tiers. The Exchange proposes to implement these changes effective December 1, 2022.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Securities Exchange Act of 1934 (the ''Act''), to which market participants may direct their order flow. Based on publicly available information,[3] no single registered equities exchange has more than 14% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a ''Maker-Taker'' model whereby it pays rebates to members that add liquidity and assesses fees to those that remove liquidity. The Exchange's Fee Schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

The ''definitions'' section of the Exchange's Fee Schedule defines various terms used throughout the Fee Schedule. The Exchange proposes to adopt a new definition for the term ''Step-Up ADV''. Specifically, as proposed ''Step-up ADV'' means ADV[4] in the relevant baseline months subtracted from current day ADV. Such definition would be referenced in tiers designed to incentivize Members to grow their ADV from the baseline month, such as the proposed Retail Growth Tier 1, as discussed below.

Under footnote 2 of the Fee Schedule, the Exchange currently offers various Retail Volume Tiers, which provide an enhanced rebate for Members' qualifying orders yielding fee codes ZA[5] or ZO.[6] Now, the Exchange proposes to adopt a new Retail Growth Tier 1 and renumber the existing Retail Growth Tiers. Specifically, the proposed Retail Growth Tier 1 would provide a rebate of $0.0033 per share to qualifying orders (*i.e.,* orders yielding fee code ZA or ZO) in securities priced at or above

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (November 28, 2022), available at *https://www.cboe.com/us/equities/market_statistics/.*

[4] ''ADV'' means average daily volume calculated as the number of shares added to, removed from, or routed by, the Exchange, or any combination or subset thereof, per day. ADV is calculated on a monthly basis.

[5] Orders yielding fee code ''ZA'' are retail orders adding liquidity to EDGX.

[6] Orders yielding fee code ''ZO'' are retail orders adding liquidity to EDGX in the pre and post market.

$1[7] to Member Participant Identifiers (''MPIDs'') with a Step-Up ADV from November 2022 greater than or equal to 0.05% of the TCV.[8] The proposed Retail Growth Tier 1 is designed to provide Members an opportunity to receive an enhanced rebate by meeting the Retail Growth Tier 1 criteria. Further, overall the Retail Growth Tiers are intended to provide Members an opportunity to receive an enhanced rebate by increasing their retail order flow to the Exchange, which further contributes to a deeper, more liquid market and provides even more execution opportunities for active market participants. Incentivizing an increase in liquidity adding or removing volume, through enhanced rebate opportunities, encourages liquidity adding Members on the Exchange to contribute to a deeper, more liquid market, and liquidity executing Members on the Exchange to increase transactions and take execution opportunities provided by such increased liquidity, together providing for overall enhanced price discovery and price improvement opportunities on the Exchange. As such, increased overall order flow benefits all Members by contributing towards a robust and well-balanced market ecosystem.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Additionally, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[11] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers as well as section 6(b)(4)[12] as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposal to adopt the new Retail Growth Tier 1 reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members. Additionally, the Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges,[13] including the Exchange,[14] and are reasonable, equitable and non-discriminatory because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Competing equity exchanges offer similar tiered pricing structures, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds, as well as assess similar fees or rebates for similar types of orders, to that of the Exchange.

In particular, the Exchange believes the proposed tier is reasonable because it will be available to all Members and provide all Members with an additional opportunity to receive an enhanced rebate. The Exchange further believes the proposed tier will provide a reasonable means to encourage retail orders flow to the Exchange and to incentivize Members to continue to provide retail volume to the Exchange by offering them an additional opportunity to receive an enhanced rebate on qualifying orders. An overall increase in activity would deepen the Exchange's liquidity pool, offer additional cost savings, support the quality of price discovery, promote market transparency and improve market quality, for all investors.

The Exchange believes that the proposed change is reasonable as it does not represent a significant departure from the criteria currently offered in the Fee Schedule. Specifically, the proposed new tier has criteria similar to the existing Retail Growth Tiers, albeit with less stringent criteria that applies at the MPID level rather than the Member level. Nonetheless, the Exchange believes that the enhanced rebate under the proposed new tier is commensurate with the criteria and the type of order flow associated with the applicable tier by allowing for MPID level activity to become eligible for the rebate instead of only Member level activity. The Exchange also believes that the proposal represents an equitable allocation of fees and rebates and is not unfairly discriminatory because all Members will be eligible for the proposed new tier and have the opportunity to meet the tier's criteria and receive the corresponding enhanced rebate if such criteria is met. Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would definitely result in any Members qualifying the new proposed tier. While the Exchange has no way of predicting with certainty how the proposed changes will impact Member activity, based on the prior months volume, the Exchange anticipates that at least one MPID will be able to satisfy the criteria proposed under the proposed new tier. The Exchange also notes that proposed change will not adversely impact any Member's ability to qualify for enhanced rebates offered under other tiers. Should a Member not meet the criteria of the new tier, the Member will merely not receive that corresponding enhanced rebate.

Finally, the Exchange believes the proposal to define the term ''Step-Up ADV'' is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Specifically, the proposal is intended only to add clarity to the Exchange's Fee Schedule and involves no substantive change.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed changes would

[7] The proposed Retail Growth Tier 1 would provide no enhanced rebate for applicable orders in securities priced under $1. However, orders yielding fee codes ZA and ZO in securities priced under $1 would continue to receive the standard rebate of $0.0003 per share.

[8] ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *Id.*

[12] 15 U.S.C. 78f(b)(4).

[13] *See e.g.,* BZX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

[14] *See e.g.,* EDGX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed changes further the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.''

The Exchange believes the proposed rule changes do not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed new tier will apply to all Members equally in that all Members are eligible the tier, have a reasonable opportunity to meet the tier's criteria and will receive the enhanced rebate on their qualifying orders if such criteria is met. The Exchange does not believe the proposed changes burden competition, but rather, enhance competition as it is intended to increase the competitiveness of EDGX by adopting pricing incentives in order to attract order flow and incentivize participants to increase their participation on the Exchange, providing for additional execution opportunities for market participants and improved price transparency. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange by enhancing market quality and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem.

Next, the Exchange believes the proposed rule changes does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges, off-exchange venues, and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 14% of the market share.[15] Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [16] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission*, the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[17] Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Finally, the Exchange believes its proposal to add the definition of Step-Up ADV will have no impact on competition as it is only intended to add clarity to the Exchange's Fee Schedule and involves no substantive change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act [18] and paragraph (f) of Rule 19b–4 [19] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGX–2022–053 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGX–2022–053. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal

[15] *Supra* note 1.

[16] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[17] *NetCoalition* v. *SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f).

office of the Exchange. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGX–2022–053, and should be submitted on or before December 30, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–26745 Filed 12–8–22; 8:45 am]

BILLING CODE 8011–01–P

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on Wednesday, December 14, 2022 at 10:00 a.m.

PLACE: The meeting will be webcast on the Commission's website at *www.sec.gov.*

STATUS: This meeting will begin at 10:00 a.m. (ET) and will be open to the public via webcast on the Commission's website at *www.sec.gov.*

MATTERS TO BE CONSIDERED:

1. The Commission will consider whether to adopt amendments to Rule 10b5–1 under the Securities Exchange Act, and new disclosure regarding Rule 10b5–1 trading arrangements and insider trading policies and procedures, as well as amendments regarding the disclosure of the timing of certain equity compensation awards and reporting of gifts on Form 4.

2. The Commission will consider whether to propose rule amendments to update the disclosure required by Rule 605 under Regulation NMS of the Securities Exchange Act of 1934 for order executions in national market system stocks. The proposed rule amendments would expand the scope of entities subject to Rule 605, modify the information required to be reported under the rule, and change how orders are categorized for purposes of the rule.

3. The Commission will consider whether to propose amendments to certain rules under Regulation NMS of the Securities Exchange Act of 1934 to adopt variable minimum pricing increments for the quoting and trading of NMS stocks, reduce access fee caps, and enhance the transparency of better priced orders.

4. The Commission will consider whether to propose a new rule under Regulation NMS of the Securities Exchange Act of 1934 titled the Order Competition Rule, which would require certain equity orders of retail investors to be exposed to competition in fair and open auctions before such orders could be executed internally by any trading center that restricts order-by-order competition.

5. The Commission will consider whether to propose new rules under the Securities Exchange Act of 1934 titled Regulation Best Execution, which would establish a best execution standard and require detailed policies and procedures for brokers, dealers, government securities brokers, government securities dealers, and municipal securities dealers and more robust policies and procedures for entities engaging in certain conflicted transactions with retail customers, as well as related review and documentation requirements.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: December 7, 2022.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–26901 Filed 12–7–22; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96448; File No. SR–NYSECHX–2022–29]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Article 17, Rule 5

December 5, 2022.

Pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 1, 2022, the NYSE Chicago, Inc. (''NYSE Chicago'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Article 17, Rule 5 to (1) change how Qualified Contingent Trade (''QCT'') Cross Orders are handled in the Exchange's Brokerplex® order management system, and (2) make certain non-substantive conforming changes. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Article 17, Rule 5 (Brokerplex) in order to (1) change how QCT Cross Orders are handled in the Exchange's Brokerplex® order management system, and (2) make certain non-substantive conforming changes.

Background and Proposed Rule Change

The Exchange provides the Brokerplex order management system for use by Institutional Broker Representatives (''IBRs''),[4] to receive, transmit and hold orders from their customers while seeking execution

[4] IBRs are also known as Institutional Brokers or ''IBs''. The term ''Institutional Broker'' is defined in Article 1, Rule 1(n) to mean a member of the Exchange who is registered as an Institutional Broker pursuant to the provisions of Article 17 and has satisfied all Exchange requirements to operate as an Institutional Broker on the Exchange.

within the NYSE Chicago Marketplace [5] or elsewhere in the National Market System. Brokerplex also can be used to record trade executions and send transaction reports to a Trade Reporting Facility (''TRF''), as defined in FINRA Rules 6300 *et seq.,* as amended from time-to-time. Brokerplex can also be used to initiate clearing submissions to a Qualified Clearing Agency via the Exchange's reporting systems.

Orders may be entered into Brokerplex manually by an IBR or submitted by an Exchange-approved electronic connection. With certain enumerated exceptions,[6] Brokerplex accepts and handles all of the order types, conditions and instructions accepted by the NYSE Chicago Marketplace pursuant to Rule 7.31. In addition to the order types accepted by the NYSE Chicago Marketplace, Brokerplex permits entry and processing of certain additional order types, conditions and instructions accepted by other market centers. Finally, Brokerplex accepts and processes certain specified order types, conditions and instructions set forth in Article 17, Rule 5(c)(3).

As set forth in Rule 7.31(g), a QCT Cross Order is a Cross Order that is part of a transaction consisting of two or more component orders that qualifies for a Contingent Order Exemption to the Order Protection Rule pursuant to Rule 7.37(f)(5).[7] QCT Cross Orders may thus trade through both manual and protected quotes but may not trade through the Exchange BBO.[8]

QCT Cross Orders are only available to IBRs. While IBRs are not required to use Brokerplex to manage their orders, including QCT Cross Orders, Brokerplex facilitates the execution of QCT Cross Orders by retaining the QCT Cross Order information submitted by the IBRs and providing such information to IBRs in a format that assists IBRs in processing orders and transactions, responding to request for information from customers and regulatory bodies and for other legitimate business purposes.[9]

As noted, many of the order types specified in Rule 7.31 that would be sent directly to the matching engine cannot be entered into Brokerplex. As a practical matter, IBR business on the Exchange consists of facilitating crosses, the majority of which are QCT Cross Orders entered into Brokerplex via an Exchange-approved electronic connection or manually by an IBR. Because QCT Cross Orders are exempt from the Order Protection Rule, QCT Cross Orders entered into Brokerplex can be and usually are executed at venues away from the Exchange, which is permissible as long as the order does not trade through the Exchange BBO. The proposed rule change would require that QCT Cross Orders entered into Brokerplex be initially sent to execute on the Exchange.

Amendment of Article 17, Rule 5(e)

Article 17, Rule 5(e) sets forth the Brokerplex order handling and transmission requirements. Currently, QCT Cross Orders entered into Brokerplex electronically or manually by an IBR can either be submitted (1) to the Exchange's Matching System or the NYSE Chicago Marketplace, as applicable, to execute and then, if they cannot be executed in the Exchange's Matching System or NYSE Chicago Marketplace, as applicable, to another destination according to the IBR's instructions,[10] or (2) directly to another trading center.[11]

The Exchange proposes to amend Article 17, Rule 5(e)(1) to change how QCT Cross Orders are handled in Brokerplex. As proposed, QCT Cross Orders entered into Brokerplex either electronically or manually would be sent to the NYSE Chicago Marketplace to execute in the first instance and then to other trading centers if the order cannot be executed in the NYSE Chicago Marketplace. In other words, IBRs would no longer have the ability to send QCT Cross Orders entered into Brokerplex directly to another trading center in the first instance as provided for in Article 17, Rule 5(e)(1)(B).[12]

All other aspects of the Brokerplex functionality would continue to operate as described in Article 17, Rule 5.

Non-Substantive Conforming Changes

The Exchange proposes to amend Article 17, Rule 5 to eliminate obsolete references to the Exchange's Matching System. During its transition to the Pillar trading system, the Exchange defined ''NYSE Chicago Marketplace'' in Rule 1.1(p) to mean the electronic securities communications and trading facility of the Exchange through which orders are processed or are consolidated for execution and/or display. The definition was intended to replace references to the term ''Matching System'' following the transition to Pillar.[13] Having transitioned to Pillar, ''Matching System'' is obsolete and the Exchange proposes to delete the phrase ''Exchange's Matching System or the'' before ''NYSE Chicago Marketplace'' in each place that it appears in Article 17, Rule 5. The Exchange also proposes a non-substantive change in Article 17, Rule 5(e)(2) by replacing the word ''Institutional Broker'' with ''IBR''.

Implementation

The Exchange anticipates the technology changes associated with the proposed change to Article 17, Rule 5 relating to QCT Cross Orders to be implemented in the first quarter of 2023. The Exchange will announce the implementation date of this proposal via a Brokerplex Release Note.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(5),[15] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed change would promote just and equitable principles of trade and

[5] During the transition to Pillar, the Exchange added the phrase ''NYSE Chicago Marketplace, as applicable'' in Article 17, Rule 5 as an alternative to the term ''Matching System'' then used in the Exchange's rules. *See* Securities Exchange Act Release No. 86709 (August 20, 2019), 84 FR 44654, 44663 (August 26, 2019) (SR–NYSECHX–2019–08) (Notice of Filing of Proposed Rule Change for Trading Rules To Support the Transition of Trading to the Pillar Trading Platform). ''Matching System'' is defined in Article 1, Rule 1(z) as one of the electronic or automated order routing, execution and reporting systems provided by the Exchange. As discussed below, the term became obsolete following the transition to Pillar and the Exchange now proposes to delete it from Article 17, Rule 5.

[6] Brokerplex does not accept the following orders specified in Rule 7.31: Inside Limit Orders, Auction-Only Orders, MPL Orders, Tracking Orders, ISOs, Primary Only Orders, Primary Until 9:45 Orders, Primary After 3:55 Orders, Directed Orders, Pegged Orders, Non-Display Remove Modifier, Proactive if Crossed Modifier, Self-Trade Prevention Modifier, and Minimum Trade Size Modifier. *See* Article 17, Rule 5(c)(1).

[7] *See* Rule 7.31(g).

[8] *See* Rule 7.37(f)(5).

[9] *See* Article 17, Rule 5(b).

[10] *See* Article 17, Rule 5(e)(1)(A).

[11] *See* Article 17, Rule 5(e)(1)(B).

[12] As noted, the QCT Cross Order is a type of Cross Order that is only available to IBRs. Cross Orders are two-sided orders with instructions to match the identified buy-side with the identified sell-side at a specified price known as the ''cross price.'' The Exchange will reject a QCT Cross Order if the cross price is not between the BBO, unless it meets Cross with Size requirements, in which case the cross price can be equal to the BB (BO). *See* Rule 7.31(g)(2). Other equities markets do not have a comparable QCT Cross Order type.

[13] *See* note 5, *supra.*

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

protect investors and the public interest by requiring that QCT Cross Orders entered into Brokerplex be sent to the Exchange for execution in the first instance. Currently, IBRs can send QCT Cross Orders entered into the Exchange-provided Brokerplex order management system either to the Exchange or to an away trading center. As proposed, QCT Cross Orders entered into Brokerplex could only be sent to the Exchange in the first instance for execution. If there is no opportunity to execute on the Exchange, such orders would then be sent to another trading center, at the direction of the IBR. By requiring QCT Cross Orders entered into Brokerplex to be sent to the Exchange first rather than allowing IBRs to execute such QCT Cross Orders in away venues as long as they do not trade through the Exchange BBO,[16] the Exchange believes that the proposal would enhance the likelihood of QCT Cross Orders executing on the Exchange, thereby enabling the Exchange to better compete with other trading centers for the execution of such orders when those orders are entered into Exchange systems.

As noted, although IBRs are not required to use Brokerplex to manage their orders, Brokerplex facilitates entry and execution of QCT Cross Orders by providing IBRs with a comprehensive recordkeeping solution for such orders, which contain both equities and options legs.[17] To the extent that IBRs utilize Brokerplex in order to facilitate their QCT Cross Order business, the Exchange believes that such orders should be required to be executed on the Exchange. The current functionality permits IBRs that utilize Brokerplex to immediately send those orders to away venues. The Exchange believes that if IBRs utilize Brokerplex to facilitate QCT Cross Orders, it would be fair and consistent with just and equitable principles of trade for those orders to be executed on the Exchange. As noted above, a number of order types enumerated in Rule 7.31 currently interact with the Exchange's order book first. Unlike those order types, which as noted are not eligible to be entered into Brokerplex, QCT Cross Orders entered into Brokerplex, do not automatically interact with the NYSE Chicago Marketplace. QCT Cross Orders, for the most part, are routed away for execution because they can trade through a protected quote, which is permissible as long as the order does not trade through the Exchange BBO. The Exchange therefore believes that it is just and equitable to require QCT Cross Orders entered into Brokerplex to be treated similarly to these other order types and sent to the Exchange for execution in the first instance.

In addition, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[18] in general, and with Section 6(b)(1)[19] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. In particular, the Exchange believes that the proposed non-substantive conforming changes to delete the words ''Matching System'' throughout Article 17, Rule 5 and replacing the word ''Institutional Broker'' with ''IBR'' in Article 17, Rule 5(e)(2) would add clarity, consistency and transparency to the Exchange's rules. The Exchange believes that adding such clarity, consistency and transparency would also be consistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency, thereby reducing potential confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that by requiring QCT Cross Orders entered into Brokerplex to be sent to the Exchange before other trading centers, the proposed rule change would increase opportunities for these orders to be executed on the Exchange, thereby improving the Exchange's ability to compete with other trading centers for the execution of QCT Cross Orders.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act[20] and Rule 19b–4(f)(6) thereunder.[21] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under section 19(b)(2)(B)[22] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSECHX–2022–29 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–NYSECHX–2022–29. 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

[16] *See* Rule 7.37(f)(5).

[17] *See* Article 17, Rule 5(b).

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(1).

[20] 15 U.S.C. 78s(b)(3)(A)(iii).

[21] 17 CFR 240.19b–4(f)(6).

[22] 15 U.S.C. 78s(b)(2)(B).

only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSECHX–2022–29 and should be submitted on or before December 30, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–26744 Filed 12–8–22; 8:45 am]

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[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–057, OMB Control No. 3235–0057]

Submission for OMB Review; Comment Request; Extension: Regulation 14C (Commission Rules 14c–1 through 14c–7 and Schedule 14C)

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Section 14(c) of the Securities Exchange Act of 1934 (the ''Exchange Act'') operates to require issuers that do not solicit proxies or consents from any or all of the holders of record of a class of securities registered under section 12 of the Exchange Act and in accordance with the rules and regulations prescribed under section 14(a) in connection with a meeting of security holders (including action by consent) to distribute to any holders that were not solicited an information statement substantially equivalent to the information that would be required to be transmitted if a proxy or consent solicitation were made. Regulation 14C (Exchange Act Rules 14c–1 through 14c–7 and Schedule 14C) (17 CFR 240.14c–1 through 240.14c–7 and 240.14c–101) sets forth the requirements for the dissemination, content and filing of the information statement. We estimate that Schedule 14C takes approximately 129.1575 hours per response and will be filed by approximately 569 issuers annually. In addition, we estimate that 75% of the 129.1575 hours per response (96.8681 hours) is prepared by the issuer for an annual reporting burden of 55,118 hours (96.8681 hours per response × 569 responses). An agency may conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by January 9, 2023 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: December 5, 2022.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–26817 Filed 12–8–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–231, OMB Control No. 3235–0229]

Submission for OMB Review; Comment Request; Extension: Form N–17D–1

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 350l-3520), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Section 17(d) (15 U.S.C. 80a–17(d)) of the Investment Company Act of 1940 (''Act'') authorizes the Commission to adopt rules that protect funds and their security holders from overreaching by affiliated persons when the fund and the affiliated person participate in any joint enterprise or other joint arrangement or profit-sharing plan. Rule 17d–1 under the Act (17 CFR 270.17d–1) prohibits funds and their affiliated persons from participating in a joint enterprise, unless an application regarding the transaction has been filed with and approved by the Commission. Subparagraph (d)(3) of the rule provides an exemption from this requirement for any loan or credit advance to, or acquisition of securities or other property of, a small business concern, or any agreement to do any of these transactions (''investments'') made by a small business investment company (''SBIC'') and a bank that is an affiliated person of (1) the SBIC or (2) an affiliated person of the SBIC (''affiliated bank''). The exemption requires the Commission to prescribe reports about the investments, and the Commission has designated Form N–17D–1 (''form'') as the form for reports required by rule 17d–1(d)(3).[1]

SBICs and their affiliated banks use form N–17D–1 to report any contemporaneous investments in a small business concern. The form provides shareholders and persons seeking to make an informed decision about investing in an SBIC an opportunity to learn about transactions of the SBIC that have the potential for self-dealing and other forms of overreaching by affiliated persons at the expense of shareholders.

[1] *See* 17 CFR 270.17d–2.

Form N–17D–1 requires SBICs and their affiliated banks to report identifying information about the small business concern and the affiliated bank. The report must include, among other things, the SBIC's and affiliated bank's outstanding investments in the small business concern, the use of the proceeds of the investments made during the reporting period, any changes in the nature and amount of the affiliated bank's investment, the name of any affiliated person of the SBIC or the affiliated bank (or any affiliated person of the affiliated person of the SBIC or the affiliated bank) who has any interest in the transactions, the basis of the affiliation, the nature of the interest, and the consideration the affiliated person has received or will receive.

There are no SBICs currently registered with the Commission and, thus, we estimate that annually there will be no transactions that trigger the obligations to file the form.[2] The Commission requests authorization to maintain an inventory of one burden hour to ease future renewals of Form N–17D–1's collection of information analysis should an SBIC register with the Commission in the future and engage in a transaction that would necessitate reporting on the form. If an SBIC were to file on Form N–17D–1, we estimate the cost would be $237.[3] The Commission will not keep responses on Form N–17D–1 confidential.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by January 9, 2023 to (i) *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: December 5, 2022.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–26815 Filed 12–8–22; 8:45 am]

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[2] The Commission has not received a filing on Form N–17D–1 since March 23, 1987.

[3] The estimated wage figure is based on published rates for Senior Accountants ($237). The $237/hour figure for a Senior Accountant is from Securities Industry and Financial Markets Association's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

SMALL BUSINESS ADMINISTRATION

National Women's Business Council; Notice of Public Meeting

AGENCY: Small Business Administration, National Women's Business Council.

ACTION: Notice of open public meeting.

DATES: The public meeting will be held on Wednesday, February 8, 2023, from 10:00 a.m. to 12:00 p.m. EDT.

ADDRESSES: This meeting is hybrid and will be held via Zoom, a web conferencing platform as well as in-person. The access link will be provided to attendees upon registration. For those attending in-person, the event will take place at the U.S. Small Business Administration Headquarters (409 3rd St. SW, Washington, DC 20416) in Eisenhower Conference Room B on the Concourse Level.

FOR FURTHER INFORMATION CONTACT: For more information, please visit the NWBC website at *www.nwbc.gov,* email *info@nwbc.gov* or call Jordan Chapman (NWBC Communications Specialist) at 202–941–6001.

The meeting is open to the public; however, advance notice of attendance is requested. To RSVP, please visit the NWBC website at *www.nwbc.gov.* The ''Public Meetings'' section will feature a link to register on Eventbrite.

NWBC strongly encourages that public comments and questions be submitted in advance by January 31st. This Eventbrite registration page will include an opportunity to do so, but individuals may also email *info@nwbc.gov* with subject line— ''[Name/Organization] Comment for 02/08/23 Public Meeting.'' NWBC staff may read a selection submitted statements during the final 20 minutes of the program.

This event will be held over Zoom and in-person, with a link being provided closer to the date of the event for Zoom attendees. During the live event, attendees will be in listen-only mode. For technical assistance, please visit the Zoom Support Page. All public comments will be included in the meeting record, which will be made available on *www.nwbc.gov* under the ''Public Meetings'' section.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, the National Women's Business Council (NWBC) announces its third public meeting of Fiscal Year 2022. The 1988 Women's Business Ownership Act established NWBC to serve as an independent source of advice and policy recommendations to the President, Congress, and the Administrator of the U.S. Small Business Administration (SBA) on issues of importance to women entrepreneurs.

This meeting will allow Council Members to review what has been accomplished over the past year and preview what may be accomplished over the next year. The event will include guest speakers and will allow Council Members to respond to a selection of questions and comments from the public.

Dated: December 5, 2022.

Andrienne Johnson,

Committee Management Officer.

[FR Doc. 2022–26718 Filed 12–8–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of limitation on claims for judicial review of actions by the California Department of Transportation (Caltrans), and Federal Highway Administration.

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans, Federal Highway Administration that are final. The actions relate to a proposed highway project, State Route 88 from just east of Comstock Road to just east of the City of Lockeford in San Joaquin County State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or

before May 8, 2023. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: John Thomas, Branch Chief, Northern San Joaquin Valley Management Branch 1, 2015 E Shields Avenue, Suite 100, Fresno, CA 93726, (559) 408–4496, *john.q.thomas@dot.ca.gov,* Mon.–Fri. 9:00 a.m.–5:00 p.m.

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans, Federal Highway Administration have taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: Caltrans proposes to repair the roadway pavement to comply with Americans with Disabilities Act requirements for pedestrians, improve highway operations and Transportation Management Systems, and replace sign panels on State Route 88 in San Joaquin County from post miles 5.1 to 16.4 to address the deteriorating pavement and other multi-objective assets. The project will also add bike lanes and sidewalks for Complete Streets elements.

The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Assessment (FEA) for the project, approved on September 13, 2022, in the FHWA Finding of No Significant Impact (FONSI) issued on September 13, 2022, and in other documents in the FHWA project records. The FEA, FONSI, and other project records are available by contacting Caltrans at the addresses provided above. The Caltrans FEA and FONSI can be viewed and downloaded from the project website at: *https://dot.ca.gov/caltrans-near-me/district-10/district-10-current-projects/state-route-88-lockeford-updates.*

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4335].
2. *Air:* Clean Air Act [23 U.S.C. 109 (j) and 42 U.S.C 7521(a)].
3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [23 U.S.C. 138 and 49 U.S.C. 303]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; The Public Health and Welfare [42 U.S.C. 4331 (b)(2)].
4. *Wildlife:* Federal Endangered Species Act [16 U.S.C. 1531–1543]; Fish and Wildlife Coordination Act [16 U.S.C. 661–666(C); Migratory Bird Treaty Act [16 U.S.C. 760c–760g].
5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–470 (ll)]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].
6. *Social and Economic:* NEPA implementation [23 U.S.C. 109(h)]; Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)].
7. *Wetlands and Water Resources:* Clean Water Act [33 U.S.C. 1344]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287].
8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 13112 Invasive Species; E.O. 11988 Floodplain management; E.O. 12898 Federal actions to Address Environmental Justice in Minority Populations and Low Income Populations.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Antonio Johnson,

Director, Planning, Environment and Right of Way, Federal Highway Administration, California Division.

[FR Doc. 2022–26753 Filed 12–8–22; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Tanker Security Program Application Solicitation

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of application period for the Tanker Security Program (TSP).

SUMMARY: The Maritime Administration (MARAD) requests applications from eligible candidates for possible participation in the Tanker Security Program (TSP). This request for applications is issued in accordance with certain provisions of the National Defense Authorization Act for Fiscal Year 2021 (FY21 NDAA) and the National Defense Authorization Act for Fiscal Year 2022 (FY22 NDAA). The FY21 NDAA authorized the Secretary of Transportation to establish a fleet of active, commercially viable, militarily useful, privately owned product tank vessels of the United States. The fleet will meet national defense and other security requirements and maintain a United States presence in international commercial shipping. The FY22 NDAA made minor adjustments related to the participation of long-term charters in the TSP. This request for applications provides, among other things, application criteria and a deadline for submitting applications for the enrollment of vessels in the TSP.

DATES: Applications for enrollment must be received no later than February 7, 2023. Applications should be submitted to the address listed in the **ADDRESSES** section below.

ADDRESSES: Applications may be submitted electronically to *sealiftsupport@dot.gov* or in hard copy to the Tanker Security Program, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Application forms are available upon request or may be downloaded from MARAD's website.

FOR FURTHER INFORMATION CONTACT: David Hatcher, Director, Office of Sealift Support, Maritime Administration, Telephone (202) 366–0688. For legal questions, call Joseph Click, Office of Chief Counsel, Division of Maritime Programs, Maritime Administration, (202) 366–5882.

SUPPLEMENTARY INFORMATION: Section 53402(a) of title 46, United States Code, requires that the Secretary of Transportation (Secretary), in consultation with the Secretary of Defense (SecDef), establish a fleet of active, commercially viable, militarily useful, privately-owned product tank vessels to meet national defense and other security requirements. The TSP will provide a stipend to tanker operators of U.S.-flagged vessels that meet certain qualifications.

Congress appropriated $60,000,000 for the TSP in the Consolidated Appropriations Act of 2022, Public Law 117–269, to remain available until expended. Authorized payments to participating operators are limited to $6 million per ship, per fiscal year and are subject to annual appropriations. Participating operators will be required to make their commercial transportation resources available upon request of the

SecDef during times of war or national emergency.

Application Criteria

Section 53403(b)(2)(A) of Title 46, United States Code directs the Secretary in consultation with the SecDef to consider applicant vessel qualifications as they relate to 46 CFR 294.9 and give priority to applications based on the following criteria:

(1) Vessel capabilities, as established by SecDef;

(2) Applicant's record of vessel ownership and operation of tanker vessels; and

(3) Applicant's citizenship, with preference for Section 50501 Citizens.

Vessel Requirements

Acceptable vessels for a TSP Operating Agreement must meet the requirements of 46 U.S.C. 53402(b) and 46 CFR 294.9. The Commander, USTRANSCOM, has provided vessel suitability standards for eligible TSP vessels for use during the application selection process. The following suitability standards, consistent with the requirements of 46 U.S.C. 53402(b)(5), will apply to vessel applications:

- Medium Range (MR) tankers between 30,000–60,000 deadweight tons, with fuel cargo capacity of 230,000 barrels or greater.
- Deck space and size to accept installation of Consolidation (CONSOL) stations, two on each side for a total of four stations.
- Ability to accommodate up to an additional 12 crew for CONSOL, security, and communication crew augmentation.
- Communication facilities capable of integrating secure communications equipment.
- Does not engage in commerce or acquire any supplies or services if any proclamation, Executive order, or statute administered by Office of Foreign Assets Control (OFAC), or if OFAC's implementing regulations at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States, except as authorized by the OFAC in the Department of the Treasury.
- Operate in the Indo-Pacific region.
- Maximum draft of no more than 44 feet. Preference will be given to vessels that can transport the most fuel at the shallowest draft.
- Sustained service speed of at least 14 knots, with higher speeds preferred.
- Carry only clean refined products.
- Capable of carrying more than two separated grades of refined petroleum products with double valve protection between tanks. Additionally, the vessel must meet the standards of 46 U.S.C. 53401(4).

National Security Requirements

The applicants chosen to receive a TSP Operating Agreement will be required to enter into an Emergency Preparedness Agreement (EPA) under 46 U.S.C. 53407, or such other agreement as may be approved by the Secretaries. The current EPA approved by the Secretary and SecDef is the Voluntary Tanker Agreement (VTA), publicly available for review at 87 FR 67119 (November 7, 2022).

Documentation

A vessel chosen to receive the TSP Operating Agreement, must be documented as a U.S.-flag vessel under 46 U.S.C., chapter 121. An applicant proposing a foreign-flag vessel must demonstrate the vessel owner's intent to have the vessel so documented and must demonstrate that the vessel is so documented by the time the applicant enters into a TSP Operating Agreement for the vessel. Proof of U.S. Coast Guard vessel documentation and all relevant charter and management agreements for a chosen vessel must be approved by MARAD before the vessel will be eligible to receive TSP payments.

Vessel Operation

A vessel selected for award of a TSP Operating Agreement must be operated in foreign commerce, in mixed foreign commerce and domestic trade of the United States permitted under a registry endorsement issued under 46 U.S.C. 12111, or between U.S. ports and those points identified in 46 U.S.C. 55101(b), or in foreign-to-foreign commerce, and must not otherwise operate in the coastwise trade of the United States.

Protection of Confidential Commercial or Financial Information

If the application includes information that the applicant considers to be a trade secret or confidential commercial or financial information, the applicant should do the following: (1) Note on the front cover that the submission ''Contains Confidential Commercial or Financial Information (CCFI)''; (2) mark each affected page ''CCFI''; and (3) highlight or otherwise denote the CCFI portions. MARAD will protect such information from disclosure to the extent allowed under applicable law. 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 that procedure will be exempt from disclosure under FOIA.

Award of Operating Agreements

MARAD does not guarantee the award of TSP Operating Agreements in response to applications submitted under this Notice. In the event that no awards are made, or an application is not selected for an award, the applicant will be provided with a written reason why the application was denied, consistent with the requirements of 46 U.S.C. 53403.

(Authority: 46 U.S.C. chapter 534, 49 CFR 1.92 and 1.93, 46 CFR 294.)

By order of the Maritime Administrator.

T. Mitchell Hudson, Jr.

Secretary, Maritime Administration.

[FR Doc. 2022–26848 Filed 12–8–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD–2022–0254]

Aquaculture Support Operations Waiver Request for the Vessels COLBY PERCE, RONJA CARRIER, SADIE JANE, MISS MILDRED 1, KC COMMANDER

AGENCY: Maritime Administration (MARAD), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: Pursuant to a delegation of authority from the Secretary of Transportation, the Maritime Administrator is authorized to issue an Aquaculture Support Operations Waiver to U.S. documented vessels with registry endorsements or foreign flag vessels in operations that treat aquaculture fish or protect aquaculture fish from disease, parasitic infestation, or other threats to their health upon a finding that suitable vessels of the United States are not available that could perform those operations. MARAD has received an Aquaculture Support Operations waiver request and is publishing this notice to solicit comments that may assist MARAD in determining whether suitable vessels of the United States are available that could perform the proposed aquaculture support operations set forth in the request. A brief description of the proposed aquaculture support operations is listed in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Submit comments on or before January 9, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0254 by any of the following methods:

• *On-line via the Federal Electronic Portal: http://www.regulations.gov.* Search using ''MARAD–2022–0254'' and follow the instructions for submitting comments.

• *Mail/Hand-Delivery/Courier:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590. Submit comments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

Reference Materials and Docket Information: You may view the complete application, including the aquaculture support technical service requirements, and all public comments at the DOT Docket on-line via *http://www.regulations.gov.* Search using ''MARAD–2022–0254.'' All comments received will be posted without change to the docket, including any personal information provided. The Docket Management Facility is open 9:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jennifer Meurer, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–436, Washington, DC 20590. Email: *Jennifer.Meurer@dot.gov.* Phone: 202–366–4946.

If you have questions on viewing the Docket, call Docket Operations, telephone: (800) 647–5527.

SUPPLEMENTARY INFORMATION: Pursuant to 46 CFR 106.115, vessel owners, operators, or charterers of U.S. documented vessels with registry endorsements or foreign flag vessels are required to provide prior notification to the United States Coast Guard (USCG) of aquaculture support operations in U.S. waters. The notification, in part, must include a copy of a MARAD-issued Aquaculture Support Operations Waiver. Pursuant to 46 U.S.C. 12102(d), the Secretary of Transportation has the authority to issue Aquaculture Support Operations Waivers to U.S. documented vessels with registry endorsements or foreign flag vessels engaged in operations that treat aquaculture fish or protect aquaculture fish from disease, parasitic infestation, or other threats to their health after a finding that suitable vessels of the United States are not available that could perform those operations. The Secretary has delegated this authority to the Maritime Administrator.

MARAD has received an Aquaculture Support Operations Waiver request from Cooke Aquaculture USA, Inc. (Cooke) for the operations of the Canadian-flag vessels COLBY PERCE, RONJA CARRIER, SADIE JANE, MISS MILDRED 1, KC COMMANDER. Cooke proposes, in part, ''to use highly-specialized foreign-flag vessels referred to as a ''wellboat'' (or ''live fish carrier'') to treat Cooke's swimming inventory of farmed Atlantic salmon in the company's salt-water grow-out pens off Maine's North Atlantic Coast. This treatment prevents against parasitic infestation by sea lice that is highly destructive to the salmon's health.'' Cooke proposes to operate the vessels off Maine's North Atlantic Coast during the 2023 calendar year, from January 1 to December 31, 2023. Further details of Cooke's proposed operations may be found in the waiver request posted in the docket.

The public may submit comments providing detailed information relating to the availability of U.S.-flag vessels to perform the proposed aquaculture support operations set forth in Cooke's waiver request. Comments should reference the docket number of this notice, the vessel names, the commenter's interest in the application, and address whether there are suitable U.S. vessels available to conduct the proposed aquaculture support operations.

Privacy Act

In accordance with 5 U.S.C. 553(c), MARAD solicits comments from the public to inform its decision determining the availability of suitable U.S.-flag vessels to conduct the aquaculture support operations proposed in this notice. All timely comments will be considered; however, to facilitate comment tracking, commenters should provide their name or the name of their organization. If comments contain proprietary or confidential information, commenters may contact the agency for alternate submission instructions. 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(w))

* * * * *

By order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–26821 Filed 12–8–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2019–0038; Notice 2]

Mercedes-Benz USA, LLC and Pirelli Tire, LLC, Denial of Petitions for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petitions.

SUMMARY: Daimler AG (DAG) and Mercedes-Benz USA, LLC (MBUSA) collectively referred to as ''DAG-Mercedes-Benz,'' and Pirelli Tire, LLC (Pirelli), have determined that certain Pirelli P7 Cinturato RUN FLAT radial tires that were installed as original equipment in certain model year (MY) 2018–2019 Mercedes-Benz motor vehicles and also sold as replacement equipment do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles.* Pirelli filed a noncompliance report dated February 25, 2019, and later amended it on March 15, 2019, and DAG-Mercedes-Benz filed a noncompliance report dated March 4, 2019. Pirelli subsequently petitioned NHTSA (the ''Agency'') on March 18, 2019, and DAG-Mercedes-Benz petitioned NHTSA on March 27, 2019, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces and explains the denial of DAG-Mercedes-Benz's and Pirelli's petitions.

FOR FURTHER INFORMATION CONTACT: Jayton Lindley, Office of Vehicle Safety Compliance, NHTSA, (325) 655–0547, *Jayton.Lindley@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Overview

DAG-Mercedes-Benz and Pirelli (the ''petitioners'') have determined that certain Pirelli P7 Cinturato RUN FLAT radial tires that were installed as original equipment in certain MY 2018–2019 Mercedes-Benz motor vehicles and also sold as replacement equipment do not fully comply with paragraph S5.5(c) of FMVSS No. 139, *New Pneumatic Radial Tires for Light Vehicles* (49 CFR 571.139).

Pirelli filed a noncompliance report dated February 25, 2019, and later amended the report on March 15, 2019, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Pirelli subsequently petitioned NHTSA, on March 18, 2019, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

DAG-Mercedes-Benz filed a noncompliance report dated March 4, 2019, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports,* and subsequently petitioned NHTSA, on March 27, 2019,[1] for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

Notice of receipt of the petitioners' petitions was published with a 30-day public comment period, on May 19, 2020, in the **Federal Register** (85 FR 30014). One comment was received. To view the petitions, all supporting documents, and the comment from the public, log onto the Federal Docket Management System's website at *https://www.regulations.gov/,* and then follow the online search instructions to locate docket number ''NHTSA–2019–0038.''

II. Vehicles and Tires Involved

Approximately 2,023 Pirelli P7 Cinturato RUN FLAT replacement radial tires, size 245/45R18 100 Y (the ''subject tires''), manufactured between April 3, 2017, and February 15, 2019, are potentially involved.

The subject tires were installed as original equipment on approximately 206 of the following MY 2018–2019 Mercedes-Benz motor vehicles, manufactured between May 4, 2017, and February 7, 2019:

- 2018 Mercedes-Benz E400 4MATIC Cabriolet
- 2018 Mercedes-Benz E400 Coupe
- 2018 Mercedes-Benz E400 Cabriolet
- 2019 Mercedes-Benz E450 4MATIC Cabriolet
- 2019 Mercedes-Benz E450 Cabriolet
- 2019 Mercedes-Benz E450 Coupe
- 2019 Mercedes-Benz E450 4MATIC Coupe

III. Rule Requirements

Paragraph S5.5(c) of FMVSS No. 139, includes the requirements relevant to the petitions. Each tire must be marked on each sidewall with the maximum permissible inflation pressure, and in the case of the subject tires, the maximum permissible inflation pressure must be followed in parenthesis by the equivalent load rating in pounds, rounded to the nearest whole number.

IV. Noncompliance

The petitioners explain that the noncompliance is that the subject tires, manufactured by Pirelli and sold as replacement equipment, as well as sold by DAG-Mercedes-Benz as original equipment on certain MY 2018–2019 Mercedes-Benz motor vehicles, were erroneously marked with the incorrect maximum permissible inflation pressure. Therefore, the tires do not meet the requirements of paragraph S5.5(c) of FMVSS No. 139. Specifically, the subject tires are marked with a maximum permissible inflation pressure of 340 kPa, when they should have been marked with the maximum permissible inflation pressure of 350 kPa.

V. Summary of Petitions

The following views and arguments presented in this section, ''V. Summary of Petitions,'' are the views and arguments provided by the petitioners. They do not reflect the views of the Agency. The petitioners described the subject noncompliance and stated their belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

On January 15, 2019, DAG-Mercedes-Benz received preliminary information from the Korea Automobile Testing & Research Institute (KATRI), which indicated that when KATRI tested the subject tires installed on a DAG-Mercedes-Benz vehicle, using the test specifications applicable for 340 kPa (the maximum permissible tire pressure that was indicated on the sidewall of the tire) the tire reportedly failed the strength test.[2] DAG-Mercedes-Benz relayed information about KATRI's test to Pirelli Deutschland GMBH, who informed Pirelli about this issue. Pirelli subsequently concluded that the subject tires were erroneously marked with a maximum permissible inflation pressure of 340 kPa.

In support of their petitions, Pirelli and DAG-Mercedes-Benz submitted the following reasoning:

1. The petitioners cited the following noncompliance petitions that the Agency has granted previously:

a. DAG-Mercedes-Benz cited Continental Tire the America, LLC, Grant of Petition for Decision of Inconsequential Noncompliance. See 83 FR 36668, July 30, 2018.

b. Pirelli cited Tireco Inc., Grant of Petition for Decision of Inconsequential Noncompliance. *See* 76 FR 66353, October 26, 2011.

c. The petitioners cited Michelin North America, Grant of Petition for Decision of Inconsequential Noncompliance. *See* 74 FR 10805, March 12, 2009.

Pirelli highlighted that in the Michelin case, the tire was marked on one sidewall as having a maximum permissible inflation pressure of ''300 kPa,'' while the other sidewall was marked ''350 kPa.'' In concluding that this noncompliance was inconsequential to safety, NHTSA cited the following justifications:

> ''Since the load that is marked on both sides of the tire (*i.e.,* 750 KG (1653 lb.)) is correct; the recommended inflation pressure (240 kPa (35 PSI)) is well below both the correct tire pressure of 300 kPa (44 PSI), and the incorrectly labeled tire pressure of 350 kPa (51 PSI); and, in any event, the tire was manufactured to safely accommodate a pressure of 350 kPa (51 PSI), the tire cannot be inadvertently overloaded.''

2. DAG-Mercedes-Benz stated that the subject tires meet or exceed all performance and safety requirements for tires with a maximum permissible inflation pressure of 350 kPa, and the mislabeling has no effect whatsoever on their safety or performance. DAG-Mercedes-Benz asserted the following:

a. The subject tires were designed and engineered as tires with a maximum permissible inflation pressure of 350 kPa, and they meet or exceed all of the performance requirements for such tires. Specifically, the tires meet the applicable specifications contained in FMVSS No. 139 for tire dimensions under paragraph S6.1, the high-speed performance test under paragraph S6.2, the tire endurance test under paragraph S6.3, the low inflation pressure test under paragraph S6.4, and the bead unseating test applicable under paragraph S6.6 (which references FMVSS No. 109, paragraph S5.2). These tires also meet the tire strength test specified for tires with a maximum inflation pressure of 350 kPa, in accordance with paragraph S6.5 of

[1] NHTSA notes that DAG-Mercedes-Benz's petition was incorrectly dated March 27, 2018.

[2] The test was conducted according to the applicable Korean standard. DAG-Mercedes-Benz stated that the applicable Korean standard is equivalent to FMVSS No. 139 in all material respects.

FMVSS No. 139 (which references FMVSS No. 109, paragraph S5.3).

b. Since the subject tires were labeled as having a maximum permissible inflation pressure of 340 kPa rather than 350 kPa, the tires would be subject to a different strength test specification under FMVSS No. 139 (which references FMVSS No. 109, paragraph S5.3), which they were not meant to satisfy.

c. The mislabeling of the subject tires has no effect on vehicle safety as compared to tires that are properly and correctly labeled with a maximum permissible inflation pressure of 350 kPa. The error does not present any risk of over-inflation since the design maximum permissible inflation pressure of 350 kPa is higher than the labeled inflation pressure of 340 kPa. Additionally, there is no risk of tire under inflation, since the calculated load-carrying capacity of the tire at 340 kPa is met and exceeded by the design for 350 kPa.

d. All of the tire load-carrying information labeled on the subject tires is correct and, in fact, that information understates the load-carrying capacity of the tires. Since the tires were designed to have a maximum permissible inflation pressure of 350 kPa, according to the European Tyre and Rim Technical Organization (ETRTO) guidelines, these tires have a load-carrying capacity that is higher by 15 to 20 kg.

e. The mislabeling does not cause any safety problems, such as increasing the probability of tire failure, if the tires were inflated to 350 kPa under a load of 750kg, and it is not likely to result in unsafe use of the tires. In a similar case, NHTSA granted an inconsequentiality petition with respect to two tires, one of which was mislabeled as having a maximum permissible inflation pressure of 350 kPa instead of 300 kPa, and the other tire was mislabeled as having a maximum permissible inflation pressure of 300 kPa instead of 350 kPa.[3] As NHTSA has acknowledged, ''the choice of the maximum inflation pressure level then becomes the choice of the tire manufacturer, as long as it is in compliance with the established values under FMVSS No. 139 paragraph S5.5.4.''[4] Both 340 and 350 maximum inflation pressure levels are acceptable choices for this tire under paragraph S5.5.4.

f. NHTSA has previously stated that it has retained the requirement that tires be marked with the maximum permissible inflation pressure only ''as an aid in preventing over-inflation,'' for which there is no risk in this case.[5]

3. Pirelli stated that the different tire strength test criteria for tires marked with a maximum permissible inflation pressure of 340 kPa vs. 350 kPa do not have any real-world safety relevance in this case.

a. Since these tires are labeled as having a maximum permissible inflation pressure of 340 kPa rather than 350 kPa, the tires would be subject to a different strength test criteria under FMVSS No. 109/139, which they were not meant to satisfy. Due to this labeling error, the appropriate specification to be applied should be that which is applicable to the tire as designed, with a maximum permissible inflation pressure of 350 kPa.

b. FMVSS No. 139, paragraph S6.5 incorporates the tire strength test requirements of FMVSS No. 109, paragraph S5.3. Specifically, under the tire strength test in paragraph S5.3 of FMVSS No. 109 (which is cross-referenced in paragraph S6.5 of FMVSS No. 139), tires with a maximum permissible inflation pressure of 350 kPa should be tested at 180 kPa, while tires with a maximum pressure of 340 kPa should be tested at 220 kPa.[6] When tested at these pressures using the test procedures specified in FMVSS No. 109, a tire with a maximum permissible inflation pressure of 350 kPa must have a minimum breaking energy of 294 joules, while a tire with a maximum permissible inflation pressure of 340 kPa must have a minimum breaking energy of 588 joules. The subject tires have shown a breaking energy of 455 joules, which far exceeds the requirements for tires marked with a maximum permissible inflation pressure of 350 kPa (*i.e.,* 54.7% above the required threshold).

c. The subject tires were developed for a specific DAG-Mercedes-Benz application and, accordingly, they were subject to and fulfilled a very stringent DAG-Mercedes-Benz homologation process, including all customer requirements related to performance, quality and safety standards.

d. With specific reference to the DAG-Mercedes-Benz applications, the table below shows the following information for each of the vehicles for which the tires were fitted as original equipment:

- a summary of vehicle weights under ''Normal Load'' and ''Maximum Load'' operating conditions;
- the recommended tire inflation pressures for ''Normal Load'' and ''Maximum Load'' operating conditions reported on each vehicle's placard;
- minimum inflation pressures corresponding to each vehicle's load condition according to the Tire and Rim Association standard; and
- the minimum inflation pressures corresponding to each load condition according to the ETRTO standard (as shown at page 8 of Pirelli's petition[7]).

e. Either considering the Tire and Rim Association or the ETRTO standard for the maximum tire load-carrying capacity calculation, a tire with a load index of 96 ''Standard Load'' would be an appropriate fitment for each of the identified vehicles and would be more than sufficient to carry the vehicles' load both under ''Normal Load'' and ''Maximum Load'' conditions. In other words, under the above-reported operating conditions, an ''Extra Load'' tire with a load index of 100 is not necessary to carry the vehicles' loads.

f. Considering a tire with a load index of 96 ''Standard Load,'' and marked with a maximum permissible inflation pressure of 350 kPa, based on the above consideration, for each of the above-mentioned vehicles, the referenced strength test limit, and testing conditions are sufficient to achieve all strength test-related standards.

g. The subject tires are self-supporting ''run flat'' tires designed with a reinforcing element in the sidewall that carries the vehicle load under zero (0) kPa inflation pressure operating conditions, thereby avoiding the complete deflection of the tire sidewall which may lead to the tire rim roll-off. Thus, even in the event of a failure of the type that the tire strength test was originally intended to address (*i.e.,* road hazards), the subject tires' run flat design enables the vehicle to maintain stability, drivability, and control. Accordingly, there are no safety consequences in the event of such a failure.

h. The safety of the subject tires has been confirmed through rigorous testing under different testing methods focused to measure resistance to accidental impact damage and tire durability.

Neither petitioner is aware of any warranty claims, field reports, customer complaints, legal claims, or any

[3] *See Continental Tire the Americas, LLC, Grant of Petition for Decision of Inconsequential Noncompliance;* 80 FR 31092, June 1, 2015.

[4] *See Michelin North America, Grant of Petition for Decision of Inconsequential Noncompliance;* 74 FR 10805, March 12, 2009.

[5] *See Michelin North America, Inc., Grant of Application for Decision that Noncompliance is Inconsequential to Motor Vehicle Safety;* 70 FR 10161, March 2, 2005 (concluding that ''the mislabeling issue, in this case, will in no way contribute to the risk of over-inflation because the value actually marked is lower than the value required by the regulations'').

[6] *See* FMVSS No. 109 *New pneumatic and certain specialty tires;* Table II.

[7] The petition is available in the docket at NHTSA–2019–0038–0001.

incidents or injuries related to the original or the replacement tires.

VI. Public Comment

NHTSA received one comment from the public.[8] The commenter posted anonymously in opposition to NHTSA granting the subject petitions. The commenter argued that if the petitioners' petitions were to be granted, it would protect the manufacturers rather than consumers. The commenter further asserted that most vehicle owners do not know how to properly check and maintain the air pressure in their tires or understand how damaging and dangerous under-inflated tires have the potential to be.

VII. NHTSA's Analysis

A. General Principles

An important issue to consider in determining inconsequentiality is the safety risk to individuals who experience the type of event against which the recall would otherwise protect.[9] NHTSA also does not consider the absence of complaints or injuries to show that the issue is inconsequential to safety. ''Most importantly, the absence of a complaint does not mean there have not been any safety issues, nor does it mean that there will not be safety issues in the future.'' [10] ''[T]he fact that in past reported cases good luck and swift reaction have prevented many serious injuries does not mean that good luck will continue to work.'' [11]

B. NHTSA's Response to the Petitioners' Petitions

NHTSA considered several factors specific to these petitions and disagrees that mismarking the maximum permissible inflation pressure is inconsequential to motor vehicle safety.

Because the subject tires were marked with a maximum permissible inflation pressure of 340 kPa, these tires are required to meet the strength test conditions specified under paragraph S6.5, *Tire Strength,* of FMVSS No. 139, which points to the requirements documented in paragraph S5.3 of FMVSS No. 109. Based on Pirelli's testing and the sidewall picture Pirelli submitted to the Agency on July 11, 2019, the tire failed to meet the applicable requirement since it did not reach the minimum energy levels specified in the FMVSS standard. Specifically, a tire labeled with a maximum permissible inflation pressure of 340 kPa must meet or exceed a strength test requirement of 588 joules. Based on the information provided by Pirelli, the subject tires obtained energy levels up to 486.4 joules, which is significantly below the minimum requirement of 588 joules. NHTSA's regulations have different energy level requirements because a tire with a maximum permissible inflation pressure of 340 kPa is an ''Extra Load'' tire, whereas a tire with a maximum permissible inflation pressure of 350 kPa is a ''Standard Load'' tire.

Furthermore, based on the picture and information Pirelli provided to the Agency on July 11, 2019,[12] NHTSA does not believe that the only incorrect marking on the tire was the labeling of a maximum permissible inflation pressure of 340 kPa, as Pirelli described in its petition. The tire was also incorrectly marked as an ''Extra Load'' tire and the maximum load marked on the subject tires is 800 kg (1764 lbs.). This information correlates to a tire designed and manufactured as a tire having an inflation pressure of 340 kPa according to the 2019 edition of the Tire and Rim Association Year Book.[13] Therefore, the tire appears to be marked in multiple ways that would indicate to users that it is an ''Extra Load'' tire.

Tires labeled with either a maximum permissible inflation pressure of 340 kPa or 350 kPa are both acceptable choices under FMVSS No. 139, S5.5.4. However, the 340 kPa labeling indicates that a tire can support a load that is 199 lbs. per tire more than a tire marked with a maximum permissible inflation pressure of 350 kPa. Because the subject tires were engineered and manufactured to support the maximum load carrying capacity for a tire marked with a maximum permissible inflation pressure of 350 kPa, labeling the subject tires with an inflation pressure of 340 kPa creates the risk that the tires will be overloaded. For example, a consumer relying on the incorrect labeling may believe an overload condition of as much as 796 lbs. is safe—even though that overload poses a risk to motor vehicle safety.

The Michelin petition [14] for inconsequential noncompliance cited by the petitioners does not support the petitioners' claims. In the Michelin case, the Agency concluded that the incorrect labeling on the tire would not lead to the tire being inadvertently overloaded since the load on both sidewalls of the tire understates its capability. In contrast, the petitioners' petitions concern tires that were marked with information that would likely result in misuse of the tires, including the risk of overloading the tires. Overloading can lead to tire failure and resulting loss of vehicle control, increasing the risk of a crash.

The Continental Tire the Americas, LLC's petition for inconsequential noncompliance,[15] which the petitioners cited does not support the petitioners' claims. In that petition, the tires in question were labeled with both 300 kPa and 350 kPa. Tires having both of these labels are tested using the same test inflation pressures and must comply with the same energy levels since both pressures are in reference to a ''Standard Load'' tire. In the petitioners' case, the tires are marked as ''Extra Load'' tires instead of ''Standard Load'' tires—thus distinguishing the petitioners' labeling error from the Continental Tire the Americas, LLC's petition.

In the Tireco Inc. petition [16] the maximum permissible inflation pressures in kPa and PSI were reversed (*i.e.,* the kPa number was labeled as PSI and the PSI number was labeled as kPa). The Agency concluded the incorrect labeling of the tire inflation information will not have any consequential effect on motor vehicle safety because it is unlikely a vehicle owner would inflate the tires to the incorrectly labeled pressure because it was so obviously incorrect. Whereas, with respect to the petitioners' error, the incorrect markings on the subject tires are not obviously incorrect, and therefore, are likely to be

[8] *See https://www.regulations.gov/comment/NHTSA-2019-0038-0004.*

[9] *See Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osram Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

[10] *Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance,* 81 FR 21663, 21666 (Apr. 12, 2016).

[11] *United States* v. *Gen. Motors Corp.,* 565 F.2d 754, 759 (D.C. Cir. 1977) (finding defect poses an unreasonable risk when it ''results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future'').

[12] *https://www.regulations.gov/document/NHTSA-2019-0038-0005.*

[13] According to the *Tire and Rim Association Year Book,* 2019 edition, the maximum loading capacity for a tire marked 350 kPa is 710 kg (1565 lbs).

[14] *See Michelin North America, Grant of Petition for Decision of Inconsequential Noncompliance;* 74 FR 10805, March 12, 2009.

[15] *See Continental Tire the Americas, LLC, Grant of Petition for Decision of Inconsequential Noncompliance,* 83 FR 36668, July 30, 2018.

[16] *See Tireco, Inc., Grant of Petition for Decision of Inconsequential Noncompliance,* 76 FR 66353, October 26, 2011.

relied upon by vehicle owners in a way that poses a risk to motor vehicle safety.

The petitioners state that they do not foresee any safety issues due to consumers over-inflating the tires since a maximum permissible inflation pressure of 350 kPa is a higher pressure than the 340 kPa that is erroneously labeled on the subject tires—since the tires were engineered to sustain the higher of the two inflation pressures. NHTSA agrees with the petitioners on this one limited point; however, agreement on this one limited point does not affect NHTSA's ultimate decision to deny the petitions.

According to the Tire and Rim Association Year Book (2019), a tire for this size designation should have a load index of 96. The words ''Extra Load'' emphasizes that the tire has been marked or labeled with a maximum permissible inflation pressure of 340 kPa which corresponds to a load index of 100. Based on the sidewall pictures, the subject tires were also mistakenly labeled with a load index of 100, which pertains to an ''Extra Load'' tire or a tire with a maximum permissible inflation pressure of 340 kPa. For these reasons, the Agency believes that the tire was not correctly marked with respect to the load index labeling information and, therefore, misleads the public and vehicle owners as to the appropriate usage of the tire.

Even though the subject tires meet rigorous testing under the FMVSS and other methods employed by DAG-Mercedes-Benz, like the curb test, maximum pressure resistance (static blow out test), rim roll-off test, fatigue test, run-flat mileage test, rapid loss of inflation and lane change test, integrity tests, etc., that does not negate the fact that these tires must also meet the strength test according to FMVSS No. 139, section S6.5.1, *Tire Strength Test for Passenger Car Tires*. Furthermore, Pirelli seems to recognize that the subject tires fail to meet the minimum requirements under the FMVSS for a tire labeled with a maximum permissible inflation pressure of 340 kPa.

Finally, for a tire with a load index of 100, the energy level—as referenced in FMVSS No. 109—is 588 joules on Table I–C Radial Ply Tires for ''Extra Load'' tires. The subject tires failed to meet this required energy level, pursuant to FMVSS No. 139/FMVSS No. 109.

For the above-stated reasons, the Agency finds that the subject noncompliance is consequential to motor vehicle safety.

VIII. NHTSA's Decision

In consideration of the foregoing, NHTSA has determined that DAG-Mercedes-Benz and Pirelli have not met their burden of persuasion that the subject FMVSS No. 139 noncompliance is inconsequential to motor vehicle safety. Accordingly, DAG-Mercedes-Benz's and Pirelli's petitions are hereby denied, and DAG-Mercedes-Benz and Pirelli are consequently obligated to provide notification of and free remedy for that noncompliance under 49 U.S.C. 30118 and 30120.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8.)

Anne L. Collins,

Associate Administrator for Enforcement.

[FR Doc. 2022–26769 Filed 12–8–22; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2021–0109; Notice No. 2022–13]

Hazardous Materials: Frequently Asked Questions—Applicability of the Hazardous Material Regulations

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice; response to comments and publication of finalized FAQ.

SUMMARY: On March 22, 2022, PHMSA announced an initiative to convert historical letters of interpretation (LOI) applicable to the Hazardous Materials Regulations that have been issued to specific stakeholders into broadly applicable frequently asked questions (FAQ). As such, PHMSA requested comment on the initiative and for input on the prioritization of future sets of FAQ. During the initial comment period, several commenters requested that PHMSA further clarify the future disposition of the LOI process and address commenters' initial concerns. In response to this feedback, PHMSA published a second notice on June 13, 2022, extending the comment period to July 22, 2022, and announcing that a webinar would be held on June 27, 2022. In this final notice, PHMSA is responding to comments received from stakeholders, summarizing the webinar event, finalizing the first set of FAQ, and announcing the topic for future FAQ.

FOR FURTHER INFORMATION CONTACT: Arthur Pollack, Standards and Rulemaking Division, (202) 366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

The March 22, 2022,[1] notice announced an initiative to convert historical LOI applicable to the Hazardous Materials Regulations (HMR)[2] that have been issued to specific stakeholders into broadly applicable FAQ to facilitate better public understanding and awareness of the HMR. PHMSA also requested comment on the initiative and solicited input on the prioritization of future sets of FAQ. FAQ are not substantive rules, themselves, and do not create legally enforceable rights, assign duties, or impose new obligations not otherwise contained in the existing regulations and standards. Instead, the FAQ are intended as an aid to demonstrate compliance with the relevant regulations.

The comment period for the March 22, 2022, notice closed on May 23, 2022; however, on June 13, 2022, PHMSA published a second notice extending the comment period until July 22, 2022, and announcing a public webinar to clarify the FAQ initiative and address concerns expressed by commenters that PHMSA may eliminate the LOI process.

II. Purpose of the FAQ Initiative

This initiative will provide additional value to PHMSA's Online Code of Federal Regulations (oCFR) tool.[3] The oCFR tool is an interactive web-based application that allows users to navigate with a single click between all content, including LOI, connected to an HMR citation. The oCFR tool includes the ability to sort, filter, and export search results. Upon completion of this initiative, PHMSA's Office of Hazardous Materials Safety (OHMS) will be able to achieve efficiencies for other more complex or novel requests for LOI and devote resources to other hazardous materials transportation safety projects.

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[1] Hazardous Materials: Frequently Asked Questions—Applicability of the Hazardous Material Regulations, 87 FR 16308 (March 22, 2022), available at, *https://www.federalregister.gov/documents/2022/03/22/2022-05958/hazardous-materials-frequently-asked-questions-applicability-of-the-hazardous-material-regulations*; PHMSA–2021–0109–0001.

[2] 49 CFR parts 171–180.

[3] The oCFR tool is available at. *https://www.phmsa.dot.gov/standards-rulemaking/hazmat/phmsas-online-cfr-ocfr.*

This initiative will allow resources to be made available for other improvement-related operations such as petitions for rulemakings, public outreach and engagement, and economically beneficial regulatory and policy improvements. In the section of this notice titled ''V. Frequently Asked Questions: Applicability of Hazardous Materials Regulations to Persons and Functions,'' PHMSA is finalizing the first set of FAQ developed under this initiative.

III. Response to Notice Comments

PHMSA received 10 sets of comments to the aforementioned FAQ notices from the following individuals and organizations:

TABLE 1—COMMENTER DOCKET TABLE

Commenter	ID No.
International Longshoremen's Association ~ United States Maritime Alliance Coastwide Joint Safety Committee	PHMSA–2021–0109–0002
Anonymous	PHMSA–2021–0109–0003
L'Gena Shaffer, Director, Regulatory Compliance, International Vessel Operators Dangerous Goods Association (IVODGA).	PHMSA–2021–0109–0004
L'Gena Shaffer, Director, Regulatory Compliance, Council on Safe Transportation of Hazardous Articles (COSTHA)	PHMSA–2021–0109–0005
Bruce Grimm	PHMSA–2021–0109–0006
Patty Long, President, Railway Supply Institute	PHMSA–2021–0109–0007
Paul Rankin, Chair, Interested Parties for Hazardous Materials Transportation	PHMSA–2021–0109–0008
Kathy Hahn	PHMSA–2021–0109–0010
Delmer F. Billings, Technical Director, Dangerous Goods Advisory Council (DGAC)	PHMSA–2021–0109–0011
Jennifer Fletcher, Senior Manager, Transportation Compliance, Veolia North America	PHMSA–2021–0109–0012

The comments received express general support for the FAQ initiative and several commenters included suggestions for future topic areas. Commenters also suggest strategies for selecting topics and specific FAQ. In addition, many of the commenters express a concern that PHMSA may eliminate the LOI process and rescind the existing LOI. As a result, PHMSA held a public webinar on June 27, 2022, to clarify the initiative's intent and address commenters' questions and concerns.

In its comment, the International Longshoremen's Association expressed concern that ''PHMSA should not be overly selective in its choices of which particular [LOI] rise to the level of interest'' for FAQ development. Although the process of FAQ development is subjective, PHMSA acknowledges the request for detailed and specific FAQ and intends to continue the process with an inclusive approach.

Two groups of commenters, IVODGA and COSTHA, submitted potential revisions to Questions 3, 4, and 8 of the initial set of FAQ. Specifically, IVODGA and COSTHA both suggest that Question 3 and Question 4 either be combined or reference each other, as both questions are related to private roads and may be less clear to a reader if the questions are not read together. Additionally, IVODGA and COSTHA both suggest an editorial revision to clarify Question 8's answer pertaining to hazardous materials being transported for ''personal use.'' PHMSA agrees with both suggestions and is revising the FAQ in this notice to reflect these minor editorial changes to Questions 3, 4, and 8. Commenters also provide several suggestions for future topics including combustible liquids, lithium batteries, materials of trade, miscellaneous hazardous materials (*i.e.,* Class 9) and placarding. PHMSA appreciates the suggestions and will consider them as it prioritizes its next set of FAQ.

IV. Webinar Summary

During the comment period, DGAC requested—on behalf of its members—that PHMSA host a webinar to present the objectives of the FAQ initiative and answer questions from concerned parties. The overarching concern expressed in comments to the March 22, 2022, notice and during the June 27, 2022, webinar was that PHMSA may eliminate the LOI process and rescind its existing LOI. During the public webinar, PHMSA clarified that the FAQ initiative compliments the LOI process and that PHMSA has no intention of discontinuing the process to request LOI, rescinding the nearly 7,000 LOI in its database, or limiting the scope of questions PHMSA will answer in the future. The recording of the June 27, 2022, webinar can be found at *https://www.youtube.com/watch?v=R1fCnNRK2d0*.

Based on comments and input PHMSA received, PHMSA is publishing the following series of FAQ in the **Federal Register** and on its website to facilitate better understanding of the HMR applicability requirements and avoid the need for responding to frequent and recurring questions already addressed in accordance with 49 CFR 105.20 (Guidance and Interpretations).

V. Frequently Asked Questions: Applicability of Hazardous Materials Regulations to Persons and Functions

Section 171.1 addresses the applicability of the HMR for the safe and secure transportation of hazardous materials in commerce.

(1) *Question:* Is a federal, state, or local government agency subject to the HMR?

Answer: Pursuant to § 171.1(d)(5), a federal, state, or local government that transports hazardous materials for non-commercial governmental purposes using its own personnel is not engaged in transportation in commerce and, therefore, is not subject to the HMR. As specified in § 171.1, the HMR governs the safe transportation of hazardous materials in intrastate, interstate, and foreign commerce. The term ''in commerce'' does not include a federal, state, or local government that transports hazardous materials for its own use, using its own personnel, and motor vehicles, aircraft, or vessel under its control.

(2) *Question:* Are state universities subject to the HMR when transporting hazardous materials?

Answer: A state agency—such as a state university—that transports hazardous materials for its own non-commercial use, using its own personnel and vehicles, is not engaged in transportation in commerce and, therefore, is not subject to the HMR.

(3) *Question:* Is a hazardous material transported on private roads subject to the HMR?

Answer: Section 171.1(d)(4) states that the transportation of hazardous materials entirely on private roads with restricted public access is not subject to the HMR. Please see Q4.

(4) *Question:* Is a hazardous material subject to the HMR that only crosses a road with public access?

Answer: The transportation of hazardous materials that takes place by motor vehicle and within a contiguous plant boundary is not subject to the HMR. However, intra-plant transport that utilizes or crosses a public road is subject to the HMR during that portion of the transportation unless access to the public road is restricted by gates, traffic signals, guard stations, or similar controls, in accordance with § 171.1(d)(4). Please see Q3.

(5) *Question:* Are hazardous materials installed or used in or on a motor vehicle (e.g., gasoline in the motor vehicle's fuel tank) subject to the HMR?

Answer: Hazardous materials that are installed or used in or on a motor vehicle such as the motor vehicle's fuel, suspension, or safety systems are not subject to the HMR. Fuel systems and safety equipment may be subject to the Federal Motor Carrier Safety Regulations (FMCSR) and National Highway Traffic Safety Administration (NHTSA) requirements.

(6) *Question:* Is the filling of a package with a hazardous material subject to the HMR if it is not being offered for transportation in commerce?

Answer: The answer is no. However, if there is a chance of future transportation in commerce, the stakeholder should consider placing that hazardous material in packagings suitable for transportation of that material in commerce to minimize safety risks associated with its re-packaging.

(7) *Question:* Are stationary (storage) tanks containing a hazardous material such as propane subject to the HMR?

Answer: The answer is no, unless the tank is transported in commerce containing a hazardous material or its residue or if it is represented and maintained as a DOT packaging usable for hazmat transportation.

(8) *Question:* Are hazardous materials being transported for personal use subject to the HMR? For example, are pesticides that are transported from a store by individuals to treat their garden subject to the HMR?

Answer: The answer is no. Under part 171, the phrase ''in commerce'' means in furtherance of a commercial enterprise. Transportation in a private motor vehicle for personal use is not considered in furtherance of a commercial enterprise even when transported in a leased or rented vehicle.

(9) *Question:* Are privately-owned Department of Transportation (DOT) cylinders used for SCUBA diving subject to the HMR even when not transported in commerce?

Answer: A SCUBA tank that is represented as conforming to HMR requirements— *i.e.,* marked with a DOT specification marking—must be maintained by the owner of said SCUBA tank in accordance with the applicable specification requirements whether or not it is in transportation in commerce.

(10) *Question:* Are government-owned hazardous materials transported for government purposes by contractor personnel subject to the HMR?

Answer: The answer is yes. As provided in § 171.1(d)(5), the HMR do not apply to transportation of a hazardous material in a motor vehicle, aircraft, or vessel operated by a federal, state, or local government employee solely for noncommercial federal, state, or local government purposes. However, contractor personnel are not considered government employees and the provisions of the HMR apply.

(11) *Question:* Are gasoline cans transported by a landscaping company by motor vehicle subject to the HMR?

Answer: Commercial businesses—such as landscaping, swimming pool services, or construction companies—transporting hazardous materials are considered ''in commerce'' and subject to the HMR. However, when used in support of a business, the HMR provides an exception in § 173.6 for the transport of ''materials of trade.''

(12) *Question:* Are household hazardous wastes transported by a private person to a county drop-off facility subject to the HMR?

Answer: The answer is no, provided the household hazardous wastes are the individual's personal property and he or she is not engaged in a commercial activity, such as a landscaping company or carpentry service.

VI. Future FAQ Topics

With the completion of the first set of FAQ specific to HMR Applicability, PHMSA has begun compiling its next set of FAQ. As such, the next set of FAQ will pertain to LOIs addressing questions regarding the incident reporting requirements specified in §§ 171.15 and 171.16. In addition, PHMSA will continue concurrent work on future FAQ notices and, in response to the comments received, subsequent topics may include FAQ pertaining to batteries, classification, hazard communication, hazardous substances, hazardous wastes, modal-specific requirements, or packaging.

Signed in Washington, DC on December 6, 2022, under authority delegated in 49 CFR 1.97.

William A. Quade,

Deputy Associate Administrator of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2022–26808 Filed 12–8–22; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for New Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

DATES: Comments must be received on or before January 9, 2023.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

Copies of the applications are available for inspection in the Records Center, East Building, PHH–13, 1200

New Jersey Avenue Southeast, Washington, DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on December 6, 2022.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
Special Permits Data			
21478–N	Fibre Drum Sales, Inc	172.200, 172.500	To authorize the transportation in commerce of intermediate bulk containers (IBCs), containing only a residue of a hazardous material, in the manner authorized for non-bulk packagings in 49 CFR 173.29(c). (modes 1, 2)
21479–N	Astra Space Operations, Inc	173.301(f)(1), 178.35(e)	To authorize the transportation in commerce of cylinders that are not equipped with pressure relief devices. (modes 1, 2, 3, 4, 5)
21480–N	Korean Air Lines Co., Ltd	172.101(j)(1), 173.27(b)(2), 173.27(b)(3), 175.30(a)(1).	To authorize the transportation in commerce of certain explosives that are forbidden for transportation by aircraft. (mode 4)
21483–N	Trinity Industries, Inc.	172.203(a), 172.302(c), 179.100–12(c).	To authorize the manufacture, mark, sale, and use of DOT 105 tank cars equipped with a welded protective housing. (mode 2)
21484–N	Probe Technology Services, Inc.	173.301(a)(1), 173.304(a), 173.304a(a)(2), 173.304a(a)(2).	To authorize the transportation in commerce of non-DOT specification cylinders containing sulfur hexafluoride. (modes 1, 2, 3, 4, 5)
21486–N	Colorado Department of Public Health and Environment.	171.2(k)	This special permit authorizes the transportation in commerce of packages of non-hazardous material identified as ''Biological substance, Category B'', for purposes of shipping and packaging drills conducted to evaluate bioterrorism, chemical terrorism and pandemic influenza preparedness. (modes 1, 4, 5)

[FR Doc. 2022–26811 Filed 12–8–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Actions on Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of actions on special permit applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

DATES: Comments must be received on or before January 9, 2023.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on December 6, 2022.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
Special Permits Data—Granted			
8723–M	Dyno Nobel Inc	173.242(c)	To modify the special permit to authorize UN Portable Tanks as authorized packagings.
11194–M	Mission Systems Orchard Park Inc.	172.203(a), 172.301(c), 173.302a(a)(1), 173.304a(a)(1), 180.205.	To modify the special permit to authorize the cylinders to be used for underwater breathing purposes.
11859–M	Mission Systems Orchard Park Inc.	173.301(f), 173.302(a)(1), 178.65(a)(2).	To modify the special permit to update the maximum service pressure and minimum test pressure.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
14951–M	Hexagon Lincoln, LLC	173.301(f), 173.302(a)	To modify the special permit to extend the compliance date for trailers to be equipped with roll stability control.
20881–M	Arkema Inc	172.102(c)(7), 173.201(c)	To modify the special permit to authorize the transportation of the non-UN portable tanks from Arkema Inc. to customer sites and between customer sites.
20998–M	Daicel Safety Systems Americas, Inc.	173.301(a)(1), 173.302(a)(1), 178.65(c)(3).	To modify the special permit to authorize an additional airbag inflator design.
21083–N	Alliant Techsystems Operations LLC.	172.200, 172.300, 172.604, 172.400, 172.500.	To authorize the transportation in commerce of certain hazardous materials and waste materials explosives along an approximately 1.3 mile stretch of roadway between the Barton Park Shell building, Cumberland, MD, and the Alliant Techsystems Operations LLC plants 1, 2, and 3 in Rocket Center, WV without shipping papers, marking, labeling, and placarding and with alternative emergency response information.
21280–N	Crown Cork & Seal USA, Inc	178.33a–7	To authorize the manufacture, marking, sale, and use of non-DOT specification containers conforming with all regulations applicable to a DOT specification 2Q inner metal receptacle except for wall thickness, for the transportation in commerce of certain Division 2.1 and 2.2 aerosols.
21351–M	Bolloré Logistics Germany Gmbh.	172.101(j), 172.300, 172.400, 173.301(f)(1), 173.302a(a)(1), 173.185(a)(1).	To modify the special permit to authorize multiple heat pipes in each outer transport container.
21392–N	Airbus U.S. Space & Defense, Inc.	171.23(a)(1), 171.23(a)(3), 172.101(j), 173.301(f), 173.302a(a)(1), 173.304a(a)(2).	To authorize the transportation in commerce of certain hazardous materials in non-specification packaging (satellite).
21397–N	Strategic Edge Imports, LLC	171.2(k), 172.200, 172.300, 172.400, 172.500, 172.700(a).	To authorize the transportation in commerce of certain DOT 3AL cylinders that contain carbon dioxide, with alternative hazard communication. Additionally, cylinders with a gauge pressure less than 200 kPa (29.0 psig/43.8 psia) at 20 °C (68 °F) are authorized to be transported as a hazardous material under the terms of this special permit.
21414–N	Zero Motorcycles Inc	172.101(j)	To authorize the transportation in commerce of lithium batteries exceeding 35 kg by cargo-only aircraft.
21422–N	Superior Refining Company LLC.	172.200, 172.300, 172.400, 172.500, 172.600, 173.201, 173.202.	To authorize the transportation in commerce of gasoline in glass and Packing Group I petroleum distillates or petroleum products in non-specification packagings for the purpose of testing.
21425–N	Lucid USA, Inc	172.101(j)	To authorize the transportation in commerce of lithium batteries exceeding 35 kg via cargo-only aircraft.
21465–N	IQA Metal Inc	172.200, 172.300, 172.400, 173.185.	To authorize the transportation of lithium-ion batteries for the purposes of repackaging.
21471–N	Chinook Fire Protection, Inc	172.101(j)	To authorize the transportation in commerce of a Division 2.2 material exceeding the quantity limitations for air.
Special Permits Data—Denied			
21396–N	Porsche Cars North America, Inc.	173.185(f)(3)	To authorize the transportation in commerce of damaged, defective, and recalled lithium batteries with more than one lithium battery per outer packaging.
Special Permits Data—Withdrawn			
11536–M	The Boeing Company	172.101(c)(1), 172.101(j), 173.211, 173.302(a), 173.304(a), 173.24(g), 173.62, 173.185(a), 173.185(b), 173.202.	To modify the special permit to add Division 1.4 material and relief from UN Manual of Tests and Criteria.
21477–N	Independent Explosives, Inc	106.10(a), 173.66(a)	This special permit authorizes the transportation in commerce of certain oxidizing materials by motor vehicle in accordance with International Makers of Explosives Safety Library Publication (IME SLP) 23 incorporated by reference.

[FR Doc. 2022–26813 Filed 12–8–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for modification of special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

DATES: Comments must be received on or before December 27, 2022.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

Copies of the applications are available for inspection in the Records Center, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Donald P. Burger,

Chief, General Approvals and Permits Branch.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
SPECIAL PERMITS DATA			
15963–M	Jack Harter Helicopters, Inc.	172.200, 175.75, 172.300, 172.400, 173.27, 175.30, 175.33, 175.75, 175.1, 175.3, 178.1.	To modify the special permit to authorize 14 CFR Part 135 aircraft, additional hazardous materials, and alternative packagings. (mode 4)
20681–M	Proserv UK Ltd	172.301(c), 173.302(a)(1), 173.304(a).	To modify the special permit to authorize additional cylinder coatings. (modes 1, 2, 3, 4)
20835–M	Nouryon Functional Chemicals LLC.	178.337–8(a)(3), 178.337–8(a)(4), 178.337–8(a)(5)(i), 178.337–10(f).	To modify the special permit to authorize valves without shear sections and to authorize certain vapor and liquid discharge openings not equipped with excess flow valves. (mode 1)
21139–M	KULR Technology Corporation	172.600, 172.200, 172.300, 172.700(a), 172.400, 172.500, 173.185(b).	To modify the special permit to authorize ferry and cargo vessel, to authorize additional hazardous materials, and to increase the gross weight of the package. (modes 1, 2, 3,)

[FR Doc. 2022–26812 Filed 12–8–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Employment Tax Adjustments; and Rules Relating to Additional Medicare Tax.

DATES: Written comments should be received on or before February 7, 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 Number 1545–2097—Employment Tax Adjustments; and Rules Relating to Additional Medicare Tax'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Martha R. Brinson, at (202)317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Employment Tax Adjustments; and Rules Relating to Additional Medicare Tax.

OMB Number: 1545–2097.

Regulation Project Numbers: TD 9405, TD 9645.

Abstract: This document contains final regulations relating to employment tax adjustments and employment tax refund claims. These regulations modify the process for making interest-free adjustments for both underpayments and overpayments of Federal Insurance Contributions Act (FICA) and Railroad Retirement Tax Act (RRTA) taxes and federal income tax withholding (ITW) under sections 6205(a) and 6413(a), respectively, of the Internal Revenue Code (Code).

Current Actions: There are no changes in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 3,400,000.

Estimated Time per Respondent: 4 hrs., 58 mins.

Estimated Total Annual Burden Hours: 16,900,000.

The following paragraph applies to all of 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 as long as 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. Comments will be 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 has 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 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.

Martha R. Brinson,

Tax Analyst.

[FR Doc. 2022–26818 Filed 12–8–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 13803

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Application to Participate in the Income Verification Express Service (IVES) Program.

DATES: Written comments should be received on or before February 7, 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 Number 1545–2032—Application to Participate in the Income Verification Express Service (IVES) Program'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Martha R. Brinson, at (202) 317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application to Participate in the Income Verification Express Service (IVES) Program.

OMB Number: 1545–2032.

Form Number: 13803.

Abstract: Form 13803, Application to Participate in the Income Verification Express Service (IVES) Program, is used to submit the required information necessary to complete the e-services enrollment process for IVES users and to identify delegates receiving transcripts on behalf of the principle account user.

Current Actions: There are no changes in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Time per Respondent: 30 mins.

Estimated Total Annual Burden Hours: 100.

The following paragraph applies to all of 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 as long as 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. Comments will be 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 has 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 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.

Martha R. Brinson,

Tax Analyst.

[FR Doc. 2022–26819 Filed 12–8–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8858

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Information Return of U.S. Persons With Respect To Foreign Disregarded Entities; and Transactions Between Foreign Disregarded Entity of a Foreign Tax Owner and the Filer.

DATES: Written comments should be received on or before February 7, 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 Number 1545–1910—Information Return of U.S. Persons With Respect To Foreign Disregarded Entities; and Transactions Between Foreign Disregarded Entity of a Foreign Tax

Owner and the Filer'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Martha R. Brinson, at (202) 317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Information Return of U.S. Persons With Respect To Foreign Disregarded Entities; and Transactions Between Foreign Disregarded Entity of a Foreign Tax Owner and the Filer.

OMB Number: 1545–1910.

Form Number: Form 8858 and Sch M (Form 8858).

Abstract: Form 8858 and Schedule M (Form 8858) are used by certain U.S. persons that own a foreign disregarded entity (FDE) directly or, in certain circumstances, indirectly or constructively.

Current Actions: There are no changes in 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.

Form 8858:

Estimated Number of Respondents: 20,000.

Estimated Time per Respondent: 35.99 hours.

Estimated Total Annual Burden Hours: 719,800.

Form 8858 (Sch M):

Estimated Number of Respondents: 8,000.

Estimated Time per Respondent: 24.75 hours.

Estimated Total Annual Burden Hours: 198,000 hours.

The following paragraph applies to all of 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 as long as 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. Comments will be 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 has 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 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.

Martha R. Brinson,

Tax Analyst.

[FR Doc. 2022–26820 Filed 12–8–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Federal Advisory Committee Act, 5 U.S.C. app. 2, that a meeting of the Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board (JBL/CS SMRB) will be held Tuesday, January 10, 2023, via WebEx. The meeting will begin at 3 p.m. and end at 5 p.m. ET. The meeting will have an open session from 3 p.m. until 3:30 p.m. and a closed session from 3:30 p.m. until 5 p.m.

The purpose of the Board is to provide expert review of the scientific quality, budget, safety and mission-relevance of investigator-initiated research applications submitted for VA merit review consideration and to offer advice for research program officials on program priorities and policies.

The purpose of the open session is to meet with the JBL/CS Service Directors to discuss the overall policies and process for scientific review, as well as disseminate information among the Board members regarding the VA research priorities.

The purpose of the closed session is to provide recommendations on the scientific quality, budget, safety and mission relevance of investigator-initiated research applications submitted for VA merit review evaluation. Applications submitted for review include various medical specialties within the general areas of biomedical, behavioral and clinical science research. The JBL/CS SMRB meeting will be closed to the public for the review, discussion and evaluation of initial and renewal research applications, which involve reference to staff and consultant critiques of research applications. Discussions will deal with scientific merit of each application and qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Additionally, premature disclosure of research information could significantly obstruct implementation of proposed agency action regarding the research applications. As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing the subcommittee meetings is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B).

Members of the public who wish to attend the open JBL/CS SMRB meeting should join via WebEx. Meeting number (access code): 2761 972 1897 Meeting password: ssFhd2nm*63.

Meeting link: https://veteransaffairs.webex.com/veteransaffairs/j.php?MTID=m4b2d79b1d3499a1c8ba602eb4cb49489.

Those who would like to obtain a copy of the minutes from the closed subcommittee meetings and rosters of the subcommittee members should contact Michael Burgio, Ph.D., Designated Federal Officer (14RD) Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, at 202–603–4667 or at *Michael.Burgio@va.gov.*

Dated: December 6, 2022.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2022–26759 Filed 12–8–22; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection Activity Under OMB Review: Veteran Self-Check Assessment (SCA)

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the

Veterans Health Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–NEW.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–NEW'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21.

Title: Veteran Self-Check Assessment (SCA).

OMB Control Number: 2900–NEW.

Type of Review: New collection.

Abstract: The Veterans Crisis Line (VCL) Chat program allows Veterans, along with their families and friends, to interact online, anonymously, through chat services with a trained VCL Responder. The VCL Chat program is available to all Veterans who may or may not be enrolled in the VA health care system and provides them with online access to the VCL and the VA's suicide prevention services. For many Veterans, their first contact with VHA is through this program. To help facilitate Veterans' utilization of the Chat program and enhance the Chat Responders' ability to understand and respond effectively to Veteran-users, the VCL has implemented the Self-Check Assessment (SCA).

The SCA is an online, confidential, and anonymous risk assessment tool for U.S. Veterans, Active-Duty Service Members (ADSM), members of the National Guard and Reserves or family members of someone in one of those groups. The SCA tool is used to seamlessly link Veterans and their families with the VCL Chat program. At no point is the respondent asked to give their name or any other identifying information. The respondent is assigned a unique identifying number called a ''Reference Code'' that they use to get the VCL Responder's response to their SCA. The participant answers to the SCA are collected, and the program automatically calculates and lists their risk Tier based on their responses. The VCL Responder then reviews the SCA answers and sends a message to the participant, which they receive using their ''Reference Code.'' This messaging encourages the individual to connect to a VCL Responder via an online chat link on the page. The VCL Responder will engage the participant in exploring any service needs they may have and direct them on how they might benefit from VA or community-based services.

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 **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published at 87 FR 188 on September 29, 2022, pages 59165 and 59166.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,964 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 11,783.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2022–26816 Filed 12–8–22; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 87 Friday,

No. 236 December 9, 2022

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 21, 23, 25, et al.
Miscellaneous Amendments; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 23, 25, 29, 33, 36, 47, 49, 60, 61, 67, 73, 91, 97, 101, 107, 121, 125, 129, 135, 141, 183, and 440

[Docket No. FAA–2022–1355; Amdt. Nos. 21–106, 23–65, 25–146, 29–58, 33–1, 36–32, 47–32, 49–11, 60–7, 61–151, 67–22, 73–1, 91–366, 97–1339, 101–9, 107–10, 121–387, 125–72, 129–54, 135–143, 141–24, 183–18, 440–6]

RIN 2120–AL53

Miscellaneous Amendments

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

ACTION: Final rule; technical amendments.

SUMMARY: This technical amendment contains non-substantive corrections to address typographical errors, editorial errors, and outdated or incorrect references in various parts of FAA regulations.

DATES: Effective December 9, 2022.

FOR FURTHER INFORMATION CONTACT: For questions concerning this action, contact Jesse Holston, Office of Rulemaking, ARM–200, Federal Aviation Administration, 800 Independence Ave. SW, Washington, DC 20591; telephone (202) 267–0810; email *jesse.c.holston@faa.gov.*

SUPPLEMENTARY INFORMATION:

I. Good Cause for Immediate Adoption Without Prior Notice

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

Additionally, the APA requires agencies to delay the effective date of regulations for 30 days after publication, unless the agency finds good cause to make the regulations effective sooner. *See*, 5 U.S.C. 553(d). This action makes technical amendments that affect the clarity of existing regulations. These amendments will not impose any additional substantive restrictions or requirements on the persons affected by these regulations. Because this action merely makes technical amendments, the FAA finds that notice and public comment under 5 U.S.C. 553(b) is unnecessary. For the same reason, the FAA finds that good cause exists under 5 U.S.C. 553(d) for making this rule effective in less than 30 days.

II. Authority for This Rulemaking

The FAA's authority to issue rules is found in title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. This rulemaking is promulgated under the authority described in 49 U.S.C. 106(f) and (g), which establish the authority of the Administrator to promulgate and revise regulations and rules related to aviation safety. This regulation is within the scope of that authority because the rule makes non-substantive edits to regulations related to aviation safety promulgated under authorities listed in 49 U.S.C. 106(g).

Portions of this rulemaking are also authorized under 51 U.S.C. 50903(c), which authorizes the promulgation of regulations related to commercial space launches and reentries.

III. Technical Amendments

The FAA is making technical amendments to parts 21, 23, 25, 29, 33, 36, 47, 49, 60, 61, 67, 73, 91, 97, 101, 107, 121, 125, 129, 135, 141, 183, and 440 of those regulations found in Title 14 of the Code of Federal Regulations. All amendments are non-substantive and correct typographical errors, editorial errors, and outdated or incorrect references. The following is a summary of the various amendments to each of the above-listed parts.

Part 21

In § 21.619(a), permits the manufacturer of an article under a Technical Standard Order (TSO) authorization to make a minor design change without FAA approval, so long as the manufacturer forwards to the FAA any revised data necessary for compliance with the application requirements in § 21.603. However, the reference to § 21.603(b) is incorrect, as that section addresses the use of open brackets to identify minor changes. The correct reference is to § 21.603(a), which contains the requirements to include a statement of conformity and required technical data in an application for TSO authorization.

Part 23

In the following sections, the FAA corrects minor typographical and grammatical errors: §§ 23.2115(c), 23.2165(a)(1)(i), 23.2200(d), 23.2315(a), 23.2440(c)(2), 23.2520(a), and 23.2620(b).

In § 23.2120(a), the word ''configuration'' is removed and replaced with the word ''configuration(s)'' to clarify that there could be multiple initial climb configurations.

In § 23.2255(c), the word ''aircraft'' is removed and replaced with the word ''airplane'' for consistency with this section and part 23, which sets forth airworthiness standards for normal category airplanes.

In § 23.2400(b), the word ''FAA'' is removed and replaced with the word ''Administrator'' to align with 49 U.S.C. 44704, which identifies that the Administrator issues type certificates. In § 23.2500(b), the change clarifies that the reference to paragraph (a) refers to paragraph (a) of § 23.2500. Additional updates are made to punctuation for clarity.

In § 23.2600(b), the term ''qualified flightcrew'' is removed and replaced with ''flightcrew members'' to clarify that the term ''qualified flightcrew'' was not intended to have a different meaning than the term ''flightcrew member'' as defined in 14 CFR part 1.[1]

Part 25

In § 25.471(b)(2), the reference to paragraph (c)(1) of § 25.1583 is no longer accurate because § 25.1583 was subsequently revised, and the paragraph numbering changed.[2] Thus, § 25.471(b)(2) is corrected to refer to § 25.1583(c)(2).

In § 25.525(b), the reference to ''§ 25.533(b)'' is incorrect and is replaced with a reference to ''25.533(c)''. Section 25.533(b) provides local pressures rather than distributed pressures, which are the proper pressures to calculate distributed loads as described in § 25.525(b). The distributed pressures are provided in § 25.533(c).

In § 25.535(d), the number ''3.25'' is incorrect and is replaced with the number ''0.25'' as originally stated in the final rule.[3]

In § 25.571, the FAA corrects a minor typographical error.

In § 25.903(a)(3)(ii), the effective date of § 33.68 is corrected to read ''March 26, 1984'' because that is the effective date of Amendment 33–10.

In § 25.903(a)(3)(iii), the effective date of § 33.68 is corrected to read ''October 31, 1974'' because that is the effective date of Amendment 33–6.

In § 25.1517(b), the term ''VMO—35 KTAS'' is removed and replaced with ''VMO minus 35 KTAS'' to clarify that

[1] *See* 81 FR 96572 (Dec. 30, 2016).

[2] *See* 43 FR 4302 (Jan. 16, 1978).

[3] *See* 29 FR 18289 (Dec. 24, 1964).

the ''-'' symbol was logically intended to be a minus sign and not a dash.

Part 29

In § 29.1557(d), the cross reference to § 29.811(h)(2), which does not exist, is replaced with the correct cross reference, § 29.811(f)(2).

Part 33

In § 33.97(a), a comma is added between the words ''endurance'' and ''calibration'' to clarify that both endurance tests and calibration tests are required to evaluate thrust reversers and are separate tests.

Part 36

In § 36.1(a)(4), a spelling error is corrected.

Part 47

Section 47.9(b) differentiates aircraft registered prior to January 1, 1980 and aircraft registered after 1980. As the aircraft registration dates for all aircraft currently on the registry are after January 1, 1980, this differentiation is no longer necessary. The FAA has revised § 47.9(b), (b)(1) and (b)(2) to remove the reference to January 1, 1980 and make conforming changes resulting from the removal of such reference.

In § 47.19, the phrase ''must be mailed to the Registry, Department of Transportation, Post Office Box 25504, Oklahoma City, Oklahoma 73125–0504, or delivered to the Registry at 6425 S. Denning Ave., Oklahoma City, Oklahoma 73169,'' is removed and replaced with, ''must be delivered to the Registry by a means acceptable to the Administrator,'' to conform to the Registry's current practice of accepting digitally signed documents and communications by email as an alternative to delivery of hard copies, as well as submission of documents and communications by other means acceptable to the Administrator.

Part 49

In § 49.1(a)(2), the horsepower threshold for aircraft engines incorrectly references 750 and is corrected to 550 consistent with § 49.41.[4]

Section 49.11 is revised to conform to the Registry's current practice of accepting digitally signed documents by email in addition to accepting delivery of hard copies or acceptance of delivery by other means.

In § 49.13(a), the phrase ''must be in ink'' is removed and replaced with ''must be signed in a manner acceptable to the Administrator,'' to conform to the Registry's continued acceptance of digital signatures.[5]

Part 60

Part 60 has multiple references to the ''National Simulator Program Manager'', ''NSPM'', and ''NSP''. This office and manager position no longer exist by those names due to the reorganization of the Air Transportation Division. Thus, this technical amendment updates all of these references by deleting or replacing them with ''responsible Flight Standards office'', ''Flight Standards Service'', or ''FAA'', as appropriate. Further, references to outdated websites, references to outdated contact information, and incorrect numbering are corrected.

The following table identifies the nomenclature changes in 14 CFR part 60 to account for the reorganization of the Air Transportation Division:

TABLE 1—REVISED NOMENCLATURE AND AFFECTED SECTIONS OF 14 CFR PART 60

Old nomenclature/current CFR	New nomenclature/revision	Affected sections of 14 CFR part 60
National Simulator Program Manager (NSPM)	responsible Flight Standards office	§ 60.5, Attachment 6 to Appendix A to Part 60.
NSPM	responsible Flight Standards office	§ 60.5, § 60.7, § 60.9, § 60.11, § 60.13, § 60.14, § 60.15, § 60.16, § 60.17, § 60.19, § 60.21, § 60.23, § 60.25, § 60.27, § 60.29, § 60.31, § 60.37, Appendix A to Part 60, Attachment 1 to Appendix A to Part 60, Attachment 2 to Appendix A to Part 60, Attachment 3 to Appendix A to Part 60, Attachment 5 to Appendix A to Part 60, Attachment 6 to Appendix A to Part 60, Appendix B to Part 60, Attachment 1 to Appendix B to Part 60, Attachment 2 to Appendix B to Part 60, Appendix C to Part 60, Attachment 1 to Appendix C to Part 60, Attachment 2 to Appendix C to Part 60, Attachment 3 to Appendix C to Part 60, Appendix D to Part 60, Attachment 1 to Appendix D to Part 60, Attachment 2 to Appendix D to Part 60, Attachment 3 to Appendix D to Part 60, Appendix E to Part 60, Appendix F to Part 60.
NSPM	the responsible Flight Standards office	§ 60.19, Attachment 2 to Appendix A to Part 60, Attachment 2 to Appendix C to Part 60.
an NSPM	a responsible Flight Standards office	§ 60.19.
NSPM	Flight Standards Service	Appendix A to Part 60, Attachment 2 to Appendix A to Part 60, Appendix C to Part 60, Appendix D to Part 60.
NSPM, or a person assigned by the NSPM	responsible Flight Standards office	Appendix A to Part 60, Appendix C to Part 60.
an NSP pilot	a pilot from the responsible Flight Standards office.	Appendix A to Part 60, Appendix B to Part 60, Appendix C to Part 60, Appendix D to Part 60.

[4] *See* 70 FR 239 (Jan. 3, 2005).

[5] Notice of Policy Clarification for Acceptance of Documents With Digital Signatures by the Federal Aviation Administration Aircraft Registry, 81 FR 23348, (April 20, 2016).

TABLE 1—REVISED NOMENCLATURE AND AFFECTED SECTIONS OF 14 CFR PART 60—Continued

Old nomenclature/current CFR	New nomenclature/revision	Affected sections of 14 CFR part 60
NSPM or visit the NSPM Web site	responsible Flight Standards office	Appendix A to Part 60, Appendix B to Part 60, Appendix C to Part 60, Appendix D to Part 60.
FAA FSDO	responsible Flight Standards office	Appendix A to Part 60, Appendix B to Part 60, Appendix C to Part 60, Appendix D to Part 60.
NSPM, or a person or persons assigned by the NSPM.	responsible Flight Standards office	Appendix B to Part 60, Appendix D to Part 60.
NSP	FAA	Attachment 2 to Appendix B to Part 60.

In addition to the above nomenclature changes, this technical amendment makes several other minor technical changes to 14 CFR part 60.

In appendices A, B, C, and D to part 60, paragraph 1. Introduction, the following changes are made to reflect the reorganization of the Air Transportation Division:

- Removed paragraph b.;
- Removed the last sentence of paragraph c.;
- Added ''Flightcrew Member'' after ''as amended,'' in appendix A, paragraph d.(12); appendix B, paragraph d.(12); appendix C, paragraph d.(10); and appendix D, paragraph d.(12); and
- Removed the phrase ''FAA Airman Testing Standards for the Airline Transport Pilot Certificate, Type Ratings, Commercial Pilot Certificate, and Instrument Ratings.'' and replaced with ''FAA Airman Certification Standards and Practical Test Standards for Airline Transport Pilot, Type Ratings, Commercial Pilot, and Instrument Ratings.'' in appendix A, paragraph d.(27); appendix B, paragraph d.(26); appendix C, paragraph d.(25); and appendix D, paragraph d.(28).

''NSP'' is removed from the following places to reflect the reorganization of the Air Transportation Division:

- Appendix A;
- Attachment 3 to appendix A;
- Appendix B;
- Attachment 3 to appendix B;
- Appendix C;
- Attachment 3 to appendix C;
- Appendix D; and
- Attachment 3 to appendix D.

In attachment 3 to appendix A, 2. Discussion, the last sentence of paragraph g. is removed to reflect the reorganization of the Air Transportation Division.

In the following Figures, the letter heading addressed to ''Edward D. Cook'' is removed because it is outdated contact information that is no longer accurate:

- Attachment 4 to appendix A, Figure A4A; and
- Attachment 4 to appendix B, Figure B4A.

In the following Figures, ''FAA National Simulator Program'' is removed to reflect the reorganization of the Air Transportation Division:

- Attachment 4 to appendix A, Figure A4C;
- Attachment 4 to appendix B, Figure B4C;
- Attachment 4 to appendix C, Figure C4C; and
- Attachment 4 to appendix D, Figure D4C.

In the following Figures, ''Manager, National Simulator Program'' is removed to reflect the reorganization of the Air Transportation Division:

- Attachment 4 to appendix A, Figure A4D;
- Attachment 4 to appendix B, Figure B4D;
- Attachment 4 to appendix C, Figure C4D; and
- Attachment 4 to appendix D, Figure D4D.

In the following Figures, ''National Simulator Program'' and ''NSPM'' are removed and replaced with ''FAA'' to reflect the reorganization of the Air Transportation Division:

- Attachment 4 to appendix A, Figure A4E;
- Attachment 4 to appendix B, Figure B4E;
- Attachment 4 to appendix C, Figure C4E; and
- Attachment 4 to appendix D, Figure D4E.

''NSP's'' is removed from attachment 6 to appendix A to reflect the reorganization of the Air Transportation Division.

''NSPM'' is removed from the second sentence of appendix B to reflect the reorganization of the Air Transportation Division.

In attachment 3 to appendix C, the last sentence of the first paragraph h. is removed to reflect the reorganization of the Air Transportation Division. Also, the second paragraph h. is redesignated as paragraph i. and paragraph i. is redesignated as paragraph j.

In the following Figures, the letter heading addressed to ''Charles A. Spillner'' is removed because it is outdated contact information that is no longer accurate:

- Attachment 4 to appendix C, figure C4A; and
- Attachment 4 to appendix D, figure D4A.

In appendix D, 17. Modifications to FTDs, an incorrect reference is updated.

In appendix E, paragraph i.(4) is removed and ''NSPM'' is removed from paragraphs h.(1) and h.(2) to reflect the reorganization of the Air Transportation Division.

In appendix F, the definition for ''National Simulator Program Manager (NSPM)'' is removed and the abbreviation ''NSPM'' is removed to reflect the reorganization of the Air Transportation Division.

In the Flight Simulation Training Device Qualification Standards for Extended Envelope and Adverse Weather Event Training Tasks Final Rule, the FAA removed Figure A4H Sample Continuing Qualification Evaluation Requirements Page from attachment 4 to appendix A because the final rule amendment to § 60.19 made the figure obsolete and unnecessary. This same figure should have also been removed from Appendices B–D for the same reason. Thus, the following changes are made:

- In attachment 4 to appendix B, figure B4H is removed and the table of contents is updated accordingly;
- In attachment 4 to appendix C, figure C4H is removed and the table of contents is updated accordingly; and
- In attachment 4 to appendix D, figure D4H is removed and the table of contents is updated accordingly.

In the Flight Simulation Training Device Qualification Standards for Extended Envelope and Adverse Weather Event Training Tasks Final Rule, the FAA added Level 7 FTDs to appendix B. However, the first sentence in this appendix does not include Level 7. Thus, in the first sentence of appendix B, the phrase ''or Level 6'' is replaced with ''Level 6, or Level 7''.

Part 61

In § 61.58, paragraphs (j) and (k) are removed because the October 12, 2012, time limitation has passed and accordingly, those paragraphs are now obsolete.

The FAA also corrects a spelling error in § 61.313(h).

Part 67

A mailing address is updated in §§ 67.4 and 67.409(a). Additionally, in § 67.409(a) a requirement that a duplicate document be submitted is removed because these documents are no longer reviewed in hardcopy.

Part 73

This technical amendment updates office titles in § 73.19(a) and (c) to reflect reorganization within the FAA. It also updates the FAA headquarters address in § 73.19(a) and replaces the word ''shall'' with ''must'' in § 73.19(a), (b) and (c).

Part 91

In § 91.9(c), ''or part 48'' is added to indicate that an aircraft operating under part 91 may also be marked under part 48. This change aligns this provision with § 91.203(a)(2).

In § 91.157(b)(4), aimed to specifically qualify daytime in Alaska because the time between sunrise and sunset is often a longer duration of time than in most of the United States. However, in a 1991 final rule, the FAA stated that daytime in Alaska is ''when the sun is 6° or more above the horizon''. 56 FR 65660 (Dec. 17, 1991). According to the Air Almanac, issued annually by the United States Naval Observatory, civil twilight (daytime) begins and ends when the sun is 6 degrees below the horizon. As such, civil twilight (daytime) is any time when the sun is 6 degrees or less below the horizon. In 1995, the FAA issued a technical amendment to correct the regulatory text to accurately capture daytime in Alaska amending it to state ''when the sun is 6 degrees or more below the horizon''. 60 FR 66874 (Dec. 27, 1995). However, this correction was inaccurate as more than 6 degrees below the horizon is nighttime. This technical amendment is meant to achieve the original intent to refer to daytime in Alaska by amending the language to read ''when the sun is 6 degrees or less below the horizon''.

In § 91.203(a)(1), ''or part 48'' is added to indicate that an aircraft operating under part 91 may also be marked under part 48. This change aligns this provision with § 91.203(a)(2).

In § 91.511(a), the phrase ''operating under this subpart'' is added to clarify who is subject to the prohibition.

In § 91.609(g), ''49 CFR'' is added prior to ''part 830'' everywhere that it appears to clarify which title of the CFR is being referenced.

In § 91.1001(b)(9), the reference to ''paragraph (b)(1)(v)'' is incorrect because no such paragraph exists. The reference to ''paragraph (b)(1)(v)'' is replaced with the correct reference to ''paragraph (b)(5)(vi)'', which addresses multi-year program agreements.

Part 97

In § 97.20(b), the FAA updates a mailing address and email address.

Part 101

In § 101.21(a), the reference to paragraph ''§ 101.25(b)(7)(ii)'' is removed and replaced with the correct reference, ''§ 101.25(g)(2)'', due to a technical amendment to § 101.25.[6]

Part 107

In § 107.9, the word ''accident'' in the title is removed and replaced with the words ''safety event'' to eliminate confusion and to distinguish it from the statutory authority afforded exclusively to the National Transportation Safety Board published in 49 U.S.C. 1101.

Part 121

In §§ 121.310(b)(2)(iii), 121.311(b)(2)(ii)(C), 121.391(d), § 121.523(c), the FAA corrects typographical, grammatical, and spelling errors.

In §§ 121.359(h) and 121.703(f), ''49 CFR'' is added prior to ''part 830'' everywhere that it appears to clarify which title of the CFR is being referenced.

In § 121.909(a) and § 121.923(a)(2), the phrase ''through the FAA office responsible for approval of the certificate holder's operations specifications, to the Manager of the Air Transportation Division'' is removed and replaced with ''to the responsible Flight Standards office'' to reflect the reorganization in the Air Transportation Division.

In § 121.1115(f), Table 2, Bombardier: BD–700, the acronym ''FH'', which stood for flight hours, is removed because it is incorrect and it is replaced with the correct acronym, ''FC'', which stands for flight cycles. Bombardier submitted information to the FAA to establish that the default limit of validity is 15,000 flight cycles rather than flight hours for the Bombardier Model BD–700; however, the FAA inadvertently used the acronym ''FH'' when listing the default LOV for the Bombardier Model BD–700 in Table 2.

[6] *See* 74 FR 38092 (July 31, 2009).

Part 125

In § 125.285(d), the reference to ''(c)(3)'' is removed because it is incorrect and it is replaced with the correct reference, ''(c)(2)'', which prescribes the observation of landings.

Part 129

The FAA corrects a spelling error in § 129.18(b). In § 129.115(f), Table 2, Bombardier: BD–700, the FAA removes the acronym ''FH'', which stood for flight hours because it is incorrect and it is replaced with the correct acronym, ''FC'', which stands for flight cycles. Bombardier submitted information to the FAA to establish that the default limit of validity is 15,000 flight cycles rather than flight hours for the Bombardier Model BD–700; however, the FAA inadvertently used the acronym ''FH'' when listing the default LOV for the Bombardier Model BD–700 in Table 2.

Part 135

In § 135.415(f), ''49 CFR'' is added prior to ''part 830'' to clarify which title of the CFR is being referenced.

Part 141

In a final rule published in the **Federal Register** on August 21, 2009 (74 FR 42499), Pilot, Flight Instructor, and Pilot School Certification, the FAA revised paragraph 4 of appendix I to 14 CFR part 141, to change the presentation of information in response to confusion about what is the amount of ground and flight training required for an add-on category and/or class rating course. In the process of changing the presentation of this information, the FAA inadvertently omitted the existing training requirements for an additional glider category rating for holders of a commercial pilot certificate. By correcting this typographical error, this technical amendment provides these existing requirements by specifying the required contents of such training programs.

In a final rule published in the **Federal Register** on June 27, 2018 (83 FR 30232), Regulatory Relief: Aviation Training Devices; Pilot Certification, Training, and Pilot Schools; and Other Provisions, the FAA inadvertently failed to revise part 141 appendix I, to allow the use of a technically advanced airplane (TAA) to satisfy the experience requirements, for those pilot applicants who would add category and class (specifically, Airplane Single Engine) to an existing Commercial Pilot Certificate. The original proposal was to provide relief to all regulated entities providing flight training for the Commercial Pilot Certificate with single engine land

rating under any applicable rule part, including part 141, appendix I. This was an inadvertent omission and has caused some confusion and concern within the flight training community. With that understanding, the FAA is providing a technical amendment to paragraph 4.(a)(3)(ii) of appendix I to part 141 to otherwise permit the use of a complex airplane, turbine-powered airplane, or a technically advanced airplane to meet the experience requirement.

Part 183

The FAA is making updates to part 183 which are necessary to reflect organizational changes within the FAA. The Administrator established the Air Traffic Safety Oversight Service (AOV) within the Aviation Safety Organization (AVS) to provide independent oversight of the Air Traffic Organization in 2004. In 2006, the Administrator gave AOV the authority to manage the Control Tower Operator Certification Program but did not update part 183 to reflect this organizational change. Due to these changes, the FAA is revising §§ 183.11(d) and 183.25(c)(2) to replace ''the Associate Administrator for Air Traffic'' with ''the Associate Administrator for Aviation Safety''. Additionally, §§ 183.11(d) and 183.25(c) will specify that the air traffic control tower operator examiner is ''designated'' to be consistent with the terminology used for other positions involving delegated authority under 49 U.S.C. 44702(d).

Part 440

In § 440.19, this technical amendment restores paragraphs (a)(1) and (a)(2) which were inadvertently deleted from this section in a 2012 technical amendment.[7]

IV. Regulatory Notices and Analyses

Federal agencies consider impacts of regulatory actions under a variety of executive orders and other requirements. 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 the 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. 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 that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year. The current threshold after adjustment for inflation is $165,000,000, using the most current (2021) Implicit Price Deflator for the Gross Domestic Product. This portion of the preamble summarizes the FAA's analysis of the economic impacts of this rule.

In conducting these analyses, the FAA has determined that this rule: will result in benefits that justify costs; is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866; will not create unnecessary obstacles to the foreign commerce of the United States; and will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

A. Regulatory Impact Analysis

This final rule corrects several technical errors that affect the clarity of the regulatory text. As all the amendments in this final rule are non-substantive and intended to correct typographical errors, editorial errors, and outdated or incorrect references, the FAA does not expect that these technical corrections will result in any substantive incremental costs or benefits. These changes include corrections of grammatical and typographical errors, corrections of incorrect cross references, updates to mailing addresses and contact information, and updates to terms and titles following the reorganization or the Air Transportation Division. Since this rule involves non-substantive and clarifying editorial changes only, the impacts of the rule will be minimal.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), in 5 U.S.C. 603, requires an agency to prepare an initial regulatory flexibility analysis describing impacts on small entities whenever 5 U.S.C. 553 or any other law requires an agency to publish a general notice of proposed rulemaking for any proposed rule. Similarly, 5 U.S.C. 604 requires an agency to prepare a final regulatory flexibility analysis when an agency issues a final rule under 5 U.S.C. 553, after that section or any other law requires publication of a general notice of proposed rulemaking. The FAA concludes good cause exists to forgo notice and comment and to not delay the effective date for this rule. As 5 U.S.C. 553 does not require notice and comment in this situation, 5 U.S.C. 603 and 604 similarly do not require regulatory flexibility analyses.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended, 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 this Act, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of this rule and has determined that the rule is in accord with the Trade Agreements Act as the rule applies equally to domestic and foreign persons engaged in aviation activities under 14 CFR. As previously discussion, this action corrects several technical errors that affect the clarity of the regulatory text. These corrections will not impose any additional substantive restrictions or requirements on the persons affected by these regulations.

D. Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a state, local, or tribal government or the private sector to incur direct costs without the Federal government having first provided the funds to pay those costs. The FAA determined that the rule will not result in the expenditure of $165,000,000 or more by State, local, or tribal governments, in the aggregate, or the private sector, in any one year.

E. Paperwork Reduction Act

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

[7] Correction of Authority Citations for Commercial Space Transportation, 77 FR 20531, April 5, 2012.

F. International Compatibility

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

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(f) for regulations and involves no extraordinary circumstances.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

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

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

The FAA analyzed this immediately adopted final rule under Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (May 18, 2001). The agency has determined that it is not a ''significant energy action'' under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, International Cooperation

Executive Order 13609, ''Promoting International Regulatory Cooperation,'' promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

VI. How To Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document may be obtained from the internet by—

1. Searching the Federal eRulemaking Portal (*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 (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9680.

B. Small Business Regulatory Enforcement Fairness Act

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

List of Subjects

14 CFR Part 21

Aircraft, Aviation safety, Exports, Imports, Reporting and recordkeeping requirements.

14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 29

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 33

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 36

Agriculture, Aircraft, Noise control.

14 CFR Part 47

Aircraft, Reporting and recordkeeping requirements.

14 CFR Part 49

Aircraft, Reporting and recordkeeping requirements.

14 CFR Part 60

Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 61

Aircraft, Airmen, Alcohol abuse, Aviation safety, Drug abuse, Recreation and recreation areas, Reporting and recordkeeping requirements, Security measures, Teachers.

14 CFR Part 67

Airmen, Authority delegations (Government agencies), Health, Reporting and recordkeeping requirements.

14 CFR Part 73

Airspace, Navigation (air), Restricted areas, Security measures.

14 CFR Part 91

Afghanistan, Agriculture, Air carriers, Air taxis, Air traffic control, Aircraft, Airmen, Airports, Alaska, Aviation safety, Canada, Charter flights, Cuba, Drug traffic control, Ethiopia, Freight, Incorporation by reference, Iraq, Libya, Mexico, Noise control, North Korea, Political candidates, Reporting and recordkeeping requirements, Security measures, Somalia, Syria, Transportation, Yugoslavia.

14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air), Weather.

14 CFR Part 101

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 107

Aircraft, Airmen, Aviation safety, Recreation and recreation areas, Reporting and recordkeeping requirements, Security measures, Signs and symbols.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Alcohol abuse, Aviation safety, Charter flights, Drug abuse, Drug testing, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 125

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 129

Air carriers, Administration, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Security measures, Smoking.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Alcohol abuse, Aviation safety, Drug abuse, Drug testing, Reporting and recordkeeping requirements.

14 CFR Part 141

Airmen, Educational facilities, Reporting and recordkeeping requirements, Schools.

14 CFR Part 183

Aircraft, Airmen, Authority delegations (Government agencies), Health professions, Reporting and recordkeeping requirements.

14 CFR Part 440

Indemnity payments, Insurance, Reporting and recordkeeping requirements, Space transportation and exploration.

The Amendments

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations (CFR) parts 21, 23, 25, 29, 33, 36, 47, 49, 60, 61, 67, 73, 91, 97, 101, 107, 121, 125, 129, 135, 141, 183, and 440 as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND ARTICLES

■ 1. The authority citation for part 21 continues to read as follows:

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(f), 106(g), 40105, 40113, 44701–44702, 44704, 44707, 44709, 44711, 44713, 44715, 45303.

§ 21.619 [Amended]

■ 2. Amend § 21.619 in paragraph (a) by removing the citation ''§ 21.603(b)'' and adding in its place the citation ''21.603(a)''.

PART 23—AIRWORTHINESS STANDARDS: NORMAL CATEGORY AIRPLANES

■ 3. The authority citation for part 23 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701–44702, 44704, Pub. L. 113–53, 127 Stat. 584 (49 U.S.C. 44704) note.

§ 23.2115 [Amended]

■ 4. Amend § 23.2115 in paragraph (c) introductory text by adding the word ''of'' after the word ''determination''.

§ 23.2120 [Amended]

■ 5. Amend § 23.2120 in paragraph (a) introductory text by removing the word ''configuration'' and adding in its place the word ''configuration(s)''.

§ 23.2165 [Amended]

■ 6. Amend § 23.2165 in paragraph (a)(1)(i) by removing the words ''knots CAS'' and adding in their place the word ''KCAS''.

§ 23.2200 [Amended]

■ 7. Amend § 23.2200 in paragraph (d) by removing the words ''high lift'' and adding in their place the words ''high-lift''.

§ 23.2255 [Amended]

■ 8. Amend § 23.2255 in paragraph (c) by removing the word ''aircraft'' and adding in its place the word ''airplane''.

§ 23.2315 [Amended]

■ 9. Amend § 23.2315 as follows:
■ a. In paragraph (a)(1), add a comma after the words ''level 2'';
■ b. In paragraph (a)(1), remove the words ''single engine'' and add in its place ''single-engine''; and
■ c. In paragraph (a)(2), add a comma after the first mention of the word ''exits''.

§ 23.2400 [Amended]

■ 10. Amend § 23.2400 in paragraph (b) by removing both instances of ''FAA'' and adding in their places the word ''Administrator''.

■ 11. Amend § 23.2440 by revising paragraph (c)(2) to read as follows:

§ 23.2440 Powerplant fire protection.

* * * * *

(c) * * *

(2) Be fire-resistant if carrying flammable fluid, gas or air, or is required to operate in the event of a fire; and

* * * * *

§ 23.2500 [Amended]

■ 12. Amend § 23.2500 in paragraph (b) by removing the phrase ''(a), considered separately and in relation to other systems, must'' and adding in its place the phrase ''(a) of this section—considered separately and in relation to other systems—must''.

§ 23.2520 [Amended]

■ 13. Amend § 23.2520 in paragraph (a) introductory text by removing the phrase ''systems that perform'' and adding in its place the phrase ''system that performs''.

§ 23.2600 [Amended]

■ 14. Amend § 23.2600 in paragraph (b) by removing the words ''qualified flightcrew'' and adding in their place the words ''flightcrew members''.

§ 23.2620 [Amended]

■ 15. Amend § 23.2620 in paragraph (b) introductory text by removing the word ''administrator'' and adding in its place the word ''Administrator''.

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

■ 16. 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.

§ 25.471 [Amended]

■ 17. Amend § 25.471 in paragraph (b)(2) by removing the citation ''§ 25.1583(c)(1)'' and adding in its place the citation ''§ 25.1583(c)(2)''.

§ 25.525 [Amended]

■ 18. Amend § 25.525 in paragraph (b) by removing the citation ''§ 25.533(b)'' and adding in its place the citation ''§ 25.533(c)''.

§ 25.535 [Amended]

■ 19. Amend § 25.535 in paragraph (d) by removing the numbers ''3.25'' and adding in their place the numbers ''0.25''.

■ 20. Amend § 25.571 by revising the section heading to read as follows:

§ 25.571 Damage-tolerance and fatigue evaluation of structure.

* * * * *

§ 25.903 [Amended]

■ 21. Amend § 25.903 as follows:
■ a. In paragraph (a)(3)(ii), remove the date ''February 23, 1984'' and add in its place the date ''March 26, 1984''; and
■ b. In paragraph (a)(3)(iii), remove the date ''October 1, 1974''and add in its place the date ''October 31, 1974''.

§ 25.1517 [Amended]

■ 22. Amend § 25.1517 in paragraph (b) by removing ''V_{MO} - 35 KTAS'' and adding in its place ''V_{MO} minus 35 KTAS''.

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTOCRAFT

■ 23. The authority citation for part 29 continues to read as follows:

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

§ 29.1557 [Amended]

■ 24. Amend § 29.1557 in paragraph (d) by removing the citation ''§ 29.811(h)(2)'' and adding in its place the citation ''§ 29.811(f)(2)''.

PART 33—AIRWORTHINESS STANDARDS: AIRCRAFT ENGINES

■ 25. The authority citation for part 33 continues to read as follows:

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

§ 33.97 [Amended]

■ 26. Amend § 33.97 in paragraph (a) by adding a comma after the word ''endurance'' in the first sentence.

PART 36—NOISE STANDARDS: AIRCRAFT TYPE AND AIRWORTHINESS CERTIFICATION

■ 27. The authority citation for part 36 continues to read as follows:

Authority: 42 U.S.C. 4321 *et seq.;* 49 U.S.C. 106(g), 40113, 44701–44702, 44704, 44715; sec. 305, Pub. L. 96–193, 94 Stat. 50, 57; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902.

§ 36.1 [Amended]

■ 28. Amend § 36.1 in paragraph (a)(4) by removing the word ''argicultural'' and adding in its place the word ''agricultural''.

PART 47—AIRCRAFT REGISTRATION

■ 29. The authority citation for part 47 continues to read as follows:

Authority: 4 U.S.T. 1830; Public Law 108–297, 118 Stat. 1095 (49 U.S.C. 40101 note, 49 U.S.C. 44101 note); 49 U.S.C. 106(f), 106(g), 40113–40114, 44101–44108, 44110–44113, 44703–44704, 44713, 45302, 45305, 46104, 46301.

■ 30. Amend § 47.9 by revising paragraph (b) to read as follows:

§ 47.9 Corporations not US citizens.

* * * * *

(b) For the purposes of registration, an aircraft is based and primarily used in the United States if the flight hours accumulated within the United States amount to at least 60 percent of the total flight hours of the aircraft during the period consisting in the remainder of the registration month and the succeeding 6 calendar months and each 6 calendar month period thereafter.

* * * * *

§ 47.19 [Amended]

■ 31. Amend § 47.19 by removing the phrase ''must be mailed to the Registry, Department of Transportation, Post Office Box 25504, Oklahoma City, Oklahoma 73125–0504, or delivered to the Registry at 6425 S. Denning Ave., Oklahoma City, Oklahoma 73169'' and adding in its place the phrase ''must be delivered to the Registry by a means acceptable to the Administrator''.

PART 49—RECORDING OF AIRCRAFT TITLES AND SECURITY DOCUMENTS

■ 32. The authority citation for part 49 continues to read as follows:

Authority: 4 U.S.T. 1830; Pub. L. 108–297, 118 Stat. 1095 (49 U.S.C. 40101 note, 49 U.S.C. 44101 note); 49 U.S.C. 106(g), 40113–40114, 44101–44108, 44110–44113, 44704, 44713, 45302, 46104, 46301.

§ 49.1 [Amended]

■ 33. Amend § 49.1 in paragraph (a)(2) by removing the number ''750'' and adding in their place the number ''550''.

§ 49.11 [Amended]

■ 34. Amend § 49.11 by removing the phrase ''must be mailed to the FAA Aircraft Registry, Department of Transportation, Post Office Box 25504, Oklahoma City, Oklahoma 73125–0504, or delivered to the Registry at 6425 S. Denning Ave., Oklahoma City, Oklahoma 73169'' and adding in its place the phrase ''must be delivered to the Registry by a means acceptable to the Administrator''.

§ 49.13 [Amended]

■ 35. Amend § 49.13 in paragraph (a) by removing the phrase ''must be in ink'' and adding in its place the phrase ''must be signed in a manner acceptable to the Administrator''.

PART 60—FLIGHT SIMULATION TRAINING DEVICE INITIAL AND CONTINUING QUALIFICATION AND USE

■ 36. The authority citation for part 60 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, and 44701; Public Law 111–216, 124 Stat. 2348 (49 U.S.C. 44701 note).

§ 60.5, § 60.7, § 60.9, § 60.11, § 60.13, § 60.14, § 60.15, § 60.16, § 60.17, § 60.19, § 60.21, § 60.23, § 60.25, § 60.27, § 60.29, § 60.31, § 60.37 [Amended]

■ 37. Remove the word ''NSPM'' and add in its place the words ''responsible Flight Standards office'' wherever it appears in the following places:

■ a. § 60.5(c) and (d);
■ b. § 60.7(a)(2), (b)(3), (4), and (6), and (d)(2);
■ c. § 60.9(a), (b)(2), (c) introductory text, and (c)(3);
■ d. § 60.11(d);
■ e. § 60.13(a) and (c) through (f);
■ f. § 60.14;
■ g. § 60.15(a), (b)(1) through (3), (c)(1) introductory text, (c)(1)(i) and (ii), (f), (g) introductory text, (g)(6), (h), and (i);
■ h. § 60.16(a)(1)(i) through (iii), (a)(2)(i) and (ii), (b), and (c);
■ i. § 60.17(e) and (f);
■ j. § 60.19(b)(2) and (3);
■ k. § 60.21(a) introductory text, (b), and (c);
■ l. § 60.23(c)(1) introductory text and (c)(1)(i) through (iv);
■ m. § 60.25(b);
■ n. § 60.27(b)(1)(i) and (ii), (b)(2), and (c);
■ o. § 60.29(a) introductory text, (a)(1) through (3), (a)(4) introductory text, (a)(4)(i) and (ii), (b) introductory text, (b)(3), (c) introductory text, (c)(1) and (2), (d)(1) and (2), and (e);
■ p. § 60.31(b); and
■ q. § 60.37(a) introductory text.

§ 60.5 [Amended]

■ 38. Amend § 60.5 in paragraph (a) by removing the words ''National Simulator Program Manager (NSPM)'' and adding in their place the words ''responsible Flight Standards office''.

§ 60.19 [Amended]

■ 39. Amend § 60.19 as follows:
■ a. Amend paragraph (b)(4) by removing the first instance of the word ''NSPM'' and adding in its place the words ''the responsible Flight Standards office'';
■ b. Amend paragraph (b)(4) by removing the second instance of the word ''NSPM'' and adding in its place the words ''responsible Flight Standards office''; and
■ c. Amend paragraph (b)(6) by removing the words ''an NSPM'' and adding in its place the words ''a responsible Flight Standards office''.

■ 40. In appendix A to part 60:
■ a. In the introductory ''Begin Information'' text, remove the phrase ''NSPM, or a person assigned by the NSPM,'' and add in its place the words ''responsible Flight Standards office''.
■ b. In section 1:
■ i. Remove and reserve paragraph b;
■ ii. Remove the last sentence of paragraph c;
■ iii. In paragraph d.(12), add the words ''Flightcrew Member'' after ''as amended,''; and
■ iv. Revise paragraph d.(27).
■ c. In section 11:
■ i. In paragraph o. introductory text, remove the words ''an NSP pilot'' and add in its place the words, ''a pilot from the responsible Flight Standards office'' and remove the second instance of the word ''NSP'';

■ ii. In paragraph r.(1), remove the word ''NSP''; and
■ iii. In paragraph v., remove the phrase ''NSPM or visit the NSPM website'' and add in its place the words, ''responsible Flight Standards office''.
■ d. In attachment 1, revise table A1A;
■ e. In attachment 2:
■ i. Revise table A2A;
■ ii. In section 8, in the first instance of paragraph d., remove the word ''NSPM'' and add in its place the words ''the responsible Flight Standards office''; and
■ iii. In table A2E, revise the entries for 1.a.2, 2.a.1.a., 2.a.2.a., and 2.a.3.a.
■ f. In attachment 3:
■ i. In section 2, remove the last sentence of paragraph g; and
■ ii. Revise the table A3C introductory text.
■ g. In attachment 4, revise figures A4A, A4C, A4D, and A4E;
■ h. In attachment 6, FTSD Directive 2:
■ i. In the undesignated paragraph following summary paragraph (e), remove the words ''National Simulator Program Manager (NSPM)'' and add in their place the words ''responsible Flight Standards office''.
■ ii. Remove the phrase ''For Further Information Contact'' paragraph before the heading ''Specific Requirements'';
■ iii. In section I, paragraph 5 introductory text, remove the word ''NSP's'';
■ iv. In section II, paragraph 5 introductory text, remove the word ''NSP's'';
■ v. In section III, paragraph 5 introductory text, remove the word ''NSP's'';
■ vi. In section IV, paragraph 4 introductory text, remove the word ''NSP's''; and
■ vii. In section V, paragraph 4 introductory text, remove the word ''NSP's''.
■ i. Remove the word ''NSPM'' and adding in its place the words ''responsible Flight Standards office'' in the following places:
■ i. Section 1, paragraph c, the first two instances;
■ ii. Section 9, paragraphs d., d.(1), d.(2), g., h., and i.;
■ iii. Section 10, paragraph a.;
■ iv. Section 11, paragraphs b.(2), b.(3), d., f., g.(1), h., j. k., l., m., n., n.(2), o., p. q., r.(2), s., t., and w.;
■ v. Section 13, paragraphs a.(1), a.(3), a.(4), a.(5), d., and i.;
■ vi. Section 14, paragraphs a., d., e., and e.(1);
■ vii. Section 17, paragraphs b.(1) and b.(2);
■ viii. Sections 19 and 20;
■ ix. Attachment 2, section 2, paragraphs a., h., j., k., and l.;
■ x. Attachment 2, section 4, the second instance in paragraph b.(1);
■ xi. Attachment 2, section 5, paragraph b.;
■ xii. Attachment 2, section 8, paragraphs b., c., the second instance of d., f., and g.;
■ xiii. Attachment 2, section 9, paragraphs a., b. introductory text, b.(2), and c.(2)(i);
■ xiv. Attachment 2, section 12, paragraph a.;
■ xv. Attachment 2, section 13, paragraph b.(6);
■ xvi. Attachment 2, section 14, paragraph b.(4)(d);
■ xvii. Attachment 2, section 16, paragraphs a.(2) and b.(2);
■ xviii. Attachment 2, section 17, paragraphs c., d.(2), e., and f.;
■ xix. Attachment 3, section 1, paragraphs f., and g.;
■ xx. Attachment 3, section 2, paragraphs, b., and f.;
■ xxi. Attachment 5, section 7, paragraph a;
■ xxii. Attachment 5, section 8, introductory text and paragraph c.;
■ xxiii. Attachment 6, FSTD Directive 2, section I, paragraphs 5 and 6;
■ xxiv. Attachment 6, FSTD Directive 2, section II, paragraphs 3, 5, and 6;
■ xxv. Attachment 6, FSTD Directive 2, section III, paragraphs 3, 5, and 6;
■ xxvi. Attachment 6, FSTD Directive 2, section IV, paragraphs 4 and 5; and
■ xxii. Attachment 6, FSTD Directive 2, section V, paragraphs 4 and 5;
■ i. Remove the word ''NSPM'', and add in its place the words ''Flight Standards Service'' in the following places:
■ i. The introductory ''Begin Information'' text; and
■ ii. The first instance in attachment 2, section 4, paragraph b.(1).
■ j. Remove the word ''NSP'' from the following places:
■ i. Section 14, paragraph g.; and
■ ii. Attachment 3, paragraph 2.d.

The revisions read as follows:

Appendix A to Part 60—Qualification Performance Standards for Airplane Full Flight Simulators

* * * * *

1. Introduction

(d) * * *

(27) FAA Airman Certification Standards and Practical Test Standards for Airline Transport Pilot, Type Ratings, Commercial Pilot, and Instrument Ratings

* * * * *

Attachment 1 * * *

Table A1A – Minimum Simulator Requirements						
QPS REQUIREMENTS						INFORMATION
Entry Number	General Simulator Requirements	Simulator Levels				Notes
		A	B	C	D	
1. General Flight Deck Configuration.						
1.a.	The simulator must have a flight deck that is a replica of the airplane simulated with controls, equipment, observable flight deck indicators, circuit breakers, and bulkheads properly located, functionally accurate and replicating the airplane. The direction of movement of controls and switches must be identical to the airplane. Pilot seats must allow the occupant to achieve the design "eye position" established for the airplane being simulated. Equipment for the operation of the flight deck windows must be included, but the actual windows need not be operable. Additional equipment such as fire axes, extinguishers, and spare light bulbs must be available in the FFS but may be relocated to a suitable location as near as practical to the original position. Fire axes, landing gear pins, and any similar purpose instruments need only be represented in silhouette. The use of electronically displayed images with physical overlay or masking for simulator instruments and/or instrument panels is acceptable provided: (1) All instruments and instrument panel layouts are dimensionally correct with differences, if any, being imperceptible to the pilot; (2) Instruments replicate those of the airplane including full instrument functionality and embedded logic; (3) Instruments displayed are free of quantization (stepping); (4) Instrument display characteristics replicate those of the airplane including: resolution, colors, luminance, brightness, fonts, fill patterns, line styles and symbology; (5) Overlay or masking, including bezels and bugs, as applicable, replicates the airplane panel(s); (6) Instrument controls and switches replicate and operate with the same technique, effort, travel and in the same direction as those in the airplane;	X	X	X	X	For simulator purposes, the flight deck consists of all that space forward of a cross section of the flight deck at the most extreme aft setting of the pilots' seats, including additional required crewmember duty stations and those required bulkheads aft of the pilot seats. For clarification, bulkheads containing only items such as landing gear pin storage compartments, fire axes and extinguishers, spare light bulbs, and aircraft document pouches are not considered essential and may be omitted.

	(7) Instrument lighting replicates that of the airplane and is operated from the FSTD control for that lighting and, if applicable, is at a level commensurate with other lighting operated by that same control; and (8) As applicable, instruments must have faceplates that replicate those in the airplane; and Level C and Level D only; (1) The display image of any three dimensional instrument, such as an electro-mechanical instrument, should appear to have the same three dimensional depth as the replicated instrument. The appearance of the simulated instrument, when viewed from the principle operator's angle, should replicate that of the actual airplane instrument. Any instrument reading inaccuracy due to viewing angle and parallax present in the actual airplane instrument should be duplicated in the simulated instrument display image. Viewing angle error and parallax must be minimized on shared instruments such and engine displays and standby indicators.			X	X	
1.b.	Those circuit breakers that affect procedures or result in observable flight deck indications must be properly located and functionally accurate.	X	X	X	X	
2. Programming.						
2.a.	A flight dynamics model that accounts for various combinations of drag and thrust normally encountered in flight must correspond to actual flight conditions, including the effect of change in airplane attitude, thrust, drag, altitude, temperature, gross weight, moments of inertia, center of gravity location, and configuration. An SOC is required. For Level C and Level D simulators, the effects of pitch attitude and of fuel slosh on the aircraft center of gravity must be simulated.	X	X	X X	X X	The SOC should include a range of tabulated target values to enable a demonstration of the mass properties model to be conducted from the instructor's station. The data at a minimum should contain 3 weight conditions including zero fuel weight and maximum taxi weight with a least 2 different combinations of zero fuel weight, fuel weight and payload for each condition.
2.b.	The simulator must have the computer capacity, accuracy, resolution, and dynamic response needed to meet the qualification level sought. An SOC is required.	X	X	X	X	

2.c.	Surface operations must be represented to the extent that allows turns within the confines of the runway and adequate controls on the landing and roll-out from a crosswind approach to a landing.	**X**				
2.d.	Ground handling and aerodynamic programming must include the following:					
2.d.1.	Ground effect.		**X**	**X**	**X**	Ground effect includes modeling that accounts for roundout, flare, touchdown, lift, drag, pitching moment, trim, and power while in ground effect.
2.d.2.	Ground reaction. Ground reaction modeling must produce the appropriate effects during bounced or skipped landings, including the effects and indications of ground contact due to landing in an abnormal aircraft attitude (e.g. tailstrike or nosewheel contact). An SOC is required.		**X**	**X**	**X**	Ground reaction includes modeling that accounts for strut deflections, tire friction, and side forces. This is the reaction of the airplane upon contact with the runway during landing, and may differ with changes in factors such as gross weight, airspeed, or rate of descent on touchdown.
2.d.3.	Ground handling characteristics, including aerodynamic and ground reaction modeling including steering inputs, operations with crosswind, braking, thrust reversing, deceleration, and turning radius. Aerodynamic and ground reaction modeling to support training in crosswinds and gusting crosswinds up to the aircraft's maximum demonstrated crosswind component. Realistic gusting crosswind profiles must be available to the instructors that have been tuned in intensity and variation to require pilot intervention to avoid runway departure during takeoff or landing roll. An SOC is required describing source data used to construct gusting crosswind profiles.		**X**	**X** **X**	**X** **X**	In developing gust models for use in training, the FSTD sponsor should coordinate with the data provider to ensure that the gust models do not exceed the capabilities of the aerodynamic and ground models.
2.e.	If the aircraft being simulated is one of the aircraft listed in § 121.358, Low-altitude windshear system equipment requirements, the simulator must employ windshear models that provide training for recognition of windshear			**X**	**X**	If desired, Level A and B simulators may qualify for windshear training by meeting these standards; see

	phenomena and the execution of recovery procedures. Models must be available to the instructor/evaluator for the following critical phases of flight: (1) Prior to takeoff rotation; (2) At liftoff; (3) During initial climb; and (4) On final approach, below 500 ft AGL. The QTG must reference the FAA Windshear Training Aid or present alternate airplane related data, including the implementation method(s) used. If the alternate method is selected, wind models from the Royal Aerospace Establishment (RAE), the Joint Airport Weather Studies (JAWS) Project and other recognized sources may be implemented, but must be supported and properly referenced in the QTG. Only those simulators meeting these requirements may be used to satisfy the training requirements of part 121 pertaining to a certificate holder's approved low-altitude windshear flight training program as described in § 121.409. The addition of realistic levels of turbulence associated with each required windshear profile must be available and selectable to the instructor. In addition to the four basic windshear models required for qualification, at least two additional "complex" windshear models must be available to the instructor which represent the complexity of actual windshear encounters. These models must be available in the takeoff and landing configurations and must consist of independent variable winds in multiple simultaneous components. The Windshear Training Aid provides two such example "complex" windshear models that may be used to satisfy this requirement.					Attachment 5 of this appendix. Windshear models may consist of independent variable winds in multiple simultaneous components. The FAA Windshear Training Aid presents one acceptable means of compliance with simulator wind model requirements. The simulator should employ a method to ensure the required survivable and non-survivable windshear scenarios are repeatable in the training environment.
2.f.	The simulator must provide for manual and automatic testing of simulator hardware and software programming to determine compliance with simulator objective tests as prescribed in Attachment 2 of this appendix. An SOC is required.			**X**	**X**	Automatic "flagging" of out-of-tolerance situations is encouraged.
2.g.	Relative responses of the motion system, visual system, and flight deck instruments, measured by latency tests or transport delay tests. Motion onset should occur before the start of the visual scene change (the start of the scan of the first video field containing different information) but must occur before the end of the scan of that video field. Instrument response may not occur prior to motion onset. Test results must be within the following limits:					The intent is to verify that the simulator provides instrument, motion, and visual cues that are, within the stated time delays, like the airplane responses. For airplane

						response, acceleration in the appropriate, corresponding rotational axis is preferred.
2.g.1.	300 milliseconds of the airplane response.	**X**	**X**			
2.g.2.	100 milliseconds of the airplane response (motion and instrument cues) 120 milliseconds of the airplane response (visual system cues)			**X**	**X**	
2.h.	The simulator must accurately reproduce the following runway conditions: (1) Dry; (2) Wet; (3) Icy; (4) Patchy Wet; (5) Patchy Icy; and (6) Wet on Rubber Residue in Touchdown Zone. An SOC is required.			**X**	**X**	
2.i.	The simulator must simulate: (1) brake and tire failure dynamics, including antiskid failure; and (2) decreased brake efficiency due to high brake temperatures, if applicable. An SOC is required.			**X**	**X**	Simulator pitch, side loading, and directional control characteristics should be representative of the airplane.
2.j.	Engine and Airframe Icing Modeling that includes the effects of icing, where appropriate, on the airframe, aerodynamics, and the engine(s). Icing models must simulate the aerodynamic degradation effects of ice accretion on the airplane lifting surfaces including loss of lift, decrease in stall angle of attack, change in pitching moment, decrease in control effectiveness, and changes in control forces in addition to any overall increase in drag. Aircraft systems (such as the stall protection system and autoflight system) must respond properly to ice accretion consistent with the simulated aircraft. Aircraft OEM data or other acceptable analytical methods must be utilized to develop ice accretion models. Acceptable analytical methods may include wind tunnel analysis and/or engineering analysis of the aerodynamic effects of icing on the lifting surfaces coupled with tuning and supplemental subjective assessment by a subject matter expert pilot.			**X**	**X**	SOC should be provided describing the effects which provide training in the specific skills required for recognition of icing phenomena and execution of recovery. The SOC should describe the source data and any analytical methods used to develop ice accretion models including verification that these effects have been tested. Icing effects simulation models are only required for those

	SOC and tests required. See objective testing requirements (Attachment 2, test 2.i.).					airplanes authorized for operations in icing conditions. See Attachment 7 of this Appendix for further guidance material.
2.k.	The aerodynamic modeling in the simulator must include: (1) Low-altitude level-flight ground effect; (2) Mach effect at high altitude; (3) Normal and reverse dynamic thrust effect on control surfaces; (4) Aeroelastic representations; and (5) Nonlinearities due to sideslip. An SOC is required and must include references to computations of aeroelastic representations and of nonlinearities due to sideslip.				**X**	See Attachment 2 of this appendix, paragraph 5, for further information on ground effect.
2.l.	The simulator must have aerodynamic and ground reaction modeling for the effects of reverse thrust on directional control, if applicable. An SOC is required.		**X**	**X**	**X**	
2.m.	High Angle of Attack Modeling Aerodynamic stall modeling that includes degradation in static/dynamic lateral-directional stability, degradation in control response (pitch, roll, and yaw), uncommanded roll response or roll-off requiring significant control deflection to counter, apparent randomness or non-repeatability, changes in pitch stability, Mach effects, and stall buffet, as appropriate to the aircraft type. The aerodynamic model must incorporate an angle of attack and sideslip range to support the training tasks. At a minimum, the model must support an angle of attack range to ten degrees beyond the stall identification angle of attack. The stall identification angle of attack is defined as the point where the behavior of the airplane gives the pilot a clear and distinctive indication through the inherent flight characteristics or the characteristics resulting from the operation of a stall identification device (e.g., a stick pusher) that the airplane has stalled.			**X**	**X**	The requirements in this section only apply to those FSTDs that are qualified for full stall training tasks. Sponsors may elect to not qualify an FSTD for full stall training tasks; however, the FSTD's qualification will be restricted to approach to stall training tasks that terminate at the activation of the stall warning system. Specific guidance should be available to the instructor which clearly communicates the flight configurations and stall maneuvers that have been

	The model must be capable of capturing the variations seen in the stall characteristics of the airplane (e.g., the presence or absence of a pitch break, deterrent buffet, or other indications of a stall where present on the aircraft). The aerodynamic modeling must support stall training maneuvers in the following flight conditions: (1) Stall entry at wings level (1g); (2) Stall entry in turning flight of at least 25° bank angle (accelerated stall); (3) Stall entry in a power-on condition (required only for propeller driven aircraft); and (4) Aircraft configurations of second segment climb, high altitude cruise (near performance limited condition), and approach or landing. A Statement of Compliance (SOC) is required which describes the aerodynamic modeling methods, validation, and checkout of the stall characteristics of the FSTD. The SOC must also include verification that the FSTD has been evaluated by a subject matter expert pilot acceptable to the FAA. See Attachment 7 of this Appendix for detailed requirements. Where known limitations exist in the aerodynamic model for particular stall maneuvers (such as aircraft configurations and stall entry methods), these limitations must be declared in the required SOC. FSTDs qualified for full stall training tasks must also meet the instructor operating station (IOS) requirements for upset prevention and recovery training (UPRT) tasks as described in section 2.n. of this table. See Attachment 7 of this Appendix for additional requirements.					evaluated in the FSTD for use in training. See Attachment 7 of this Appendix for additional guidance material.
2.n.	Upset Prevention and Recovery Training (UPRT). Aerodynamics Evaluation: The simulator must be evaluated for specific upset recovery maneuvers for the purpose of determining that the combination of angle of attack and sideslip does not exceed the range of flight test validated data or wind tunnel/analytical data while performing the recovery maneuver. The following minimum set of required upset recovery maneuvers must be evaluated in this manner and made available to the instructor/evaluator. Other upset recovery scenarios as developed by the FSTD sponsor must be evaluated in the same manner:			**X**	**X**	This section generally applies to the qualification of airplane upset recovery training maneuvers or unusual attitude training maneuvers that exceed one or more of the following conditions: ▪ Pitch attitude greater than 25 degrees, nose up

	(1) A nose-high, wings level aircraft upset; (2) A nose-low aircraft upset; and (3) A high bank angle aircraft upset. Upset Scenarios: IOS selectable dynamic airplane upsets must provide guidance to the instructor concerning the method used to drive the FSTD into an upset condition, including any malfunction or degradation in the FSTD's functionality required to initiate the upset. The unrealistic degradation of simulator functionality (such as degrading flight control effectiveness) to drive an airplane upset is generally not acceptable unless used purely as a tool for repositioning the FSTD with the pilot out of the loop. Instructor Operating System (IOS): The simulator must have a feedback mechanism in place to notify the instructor/evaluator when the simulator's validated aerodynamic envelope and aircraft operating limits have been exceeded during an upset recovery training task. This feedback mechanism must include: (1) FSTD validation envelope. This must be in the form of an alpha/beta envelope (or equivalent method) depicting the "confidence level" of the aerodynamic model depending on the degree of flight validation or source of predictive methods The envelopes must provide the instructor real-time feedback on the simulation during a maneuver. There must be a minimum of a flaps up and flaps down envelope available; (2) Flight control inputs. This must enable the instructor to assess the pilot's flight control displacements and forces (including fly-by-wire as appropriate); and (3) Airplane operational limits. This must display the aircraft operating limits during the maneuver as applicable for the configuration of the airplane. Statement of Compliance (SOC): An SOC is required that defines the source data used to construct the FSTD validation envelope. The SOC must also verify that each upset prevention and recovery feature programmed at the instructor station and the associated training maneuver has been evaluated by a suitably qualified pilot using methods described in this section. The statement must confirm that the recovery maneuver can be performed such					▪ Pitch attitude greater than 10 degrees, nose down ▪ Bank angle greater than 45 degrees ▪ Flight at airspeeds inappropriate for conditions. FSTDs used to conduct upset recovery maneuvers at angles of attack above the stall warning system activation must meet the requirements for high angle of attack modeling as described in section 2.m. Special consideration should be given to the motion system response during upset prevention and recovery maneuvers. Notwithstanding the limitations of simulator motion, specific emphasis should be placed on tuning out motion system responses. Consideration should be taken with flight envelope protected airplanes as artificially positioning the airplane to a specified attitude may incorrectly initialize flight control laws. See Attachment 7 of this Appendix for further guidance material.

	that the FSTD does not exceed the FSTD validation envelope, or when exceeded, that it is within the realm of confidence in the simulation accuracy.					
3. Equipment Operation.						
3.a.	All relevant instrument indications involved in the simulation of the airplane must automatically respond to control movement or external disturbances to the simulated airplane; e.g., turbulence or windshear. Numerical values must be presented in the appropriate units. For Level C and Level D simulators, instrument indications must also respond to effects resulting from icing.	**X**	**X**	**X**	**X**	
3.b.	Communications, navigation, caution, and warning equipment must be installed and operate within the tolerances applicable for the airplane. Instructor control of internal and external navigational aids. Navigation aids must be usable within range or line-of-sight without restriction, as applicable to the geographic area.	**X**	**X**	**X**	**X**	See Attachment 3 of this appendix for further information regarding long-range navigation equipment.
3.b.1.	Complete navigation database for at least 3 airports with corresponding precision and non-precision approach procedures, including navigational database updates.			**X**	**X**	
3.b.2.	Complete navigation database for at least 1 airport with corresponding precision and non-precision approach procedures, including navigational database updates.	**X**	**X**			
3.c.	Simulated airplane systems must operate as the airplane systems operate under normal, abnormal, and emergency operating conditions on the ground and in flight. Once activated, proper systems operation must result from system management by the crew member and not require any further input from the instructor's controls.	**X**	**X**	**X**	**X**	Airplane system operation should be predicated on, and traceable to, the system data supplied by the airplane manufacturer, original equipment manufacturer or alternative approved data for the airplane system or component. At a minimum, alternate approved data should validate the operation of all normal, abnormal, and emergency operating procedures and

						training tasks the FSTD is qualified to conduct.
3.d.	The simulator must provide pilot controls with control forces and control travel that correspond to the simulated airplane. The simulator must also react in the same manner as in the airplane under the same flight conditions. Control systems must replicate airplane operation for the normal and any non-normal modes including back-up systems and should reflect failures of associated systems. Appropriate cockpit indications and messages must be replicated.	**X**	**X**	**X**	**X**	
3.e.	Simulator control feel dynamics must replicate the airplane. This must be determined by comparing a recording of the control feel dynamics of the simulator to airplane measurements. For initial and upgrade qualification evaluations, the control dynamic characteristics must be measured and recorded directly from the flight deck controls, and must be accomplished in takeoff, cruise, and landing flight conditions and configurations.			**X**	**X**	
3.f.	For aircraft equipped with a stick pusher system, control forces, displacement, and surface position must correspond to that of the airplane being simulated. A Statement of Compliance (SOC) is required verifying that the stick pusher system has been modeled, programmed, and validated using the aircraft manufacturer's design data or other acceptable data source. The SOC must address, at a minimum, stick pusher activation and cancellation logic as well as system dynamics, control displacement and forces as a result of the stick pusher activation. Tests required.			**X**	**X**	See Appendix A, Table A2A, test 2.a.10 (stick pusher system force calibration) for objective testing requirements. The requirements in this section only apply to those FSTDs that are qualified for full stall training tasks.
4. Instructor or Evaluator Facilities.						
4.a.	In addition to the flight crewmember stations, the simulator must have at least two suitable seats for the instructor/check airman and FAA inspector. These seats must provide adequate vision to the pilot's panel and forward windows. All seats other than flight crew seats need not represent those found in the airplane, but must be adequately secured to the floor and equipped with similar positive restraint devices.	**X**	**X**	**X**	**X**	The responsible Flight Standards office will consider alternatives to this standard for additional seats based on unique flight deck configurations.
4.b.	The simulator must have controls that enable the instructor/evaluator to control all required system variables and insert all abnormal or emergency conditions into the simulated airplane systems as described in the sponsor's	**X**	**X**	**X**	**X**	

	FAA-approved training program; or as described in the relevant operating manual as appropriate.					
4.c.	The simulator must have instructor controls for all environmental effects expected to be available at the IOS; e.g., clouds, visibility, icing, precipitation, temperature, storm cells and microbursts, turbulence, and intermediate and high altitude wind speed and direction.	**X**	**X**	**X**	**X**	
4.d.	The simulator must provide the instructor or evaluator the ability to present ground and air hazards.			**X**	**X**	For example, another airplane crossing the active runway or converging airborne traffic.
5. Motion System.						
5.a.	The simulator must have motion (force) cues perceptible to the pilot that are representative of the motion in an airplane.	**X**	**X**	**X**	**X**	For example, touchdown cues should be a function of the rate of descent (RoD) of the simulated airplane.
5.b.	The simulator must have a motion (force cueing) system with a minimum of three degrees of freedom (at least pitch, roll, and heave). An SOC is required.	**X**	**X**			
5.c.	The simulator must have a motion (force cueing) system that produces cues at least equivalent to those of a six-degrees-of-freedom, synergistic platform motion system (i.e., pitch, roll, yaw, heave, sway, and surge). An SOC is required.			**X**	**X**	
5.d.	The simulator must provide for the recording of the motion system response time. An SOC is required.	**X**	**X**	**X**	**X**	
5.e.	The simulator must provide motion effects programming to include:					
5.e.1.	(1) Thrust effect with brakes set; (2) Runway rumble, oleo deflections, effects of ground speed, uneven runway, centerline lights, and taxiway characteristics; (3) Buffets on the ground due to spoiler/speedbrake extension and thrust reversal; (4) Bumps associated with the landing gear; (5) Buffet during extension and retraction of landing gear; (6) Buffet in the air due to flap and spoiler/speedbrake extension; (7) Approach-to-stall buffet and stall buffet (where applicable);		**X**	**X**	**X**	If there are known flight conditions where buffet is the first indication of the stall, or where no stall buffet occurs, this characteristic should be included in the model.

	(8) Representative touchdown cues for main and nose gear; (9) Nosewheel scuffing, if applicable; (10) Mach and maneuver buffet; (11) Engine failures, malfunctions, and engine damage (12) Tail and pod strike;					
5.e.2.	(13) Taxiing effects such as lateral and directional cues resulting from steering and braking inputs; (14) Buffet due to atmospheric disturbances (e.g. buffets due to turbulence, gusting winds, storm cells, windshear, etc.) in three linear axes (isotropic); (15) Tire failure dynamics; and (16) Other significant vibrations, buffets and bumps that are not mentioned above (e.g. RAT), or checklist items such as motion effects due to pre-flight flight control inputs.			**X**	**X**	
5.f.	The simulator must provide characteristic motion vibrations that result from operation of the airplane if the vibration marks an event or airplane state that can be sensed in the flight deck.				**X**	The simulator should be programmed and instrumented in such a manner that the characteristic buffet modes can be measured and compared to airplane data.
6. Visual System.						
6.a.	The simulator must have a visual system providing an out-of-the-flight deck view.	**X**	**X**	**X**	**X**	
6.b.	The simulator must provide a continuous collimated field-of-view of at least 45° horizontally and 30° vertically per pilot seat or the number of degrees necessary to meet the visual ground segment requirement, whichever is greater. Both pilot seat visual systems must be operable simultaneously. The minimum horizontal field-of-view coverage must be plus and minus one-half (½) of the minimum continuous field-of-view requirement, centered on the zero degree azimuth line relative to the aircraft fuselage. An SOC is required and must explain the system geometry measurements including system linearity and field-of-view.	**X**	**X**			Additional field-of-view capability may be added at the sponsor's discretion provided the minimum fields of view are retained.
6.c.	(Reserved)					
6.d.	The simulator must provide a continuous collimated visual field-of-view of at least176° horizontally and 36° vertically or the number of degrees necessary to meet the visual ground segment requirement, whichever is greater. The minimum horizontal field-of-view coverage must be plus and minus one-half			**X**	**X**	The horizontal field-of-view is traditionally described as a 180° field-of-view. However, the field-of-view is technically

	(½) of the minimum continuous field-of-view requirement, centered on the zero degree azimuth line relative to the aircraft fuselage. An SOC is required and must explain the system geometry measurements including system linearity and field-of-view.					no less than 176º. Additional field-of-view capability may be added at the sponsor's discretion provided the minimum fields of view are retained.
6.e.	The visual system must be free from optical discontinuities and artifacts that create non-realistic cues.	**X**	**X**	**X**	**X**	Non-realistic cues might include image "swimming" and image "roll-off," that may lead a pilot to make incorrect assessments of speed, acceleration, or situational awareness.
6.f.	The simulator must have operational landing lights for night scenes. Where used, dusk (or twilight) scenes require operational landing lights.	**X**	**X**	**X**	**X**	
6.g.	The simulator must have instructor controls for the following: (1) Visibility in statute miles (km) and runway visual range (RVR) in ft.(m); (2) Airport selection; and (3) Airport lighting.	**X**	**X**	**X**	**X**	
6.h.	The simulator must provide visual system compatibility with dynamic response programming.	**X**	**X**	**X**	**X**	
6.i.	The simulator must show that the segment of the ground visible from the simulator flight deck is the same as from the airplane flight deck (within established tolerances) when at the correct airspeed, in the landing configuration, at the appropriate height above the touchdown zone, and with appropriate visibility.	**X**	**X**	**X**	**X**	This will show the modeling accuracy of RVR, glideslope, and localizer for a given weight, configuration, and speed within the airplane's operational envelope for a normal approach and landing.
6.j.	The simulator must provide visual cues necessary to assess sink rates (provide depth perception) during takeoffs and landings, to include: (1) Surface on runways, taxiways, and ramps; and (2) Terrain features.		**X**	**X**	**X**	
6.k.	The simulator must provide for accurate portrayal of the visual environment relating to the simulator attitude.	**X**	**X**	**X**	**X**	Visual attitude vs. simulator attitude is a comparison of pitch and roll of the horizon as displayed in the visual scene

						compared to the display on the attitude indicator.
6.l.	The simulator must provide for quick confirmation of visual system color, RVR, focus, and intensity. An SOC is required.			**X**	**X**	
6.m.	The simulator must be capable of producing at least 10 levels of occulting.			**X**	**X**	
6.n.	Night Visual Scenes. When used in training, testing, or checking activities, the simulator must provide night visual scenes with sufficient scene content to recognize the airport, the terrain, and major landmarks around the airport. The scene content must allow a pilot to successfully accomplish a visual landing. Scenes must include a definable horizon and typical terrain characteristics such as fields, roads and bodies of water and surfaces illuminated by airplane landing lights.	**X**	**X**	**X**	**X**	
6.o.	Dusk (or Twilight) Visual Scenes. When used in training, testing, or checking activities, the simulator must provide dusk (or twilight) visual scenes with sufficient scene content to recognize the airport, the terrain, and major landmarks around the airport. The scene content must allow a pilot to successfully accomplish a visual landing. Dusk (or twilight) scenes, as a minimum, must provide full color presentations of reduced ambient intensity, sufficient surfaces with appropriate textural cues that include self-illuminated objects such as road networks, ramp lighting and airport signage, to conduct a visual approach, landing and airport movement (taxi). Scenes must include a definable horizon and typical terrain characteristics such as fields, roads and bodies of water and surfaces illuminated by airplane landing lights. If provided, directional horizon lighting must have correct orientation and be consistent with surface shading effects. Total night or dusk (twilight) scene content must be comparable in detail to that produced by 10,000 visible textured surfaces and 15,000 visible lights with sufficient system capacity to display 16 simultaneously moving objects. An SOC is required.			**X**	**X**	
6.p.	Daylight Visual Scenes. The simulator must provide daylight visual scenes with sufficient scene content to recognize the airport, the terrain, and major landmarks around the airport. The scene content must allow a pilot to successfully accomplish a visual landing. Any ambient lighting must not "washout" the displayed visual scene. Total daylight scene content must be			**X**	**X**	

	comparable in detail to that produced by 10,000 visible textured surfaces and 6,000 visible lights with sufficient system capacity to display 16 simultaneously moving objects. The visual display must be free of apparent and distracting quantization and other distracting visual effects while the simulator is in motion. An SOC is required.					
6.q.	The simulator must provide operational visual scenes that portray physical relationships known to cause landing illusions to pilots.			**X**	**X**	For example: short runways, landing approaches over water, uphill or downhill runways, rising terrain on the approach path, unique topographic features.
6.r.	The simulator must provide special weather representations of light, medium, and heavy precipitation near a thunderstorm on takeoff and during approach and landing. Representations need only be presented at and below an altitude of 2,000 ft. (610 m) above the airport surface and within 10 miles (16 km) of the airport.			**X**	**X**	
6.s.	The simulator must present visual scenes of wet and snow-covered runways, including runway lighting reflections for wet conditions, partially obscured lights for snow conditions, or suitable alternative effects**.**			**X**	**X**	
6.t.	The simulator must present realistic color and directionality of all airport lighting.			**X**	**X**	
6.u.	The following weather effects as observed on the visual system must be simulated and respective instructor controls provided. (1) Multiple cloud layers with adjustable bases, tops, sky coverage and scud effect; (2) Storm cells activation and/or deactivation; (3) Visibility and runway visual range (RVR), including fog and patchy fog effect; (4) Effects on ownship external lighting; (5) Effects on airport lighting (including variable intensity and fog effects); (6) Surface contaminants (including wind blowing effect); (7) Variable precipitation effects (rain, hail, snow); (8) In-cloud airspeed effect; and (9) Gradual visibility changes entering and breaking out of cloud.			**X**	**X**	Scud effects are low, detached, and irregular clouds below a defined cloud layer. Atmospheric model should support representative effects of wake turbulence and mountain waves as needed to enhance UPRT training. The mountain wave model should support the atmospheric climb, descent, and roll rates which can be encountered in

						mountain wave and rotor conditions.
6.v.	The simulator must provide visual effects for: (1) Light poles; (2) Raised edge lights as appropriate; and (3) Glow associated with approach lights in low visibility before physical lights are seen,			**X**	**X**	Visual effects for light poles and raised edge lights are for the purpose of providing additional depth perception during takeoff, landing, and taxi training tasks. Three dimensional modeling of the actual poles and stanchions is not required.
7. Sound System.						
7.a.	The simulator must provide flight deck sounds that result from pilot actions that correspond to those that occur in the airplane.	**X**	**X**	**X**	**X**	
7.b.	The volume control must have an indication of sound level setting which meets all qualification requirements.	**X**	**X**	**X**	**X**	For Level D simulators, this indication should be readily available to the instructor on or about the IOS and is the sound level setting required to meet the objective testing requirements as described in Table A2A of this Appendix. For all other simulator levels, this indication is the sound level setting as evaluated during the simulator's initial evaluation.
7.c.	The simulator must accurately simulate the sound of precipitation, windshield wipers, and other significant airplane noises perceptible to the pilot during normal and abnormal operations, and include the sound of a crash (when the simulator is landed in an unusual attitude or in excess of the structural gear limitations); normal engine and thrust reversal sounds; and the sounds of flap, gear, and spoiler extension and retraction. Sounds must be directionally representative.			**X**	**X**	For simulators qualified for full stall training tasks, sounds associated with stall buffet should be replicated if significant in the airplane.

	A SOC is required.					
7.d.	The simulator must provide realistic amplitude and frequency of flight deck noises and sounds. Simulator performance must be recorded, compared to amplitude and frequency of the same sounds recorded in the airplane, and be made a part of the QTG.				**X**	

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Attachment 2 * * *

Table A2A - Full Flight Simulator (FFS) Objective Tests									
QPS REQUIREMENTS									INFORMATION
Test		Tolerance	Flight Conditions	Test Details	Simulator Level				Notes
Entry Number	Title				A	B	C	D	
1. Performance.									
1.a.	**Taxi.**								
1.a.1	Minimum radius turn.	±0.9 m (3 ft) or ±20% of airplane turn radius.	Ground.	Plot both main and nose gear loci and key engine parameter(s). Data for no brakes and the minimum thrust required to maintain a steady turn except for airplanes requiring asymmetric thrust or braking to achieve the minimum radius turn.		X	X	X	
1.a.2	Rate of turn versus nosewheel steering angle (NWA).	±10% or ±2°/s of turn rate.	Ground.	Record for a minimum of two speeds, greater than minimum turning radius speed with one at a typical taxi speed, and with a spread of at least 5 kt.		X	X	X	
1.b.	**Takeoff.**			*Note.— All airplane manufacturer commonly-used certificated take-off flap settings must be demonstrated at least once either in minimum unstick speed (1.b.3), normal take-off (1.b.4), critical engine failure on take-off (1.b.5) or crosswind take-off (1.b.6).*					
1.b.1	Ground acceleration time and distance.	±1.5 s or ±5% of time; and ±61 m (200 ft) or ±5% of distance.	Takeoff.	Acceleration time and distance must be recorded for a minimum of 80% of the total time from brake release to V_r. Preliminary aircraft certification data may be used.	X	X	X	X	May be combined with normal takeoff (1.b.4.) or rejected takeoff (1.b.7.). Plotted data should be shown using appropriate scales for each portion of the maneuver.
1.b.2	Minimum control speed, ground (V_{mcg}) using aerodynamic controls only per applicable airworthiness requirement or alternative engine inoperative test to demonstrate ground control characteristics.	±25% of maximum airplane lateral deviation reached or ±1.5 m (5 ft). For airplanes with reversible flight control systems: ±2.2 daN (5 lbf) or ±10% of rudder pedal force.	Takeoff.	Engine failure speed must be within ±1 kt of airplane engine failure speed. Engine thrust decay must be that resulting from the mathematical model for the engine applicable to the FSTD under test. If the modeled engine is not the same as the airplane manufacturer's flight test engine, a further test may be run with the same initial conditions using the thrust from the flight test data as the driving parameter.	X	X	X	X	If a V_{mcg} test is not available, an acceptable alternative is a flight test snap engine deceleration to idle at a speed between V_1 and V_1-10 kt, followed by control of heading using aerodynamic control only and recovery should be achieved with the main gear on the ground. To ensure only aerodynamic control, nosewheel steering should be disabled (i.e. castored) or the nosewheel held slightly off the ground.

1.b.3	Minimum unstick speed (V_{mu}) or equivalent test to demonstrate early rotation take-off characteristics.	±3 kt airspeed. ±1.5° pitch angle.	Takeoff.	Record time history data from 10 knots before start of rotation until at least 5 seconds after the occurrence of main gear lift-off.	**X**	**X**	**X**	**X**	V_{mu} is defined as the minimum speed at which the last main landing gear leaves the ground. Main landing gear strut compression or equivalent air/ground signal should be recorded. If a V_{mu} test is not available, alternative acceptable flight tests are a constant high-attitude takeoff run through main gear lift-off or an early rotation takeoff. If either of these alternative solutions is selected, aft body contact/tail strike protection functionality, if present on the airplane, should be active.
1.b.4	Normal take-off.	±3 kt airspeed. ±1.5° pitch angle. ±1.5° AOA. ±6 m (20 ft) height. For airplanes with reversible flight control systems: ±2.2 daN (5 lbf) or ±10% of column force.	Takeoff.	Data required for near maximum certificated takeoff weight at mid center of gravity location and light takeoff weight at an aft center of gravity location. If the airplane has more than one certificated takeoff configuration, a different configuration must be used for each weight. Record takeoff profile from brake release to at least 61 m (200 ft) AGL.	**X**	**X**	**X**	**X**	The test may be used for ground acceleration time and distance (1.b.1). Plotted data should be shown using appropriate scales for each portion of the maneuver.
1.b.5	Critical engine failure on take-off.	±3 kt airspeed. ±1.5° pitch angle. ±1.5° AOA. ±6 m (20 ft) height. ±2° roll angle. ±2° side-slip angle. ±3° heading angle. For airplanes with reversible flight control systems: ±2.2 daN (5 lbf) or ±10% of column force; ±1.3 daN (3 lbf) or ±10% of wheel force; and	Takeoff.	Record takeoff profile to at least 61 m (200 ft) AGL. Engine failure speed must be within ±3 kt of airplane data. Test at near maximum takeoff weight.	**X**	**X**	**X**	**X**	

		±2.2 daN (5 lbf) or ±10% of rudder pedal force.							
1.b.6	Crosswind takeoff.	± 3 kt airspeed. ±1.5° pitch angle. ±1.5° AOA. ±6 m (20 ft) height. ±2° roll angle. ±2° side-slip angle. ±3° heading angle. Correct trends at ground speeds below 40 kt for rudder/pedal and heading angle. For airplanes with reversible flight control systems: ±2.2 daN (5 lbf) or ±10% of column force; ±1.3 daN (3 lbf) or ±10% of wheel force; and ±2.2 daN (5 lbf) or ±10% of rudder pedal force.	Takeoff.	Record takeoff profile from brake release to at least 61 m (200 ft) AGL. This test requires test data, including wind profile, for a crosswind component of at least 60% of the airplane performance data value measured at 10 m (33 ft) above the runway. Wind components must be provided as headwind and crosswind values with respect to the runway.	**X**	**X**	**X**	**X**	In those situations where a maximum crosswind or a maximum demonstrated crosswind is not known, contact the responsible Flight Standards office.
1.b.7.	Rejected Takeoff.	±5% of time or ±1.5 s. ±7.5% of distance or ±76 m (250 ft).	Takeoff.	Record at mass near maximum takeoff weight. Speed for reject must be at least 80% of V_1. Maximum braking effort, auto or manual. Where a maximum braking demonstration is not available, an acceptable alternative is a test using approximately 80% braking and full reverse, if applicable. Time and distance must be recorded from brake release to a full stop.	**X**	**X**	**X**	**X**	Autobrakes will be used where applicable.
1.b.8.	Dynamic Engine Failure After Takeoff.	±2°/s or ±20% of body angular rates.	Takeoff.	Engine failure speed must be within ±3 kt of airplane data. Engine failure may be a snap deceleration to idle.			**X**	**X**	For safety considerations, airplane flight test may be performed out of ground effect at a safe altitude, but with correct airplane configuration and airspeed.

				Record hands-off from 5 s before engine failure to +5 s or 30° roll angle, whichever occurs first. **CCA**: Test in Normal and Non-normal control state.					
1.c.	**Climb.**								
1.c.1.	Normal Climb, all engines operating.	±3 kt airspeed. ±0.5 m/s (100 ft/ min) or ±5% of rate of climb.	Clean.	Flight test data are preferred; however, airplane performance manual data are an acceptable alternative. Record at nominal climb speed and mid initial climb altitude. FSTD performance is to be recorded over an interval of at least 300 m (1 000 ft).	**X**	**X**	**X**	**X**	
1.c.2.	One-engine-inoperative 2nd segment climb.	±3 kt airspeed. ±0.5 m/s (100 ft/ min) or ±5% of rate of climb, but not less than airplane performance data requirements.	2nd segment climb.	Flight test data is preferred; however, airplane performance manual data is an acceptable alternative. Record at nominal climb speed. FSTD performance is to be recorded over an interval of at least 300 m (1,000 ft). Test at WAT (weight, altitude or temperature) limiting condition.	**X**	**X**	**X**	**X**	
1.c.3.	One Engine Inoperative En route Climb.	±10% time, ±10% distance, ±10% fuel used	Clean	Flight test data or airplane performance manual data may be used. Test for at least a 1,550 m (5,000 ft) segment.			**X**	**X**	
1.c.4.	One Engine Inoperative Approach Climb for airplanes with icing accountability if provided in the airplane performance data for this phase of flight.	±3 kt airspeed. ±0.5 m/s (100 ft/ min) or ±5% rate of climb, but not less than airplane performance data.	Approach	Flight test data or airplane performance manual data may be used. FSTD performance to be recorded over an interval of at least 300 m (1,000 ft). Test near maximum certificated landing weight as may be applicable to an approach in icing conditions.	**X**	**X**	**X**	**X**	Airplane should be configured with all anti-ice and de-ice systems operating normally, gear up and go-around flap. All icing accountability considerations, in accordance with the airplane performance data for an approach in icing conditions, should be applied.
1.d.	**Cruise / Descent.**								
1.d.1.	Level flight acceleration	±5% Time	Cruise	Time required to increase airspeed a minimum of 50 kt, using maximum continuous thrust rating or equivalent. For airplanes with a small operating speed range, speed change may be reduced to 80% of operational speed change.	**X**	**X**	**X**	**X**	

1.d.2.	Level flight deceleration.	±5% Time	Cruise	Time required to decrease airspeed a minimum of 50 kt, using idle power. For airplanes with a small operating speed range, speed change may be reduced to 80% of operational speed change.	**X**	**X**	**X**	**X**	
1.d.3.	Cruise performance.	±.05 EPR or ±3% N1 or ±5% of torque. ±5% of fuel flow.	Cruise.	The test may be a single snapshot showing instantaneous fuel flow, or a minimum of two consecutive snapshots with a spread of at least 3 minutes in steady flight.			**X**	**X**	
1.d.4.	Idle descent.	±3 kt airspeed. ±1.0 m/s (200 ft/min) or ±5% of rate of descent.	Clean.	Idle power stabilized descent at normal descent speed at mid altitude. FSTD performance to be recorded over an interval of at least 300 m (1,000 ft).	**X**	**X**	**X**	**X**	
1.d.5.	Emergency descent.	±5 kt airspeed. ±1.5 m/s (300 ft/min) or ±5% of rate of descent.	As per airplane performance data.	FSTD performance to be recorded over an interval of at least 900 m (3,000 ft).	**X**	**X**	**X**	**X**	Stabilized descent to be conducted with speed brakes extended if applicable, at mid altitude and near V_{mo} or according to emergency descent procedure.
1.e.	**Stopping.**								
1.e.1.	Deceleration time and distance, manual wheel brakes, dry runway, no reverse thrust.	±1.5 s or ±5% of time. For distances up to 1,220 m (4, 000 ft), the smaller of ±61 m (200 ft) or ±10% of distance. For distances greater than 1,220 m (4, 000 ft), ±5% of distance.	Landing.	Time and distance must be recorded for at least 80% of the total time from touchdown to a full stop. Position of ground spoilers and brake system pressure must be plotted (if applicable). Data required for medium and near maximum certificated landing mass. Engineering data may be used for the medium mass condition.	**X**	**X**	**X**	**X**	
1.e.2.	Deceleration time and distance, reverse thrust, no wheel brakes, dry runway.	±1.5 s or ±5% of time; and the smaller of ±61 m (200 ft) or ±10% of distance.	Landing	Time and distance must be recorded for at least 80% of the total time from initiation of reverse thrust to full thrust reverser minimum operating speed. Position of ground spoilers must be plotted (if applicable). Data required for medium and near maximum certificated landing mass. Engineering data may be used for the medium mass condition.	**X**	**X**	**X**	**X**	
1.e.3.	Stopping distance, wheel brakes, wet runway.	±61 m (200 ft) or ±10% of distance.	Landing.	Either flight test or manufacturer's performance manual data must be used, where available. Engineering data, based on dry runway flight test stopping distance and the effects of contaminated			**X**	**X**	

				runway braking coefficients, are an acceptable alternative.					
1.e.4.	Stopping distance, wheel brakes, icy runway.	±61 m (200 ft) or ±10% of distance.	Landing.	Either flight test or manufacturer's performance manual data must be used, where available. Engineering data, based on dry runway flight test stopping distance and the effects of contaminated runway braking coefficients, are an acceptable alternative.			X	X	
1.f.	**Engines.**								
1.f.1.	Acceleration.	±10% Ti or ±0.25 s; and ±10% Tt or ±0.25 s.	Approach or landing	Total response is the incremental change in the critical engine parameter from idle power to go-around power.	X	X	X	X	See Appendix F of this part for definitions of T_i, and T_t.
1.f.2.	Deceleration.	±10% Ti or ±0.25 s; and ±10% Tt or ±0.25 s.	Ground	Total response is the incremental change in the critical engine parameter from maximum takeoff power to idle power.	X	X	X	X	See Appendix F of this part for definitions of T_i, and T_t.
2. Handling Qualities.									
2.a.	**Static Control Tests.**								
	Note.1 — Testing of position versus force is not applicable if forces are generated solely by use of airplane hardware in the FSTD. *Note 2 — Pitch, roll and yaw controller position versus force or time should be measured at the control. An alternative method in lieu of external test fixtures at the flight controls would be to have recording and measuring instrumentation built into the FSTD. The force and position data from this instrumentation could be directly recorded and matched to the airplane data. Provided the instrumentation was verified by using external measuring equipment while conducting the static control checks, or equivalent means, and that evidence of the satisfactory comparison is included in the MQTG, the instrumentation could be used for both initial and recurrent evaluations for the measurement of all required control checks. Verification of the instrumentation by using external measuring equipment should be repeated if major modifications and/or repairs are made to the control loading system. Such a permanent installation could be used without any time being lost for the installation of external devices. Static and dynamic flight control tests should be accomplished at the same feel or impact pressures as the validation data where applicable.* *Note 3 — FSTD static control testing from the second set of pilot controls is only required if both sets of controls are not mechanically interconnected on the FSTD. A rationale is required from the data provider if a single set of data is applicable to both sides. If controls are mechanically interconnected in the FSTD, a single set of tests is sufficient.*								
2.a.1.a.	Pitch controller position versus force and surface position calibration.	±0.9 daN (2 lbf) breakout. ±2.2 daN (5 lbf) or ±10% of force. ±2° elevator angle.	Ground.	Record results for an uninterrupted control sweep to the stops.	X	X	X	X	Test results should be validated with in-flight data from tests such as longitudinal static stability, stalls, etc.
2.a.1.b.	**(Reserved)**								
2.a.2.a.	Roll controller position versus force and surface position calibration.	±0.9 daN (2 lbf) breakout. ±1.3 daN (3 lbf) or ±10% of force. ±2° aileron angle. ±3° spoiler angle.	Ground.	Record results for an uninterrupted control sweep to the stops.	X	X	X	X	Test results should be validated with in-flight data from tests such as engine-out trims, steady state side-slips, etc.
2.a.2.b.	**(Reserved)**								
2.a.3.a.	Rudder pedal position versus force and surface position calibration.	±2.2 daN (5 lbf) breakout.	Ground.	Record results for an uninterrupted control sweep to the stops.	X	X	X	X	Test results should be validated with in-flight data from tests such as engine-out

		±2.2 daN (5 lbf) or ±10% of force. ±2° rudder angle.							trims, steady state side-slips, etc.
2.a.3.b.	**(Reserved)**								
2.a.4.	Nosewheel Steering Controller Force and Position Calibration.	±0.9 daN (2 lbf) breakout. ±1.3 daN (3 lbf) or ±10% of force. ±2° NWA.	Ground.	Record results of an uninterrupted control sweep to the stops.	**X**	**X**	**X**	**X**	
2.a.5.	Rudder Pedal Steering Calibration.	±2° NWA.	Ground.	Record results of an uninterrupted control sweep to the stops.	**X**	**X**	**X**	**X**	
2.a.6.	Pitch Trim Indicator vs. Surface Position Calibration.	±0.5° trim angle.	Ground.		**X**	**X**	**X**	**X**	The purpose of the test is to compare FSTD surface position and indicator against the flight control model computed value.
2.a.7.	Pitch Trim Rate.	±10% of trim rate (°/s) or ±0.1°/s trim rate.	Ground and approach.	Trim rate to be checked at pilot primary induced trim rate (ground) and autopilot or pilot primary trim rate in-flight at go-around flight conditions. For CCA, representative flight test conditions must be used.	**X**	**X**	**X**	**X**	
2.a.8.	Alignment of cockpit throttle lever versus selected engine parameter.	When matching engine parameters: ±5° of TLA. When matching detents: ±3% N1 or ±.03 EPR or ±3% torque, or equivalent. Where the levers do not have angular travel, a tolerance of ±2 cm (±0.8 in) applies.	Ground.	Simultaneous recording for all engines. The tolerances apply against airplane data. For airplanes with throttle detents, all detents to be presented and at least one position between detents/ endpoints (where practical). For airplanes without detents, end points and at least three other positions are to be presented.	**X**	**X**	**X**	**X**	Data from a test airplane or engineering test bench are acceptable, provided the correct engine controller (both hardware and software) is used. In the case of propeller-driven airplanes, if an additional lever, usually referred to as the propeller lever, is present, it should also be checked. This test may be a series of snapshot tests.
2.a.9.	Brake pedal position versus force and brake system pressure calibration.	±2.2 daN (5 lbf) or ±10% of force. ±1.0 MPa (150 psi) or ±10% of brake system pressure.	Ground.	Relate the hydraulic system pressure to pedal position in a ground static test. Both left and right pedals must be checked.	**X**	**X**	**X**	**X**	FFS computer output results may be used to show compliance.
2.a.10	Stick Pusher System Force Calibration (if applicable)	±10% or ±5 lb (2.2 daN)) Stick/Column force	Ground or Flight	Test is intended to validate the stick/column transient forces as a result of a stick pusher system activation. This test may be conducted in an on-ground condition through stimulation of the stall			**X**	**X**	Aircraft manufacturer design data may be utilized as validation data as determined acceptable by the responsible Flight Standards office.

				protection system in a manner that generates a stick pusher response that is representative of an in-flight condition.					Test requirement may be met through column force validation testing in conjunction with the Stall Characteristics test (2.c.8.a.). This test is required only for FSTDs qualified to conduct full stall training tasks.
2.b.	**Dynamic Control Tests.**								
	Note.— Tests 2.b.1, 2.b.2 and 2.b.3 are not applicable for FSTDs where the control forces are completely generated within the airplane controller unit installed in the FSTD. Power setting may be that required for level flight unless otherwise specified. See paragraph 4 of this attachment.								
2.b.1.	Pitch Control.	**For underdamped systems**: T(P_0) ±10% of P_0 or ±0.05 s. T(P_1) ±20% of P_1 or ±0.05 s. T(P_2) ±30% of P_2 or ±0.05 s. T(P_n) ±10*(n+1)% of P_n or ±0.05 s. T(A_n) ±10% of A_{max}, where A_{max} is the largest amplitude or ±0.5% of the total control travel (stop to stop). T(A_d) ±5% of A_d = residual band or ±0.5% of the maximum control travel = residual band. ±1 significant overshoots (minimum of 1 significant overshoot). Steady state position within residual band. *Note 1.— Tolerances should not be applied on period or amplitude after the last significant overshoot.*	Takeoff, Cruise, and Landing.	Data must be for normal control displacements in both directions (approximately 25% to 50% of full throw or approximately 25% to 50% of maximum allowable pitch controller deflection for flight conditions limited by the maneuvering load envelope). Tolerances apply against the absolute values of each period (considered independently).			**X**	**X**	n = the sequential period of a full oscillation. Refer to paragraph 4 of this Attachment. For overdamped and critically damped systems, see Figure A2B of Appendix A for an illustration of the reference measurement.

		Note 2.— Oscillations within the residual band are not considered significant and are not subject to tolerances. **For overdamped and critically damped systems only**, the following tolerance applies: $T(P_0)$ ±10% of P_0 or ±0.05 s.							
2.b.2.	Roll Control.	Same as 2.b.1.	Takeoff, Cruise, and Landing.	Data must be for normal control displacement (approximately 25% to 50% of full throw or approximately 25% to 50% of maximum allowable roll controller deflection for flight conditions limited by the maneuvering load envelope).			**X**	**X**	Refer to paragraph 4 of this Attachment. For overdamped and critically damped systems, see Figure A2B of Appendix A for an illustration of the reference measurement.
2.b.3.	Yaw Control.	Same as 2.b.1.	Takeoff, Cruise, and Landing.	Data must be for normal control displacement (approximately 25% to 50% of full throw).			**X**	**X**	Refer to paragraph 4 of this Attachment. For overdamped and critically damped systems, see Figure A2B of Appendix A for an illustration of the reference measurement.
2.b.4.	Small Control Inputs – Pitch.	±0.15°/s body pitch rate or ±20% of peak body pitch rate applied throughout the time history.	Approach or Landing.	Control inputs must be typical of minor corrections made while established on an ILS approach (approximately 0.5 to 2°/s pitch rate). Test in both directions. Show time history data from 5 s before until at least 5 s after initiation of control input. If a single test is used to demonstrate both directions, there must be a minimum of 5 s before control reversal to the opposite direction. **CCA**: Test in normal and non-normal control state.			**X**	**X**	
2.b.5.	Small Control Inputs – Roll.	±0.15°/s body roll rate or ±20% of peak body roll rate applied throughout the time history.	Approach or landing.	Control inputs must be typical of minor corrections made while established on an ILS approach (approximately 0.5 to 2°/s roll rate). Test in one direction. For airplanes that exhibit non-symmetrical behavior, test in both directions. Show time history data from 5 s before until at least 5 s after initiation of control input.			**X**	**X**	

				If a single test is used to demonstrate both directions, there must be a minimum of 5 s before control reversal to the opposite direction. **CCA**: Test in normal and non-normal control state.					
2.b.6.	Small Control Inputs – Yaw.	±0.15°/s body yaw rate or ±20% of peak body yaw rate applied throughout the time history.	Approach or landing.	Control inputs must be typical of minor corrections made while established on an ILS approach (approximately 0.5 to 2°/s yaw rate). Test in both directions. Show time history data from 5 s before until at least 5 s after initiation of control input. If a single test is used to demonstrate both directions, there must be a minimum of 5 s before control reversal to the opposite direction. **CCA:** Test in normal and non-normal control state.			**X**	**X**	
2.c.	**Longitudinal Control Tests.**								
	Power setting is that required for level flight unless otherwise specified.								
2.c.1.	Power Change Dynamics.	±3 kt airspeed. ±30 m (100 ft) altitude. ±1.5° or ±20% of pitch angle.	Approach.	Power change from thrust for approach or level flight to maximum continuous or go-around power. Time history of uncontrolled free response for a time increment equal to at least 5 s before initiation of the power change to the completion of the power change + 15 s. **CCA:** Test in normal and non-normal control mode	**X**	**X**	**X**	**X**	
2.c.2.	Flap/Slat Change Dynamics.	±3 kt airspeed. ±30 m (100 ft) altitude. ±1.5° or ±20% of pitch angle.	Takeoff through initial flap retraction, and approach to landing.	Time history of uncontrolled free response for a time increment equal to at least 5 s before initiation of the reconfiguration change to the completion of the reconfiguration change + 15 s. **CCA:** Test in normal and non-normal control mode	**X**	**X**	**X**	**X**	
2.c.3.	Spoiler/Speedbrake Change Dynamics.	±3 kt airspeed. ±30 m (100 ft) altitude. ±1.5° or ±20% of pitch angle.	Cruise.	Time history of uncontrolled free response for a time increment equal to at least 5 s before initiation of the configuration change to the completion of the configuration change +15 s. Results required for both extension and retraction.	**X**	**X**	**X**	**X**	

				CCA: Test in normal and non-normal control mode					
2.c.4.	Gear Change Dynamics.	±3 kt airspeed. ±30 m (100 ft) altitude. ±1.5° or ±20% of pitch angle.	Takeoff (retraction), and Approach (extension).	Time history of uncontrolled free response for a time increment equal to at least 5 s before initiation of the configuration change to the completion of the configuration change + 15 s. **CCA:** Test in normal and non-normal control mode	**X**	**X**	**X**	**X**	
2.c.5.	Longitudinal Trim.	±1° elevator angle. ±0.5° stabilizer or trim surface angle. ±1° pitch angle. ±5% of net thrust or equivalent.	Cruise, Approach, and Landing.	Steady-state wings level trim with thrust for level flight. This test may be a series of snapshot tests. **CCA**: Test in normal or non-normal control mode, as applicable.	**X**	**X**	**X**	**X**	
2.c.6.	Longitudinal Maneuvering Stability (Stick Force/g).	±2.2 daN (5 lbf) or ±10% of pitch controller force. Alternative method: ±1° or ±10% of the change of elevator angle.	Cruise, Approach, and Landing.	Continuous time history data or a series of snapshot tests may be used. Test up to approximately 30° of roll angle for approach and landing configurations. Test up to approximately 45° of roll angle for the cruise configuration. Force tolerance not applicable if forces are generated solely by the use of airplane hardware in the FSTD. Alternative method applies to airplanes which do not exhibit stick-force-per-g characteristics. **CCA:** Test in normal or non-normal control mode	**X**	**X**	**X**	**X**	
2.c.7.	Longitudinal Static Stability.	±2.2 daN (5 lbf) or ±10% of pitch controller force. Alternative method: ±1° or ±10% of the change of elevator angle.	Approach.	Data for at least two speeds above and two speeds below trim speed. The speed range must be sufficient to demonstrate stick force versus speed characteristics. This test may be a series of snapshot tests. Force tolerance is not applicable if forces are generated solely by the use of airplane hardware in the FSTD. Alternative method applies to airplanes which do not exhibit speed stability characteristics. **CCA:** Test in normal or non-normal control mode, as applicable.	**X**	**X**	**X**	**X**	

2.c.8.a	Stall Characteristics	±3 kt airspeed for stall warning and stall speeds. ±2.0° angle of attack for buffet threshold of perception and initial buffet based upon Nz component. Control inputs must be plotted and demonstrate correct trend and magnitude. Approach to stall: ±2.0° pitch angle; ±2.0° angle of attack; and ±2.0° bank angle Stall warning up to stall: ±2.0° pitch angle; ±2.0° angle of attack; and Correct trend and magnitude for roll rate and yaw rate. Stall Break and Recovery: SOC Required (see Attachment 7) Additionally, for those simulators with reversible flight control systems or equipped with stick pusher systems: ±10% or ±5 lb (2.2 daN)) Stick/Column force (prior to the stall angle of attack).	Second Segment Climb, High Altitude Cruise (Near Performance Limited Condition), and Approach or Landing	Each of the following stall entries must be demonstrated in at least one of the three flight conditions: ▪ Stall entry at wings level (1g) ▪ Stall entry in turning flight of at least 25° bank angle (accelerated stall) ▪ Stall entry in a power-on condition (required only for propeller driven aircraft) The cruise flight condition must be conducted in a flaps-up (clean) configuration. The second segment climb flight condition must use a different flap setting than the approach or landing flight condition. Record the stall warning signal and initial buffet, if applicable. Time history data must be recorded for full stall through recovery to normal flight. The stall warning signal must occur in the proper relation to buffet/stall. FSTDs of airplanes exhibiting a sudden pitch attitude change or "g break" must demonstrate this characteristic. FSTDs of airplanes exhibiting a roll off or loss of roll control authority must demonstrate this characteristic. Numerical tolerances are not applicable past the stall angle of attack, but must demonstrate correct trend through recovery. See Attachment 7 for additional requirements and information concerning data sources and required angle of attack ranges. **CCA:** Test in normal and non-normal control states. For CCA aircraft with stall envelope protection systems, the normal mode testing is only required to an angle of attack range necessary to demonstrate the correct operation of the system. These tests may be used to satisfy the required (angle of attack) flight maneuver and envelope protection tests (test 2.h.6.). Non-normal control states must be tested through stall identification and recovery.			**X**	**X**	Buffet threshold of perception should be based on 0.03 g peak to peak normal acceleration above the background noise at the pilot seat. Initial buffet to be based on normal acceleration at the pilot seat with a larger peak to peak value relative to buffet threshold of perception (some airframe manufacturers have used 0.1 g peak to peak). Demonstrate correct trend in growth of buffet amplitude from initial buffet to stall speed for normal and lateral acceleration. The FSTD sponsor/FSTD manufacturer may limit maximum buffet based on motion platform capability/limitations or other simulator system limitations. Tests may be conducted at centers of gravity and weights typically required for airplane certification stall testing. This test is required only for FSTDs qualified to conduct full stall training tasks. In instances where flight test validation data is limited due to safety of flight considerations, engineering simulator validation data may be used in lieu of flight test validation data for angles of attack that exceed the activation of a stall protection system or stick pusher system. Where approved engineering simulation validation is used, the reduced engineering tolerances (as defined in paragraph 11 of this appendix) do not apply.
2.c.8.b	Approach to Stall Characteristics	±3 kt airspeed for stall warning speeds. ±2.0° angle of attack for initial buffet.	Second Segment Climb, High Altitude Cruise (Near Performance Limited Condition), and Approach or Landing	Each of the following stall entries must be demonstrated in at least one of the three flight conditions: ▪ Approach to stall entry at wings level (1g)	**X**	**X**			Tests may be conducted at centers of gravity and weights typically required for airplane certification stall testing.

		Control displacements and flight control surfaces must be plotted and demonstrate correct trend and magnitude. ±2.0° pitch angle; ±2.0° angle of attack; and ±2.0° bank angle Additionally, for those simulators with reversible flight control systems: ±10% or ±5 lb (2.2 daN)) Stick/Column force		▪ Approach to stall entry in turning flight of at least 25° bank angle (accelerated stall) ▪ Approach to stall entry in a power-on condition (required only for propeller driven aircraft) The cruise flight condition must be conducted in a flaps-up (clean) configuration. The second segment climb flight condition must use a different flap setting than the approach or landing flight condition. **CCA:** Test in Normal and Non-normal control states. For CCA aircraft with stall envelope protection systems, the normal mode testing is only required to an angle of attack range necessary to demonstrate the correct operation of the system. These tests may be used to satisfy the required (angle of attack) flight maneuver and envelope protection tests (test 2.h.6.).					Tolerances on stall buffet are not applicable where the first indication of the stall is the activation of the stall warning system (i.e. stick shaker).
2.c.9.	Phugoid Dynamics.	±10% of period. ±10% of time to one half or double amplitude or ±0.02 of damping ratio.	Cruise.	Test must include three full cycles or that necessary to determine time to one half or double amplitude, whichever is less. **CCA:** Test in non-normal control mode.	**X**	**X**	**X**	**X**	
2.c.10	Short Period Dynamics.	±1.5° pitch angle or ±2°/s pitch rate. ±0.1 g normal acceleration	Cruise.	**CCA:** Test in normal and non-normal control mode.	**X**	**X**	**X**	**X**	
2.c.11.	**(Reserved)**								
2.d.	**Lateral Directional Tests.**								
	Power setting is that required for level flight unless otherwise specified.								
2.d.1.	Minimum control speed, air (V_{mca}) or landing (V_{mcl}), per applicable airworthiness requirement or low speed engine-inoperative handling characteristics in the air.	±3 kt airspeed.	Takeoff or Landing (whichever is most critical in the airplane).	Takeoff thrust must be set on the operating engine(s). Time history or snapshot data may be used. **CCA**: Test in normal or non-normal control state, as applicable.	**X**	**X**	**X**	**X**	Minimum speed may be defined by a performance or control limit which prevents demonstration of V_{mca} or V_{mcl} in the conventional manner.
2.d.2.	Roll Response (Rate).	±2°/s or ±10% of roll rate. For airplanes with reversible flight control systems: ±1.3 daN (3 lbf) or ±10% of wheel force.	Cruise, and Approach or Landing.	Test with normal roll control displacement (approximately one-third of maximum roll controller travel). This test may be combined with step input of flight deck roll controller test 2.d.3.	**X**	**X**	**X**	**X**	
2.d.3.	Step input of flight deck roll controller.	±2° or ±10% of roll angle.	Approach or Landing.	This test may be combined with roll response (rate) test 2.d.2.	**X**	**X**	**X**	**X**	With wings level, apply a step roll control input using

				CCA: Test in normal and non-normal control mode					approximately one-third of the roll controller travel. When reaching approximately 20° to 30° of bank, abruptly return the roll controller to neutral and allow approximately 10 seconds of airplane free response.
2.d.4.	Spiral Stability.	Correct trend and ±2° or ±10% of roll angle in 20 s. If alternate test is used: correct trend and ±2° aileron angle.	Cruise, and Approach or Landing.	Airplane data averaged from multiple tests may be used. Test for both directions. As an alternative test, show lateral control required to maintain a steady turn with a roll angle of approximately 30°. **CCA:** Test in non-normal control mode.	**X**	**X**	**X**	**X**	
2.d.5.	Engine Inoperative Trim.	±1° rudder angle or ±1° tab angle or equivalent rudder pedal. ±2° side-slip angle.	Second Segment Climb, and Approach or Landing.	This test may consist of snapshot tests.	**X**	**X**	**X**	**X**	Test should be performed in a manner similar to that for which a pilot is trained to trim an engine failure condition. 2nd segment climb test should be at takeoff thrust. Approach or landing test should be at thrust for level flight.
2.d.6.	Rudder Response.	±2°/s or ±10% of yaw rate.	Approach or Landing.	Test with stability augmentation on and off. Test with a step input at approximately 25% of full rudder pedal throw. **CCA:** Test in normal and non-normal control mode	**X**	**X**	**X**	**X**	
2.d.7.	Dutch Roll	±0.5 s or ±10% of period. ±10% of time to one half or double amplitude or ±.02 of damping ratio. ±1 s or ±20% of time difference between peaks of roll angle and side-slip angle.	Cruise, and Approach or Landing.	Test for at least six cycles with stability augmentation off. **CCA:** Test in non-normal control mode.		**X**	**X**	**X**	
2.d.8.	Steady State Sideslip.	For a given rudder position: ±2° roll angle;	Approach or Landing.	This test may be a series of snapshot tests using at least two rudder positions (in each direction for propeller-driven airplanes), one of which must be near maximum allowable rudder.	**X**	**X**	**X**	**X**	

		±1° side-slip angle; ±2° or ±10% of aileron angle; and ±5° or ±10% of spoiler or equivalent roll controller position or force. For airplanes with reversible flight control systems: ±1.3 daN (3 lbf) or ±10% of wheel force. ±2.2 daN (5 lbf) or ±10% of rudder pedal force.							
2.e.	**Landings.**								
2.e.1.	Normal Landing.	±3 kt airspeed. ±1.5° pitch angle. ±1.5° AOA. ±3 m (10 ft) or ±10% of height. For airplanes with reversible flight control systems: ±2.2 daN (5 lbf) or ±10% of column force.	Landing.	Test from a minimum of 61 m (200 ft) AGL to nosewheel touchdown. **CCA:** Test in normal and non-normal control mode, if applicable.		**X**	**X**	**X**	Two tests should be shown, including two normal landing flaps (if applicable) one of which should be near maximum certificated landing mass, the other at light or medium mass.
2.e.2.	Minimum Flap Landing.	±3 kt airspeed. ±1.5° pitch angle. ±1.5° AOA. ±3 m (10 ft) or ±10% of height. For airplanes with reversible flight control systems:	Minimum Certified Landing Flap Configuration.	Test from a minimum of 61 m (200 ft) AGL to nosewheel touchdown. Test at near maximum certificated landing weight.			**X**	**X**	

		±2.2 daN (5 lbf) or ±10% of column force.							
2.e.3.	Crosswind Landing.	±3 kt airspeed. ±1.5° pitch angle. ±1.5° AOA. ±3 m (10 ft) or ±10% of height. ±2° roll angle. ±2° side-slip angle. ±3° heading angle. For airplanes with reversible flight control systems: ±2.2 daN (5 lbf) or ±10% of column force. ±1.3 daN (3 lbf) or ±10% of wheel force. ±2.2 daN (5 lbf) or ±10% of rudder pedal force.	Landing.	Test from a minimum of 61 m (200 ft) AGL to a 50% decrease in main landing gear touchdown speed. Test data is required, including wind profile, for a crosswind component of at least 60% of airplane performance data value measured at 10 m (33 ft) above the runway. Wind components must be provided as headwind and crosswind values with respect to the runway.		**X**	**X**	**X**	In those situations where a maximum crosswind or a maximum demonstrated crosswind is not known, contact the responsible Flight Standards office.
2.e.4.	One Engine Inoperative Landing.	±3 kt airspeed. ±1.5° pitch angle. ±1.5° AOA. ±3 m (10 ft) or ±10% of height. ±2° roll angle. ±2° side-slip angle. ±3° heading angle.	Landing.	Test from a minimum of 61 m (200 ft) AGL to a 50% decrease in main landing gear touchdown speed.		**X**	**X**	**X**	
2.e.5.	Autopilot landing (if applicable).	±1.5 m (5 ft) flare height. ±0.5 s or ± 10% of Tf.	Landing.	If autopilot provides roll-out guidance, record lateral deviation from touchdown to a 50% decrease in main landing gear touchdown speed. Time of autopilot flare mode engage and main gear touchdown must be noted.		**X**	**X**	**X**	See Appendix F of this part for definition of T_f.

		±0.7 m/s (140 ft/min) rate of descent at touchdown. ±3 m (10 ft) lateral deviation during roll-out.							
2.e.6.	All-engine autopilot go-around.	±3 kt airspeed. ±1.5° pitch angle. ±1.5° AOA.	As per airplane performance data.	Normal all-engine autopilot go-around must be demonstrated (if applicable) at medium weight.		**X**	**X**	**X**	
2.e.7.	One engine inoperative go around.	±3 kt airspeed. ±1.5° pitch angle. ±1.5° AOA. ±2° roll angle. ±2° side-slip angle.	As per airplane performance data.	Engine inoperative go-around required near maximum certificated landing weight with critical engine inoperative. Provide one test with autopilot (if applicable) and one without autopilot. **CCA**: Non-autopilot test to be conducted in non-normal mode.		**X**	**X**	**X**	
2.e.8.	Directional control (rudder effectiveness) with symmetric reverse thrust.	±5 kt airspeed. ±2°/s yaw rate.	Landing.	Apply rudder pedal input in both directions using full reverse thrust until reaching full thrust reverser minimum operating speed.		**X**	**X**	**X**	
2.e.9.	Directional control (rudder effectiveness) with asymmetric reverse thrust.	±5 kt airspeed. ±3° heading angle.	Landing.	With full reverse thrust on the operating engine(s), maintain heading with rudder pedal input until maximum rudder pedal input or thrust reverser minimum operation speed is reached.		**X**	**X**	**X**	
2.f.	**Ground Effect.**								
	Test to demonstrate Ground Effect.	±1° elevator angle. ±0.5° stabilizer angle. ±5% of net thrust or equivalent. ±1° AOA. ±1.5 m (5 ft) or ±10% of height. ±3 kt airspeed. ±1° pitch angle.	Landing.	A rationale must be provided with justification of results. **CCA:** Test in normal or non-normal control mode, as applicable.		**X**	**X**	**X**	See paragraph 5 of this Attachment for additional information.
2.g.	**Windshear.**								
	Four tests, two takeoff and two landing, with one of each conducted in still air and the other	See Attachment 5 of this appendix.	Takeoff and Landing.	Requires windshear models that provide training in the specific skills needed to recognize windshear phenomena and to execute recovery procedures. See Attachment 5 of this appendix for tests, tolerances, and procedures.			**X**	**X**	See Attachment 5 of this appendix for information related to Level A and B simulators.

	with windshear active to demonstrate windshear models.								
2.h.	**Flight Maneuver and Envelope Protection Functions.**								
	Note. — The requirements of 2.h are only applicable to computer-controlled airplanes. Time history results of response to control inputs during entry into each envelope protection function (i.e. with normal and degraded control states if their function is different) are required. Set thrust as required to reach the envelope protection function.								
2.h.1.	Overspeed.	±5 kt airspeed.	Cruise.			**X**	**X**	**X**	
2.h.2.	Minimum Speed.	±3 kt airspeed.	Takeoff, Cruise, and Approach or Landing.			**X**	**X**	**X**	
2.h.3.	Load Factor.	±0.1g normal load factor	Takeoff, Cruise.			**X**	**X**	**X**	
2.h.4.	Pitch Angle.	±1.5° pitch angle	Cruise, Approach.			**X**	**X**	**X**	
2.h.5.	Bank Angle.	±2° or ±10% bank angle	Approach.			**X**	**X**	**X**	
2.h.6.	Angle of Attack.	±1.5° angle of attack	Second Segment Climb, and Approach or Landing.			**X**	**X**	**X**	
2.i.	**Engine and Airframe Icing Effects**								
2.i.	Engine and Airframe Icing Effects Demonstration (High Angle of Attack)		Takeoff or Approach or Landing [One flight condition – two tests (ice on and off)]	Time history of a full stall and initiation of the recovery. Tests are intended to demonstrate representative aerodynamic effects caused by in-flight ice accretion. Flight test validation data is not required. Two tests are required to demonstrate engine and airframe icing effects. One test will demonstrate the FSTDs baseline performance without ice accretion, and the second test will demonstrate the aerodynamic effects of ice accretion relative to the baseline test. The test must utilize the icing model(s) as described in the required Statement of Compliance in Table A1A, section 2.j. Test must include rationale that describes the icing effects being demonstrated. Icing effects may include, but are not limited to, the following effects as applicable to the particular airplane type: ▪ Decrease in stall angle of attack ▪ Changes in pitching moment ▪ Decrease in control effectiveness ▪ Changes in control forces ▪ Increase in drag ▪ Change in stall buffet characteristics and threshold of perception ▪ Engine effects (power reduction/variation, vibration, etc. where expected to be present on the aircraft in the ice accretion scenario being tested)			**X**	**X**	Tests will be evaluated for representative effects on relevant aerodynamic and other parameters such as angle of attack, control inputs, and thrust/power settings. Plotted parameters must include: • Altitude • Airspeed • Normal acceleration • Engine power • Angle of attack • Pitch attitude • Bank angle • Flight control inputs • Stall warning and stall buffet onset
3. Motion System.									
3.a.	**Frequency response.**								

		As specified by the sponsor for FSTD qualification.	Not applicable.	Appropriate test to demonstrate required frequency response.	X	X	X	X	See paragraph 6 of this Attachment.
3.b.	**Turn-around check.**								
		As specified by the sponsor for FSTD qualification.	Not applicable.	Appropriate test to demonstrate required smooth turn-around.	X	X	X	X	See paragraph 6 of this Attachment.
3.c	**Motion effects.**				X	X	X	X	Refer to Attachment 3 of this Appendix on subjective testing.
3.d.	**Motion system repeatability.**								
	Motion system repeatability	±0.05 g actual platform linear accelerations.	None.		X	X	X	X	Ensure that motion system hardware and software (in normal FSTD operating mode) continue to perform as originally qualified. Performance changes from the original baseline can be readily identified with this information. See paragraph 6.c. of this Attachment.
3.e.	**Motion cueing fidelity**								
3.e.1.	Motion cueing fidelity – Frequency-domain criterion.	As specified by the FSTD manufacturer for initial qualification.	Ground and flight.	For the motion system as applied during training, record the combined modulus and phase of the motion cueing algorithm and motion platform over the frequency range appropriate to the characteristics of the simulated aircraft. This test is only required for initial FSTD qualification.			X	X	Testing may be accomplished by the FSTD manufacturer and results provided as a statement of compliance.
3.e.2.	Reserved								
3.f	Characteristic motion vibrations. The following tests with recorded results and an SOC are required for characteristic motion vibrations, which can be sensed at the flight deck where applicable by airplane type.	None.	Ground and flight.					X	The recorded test results for characteristic buffets should allow the comparison of relative amplitude versus frequency. See also paragraph 6.e. of this Attachment.
3.f.1.	Thrust effect with brakes set.	The FSTD test results must exhibit the overall appearance and trends of the airplane data, with at least three (3) of the predominant frequency "spikes"	Ground.	Test must be conducted at maximum possible thrust with brakes set.				X	

		being present within ± 2 Hz of the airplane data.							
3.f.2.	Buffet with landing gear extended.	The FSTD test results must exhibit the overall appearance and trends of the airplane data, with at least three (3) of the predominant frequency "spikes" being present within ± 2 Hz of the airplane data.	Flight.	Test condition must be for a normal operational speed and not at the gear limiting speed.				**X**	
3.f.3.	Buffet with flaps extended.	The FSTD test results must exhibit the overall appearance and trends of the airplane data, with at least three (3) of the predominant frequency "spikes" being present within ± 2 Hz of the airplane data.	Flight.	Test condition must be at a normal operational speed and not at the flap limiting speed.				**X**	
3.f.4.	Buffet with speedbrakes deployed.	The FSTD test results must exhibit the overall appearance and trends of the airplane data, with at least three (3) of the predominant frequency "spikes" being present within ± 2 Hz of the airplane data.	Flight.	Test condition must be at a typical speed for a representative buffet.				**X**	
3.f.5.	Stall buffet	The FSTD test results must exhibit the overall appearance and trends of the airplane data, with at least three (3) of the predominant frequency "spikes" being present within ± 2 Hz of the airplane data.	Cruise (High Altitude), Second Segment Climb, and Approach or Landing	Tests must be conducted for an angle of attack range between the buffet threshold of perception to the pilot and the stall angle of attack. Post stall characteristics are not required.			**X**	**X**	If stabilized flight data between buffet threshold of perception and the stall angle of attack are not available, PSD analysis should be conducted for a time span between initial buffet and the stall angle of attack. Test required only for FSTDs qualified for full stall training tasks or for those aircraft which exhibit stall buffet before the activation of the stall warning system.
3.f.6.	Buffet at high airspeeds or high Mach.	The FSTD test results must exhibit the overall appearance and trends of the airplane data, with at least three (3) of the predominant frequency "spikes" being present within ± 2 Hz of the airplane data.	Flight.					**X**	Test condition should be for high-speed maneuver buffet/wind-up-turn or alternatively Mach buffet.

3.f.7.	In-flight vibrations for propeller driven airplanes.	The FSTD test results must exhibit the overall appearance and trends of the airplane data, with at least three (3) of the predominant frequency "spikes" being present within ± 2 Hz of the airplane data.	Flight (clean configuration).					**X**	Test should be conducted to be representative of in-flight vibrations for propeller-driven airplanes.
4. Visual System.									
4.a.	**Visual scene quality**								
4.a.1.	Continuous collimated cross-cockpit visual field of view.	Cross-cockpit, collimated visual display providing each pilot with a minimum of 176° horizontal and 36° vertical continuous field of view.	Not applicable.	Required as part of MQTG but not required as part of continuing evaluations.			**X**	**X**	Field of view should be measured using a visual test pattern filling the entire visual scene (all channels) consisting of a matrix of black and white 5° squares. Installed alignment should be confirmed in an SOC (this would generally consist of results from acceptance testing).
	Continuous collimated cross-cockpit visual field of view.	Continuous collimated field-of-view providing at least 45° horizontal and 30° vertical field-of-view for each pilot seat. Both pilot seat visual systems must be operable simultaneously.	Not applicable.	Required as part of MQTG but not required as part of continuing evaluations.	**X**	**X**			A vertical field-of-view of 30° may be insufficient to meet visual ground segment requirements.
4.a.2.	System geometry	5° even angular spacing within ±1° as measured from either pilot eye point and within 1.5° for adjacent squares.	Not applicable.	The angular spacing of any chosen 5° square and the relative spacing of adjacent squares must be within the stated tolerances.	**X**	**X**	**X**	**X**	The purpose of this test is to evaluate local linearity of the displayed image at either pilot eye point. System geometry should be measured using a visual test pattern filling the entire visual scene (all channels) with a matrix of black and white 5° squares with light points at the intersections. For continuing qualification testing, the use of an optical checking device is encouraged. This device should typically consist of a hand-held go/no go gauge to check that the relative positioning is maintained.

4.a.3	Surface resolution (object detection).	Not greater than 2 arc minutes.	Not applicable.	An SOC is required and must include the relevant calculations and an explanation of those calculations. This requirement is applicable to any level of simulator equipped with a daylight visual system.			X	X	Resolution will be demonstrated by a test of objects shown to occupy the required visual angle in each visual display used on a scene from the pilot's eyepoint. The object will subtend 2 arc minutes to the eye. This may be demonstrated using threshold bars for a horizontal test. A vertical test should also be demonstrated.
4.a.4	Light point size.	Not greater than 5 arc minutes.	Not applicable.	An SOC is required and must include the relevant calculations and an explanation of those calculations. This requirement is applicable to any level of simulator equipped with a daylight visual system.			X	X	Light point size should be measured using a test pattern consisting of a centrally located single row of white light points displayed as both a horizontal and vertical row. It should be possible to move the light points relative to the eyepoint in all axes. At a point where modulation is just discernible in each visual channel, a calculation should be made to determine the light spacing.
4.a.5	Raster surface contrast ratio.	Not less than 5:1.	Not applicable.	This requirement is applicable to any level of simulator equipped with a daylight visual system.			X	X	Surface contrast ratio should be measured using a raster drawn test pattern filling the entire visual scene (all channels). The test pattern should consist of black and white squares, 5° per square, with a white square in the center of each channel. Measurement should be made on the center bright square for each channel using a 1° spot photometer. This value should have a minimum brightness of 7 cd/m^2 (2 ft-lamberts). Measure any adjacent dark squares.

									The contrast ratio is the bright square value divided by the dark square value. *Note 1. — During contrast ratio testing, FSTD aft-cab and flight deck ambient light levels should be as low as possible.* *Note 2. — Measurements should be taken at the center of squares to avoid light spill into the measurement device.*
4.a.6	Light point contrast ratio.	Not less than 25:1.	Not applicable.	An SOC is required and must include the relevant calculations.			**X**	**X**	Light point contrast ratio should be measured using a test pattern demonstrating an area of greater than 1° area filled with white light points and should be compared to the adjacent background. *Note. — Light point modulation should be just discernible on calligraphic systems but will not be discernable on raster systems.* Measurements of the background should be taken such that the bright square is just out of the light meter FOV. *Note. — During contrast ratio testing, FSTD aft-cab and flight deck ambient light levels should be as low as practical.*
	Light point contrast ratio.	Not less than 10:1.	Not applicable.		**X**	**X**			
4.a.7	Light point brightness.	Not less than 20 cd/m^2 (5.8 ft-lamberts).	Not applicable.				**X**	**X**	Light points should be displayed as a matrix creating a square. On calligraphic systems the light points should just merge. On raster systems the light points should overlap such that the square is continuous

									(individual light points will not be visible).
4.a.8	Surface brightness.	Not less than 20 cd/m^2 (5.8 ft-lamberts) on the display.	Not applicable.	This requirement is applicable to any level of simulator equipped with a daylight visual system.			X	X	Surface brightness should be measured on a white raster, measuring the brightness using the 1° spot photometer. Light points are not acceptable. Use of calligraphic capabilities to enhance raster brightness is acceptable.
4.a.9	Black level and sequential contrast.	Black intensity: Background brightness – Black polygon brightness < 0.015 cd/m^2 (0.004 ft-lamberts). Sequential contrast: Maximum brightness – (Background brightness – Black polygon brightness) > 2,000:1.	Not applicable.		X	X	X	X	All projectors should be turned off and the cockpit environment made as dark as possible. A background reading should be taken of the remaining ambient light on the screen. The projectors should then be turned on and a black polygon displayed. A second reading should then be taken and the difference between this and the ambient level recorded. A full brightness white polygon should then be measured for the sequential contrast test. This test is generally only required for **light valve projectors**.
4.a.10	Motion blur.	When a pattern is rotated about the eyepoint at 10°/s, the smallest detectable gap must be 4 arc min or less.	Not applicable.		X	X	X	X	A test pattern consists of an array of 5 peak white squares with black gaps between them of decreasing width. The range of black gap widths should at least extend above and below the required detectable gap, and be in steps of 1 arc min. The pattern is rotated at the required rate. Two arrays of squares should be provided, one rotating in

									heading and the other in pitch, to provide testing in both axes. A series of stationary numbers identifies the gap number. *Note.— This test can be limited by the display technology. Where this is the case the responsible Flight Standards office should be consulted on the limitations.* This test is generally only required for **light valve projectors**.
4.a.11	Speckle test.	Speckle contrast must be < 10%.	Not applicable.	An SOC is required describing the test method.	**X**	**X**	**X**	**X**	This test is generally only required for **laser projectors**.
4.b	**Head-Up Display (HUD)**								
4.b.1	Static Alignment.	Static alignment with displayed image. HUD bore sight must align with the center of the displayed image spherical pattern. Tolerance +/- 6 arc min.	**N/A**				**X**	**X**	Alignment requirement applies to any HUD system in use or both simultaneously if they are used simultaneously for training.
4.b.2	System display.	All functionality in all flight modes must be demonstrated.	**N/A**				**X**	**X**	A statement of the system capabilities should be provided and the capabilities demonstrated
4.b.3	HUD attitude versus FSTD attitude indicator (pitch and roll of horizon).	Pitch and roll align with aircraft instruments.	Flight.				**X**	**X**	
4.c	**Enhanced Flight Vision System (EFVS)**								
4.c.1	Registration test.	Alignment between EFVS display and out of the window image must represent the alignment typical of the aircraft and system type.	Takeoff point and on approach at 200 ft.				**X**	**X**	*Note.— The effects of the alignment tolerance in 4.b.1 should be taken into account.*
4.c.2	EFVS RVR and visibility calibration.	The scene represents the EFVS view at 350 m (1,200 ft) and 1,609 m	Flight.				**X**	**X**	Infra-red scene representative of both 350 m (1,200 ft), and 1,609 m (1 sm) RVR.

		(1 sm) RVR including correct light intensity.							Visual scene may be removed.
4.c.3	Thermal crossover.	Demonstrate thermal crossover effects during day to night transition.	Day and night.				X	X	The scene will correctly represent the thermal characteristics of the scene during a day to night transition.
4.d	**Visual ground segment**								
4.d.1	Visual ground segment (VGS).	Near end: the correct number of approach lights within the computed VGS must be visible. Far end: ±20% of the computed VGS. The threshold lights computed to be visible must be visible in the FSTD.	Trimmed in the landing configuration at 30 m (100 ft) wheel height above touchdown zone on glide slope at an RVR setting of 300 m (1,000 ft) or 350 m (1,200 ft).	This test is designed to assess items impacting the accuracy of the visual scene presented to a pilot at DH on an ILS approach. These items include: 1) RVR/Visibility; 2) glide slope (G/S) and localizer modeling accuracy (location and slope) for an ILS; 3) for a given weight, configuration and speed representative of a point within the airplane's operational envelope for a normal approach and landing; and 4) Radio altimeter. *Note. — If non-homogeneous fog is used, the vertical variation in horizontal visibility should be described and included in the slant range visibility calculation used in the VGS computation.*	X	X	X	X	
4.e	**Visual System Capacity**								
4.e.1	System capacity – Day mode.	Not less than: 10,000 visible textured surfaces, 6,000 light points, 16 moving models.	Not applicable.				X	X	Demonstrated through use of a visual scene rendered with the same image generator modes used to produce scenes for training. The required surfaces, light points, and moving models should be displayed simultaneously.
4.e.2	System capacity – Twilight/night mode.	Not less than: 10,000 visible textured surfaces, 15,000 light points, 16 moving models.	Not applicable.				X	X	Demonstrated through use of a visual scene rendered with the same image generator modes used to produce scenes for training. The required surfaces, light points, and moving models should be displayed simultaneously.

5. Sound System. The sponsor will not be required to repeat the airplane tests (i.e., tests 5.a.1. through 5.a.8. (or 5.b.1. through 5.b.9.) and 5.c., as appropriate) during continuing qualification evaluations if frequency response and background noise test results are within tolerance when compared to the initial qualification evaluation results, and the sponsor shows that no software changes have occurred that will affect the airplane test results. If the frequency response test method is chosen and fails, the sponsor may elect to fix the frequency response problem and repeat the test or the sponsor may elect to repeat the airplane tests. If the airplane tests are repeated during continuing qualification evaluations, the results may be compared against initial qualification evaluation results or airplane master data. All tests in this section must be presented using an unweighted 1/3-octave band format from band 17 to 42 (50 Hz to 16 kHz). A minimum 20 second average must be taken at the location corresponding to the airplane data set. The airplane and flight simulator results must be produced using comparable data analysis techniques.								
5.a.	**Turbo-jet airplanes.**								All tests in this section should be presented using an unweighted 1/3-octave band format from at least band 17 to 42 (50 Hz to 16 kHz). A measurement of minimum 20 s should be taken at the location corresponding to the approved data set. The approved data set and FSTD results should be produced using comparable data analysis techniques. Refer to paragraph 7 of this Attachment
5.a.1.	Ready for engine start.	Initial evaluation: ± 5 dB per 1/3 octave band. Recurrent evaluation: cannot exceed ±5 dB difference on three consecutive bands when compared to initial evaluation and the average of the absolute differences between initial and recurrent evaluation results cannot exceed 2 dB.	Ground.	Normal condition prior to engine start. The APU should be on if appropriate.				X	For initial evaluation, it is acceptable to have some 1/3 octave bands out of ± 5 dB tolerance but not more than 2 that are consecutive and in any case within ± 7 dB from approved reference data, providing that the overall trend is correct. Where initial evaluation employs approved subjective tuning to develop the approved reference standard, recurrent evaluation tolerances should be used during recurrent evaluations.
5.a.2.	All engines at idle.	Initial evaluation: ± 5 dB per 1/3 octave band. Recurrent evaluation: cannot exceed ±5 dB difference on three consecutive bands when compared to initial	Ground.	Normal condition prior to takeoff.				X	For initial evaluation, it is acceptable to have some 1/3 octave bands out of ± 5 dB tolerance but not more than 2 that are consecutive and in any case within ± 7 dB from approved reference data, providing that the overall trend is correct.

		evaluation and the average of the absolute differences between initial and recurrent evaluation results cannot exceed 2 dB.							Where initial evaluation employs approved subjective tuning to develop the approved reference standard, recurrent evaluation tolerances should be used during recurrent evaluations.
5.a.3.	All engines at maximum allowable thrust with brakes set.	Initial evaluation: ± 5 dB per 1/3 octave band. Recurrent evaluation: cannot exceed ±5 dB difference on three consecutive bands when compared to initial evaluation and the average of the absolute differences between initial and recurrent evaluation results cannot exceed 2 dB.	Ground.	Normal condition prior to takeoff.				X	For initial evaluation, it is acceptable to have some 1/3 octave bands out of ± 5 dB tolerance but not more than 2 that are consecutive and in any case within ± 7 dB from approved reference data, providing that the overall trend is correct. Where initial evaluation employs approved subjective tuning to develop the approved reference standard, recurrent evaluation tolerances should be used during recurrent evaluations.
5.a.4.	Climb	Initial evaluation: ± 5 dB per 1/3 octave band. Recurrent evaluation: cannot exceed ±5 dB difference on three consecutive bands when compared to initial evaluation and the average of the absolute differences between initial and recurrent evaluation results cannot exceed 2 dB.	En-route climb.	Medium altitude.				X	For initial evaluation, it is acceptable to have some 1/3 octave bands out of ± 5 dB tolerance but not more than 2 that are consecutive and in any case within ± 7 dB from approved reference data, providing that the overall trend is correct. Where initial evaluation employs approved subjective tuning to develop the approved reference standard, recurrent evaluation tolerances should be used during recurrent evaluations.
5.a.5.	Cruise	Initial evaluation: ± 5 dB per 1/3 octave band. Recurrent evaluation: cannot exceed ±5 dB difference on three consecutive bands when compared to initial evaluation and the	Cruise.	Normal cruise configuration.				X	For initial evaluation, it is acceptable to have some 1/3 octave bands out of ± 5 dB tolerance but not more than 2 that are consecutive and in any case within ± 7 dB from approved reference data, providing that the overall trend is correct.

		average of the absolute differences between initial and recurrent evaluation results cannot exceed 2 dB.							Where initial evaluation employs approved subjective tuning to develop the approved reference standard, recurrent evaluation tolerances should be used during recurrent evaluations.
5.a.6.	Speed brake/spoilers extended (as appropriate).	Initial evaluation: ± 5 dB per 1/3 octave band. Recurrent evaluation: cannot exceed ±5 dB difference on three consecutive bands when compared to initial evaluation and the average of the absolute differences between initial and recurrent evaluation results cannot exceed 2 dB.	Cruise.	Normal and constant speed brake deflection for descent at a constant airspeed and power setting.				X	For initial evaluation, it is acceptable to have some 1/3 octave bands out of ± 5 dB tolerance but not more than 2 that are consecutive and in any case within ± 7 dB from approved reference data, providing that the overall trend is correct. Where initial evaluation employs approved subjective tuning to develop the approved reference standard, recurrent evaluation tolerances should be used during recurrent evaluations.
5.a.7	Initial approach.	Initial evaluation: ± 5 dB per 1/3 octave band. Recurrent evaluation: cannot exceed ±5 dB difference on three consecutive bands when compared to initial evaluation and the average of the absolute differences between initial and recurrent evaluation results cannot exceed 2 dB.	Approach.	Constant airspeed, gear up, flaps/slats as appropriate.				X	For initial evaluation, it is acceptable to have some 1/3 octave bands out of ± 5 dB tolerance but not more than 2 that are consecutive and in any case within ± 7 dB from approved reference data, providing that the overall trend is correct. Where initial evaluation employs approved subjective tuning to develop the approved reference standard, recurrent evaluation tolerances should be used during recurrent evaluations.
5.a.8	Final approach.	Initial evaluation: ± 5 dB per 1/3 octave band. Recurrent evaluation: cannot exceed ±5 dB difference on three consecutive bands when compared to initial evaluation and the average of the absolute differences between	Landing.	Constant airspeed, gear down, landing configuration flaps.				X	For initial evaluation, it is acceptable to have some 1/3 octave bands out of ± 5 dB tolerance but not more than 2 that are consecutive and in any case within ± 7 dB from approved reference data, providing that the overall trend is correct.

		initial and recurrent evaluation results cannot exceed 2 dB.							Where initial evaluation employs approved subjective tuning to develop the approved reference standard, recurrent evaluation tolerances should be used during recurrent evaluations.
5.b	**Propeller-driven airplanes**								All tests in this section should be presented using an unweighted 1/3-octave band format from at least band 17 to 42 (50 Hz to 16 kHz). A measurement of minimum 20 s should be taken at the location corresponding to the approved data set. The approved data set and FSTD results should be produced using comparable data analysis techniques. Refer to paragraph 3.7 of this Appendix.
5.b.1.	Ready for engine start.	Initial evaluation: ± 5 dB per 1/3 octave band. Recurrent evaluation: cannot exceed ±5 dB difference on three consecutive bands when compared to initial evaluation and the average of the absolute differences between initial and recurrent evaluation results cannot exceed 2 dB.	Ground.	Normal condition prior to engine start. The APU should be on if appropriate.				**X**	For initial evaluation, it is acceptable to have some 1/3 octave bands out of ± 5 dB tolerance but not more than 2 that are consecutive and in any case within ± 7 dB from approved reference data, providing that the overall trend is correct. Where initial evaluation employs approved subjective tuning to develop the approved reference standard, recurrent evaluation tolerances should be used during recurrent evaluations.
5.b.2	All propellers feathered, if applicable.	Initial evaluation: ± 5 dB per 1/3 octave band. Recurrent evaluation: cannot exceed ±5 dB difference on three consecutive bands when	Ground.	Normal condition prior to takeoff.				**X**	For initial evaluation, it is acceptable to have some 1/3 octave bands out of ± 5 dB tolerance but not more than 2 that are consecutive and in any case within ± 7 dB from approved reference data,

		compared to initial evaluation and the average of the absolute differences between initial and recurrent evaluation results cannot exceed 2 dB.							providing that the overall trend is correct. Where initial evaluation employs approved subjective tuning to develop the approved reference standard, recurrent evaluation tolerances should be used during recurrent evaluations.
5.b.3.	Ground idle or equivalent.	Initial evaluation: ± 5 dB per 1/3 octave band. Recurrent evaluation: cannot exceed ±5 dB difference on three consecutive bands when compared to initial evaluation and the average of the absolute differences between initial and recurrent evaluation results cannot exceed 2 dB.	Ground.	Normal condition prior to takeoff.				X	For initial evaluation, it is acceptable to have some 1/3 octave bands out of ± 5 dB tolerance but not more than 2 that are consecutive and in any case within ± 7 dB from approved reference data, providing that the overall trend is correct. Where initial evaluation employs approved subjective tuning to develop the approved reference standard, recurrent evaluation tolerances should be used during recurrent evaluations.
5.b.4	Flight idle or equivalent.	Initial evaluation: ± 5 dB per 1/3 octave band. Recurrent evaluation: cannot exceed ±5 dB difference on three consecutive bands when compared to initial evaluation and the average of the absolute differences between initial and recurrent evaluation results cannot exceed 2 dB.	Ground.	Normal condition prior to takeoff.				X	For initial evaluation, it is acceptable to have some 1/3 octave bands out of ± 5 dB tolerance but not more than 2 that are consecutive and in any case within ± 7 dB from approved reference data, providing that the overall trend is correct. Where initial evaluation employs approved subjective tuning to develop the approved reference standard, recurrent evaluation tolerances should be used during recurrent evaluations.
5.b.5	All engines at maximum allowable power with brakes set.	Initial evaluation: ± 5 dB per 1/3 octave band. Recurrent evaluation: cannot exceed ±5 dB difference on three consecutive bands when compared to initial	Ground.	Normal condition prior to takeoff.				X	For initial evaluation, it is acceptable to have some 1/3 octave bands out of ± 5 dB tolerance but not more than 2 that are consecutive and in any case within ± 7 dB from approved reference data,

		evaluation and the average of the absolute differences between initial and recurrent evaluation results cannot exceed 2 dB.							providing that the overall trend is correct. Where initial evaluation employs approved subjective tuning to develop the approved reference standard, recurrent evaluation tolerances should be used during recurrent evaluations.
5.b.6	Climb.	Initial evaluation: ± 5 dB per 1/3 octave band. Recurrent evaluation: cannot exceed ±5 dB difference on three consecutive bands when compared to initial evaluation and the average of the absolute differences between initial and recurrent evaluation results cannot exceed 2 dB.	En-route climb.	Medium altitude.				X	For initial evaluation, it is acceptable to have some 1/3 octave bands out of ± 5 dB tolerance but not more than 2 that are consecutive and in any case within ± 7 dB from approved reference data, providing that the overall trend is correct. Where initial evaluation employs approved subjective tuning to develop the approved reference standard, recurrent evaluation tolerances should be used during recurrent evaluations.
5.b.7	Cruise	Initial evaluation: ± 5 dB per 1/3 octave band. Recurrent evaluation: cannot exceed ±5 dB difference on three consecutive bands when compared to initial evaluation and the average of the absolute differences between initial and recurrent evaluation results cannot exceed 2 dB.	Cruise.	Normal cruise configuration.				X	For initial evaluation, it is acceptable to have some 1/3 octave bands out of ± 5 dB tolerance but not more than 2 that are consecutive and in any case within ± 7 dB from approved reference data, providing that the overall trend is correct. Where initial evaluation employs approved subjective tuning to develop the approved reference standard, recurrent evaluation tolerances should be used during recurrent evaluations.
5.b.8	Initial approach.	Initial evaluation: ± 5 dB per 1/3 octave band. Recurrent evaluation: cannot exceed ±5 dB difference on three consecutive bands when compared to initial evaluation and the	Approach.	Constant airspeed, gear up, flaps extended as appropriate, RPM as per operating manual.				X	For initial evaluation, it is acceptable to have some 1/3 octave bands out of ± 5 dB tolerance but not more than 2 that are consecutive and in any case within ± 7 dB from approved reference data, providing that the overall trend is correct.

		average of the absolute differences between initial and recurrent evaluation results cannot exceed 2 dB.							Where initial evaluation employs approved subjective tuning to develop the approved reference standard, recurrent evaluation tolerances should be used during recurrent evaluations.
5.b.9	Final approach.	Initial evaluation: ± 5 dB per 1/3 octave band. Recurrent evaluation: cannot exceed ±5 dB difference on three consecutive bands when compared to initial evaluation and the average of the absolute differences between initial and recurrent evaluation results cannot exceed 2 dB.	Landing.	Constant airspeed, gear down, landing configuration flaps, RPM as per operating manual.				X	For initial evaluation, it is acceptable to have some 1/3 octave bands out of ± 5 dB tolerance but not more than 2 that are consecutive and in any case within ± 7 dB from approved reference data, providing that the overall trend is correct. Where initial evaluation employs approved subjective tuning to develop the approved reference standard, recurrent evaluation tolerances should be used during recurrent evaluations.
5.c.	**Special cases.**	Initial evaluation: ± 5 dB per 1/3 octave band. Recurrent evaluation: cannot exceed ±5 dB difference on three consecutive bands when compared to initial evaluation and the average of the absolute differences between initial and recurrent evaluation results cannot exceed 2 dB.	As appropriate.					X	This applies to special steady-state cases identified as particularly significant to the pilot, important in training, or unique to a specific airplane type or model. For initial evaluation, it is acceptable to have some 1/3 octave bands out of ± 5 dB tolerance but not more than 2 that are consecutive and in any case within ± 7 dB from approved reference data, providing that the overall trend is correct. Where initial evaluation employs approved subjective tuning to develop the approved reference standard, recurrent evaluation tolerances should be used during recurrent evaluations
5.d	**FSTD background noise**	Initial evaluation: background noise levels must fall below the sound levels described		Results of the background noise at initial qualification must be included in the QTG document and approved by the responsible Flight Standards office. The measurements are to be				X	The simulated sound will be evaluated to ensure that the background noise does not interfere with training.

		in Paragraph 7.c (5) of this Attachment. Recurrent evaluation: ±3 dB per 1/3 octave band compared to initial evaluation.		made with the simulation running, the sound muted and a dead cockpit.					Refer to paragraph 7 of this Attachment. This test should be presented using an unweighted 1/3 octave band format from band 17 to 42 (50 Hz to 16 kHz).
5.e	**Frequency response**	Initial evaluation: not applicable. Recurrent evaluation: cannot exceed ±5 dB difference on three consecutive bands when compared to initial evaluation and the average of the absolute differences between initial and recurrent evaluation results cannot exceed 2 dB.	Ground (static with all systems switched off)					X	Only required if the results are to be used during continuing qualification evaluations in lieu of airplane tests. The results must be approved by the responsible Flight Standards office during the initial qualification. This test should be presented using an unweighted 1/3 octave band format from band 17 to 42 (50 Hz to 16 kHz).
6	**SYSTEMS INTEGRATION**								
6.a.	**System response time**								
6.a.1	Transport delay.	Motion system and instrument response: 100 ms (or less) after airplane response. Visual system response: 120 ms (or less) after airplane response.	Pitch, roll and yaw.				X	X	One separate test is required in each axis. Where EFVS systems are installed, the EFVS response should be within + or - 30 ms from visual system response, and not before motion system response. *Note.— The delay from the airplane EFVS electronic elements should be added to the 30 ms tolerance before comparison with visual system reference.*
	Transport delay.	300 milliseconds or less after controller movement.	Pitch, roll and yaw.		X	X			

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Table A2E

Alternative Data Sources, Procedures, and Instrumentation				
QPS REQUIREMENTS The standards in this table are required if the data gathering methods described in paragraph 9 of Appendix A are not used.				**INFORMATION**
Table of Objective Tests **Test Entry Number and Title**	**Sim Level**		**Alternative Data Sources, Procedures, and Instrumentation**	**Notes**
	A	**B**		
* * * * * * *				
1.a.2. Performance. Taxi Rate of Turn vs. Nosewheel Steering Angle		**X**	Data may be acquired by using a constant tiller position, measured with a protractor or full rudder pedal application for steady state turn, and synchronized video of heading indicator. If less than full rudder pedal is used, pedal position must be recorded.	A single procedure may not be adequate for all airplane steering systems, therefore appropriate measurement procedures must be devised and proposed for the responsible Flight Standards office concurrence.
* * * * * * *				
2.a.1.a. Handling Qualities. Static Control Checks. Pitch Controller Position vs. Force and Surface Position Calibration	**X**	**X**	Surface position data may be acquired from flight data recorder (FDR) sensor or, if no FDR sensor, at selected, significant column positions (encompassing significant column position data points), acceptable to the responsible Flight Standards office, using a control surface protractor on the ground. Force data may be acquired by using a hand held force gauge at the same column position data points.	For airplanes with reversible control systems, surface position data acquisition should be accomplished with winds less than 5 kts.

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2.a.2.a. Handling Qualities. Static Control Checks. Roll Controller Position vs. Force and Surface Position Calibration	**X**	**X**	Surface position data may be acquired from flight data recorder (FDR) sensor or, if no FDR sensor, at selected, significant wheel positions (encompassing significant wheel position data points), acceptable to the responsible Flight Standards office, using a control surface protractor on the ground. Force data may be acquired by using a hand held force gauge at the same wheel position data points.	For airplanes with reversible control systems, surface position data acquisition should be accomplished with winds less than 5 kts.
2.a.3.a. Handling Qualities. Static Control Checks. Rudder Pedal Position vs. Force and Surface Position Calibration	**X**	**X**	Surface position data may be acquired from flight data recorder (FDR) sensor or, if no FDR sensor, at selected, significant rudder pedal positions (encompassing significant rudder pedal position data points), acceptable to the responsible Flight Standards office, using a control surface protractor on the ground. Force data may be acquired by using a hand held force gauge at the same rudder pedal position data points.	For airplanes with reversible control systems, surface position data acquisition should be accomplished with winds less than 5 kts.

Attachments 3 * * *

Table A3C

Functions and Subjective Tests				
QPS REQUIREMENTS				
Entry Number	Additional Airport Models Beyond Minimum Required for Qualification Class II Airport Models	Simulator Level		
		A	B	C	D
	This table specifies the minimum airport model content and functionality necessary to add airport models to a simulator's model library, beyond those necessary for qualification at the stated level, without the necessity of further involvement of the responsible Flight Standards office or TPAA.				

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Attachment 4 * * *

Attachment 4 to Appendix A to Part 60—Figure A4A—Sample Letter, Request for Initial, Upgrade, or Reinstatement Evaluation

Information

Attachment 4 to Appendix A to Part 60—FigureA4C—Sample Letter of Compliance

Attachment 4 to Appendix A to Part 60—Figure A4C – Sample Letter of Compliance

Date _____

RE: Request for Initial/Upgrade Evaluation Date

This is to advise you of our intent to request an (initial or upgrade) evaluation of our (FFS Manufacturer), (Aircraft Type/Level) Full Flight Simulator (FFS), (FAA ID Number, if previously qualified), located in (City, State) at the (Facility) on (Proposed Evaluation Date). (The proposed evaluation date shall not be more than 180 days following the date of this letter.) The FFS will be sponsored by (Name of Training Center/Air Carrier), FAA Designator (4 Letter Code). The FFS will be sponsored as follows: (Select One)

☐ The FFS will be used within the sponsor's FAA approved training program and placed on the sponsor's Training/Operations Specifications.

☐ The FFS will be used for dry lease only.

We agree to provide the formal request for the evaluation to your staff as follows: (check one)

☐ For QTG tests run at the factory, not later, than 45 days prior to the proposed evaluation date with the additional "l/3 on-site" tests provided not later than 14 days prior to the proposed evaluation date.

☐ For QTG tests run on-site, not later than 30 days prior to the proposed evaluation date.

We understand that the formal request will contain the following documents:

1. Sponsor's Letter of Request (*Company Compliance Letter*).
2. Principal Operations Inspector (POI) or Training Center Program Manager's (TCPM) endorsement.
3. Complete QTG.

If we are unable to meet the above requirements, we understand this may result in a significant delay, perhaps 45 days or more, in rescheduling and completing the evaluation.

(The sponsor should add additional comments as necessary).

Please contact (Name Telephone and Fax Number of Sponsor's Contact) to confirm the date for this initial evaluation. We understand a member of your National Simulator Program staff will respond to this request within 14 days.

A copy of this letter of intent has been provided to (Name), the Principal Operations Inspector (POI) and/or Training Center Program Manager (TCPM).

Sincerely,

Attachment: FFS Information Form
cc: POI/TCPM

INFORMATION

(Date)

Mr. (Name of Training Program Approval Authority):
(Name of responsible Flight Standards office)
(Address)
(City/State/Zip)

Dear Mr. (Name of TPAA):

RE: Letter of Compliance

(Operator Sponsor Name) requests evaluation of our (Aircraft Type) FFS for Level (__) qualification. The (FFS Manufacturer Name) FFS with (Visual System Manufacturer Name/Model) system is fully defined on the FFS Information page of the accompanying Qualification Test Guide (QTG). We have completed the tests of the FFS and certify that it meets all applicable requirements of FAR parts 121, 125, or 135), and the guidance of (AC 120-40B or 14 CFR Part 60). Appropriate hardware and software configuration control procedures have been established. Our Pilot(s), (Name(s)), who are qualified on (Aircraft Type) aircraft have assessed the FFS and have found that it conforms to the (Operator/Sponsor) (Aircraft Type) flight deck configuration and that the simulated systems and subsystems function equivalently to those in the aircraft. The above named pilot(s) have also assessed the performance and the flying qualities of the FFS and find that it represents the respective aircraft.

(Added Comments may be placed here)

Sincerely,
(Sponsor Representative)

Attachment 4 to Appendix A to Part 60—Figure A4D—Sample Qualification Test Guide Cover Page

INFORMATION

SPONSOR NAME
SPONSOR ADDRESS

FAA QUALIFICATION TEST GUIDE
(SPECIFIC AIRPLANE MODEL)
for example
Stratos BA797-320A
(Type of Simulator)
(Simulator Identification Including Manufacturer, Serial Number, Visual System Used)
(Simulator Level)
(Qualification Performance Standard Used)
(Simulator Location)

FAA Initial Evaluation
Date: _____

_____ Date: _____
(Sponsor)

_____ Date: _____
FAA

Attachment 4 to Appendix A to Part 60—
Figure A4E—Sample Statement of Qualification—Certificate

INFORMATION

Federal Aviation Administration

Certificate of Qualification

This is to certify that representatives of the FAA
Completed an evaluation of the

Go-Fast Airlines

Farnsworth Z-100 Full Flight Simulator

FAA Identification Number 999

And pursuant to 14 CFR Part 60 found it to meet its original qualification basis, AC 120-40B (MM/DD/YY)

The Master Qualification Test Guide and the attached
Configuration List and Restrictions List
Provide the Qualification Basis for this device to operate at

Level D

Until April 30, 2010
Unless sooner rescinded or extended by the FAA

March 15, 2009	*B. Williamson*
(date)	(for the FAA)

* * * * *

■ 41. In appendix B to part 60:
■ a. In the introductory ''Begin Information'' text:
■ i. In the first sentence, remove ''or Level 6'' and in its place add ''Level 6, or Level 7'';
■ ii. In the second sentence, remove '', NSPM,'';
■ iii. In the last sentence, remove the phrase ''NSPM, or a person or persons assigned by the NSPM'' and add in its place the words ''responsible Flight Standards office''.
■ b. In section 1:
■ i. Remove and reserve paragraph b.;
■ ii. Remove the last sentence of paragraph c.;
■ iii. In paragraph d.(12), add the words ''Flightcrew Member'' after ''as amended,''; and
■ iv. Revise paragraph d.(26).
■ c. In section 11:
■ i. In paragraph o. introductory text, remove the words ''an NSP pilot'' and add in their place the phrase ''a pilot from the responsible Flight Standards office'' and remove second instance of the word ''NSP'';
■ ii. In paragraph r.(1), remove the word ''NSP''; and
■ iii. In paragraph v., remove the phrase ''NSPM or visit the NSPM website'' and add in its place the words ''responsible Flight Standards office''.
■ d. In attachment 1, revise table B1A;
■ e. In attachment 2:
■ i. Revise table B2A;
■ ii. In section 4.b., remove the word ''NSP'' and add in its place the word ''FAA''; and
■ iii. In table B2F, revise entries 2.a.1.a., 2.a.2.a., and 2.a.3.a.;
■ f. In attachment 3, revise table B3C;
■ g. In attachment 4:
■ i. In the table of contents, revise the entry for Figure B4H to read ''[Reserved]'';
■ ii. Revise figures B4A, B4C, B4D, and B4E;
■ iii. Remove and reserve figure B4H;
■ h. Remove the word ''NSPM'' and in its place add the words ''responsible Flight Standards office'' in the following places:
■ i. Section 1. Introduction, paragraph c., first two instances;
■ ii. Section 9. FTD Objective Data Requirements, paragraphs d., d.(1), d.(2), g., h. and i.;
■ iii. Section 10. Special Equipment and Personnel Requirements for Qualification of the FTD, paragraph a;
■ iv. Section 11. Initial (and Upgrade) Qualification Requirements, paragraphs b.(2), b.(3), d., f., g.(1), h., j., k., l., m., n., n.(2), o., p., q., r.(2), s., t., and w.;
■ v. Section 13. Previously Qualified FTDs, paragraphs a.(1), a.(3), a.(4), a.(5), d., and i.;
■ vi. Section 14. Inspection, Continuing Qualification Evaluation, and Maintenance Requirements, paragraphs a., d., and h.;
■ vii. Section 17. Modifications to FTDs, paragraphs b.(1) and b.(2);
■ viii. Section 19. Automatic Loss of Qualification and Procedures for Restoration of Qualification;
■ ix. Section 20. Other Losses of Qualification and Procedures for Restoration of Qualification; Section
■ x. Attachment 2, section 2. Test Requirements, paragraphs a., h., j., k., and l.; and
■ xi. Attachment 2, section 5. Alternative Data Sources, Procedures, and Instrumentation: Level 6 FTD Only, paragraphs c., d.(2), and e.
■ n. Remove the word ''NSP'' in the following places:
■ i. Section 14, paragraph f; and
■ ii. Attachment 3, paragraphs 1.b, and 1.c.

The revisions read as follows:

Appendix B to Part 60 Qualification Performance Standards for Airplane Flight Training Devices

* * * * *

1. Introduction

* * * * *

d. * * *

26. FAA Airman Certification Standards and Practical Test Standards for Airline Transport Pilot, Type Ratings, Commercial Pilot, and Instrument Ratings.

* * * * *

Attachment 1 to Appendix B to Part 60—General FTD REQUIREMENTS

* * * * *

Table B1A – Minimum FTD Requirements						
QPS REQUIREMENTS						INFORMATION
Entry Number	General FTD Requirements	FTD Level				Notes
		4	5	6	7	
1. General Flight deck Configuration.						
1.a.	The FTD must have a flight deck that is a replica of the airplane simulated with controls, equipment, observable flight deck indicators, circuit breakers, and bulkheads properly located, functionally accurate and replicating the airplane. The direction of movement of controls and switches must be identical to that in the airplane. Pilot seat(s) must afford the capability for the occupant to be able to achieve the design "eye position." Equipment for the operation of the flight deck windows must be included, but the actual windows need not be operable. Fire axes, extinguishers, and spare light bulbs must be available in the flight FTD, but may be relocated to a suitable location as near as practical to the original position. Fire axes, landing gear pins, and any similar purpose instruments need only be represented in silhouette.			X	X	For FTD purposes, the flight deck consists of all that space forward of a cross section of the fuselage at the most extreme aft setting of the pilots' seats including additional, required flight crewmember duty stations and those required bulkheads aft of the pilot seats. For clarification, bulkheads containing only items such as landing gear pin storage compartments, fire axes and

	The use of electronically displayed images with physical overlay or masking for FTD instruments and/or instrument panels is acceptable provided: (1) All instruments and instrument panel layouts are dimensionally correct with differences, if any, being imperceptible to the pilot; (2) Instruments replicate those of the airplane including full instrument functionality and embedded logic; (3) Instruments displayed are free of quantization (stepping); (4) Instrument display characteristics replicate those of the airplane including: resolution, colors, luminance, brightness, fonts, fill patterns, line styles and symbology; (5) Overlay or masking, including bezels and bugs, as applicable, replicates the airplane panel(s); (6) Instrument controls and switches replicate and operate with the same technique, effort, travel and in the same direction as those in the airplane; (7) Instrument lighting replicates that of the airplane and is operated from the FSTD control for that lighting and, if applicable, is at a level commensurate with other lighting operated by that same control; and (8) As applicable, instruments must have faceplates that replicate those in the airplane; and Level 7 FTD only; The display image of any three dimensional instrument, such as an electro-mechanical instrument, should appear to have the same three dimensional depth as the replicated instrument. The appearance of the simulated instrument, when viewed from the principle operator's angle, should replicate that of the actual airplane instrument. Any instrument reading inaccuracy due to viewing angle and parallax present in the actual airplane instrument should be duplicated in the simulated instrument display image. Viewing angle error and parallax must be minimized on shared instruments such and engine displays and standby indicators.					extinguishers, spare light bulbs, aircraft documents pouches are not considered essential and may be omitted. For Level 6 FTDs, flight deck window panes may be omitted where non-distracting and subjectively acceptable to conduct qualified training tasks.
1.b.	The FTD must have equipment (e.g., instruments, panels, systems, circuit breakers, and controls) simulated sufficiently for the authorized training/checking events to be accomplished. The installed equipment must be located in a spatially correct location and may be in a flight deck or an open flight deck area. Additional equipment required for the authorized training/checking events must be available in the FTD, but may be located in a suitable location as near as practical to the spatially correct position.	**X**	**X**			

	Actuation of equipment must replicate the appropriate function in the airplane. Fire axes, landing gear pins, and any similar purpose instruments need only be represented in silhouette.					
1.c.	Those circuit breakers that affect procedures or result in observable flight deck indications must be properly located and functionally accurate.				**X**	
2. Programming.						
2.a.1	The FTD must provide the proper effect of aerodynamic changes for the combinations of drag and thrust normally encountered in flight. This must include the effect of change in airplane attitude, thrust, drag, altitude, temperature, and configuration. Level 6 additionally requires the effects of changes in gross weight and center of gravity. Level 5 requires only generic aerodynamic programming. An SOC is required.		**X**	**X**		
2.a.2	A flight dynamics model that accounts for various combinations of drag and thrust normally encountered in flight must correspond to actual flight conditions, including the effect of change in airplane attitude, thrust, drag, altitude, temperature, gross weight, moments of inertia, center of gravity location, and configuration. The effects of pitch attitude and of fuel slosh on the aircraft center of gravity must be simulated. An SOC is required.				**X**	
2.b.	The FTD must have the computer capacity, accuracy, resolution, and dynamic response needed to meet the qualification level sought. An SOC is required.	**X**	**X**	**X**	**X**	
2.c.1	Relative responses of the flight deck instruments must be measured by latency tests, or transport delay tests, and may not exceed 300 milliseconds. The instruments must respond to abrupt input at the pilot's position within the allotted time, but not before the time when the airplane responds under the same conditions. (1) Latency: The FTD instrument and, if applicable, the motion system and the visual system response must not be prior to that time when the		**X**	**X**		The intent is to verify that the FTD provides instrument cues that are, within the stated time delays, like the airplane responses. For airplane response, acceleration in the appropriate, corresponding rotational axis is preferred.

	airplane responds and may respond up to 300 milliseconds after that time under the same conditions. (2) Transport Delay: As an alternative to the Latency requirement, a transport delay objective test may be used to demonstrate that the FTD system does not exceed the specified limit. The sponsor must measure all the delay encountered by a step signal migrating from the pilot's control through all the simulation software modules in the correct order, using a handshaking protocol, finally through the normal output interfaces to the instrument display and, if applicable, the motion system, and the visual system.					Additional information regarding Latency and Transport Delay testing may be found in Appendix A, Attachment 2, paragraph 15.
2.c.2.	Relative responses of the motion system, visual system, and flight deck instruments, measured by latency tests or transport delay tests. Motion onset should occur before the start of the visual scene change (the start of the scan of the first video field containing different information) but must occur before the end of the scan of that video field. Instrument response may not occur prior to motion onset. Test results must be within the following limits: 100 ms for the motion (if installed) and instrument systems; and 120 ms for the visual system.				**X**	The intent is to verify that the FTD provides instrument, motion, and visual cues that are, within the stated time delays, like the airplane responses. For airplane response, acceleration in the appropriate, corresponding rotational axis is preferred.
2.d.	Ground handling and aerodynamic programming must include the following:					
2.d.1.	Ground effect.				**X**	Ground effect includes modeling that accounts for roundout, flare, touchdown, lift, drag, pitching moment, trim, and power while in ground effect.
2.d.2.	Ground reaction.				**X**	Ground reaction includes modeling that accounts for strut deflections, tire friction, and side forces. This is the reaction of the airplane upon contact with the runway during landing, and may differ with changes in factors such as gross weight, airspeed, or rate of descent on touchdown.

2.d.3.	Ground handling characteristics, including aerodynamic and ground reaction modeling including steering inputs, operations with crosswind, gusting crosswind, braking, thrust reversing, deceleration, and turning radius.				**X**	
2.e.	If the aircraft being simulated is one of the aircraft listed in § 121.358, Low-altitude windshear system equipment requirements, the FTD must employ windshear models that provide training for recognition of windshear phenomena and the execution of recovery procedures. Models must be available to the instructor/evaluator for the following critical phases of flight: (1) Prior to takeoff rotation; (2) At liftoff; (3) During initial climb; and (4) On final approach, below 500 ft AGL. The QTG must reference the FAA Windshear Training Aid or present alternate airplane related data, including the implementation method(s) used. If the alternate method is selected, wind models from the Royal Aerospace Establishment (RAE), the Joint Airport Weather Studies (JAWS) Project and other recognized sources may be implemented, but must be supported and properly referenced in the QTG. The addition of realistic levels of turbulence associated with each required windshear profile must be available and selectable to the instructor. In addition to the four basic windshear models required for qualification, at least two additional "complex" windshear models must be available to the instructor which represent the complexity of actual windshear encounters. These models must be available in the takeoff and landing configurations and must consist of independent variable winds in multiple simultaneous components. The Windshear Training Aid provides two such example "complex" windshear models that may be used to satisfy this requirement.				**X**	Windshear models may consist of independent variable winds in multiple simultaneous components. The FAA Windshear Training Aid presents one acceptable means of compliance with FTD wind model requirements. The FTD should employ a method to ensure the required survivable and non-survivable windshear scenarios are repeatable in the training environment. For Level 7 FTDs, windshear training tasks may only be qualified for aircraft equipped with a synthetic stall warning system. The qualified windshear profile(s) are evaluated to ensure the synthetic stall warning (and not the stall buffet) is first indication of the stall.
2.f.	The FTD must provide for manual and automatic testing of FTD hardware and software programming to determine compliance with FTD objective tests as prescribed in Attachment 2 of this appendix. An SOC is required.				**X**	Automatic "flagging" of out-of-tolerance situations is encouraged.
2.g.	The FTD must accurately reproduce the following runway conditions: (1) Dry; (2) Wet;				**X**	

	(3) Icy; (4) Patchy Wet; (5) Patchy Icy; and (6) Wet on Rubber Residue in Touchdown Zone. An SOC is required.					
2.h.	The FTD must simulate: (1) brake and tire failure dynamics, including antiskid failure; and (2) decreased brake efficiency due to high brake temperatures, if applicable. An SOC is required				**X**	FTD pitch, side loading, and directional control characteristics should be representative of the airplane.
2.i.	Engine and Airframe Icing Modeling that includes the effects of icing, where appropriate, on the airframe, aerodynamics, and the engine(s). Icing models must simulate the aerodynamic degradation effects of ice accretion on the airplane lifting surfaces including loss of lift, decrease in stall angle of attack, change in pitching moment, decrease in control effectiveness, and changes in control forces in addition to any overall increase in drag. Aircraft systems (such as the stall protection system and autoflight system) must respond properly to ice accretion consistent with the simulated aircraft. Aircraft OEM data or other acceptable analytical methods must be utilized to develop ice accretion models that are representative of the simulated aircraft's performance degradation in a typical in-flight icing encounter. Acceptable analytical methods may include wind tunnel analysis and/or engineering analysis of the aerodynamic effects of icing on the lifting surfaces coupled with tuning and supplemental subjective assessment by a subject matter expert pilot. SOC required.				**X**	SOC should be provided describing the effects which provide training in the specific skills required for recognition of icing phenomena and execution of recovery. The SOC should describe the source data and any analytical methods used to develop ice accretion models including verification that these effects have been tested. Icing effects simulation models are only required for those airplanes authorized for operations in icing conditions. Icing simulation models should be developed to provide training in the specific skills required for recognition of ice accumulation and execution of the required response. See Attachment 7 of this Appendix for further guidance material.

2.j.	The aerodynamic modeling in the FTD must include: (1) Low-altitude level-flight ground effect; (2) Mach effect at high altitude; (3) Normal and reverse dynamic thrust effect on control surfaces; (4) Aeroelastic representations; and (5) Nonlinearities due to sideslip. An SOC is required and must include references to computations of aeroelastic representations and of nonlinearities due to sideslip.				**X**	See Attachment 2 of this appendix, paragraph 5, for further information on ground effect.
2.k.	The FTD must have aerodynamic and ground reaction modeling for the effects of reverse thrust on directional control, if applicable. An SOC is required.				**X**	
3. Equipment Operation.						
3.a.	All relevant instrument indications involved in the simulation of the airplane must automatically respond to control movement or external disturbances to the simulated airplane; e.g., turbulence or windshear. Numerical values must be presented in the appropriate units. For Level 7 FTDs, instrument indications must also respond to effects resulting from icing.		**X**	**X**	**X**	
3.b.1.	Navigation equipment must be installed and operate within the tolerances applicable for the airplane. Levels 6 must also include communication equipment (inter-phone and air/ground) like that in the airplane and, if appropriate to the operation being conducted, an oxygen mask microphone system. Level 5 need have only that navigation equipment necessary to fly an instrument approach.		**X**	**X**		
3.b.2.	Communications, navigation, caution, and warning equipment must be installed and operate within the tolerances applicable for the airplane. Instructor control of internal and external navigational aids. Navigation aids must be usable within range or line-of-sight without restriction, as applicable to the geographic area.				**X**	See Attachment 3 of this appendix for further information regarding long-range navigation equipment.
3.b.3.	Complete navigation database for at least 3 airports with corresponding precision and non-precision approach procedures, including navigational database updates.				**X**	

3.c.1.	Installed systems must simulate the applicable airplane system operation, both on the ground and in flight. Installed systems must be operative to the extent that applicable normal, abnormal, and emergency operating procedures included in the sponsor's training programs can be accomplished. Level 6 must simulate all applicable airplane flight, navigation, and systems operation. Level 5 must have at least functional flight and navigational controls, displays, and instrumentation. Level 4 must have at least one airplane system installed and functional.	**X**	**X**	**X**		
3.c.2.	Simulated airplane systems must operate as the airplane systems operate under normal, abnormal, and emergency operating conditions on the ground and in flight. Once activated, proper systems operation must result from system management by the crew member and not require any further input from the instructor's controls.				**X**	Airplane system operation should be predicated on, and traceable to, the system data supplied by the airplane manufacturer, original equipment manufacturer or alternative approved data for the airplane system or component. At a minimum, alternate approved data should validate the operation of all normal, abnormal, and emergency operating procedures and training tasks the FSTD is qualified to conduct.
3.d.	The lighting environment for panels and instruments must be sufficient for the operation being conducted.	**X**	**X**	**X**	**X**	Back-lighted panels and instruments may be installed but are not required.
3.e.	The FTD must provide control forces and control travel that corresponds to the airplane being simulated. Control forces must react in the same manner as in the airplane under the same flight conditions. For Level 7 FTDs, control systems must replicate airplane operation for the normal and any non-normal modes including back-up systems and should reflect failures of associated systems. Appropriate cockpit indications and messages must be replicated.			**X**	**X**	

3.f.	The FTD must provide control forces and control travel of sufficient precision to manually fly an instrument approach.		**X**			
3.e.	FTD control feel dynamics must replicate the airplane. This must be determined by comparing a recording of the control feel dynamics of the FTD to airplane measurements. For initial and upgrade qualification evaluations, the control dynamic characteristics must be measured and recorded directly from the flight deck controls, and must be accomplished in takeoff, cruise, and landing flight conditions and configurations.				**X**	
4. Instructor or Evaluator Facilities.						
4.a.1.	In addition to the flight crewmember stations, suitable seating arrangements for an instructor/check airman and FAA Inspector must be available. These seats must provide adequate view of crewmember's panel(s).	**X**	**X**	**X**		These seats need not be a replica of an aircraft seat and may be as simple as an office chair placed in an appropriate position.
4.a.2.	In addition to the flight crewmember stations, the FTD must have at least two suitable seats for the instructor/check airman and FAA inspector. These seats must provide adequate vision to the pilot's panel and forward windows. All seats other than flight crew seats need not represent those found in the airplane, but must be adequately secured to the floor and equipped with similar positive restraint devices.				**X**	The responsible Flight Standards office will consider alternatives to this standard for additional seats based on unique flight deck configurations.
4.b.1.	The FTD must have instructor controls that permit activation of normal, abnormal, and emergency conditions as appropriate. Once activated, proper system operation must result from system management by the crew and not require input from the instructor controls.	**X**	**X**	**X**		
4.b.2.	The FTD must have controls that enable the instructor/evaluator to control all required system variables and insert all abnormal or emergency conditions into the simulated airplane systems as described in the sponsor's FAA-approved training program; or as described in the relevant operating manual as appropriate.				**X**	
4.c.	The FTD must have instructor controls for all environmental effects expected to be available at the IOS; e.g., clouds, visibility, icing, precipitation, temperature, storm cells and microbursts, turbulence, and intermediate and high altitude wind speed and direction.				**X**	
4.d.	The FTD must provide the instructor or evaluator the ability to present ground and air hazards.				**X**	For example, another airplane crossing the active runway or converging airborne traffic.
5. Motion System.						

5.a.	The FTD may have a motion system, if desired, although it is not required. If a motion system is installed and additional training, testing, or checking credits are being sought on the basis of having a motion system, the motion system operation may not be distracting and must be coupled closely to provide integrated sensory cues. The motion system must also respond to abrupt input at the pilot's position within the allotted time, but not before the time when the airplane responds under the same conditions.		**X**	**X**	**X**	The motion system standards set out in part 60, Appendix A for at least Level A simulators is acceptable.
5.b.	If a motion system is installed, it must be measured by latency tests or transport delay tests and may not exceed 300 milliseconds. Instrument response may not occur prior to motion onset.			**X**	**X**	The motion system standards set out in part 60, Appendix A for at least Level A simulators is acceptable.
6. Visual System.						
6.a.	The FTD may have a visual system, if desired, although it is not required. If a visual system is installed, it must meet the following criteria:	**X**	**X**	**X**		
6.a.1.	The visual system must respond to abrupt input at the pilot's position. An SOC is required.		**X**	**X**		
6.a.2.	The visual system must be at least a single channel, non-collimated display. An SOC is required.	**X**	**X**	**X**		
6.a.3.	The visual system must provide at least a field-of-view of 18° vertical / 24° horizontal for the pilot flying. An SOC is required.	**X**	**X**	**X**		
6.a.4.	The visual system must provide for a maximum parallax of 10° per pilot. An SOC is required.	**X**	**X**	**X**		
6.a.5.	The visual scene content may not be distracting. An SOC is required.	**X**	**X**	**X**		
6.a.6.	The minimum distance from the pilot's eye position to the surface of a direct view display may not be less than the distance to any front panel instrument. An SOC is required.					
6.a.7.	The visual system must provide for a minimum resolution of 5 arc-minutes for both computed and displayed pixel size. An SOC is required.	**X**	**X**	**X**		
6.b.	If a visual system is installed and additional training, testing, or checking credits are being sought on the basis of having a visual system, a visual system meeting the standards set out for at least a Level A FFS (see Appendix A of this part) will be required. A "direct-view," non-collimated visual system (with the other requirements for a Level A visual system met) may be considered satisfactory for those			**X**		Directly projected, non-collimated visual displays may prove to be unacceptable for dual pilot applications.

	installations where the visual system design "eye point" is appropriately adjusted for each pilot's position such that the parallax error is at or less than 10° simultaneously for each pilot. An SOC is required.					
6.c.	The FTD must have a visual system providing an out-of-the-flight deck view.				**X**	
6.d.	The FTD must provide a continuous visual field-of-view of at least176° horizontally and 36° vertically or the number of degrees necessary to meet the visual ground segment requirement, whichever is greater. The minimum horizontal field-of-view coverage must be plus and minus one-half (½) of the minimum continuous field-of-view requirement, centered on the zero degree azimuth line relative to the aircraft fuselage. An SOC is required and must explain the system geometry measurements including system linearity and field-of-view. Collimation is not required but parallax effects must be minimized (not greater than 10° for each pilot when aligned for the point midway between the left and right seat eyepoints).				**X**	The horizontal field-of-view is traditionally described as a 180° field-of-view. However, the field-of-view is technically no less than 176°. Additional field-of-view capability may be added at the sponsor's discretion provided the minimum fields of view are retained.
6.e.	The visual system must be free from optical discontinuities and artifacts that create non-realistic cues.				**X**	Non-realistic cues might include image "swimming" and image "roll-off," that may lead a pilot to make incorrect assessments of speed, acceleration, or situational awareness.
6.f.	The FTD must have operational landing lights for night scenes. Where used, dusk (or twilight) scenes require operational landing lights.				**X**	
6.g.	The FTD must have instructor controls for the following: (1) Visibility in statute miles (km) and runway visual range (RVR) in ft.(m); (2) Airport selection; and (3) Airport lighting.				**X**	
6.h.	The FTD must provide visual system compatibility with dynamic response programming.				**X**	
6.i.	The FTD must show that the segment of the ground visible from the FTD flight deck is the same as from the airplane flight deck (within established				**X**	This will show the modeling accuracy of RVR, glideslope, and localizer for a given weight, configuration, and speed within

	tolerances) when at the correct airspeed, in the landing configuration, at the appropriate height above the touchdown zone, and with appropriate visibility.					the airplane's operational envelope for a normal approach and landing.
6.j.	The FTD must provide visual cues necessary to assess sink rates (provide depth perception) during takeoffs and landings, to include: (1) Surface on runways, taxiways, and ramps; and (2) Terrain features.				**X**	
6.k.	The FTD must provide for accurate portrayal of the visual environment relating to the FTD attitude.				**X**	Visual attitude vs. FTD attitude is a comparison of pitch and roll of the horizon as displayed in the visual scene compared to the display on the attitude indicator.
6.l.	The FTD must provide for quick confirmation of visual system color, RVR, focus, and intensity. An SOC is required.				**X**	
6.m.	The FTD must be capable of producing at least 10 levels of occulting.				**X**	
6.n.	Night Visual Scenes. When used in training, testing, or checking activities, the FTD must provide night visual scenes with sufficient scene content to recognize the airport, the terrain, and major landmarks around the airport. The scene content must allow a pilot to successfully accomplish a visual landing. Scenes must include a definable horizon and typical terrain characteristics such as fields, roads and bodies of water and surfaces illuminated by airplane landing lights.				**X**	
6.o.	Dusk (or Twilight) Visual Scenes. When used in training, testing, or checking activities, the FTD must provide dusk (or twilight) visual scenes with sufficient scene content to recognize the airport, the terrain, and major landmarks around the airport. The scene content must allow a pilot to successfully accomplish a visual landing. Dusk (or twilight) scenes, as a minimum, must provide full color presentations of reduced ambient intensity, sufficient surfaces with appropriate textural cues that include self-illuminated objects such as road networks, ramp lighting and airport signage, to conduct a visual approach, landing and airport movement (taxi). Scenes must include a definable horizon and typical terrain characteristics such as fields, roads and bodies of water and surfaces illuminated by airplane landing lights. If provided, directional horizon lighting must have correct orientation and be consistent with surface shading effects. Total night or dusk (twilight) scene				**X**	

	content must be comparable in detail to that produced by 10,000 visible textured surfaces and 15,000 visible lights with sufficient system capacity to display 16 simultaneously moving objects. An SOC is required.					
6.p.	Daylight Visual Scenes. The FTD must provide daylight visual scenes with sufficient scene content to recognize the airport, the terrain, and major landmarks around the airport. The scene content must allow a pilot to successfully accomplish a visual landing. Any ambient lighting must not "washout" the displayed visual scene. Total daylight scene content must be comparable in detail to that produced by 10,000 visible textured surfaces and 6,000 visible lights with sufficient system capacity to display 16 simultaneously moving objects. The visual display must be free of apparent and distracting quantization and other distracting visual effects while the FTD is in motion. An SOC is required.				**X**	
6.q.	The FTD must provide operational visual scenes that portray physical relationships known to cause landing illusions to pilots.				**X**	For example: short runways, landing approaches over water, uphill or downhill runways, rising terrain on the approach path, unique topographic features.
6.r.	The FTD must provide special weather representations of light, medium, and heavy precipitation near a thunderstorm on takeoff and during approach and landing. Representations need only be presented at and below an altitude of 2,000 ft. (610 m) above the airport surface and within 10 miles (16 km) of the airport.				**X**	
6.s.	The FTD must present visual scenes of wet and snow-covered runways, including runway lighting reflections for wet conditions, partially obscured lights for snow conditions, or suitable alternative effects.				**X**	
6.t.	The FTD must present realistic color and directionality of all airport lighting.				**X**	
6.u.	The following weather effects as observed on the visual system must be simulated and respective instructor controls provided. (1) Multiple cloud layers with adjustable bases, tops, sky coverage and scud effect; (2) Storm cells activation and/or deactivation;				**X**	Scud effects are low, detached, and irregular clouds below a defined cloud layer.

	(3) Visibility and runway visual range (RVR), including fog and patchy fog effect; (4) Effects on ownship external lighting; (5) Effects on airport lighting (including variable intensity and fog effects); (6) Surface contaminants (including wind blowing effect); (7) Variable precipitation effects (rain, hail, snow); (8) In-cloud airspeed effect; and (9) Gradual visibility changes entering and breaking out of cloud.					
6.v.	The simulator must provide visual effects for: (1) Light poles; (2) Raised edge lights as appropriate; and (3) Glow associated with approach lights in low visibility before physical lights are seen,				**X**	Visual effects for light poles and raised edge lights are for the purpose of providing additional depth perception during takeoff, landing, and taxi training tasks. Three dimensional modeling of the actual poles and stanchions is not required.
7. Sound System.						
7.a.	The FTD must provide flight deck sounds that result from pilot actions that correspond to those that occur in the airplane.			**X**	**X**	
7.b.	The volume control must have an indication of sound level setting which meets all qualification requirements.				**X**	This indication is of the sound level setting as evaluated during the FTD's initial evaluation.
7.c.	The FTD must accurately simulate the sound of precipitation, windshield wipers, and other significant airplane noises perceptible to the pilot during normal and abnormal operations, and include the sound of a crash (when the FTD is landed in an unusual attitude or in excess of the structural gear limitations); normal engine and thrust reversal sounds; and the sounds of flap, gear, and spoiler extension and retraction. Sounds must be directionally representative. An SOC is required.				**X**	

7.d.	The FTD must provide realistic amplitude and frequency of flight deck noises and sounds. FTD performance must be recorded, subjectively assessed for the initial evaluation, and be made a part of the QTG.				**X**	

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Attachment 2 to Appendix B to Part 60—Flight Training Device (FTD) Objective Tests

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Table B2A - Flight Training Device (FTD) Objective Tests								
QPS REQUIREMENTS								INFORMATION
Test		Tolerance	Flight Conditions	Test Details	FTD Level			Notes
Entry Number	Title				5	6	7	
1. Performance.								
1.a.	**Taxi.**							
1.a.1	Minimum radius turn.	±0.9 m (3 ft) or ±20% of airplane turn radius.	Ground.	Plot both main and nose gear loci and key engine parameter(s). Data for no brakes and the minimum thrust required to maintain a steady turn except for airplanes requiring asymmetric thrust or braking to achieve the minimum radius turn.			X	
1.a.2	Rate of turn versus nosewheel steering angle (NWA).	±10% or ±2°/s of turn rate.	Ground.	Record for a minimum of two speeds, greater than minimum turning radius speed with one at a typical taxi speed, and with a spread of at least 5 kt.			X	
1.b.	**Takeoff.**			*Note.— For Level 7 FTD, all airplane manufacturer commonly-used certificated take-off flap settings must be demonstrated at least once either in minimum unstick speed (1.b.3), normal take-off (1.b.4), critical engine failure on take-off (1.b.5) or crosswind take-off (1.b.6).*				
1.b.1	Ground acceleration time and distance.	±1.5 s or ±5% of time; and ±61 m (200 ft) or ±5% of distance. For Level 6 FTD: ±1.5 s or ±5% of time.	Takeoff.	Acceleration time and distance must be recorded for a minimum of 80% of the total time from brake release to V_r. Preliminary aircraft certification data may be used.		X	X	May be combined with normal takeoff (1.b.4.) or rejected takeoff (1.b.7.). Plotted data should be shown using appropriate scales for each portion of the maneuver. For Level 6 FTD, this test is required only if RTO training credit is sought.
1.b.2	Minimum control speed, ground (V_{mcg}) using aerodynamic controls only per applicable airworthiness requirement or alternative engine inoperative test to demonstrate ground control characteristics.	±25% of maximum airplane lateral deviation reached or ±1.5 m (5 ft). For airplanes with reversible flight control systems: ±10% or ±2.2 daN (5 lbf) rudder pedal force.	Takeoff.	Engine failure speed must be within ±1 kt of airplane engine failure speed. Engine thrust decay must be that resulting from the mathematical model for the engine applicable to the FTD under test. If the modeled engine is not the same as the airplane manufacturer's flight test engine, a further test may be run with the same initial conditions using the thrust from the flight test data as the driving parameter.			X	If a V_{mcg} test is not available, an acceptable alternative is a flight test snap engine deceleration to idle at a speed between V_1 and V_1-10 kt, followed by control of heading using aerodynamic control only and recovery should be achieved with the main gear on the ground. To ensure only aerodynamic control, nosewheel steering must be disabled (i.e. castored) or the nosewheel held slightly off the ground.

1.b.3	Minimum unstick speed (V_{mu}) or equivalent test to demonstrate early rotation take-off characteristics.	±3 kt airspeed. ±1.5° pitch angle.	Takeoff.	Record time history data from 10 knots before start of rotation until at least 5 seconds after the occurrence of main gear lift-off.			**X**	V_{mu} is defined as the minimum speed at which the last main landing gear leaves the ground. Main landing gear strut compression or equivalent air/ground signal should be recorded. If a V_{mu} test is not available, alternative acceptable flight tests are a constant high-attitude takeoff run through main gear lift-off or an early rotation takeoff. If either of these alternative solutions is selected, aft body contact/tail strike protection functionality, if present on the airplane, should be active.
1.b.4	Normal take-off.	±3 kt airspeed. ±1.5° pitch angle. ±1.5° AOA. ±6 m (20 ft) height. For airplanes with reversible flight control systems: ±2.2 daN (5 lbf) or ±10% of column force.	Takeoff.	Data required for near maximum certificated takeoff weight at mid center of gravity location and light takeoff weight at an aft center of gravity location. If the airplane has more than one certificated take-off configuration, a different configuration must be used for each weight. Record takeoff profile from brake release to at least 61 m (200 ft) AGL.			**X**	The test may be used for ground acceleration time and distance (1.b.1). Plotted data should be shown using appropriate scales for each portion of the maneuver.
1.b.5	Critical engine failure on take-off.	±3 kt airspeed. ±1.5° pitch angle. ±1.5° AOA. ±6 m (20 ft) height. ±2° roll angle. ±2° side-slip angle. ±3° heading angle. For airplanes with reversible flight control systems: ±2.2 daN (5 lbf) or ±10% of column force; ±1.3 daN (3 lbf) or ±10% of wheel force; and	Takeoff.	Record takeoff profile to at least 61 m (200 ft) AGL. Engine failure speed must be within ±3 kt of airplane data. Test at near maximum takeoff weight			**X**	

		±2.2 daN (5 lbf) or ±10% of rudder pedal force.						
1.b.6	Crosswind take-off.	± 3 kt airspeed. ±1.5° pitch angle. ±1.5° AOA. ±6 m (20 ft) height. ±2° roll angle. ±2° side-slip angle. ±3° heading angle. Correct trends at ground speeds below 40 kt for rudder/pedal and heading angle. For airplanes with reversible flight control systems: ±2.2 daN (5 lbf) or ±10% of column force; ±1.3 daN (3 lbf) or ±10% of wheel force; and ±2.2 daN (5 lbf) or ±10% of rudder pedal force.	Takeoff.	Record takeoff profile from brake release to at least 61 m (200 ft) AGL. This test requires test data, including wind profile, for a crosswind component of at least 60% of the airplane performance data value measured at 10 m (33 ft) above the runway. Wind components must be provided as headwind and crosswind values with respect to the runway.			**X**	In those situations where a maximum crosswind or a maximum demonstrated crosswind is not known, contact the responsible Flight Standards office.
1.b.7.a.	Rejected Takeoff.	±5% of time or ±1.5 s. ±7.5% of distance or ±76 m (250 ft). For Level 6 FTD: ±5% of time or ±1.5 s.	Takeoff.	Record at mass near maximum takeoff weight. Speed for reject must be at least 80% of V_1. Maximum braking effort, auto or manual. Where a maximum braking demonstration is not available, an acceptable alternative is a test using approximately 80% braking and full reverse, if applicable. Time and distance must be recorded from brake release to a full stop.			**X**	Autobrakes will be used where applicable.
1.b.7.b.	Rejected Takeoff.	±5% of time or ±1.5 s.	Takeoff	Record time for at least 80% of the segment from initiation of the rejected takeoff to full stop.		**X**		For Level 6 FTD, this test is required only if RTO training credit is sought.

1.b.8.	Dynamic Engine Failure After Takeoff.	±2°/s or ±20% of body angular rates.	Takeoff.	Engine failure speed must be within ±3 kt of airplane data. Engine failure may be a snap deceleration to idle. Record hands-off from 5 s before engine failure to +5 s or 30° roll angle, whichever occurs first. **CCA**: Test in Normal and Non-normal control state.			**X**	For safety considerations, airplane flight test may be performed out of ground effect at a safe altitude, but with correct airplane configuration and airspeed.
1.c.	**Climb.**							
1.c.1.	Normal Climb, all engines operating.	±3 kt airspeed. ±0.5 m/s (100 ft/ min) or ±5% of rate of climb.	Clean.	Flight test data are preferred; however, airplane performance manual data are an acceptable alternative. Record at nominal climb speed and mid initial climb altitude. FTD performance is to be recorded over an interval of at least 300 m (1, 000 ft).	**X**	**X**	**X**	For Level 5 and Level 6 FTDs, this may be a snapshot test result.
1.c.2.	One-engine-inoperative 2nd segment climb.	±3 kt airspeed. ±0.5 m/s (100 ft/ min) or ±5% of rate of climb, but not less than airplane performance data requirements.	2nd segment climb.	Flight test data is preferred; however, airplane performance manual data is an acceptable alternative. Record at nominal climb speed. FTD performance is to be recorded over an interval of at least 300 m (1,000 ft). Test at WAT (weight, altitude or temperature) limiting condition.			**X**	
1.c.3.	One Engine Inoperative En route Climb.	±10% time, ±10% distance, ±10% fuel used	Clean	Flight test data or airplane performance manual data may be used. Test for at least a 1,550 m (5,000 ft) segment.			**X**	
1.c.4.	One Engine Inoperative Approach Climb for airplanes with icing accountability if provided in the airplane performance data for this phase of flight.	±3 kt airspeed. ±0.5 m/s (100 ft/ min) or ±5% rate of climb, but not less than airplane performance data.	Approach	Flight test data or airplane performance manual data may be used. FTD performance to be recorded over an interval of at least 300 m (1,000 ft). Test near maximum certificated landing weight as may be applicable to an approach in icing conditions.			**X**	Airplane should be configured with all anti-ice and de-ice systems operating normally, gear up and go-around flap. All icing accountability considerations, in accordance with the airplane performance data for an approach in icing conditions, should be applied.
1.d.	**Cruise / Descent.**							
1.d.1.	Level flight acceleration	±5% Time	Cruise	Time required to increase airspeed a minimum of 50 kt, using maximum continuous thrust rating or equivalent.			**X**	

				For airplanes with a small operating speed range, speed change may be reduced to 80% of operational speed change.				
1.d.2.	Level flight deceleration.	±5% Time	Cruise	Time required to decrease airspeed a minimum of 50 kt, using idle power. For airplanes with a small operating speed range, speed change may be reduced to 80% of operational speed change.			**X**	
1.d.3.	Cruise performance.	±.05 EPR or ±3% N1 or ±5% of torque. ±5% of fuel flow.	Cruise.	The test may be a single snapshot showing instantaneous fuel flow, or a minimum of two consecutive snapshots with a spread of at least 3 minutes in steady flight.			**X**	
1.d.4.	Idle descent.	±3 kt airspeed. ±1.0 m/s (200 ft/min) or ±5% of rate of descent.	Clean.	Idle power stabilized descent at normal descent speed at mid altitude. FTD performance to be recorded over an interval of at least 300 m (1,000 ft).			**X**	
1.d.5.	Emergency descent.	±5 kt airspeed. ±1.5 m/s (300 ft/min) or ±5% of rate of descent.	As per airplane performance data.	FTD performance to be recorded over an interval of at least 900 m (3,000 ft).			**X**	Stabilized descent to be conducted with speed brakes extended if applicable, at mid altitude and near V_{mo} or according to emergency descent procedure.
1.e.	**Stopping.**							
1.e.1.	Deceleration time and distance, manual wheel brakes, dry runway, no reverse thrust.	±1.5 s or ±5% of time. For distances up to 1,220 m (4,000 ft), the smaller of ±61 m (200 ft) or ±10% of distance. For distances greater than 1,220 m (4,000 ft), ±5% of distance.	Landing.	Time and distance must be recorded for at least 80% of the total time from touchdown to a full stop. Position of ground spoilers and brake system pressure must be plotted (if applicable). Data required for medium and near maximum certificated landing weight. Engineering data may be used for the medium weight condition.			**X**	
1.e.2.	Deceleration time and distance, reverse thrust, no wheel brakes, dry runway.	±1.5 s or ±5% of time; and the smaller of ±61 m (200 ft) or ±10% of distance.	Landing	Time and distance must be recorded for at least 80% of the total time from initiation of reverse thrust to full thrust reverser minimum operating speed. Position of ground spoilers must be plotted (if applicable). Data required for medium and near maximum certificated landing weight. Engineering data may be used for the medium weight condition.			**X**	
1.e.3.	Stopping distance, wheel brakes, wet runway.	±61 m (200 ft) or ±10% of distance.	Landing.	Either flight test or manufacturer's performance manual data must be used, where available.			**X**	

				Engineering data, based on dry runway flight test stopping distance and the effects of contaminated runway braking coefficients, are an acceptable alternative.				
1.e.4.	Stopping distance, wheel brakes, icy runway.	±61 m (200 ft) or ±10% of distance.	Landing.	Either flight test or manufacturer's performance manual data must be used, where available. Engineering data, based on dry runway flight test stopping distance and the effects of contaminated runway braking coefficients, are an acceptable alternative.			**X**	
1.f.	**Engines.**							
1.f.1.	Acceleration.	For Level 7 FTD: ±10% Ti or ±0.25 s; and ±10% Tt or ±0.25 s. For Level 6 FTD: ±10% Tt or ±0.25 s. For Level 5 FTD: ±1 s	Approach or landing	Total response is the incremental change in the critical engine parameter from idle power to go-around power.	**X**	**X**	**X**	See Appendix F of this part for definitions of T_i, and T_t.
1.f.2.	Deceleration.	For Level 7 FTD: ±10% Ti or ±0.25 s; and ±10% Tt or ±0.25 s. For Level 6 FTD: ±10% Tt or ±0.25 s. For Level 5 FTD: ±1 s	Ground	Total response is the incremental change in the critical engine parameter from maximum take-off power to idle power.	**X**	**X**	**X**	See Appendix F of this part for definitions of T_i, and T_t.
2. Handling Qualities.								
2.a.	**Static Control Tests.**							
	Note 1 — Testing of position versus force is not applicable if forces are generated solely by use of airplane hardware in the FTD. *Note 2 — Pitch, roll and yaw controller position versus force or time should be measured at the control. An alternative method in lieu of external test fixtures at the flight controls would be to have recording and measuring instrumentation built into the FTD. The force and position data from this instrumentation could be directly recorded and matched to the airplane data. Provided the instrumentation was verified by using external measuring equipment while conducting the static control checks, or equivalent means, and that evidence of the satisfactory comparison is included in the MQTG, the instrumentation could be used for both initial and recurrent evaluations for the measurement of all required control checks. Verification of the instrumentation by using external measuring equipment should be repeated if major modifications and/or repairs are made to the control loading system. Such a permanent installation could be used without any time being lost for the installation of external devices. Static and dynamic flight control tests should be accomplished at the same feel or impact pressures as the validation data where applicable.* *Note 3 — (Level 7 FTD only) FTD static control testing from the second set of pilot controls is only required if both sets of controls are not mechanically interconnected on the FTD. A rationale is required from the data provider if a single set of data is applicable to both sides. If controls are mechanically interconnected in the FTD, a single set of tests is sufficient.*							
2.a.1.a.	Pitch controller position versus force and surface position calibration.	±0.9 daN (2 lbf) breakout. ±2.2 daN (5 lbf) or ±10% of force. ±2° elevator angle.	Ground.	Record results for an uninterrupted control sweep to the stops.		**X**	**X**	Test results should be validated with in-flight data from tests such as longitudinal static stability, stalls, etc.
2.a.1.b.	Pitch controller position versus force	±0.9 daN (2 lbf) breakout.	As determined by sponsor	Record results during initial qualification evaluation for an uninterrupted control sweep to the stops. The recorded tolerances apply to subsequent comparisons on continuing qualification evaluations.	**X**			Applicable only on continuing qualification evaluations. The intent is to design the control feel for Level 5 to be able to manually fly an instrument

		±2.2 daN (5 lbf) or ±10% of force.						approach; and not to compare results to flight test or other such data.
2.a.2.a.	Roll controller position versus force and surface position calibration.	±0.9 daN (2 lbf) breakout. ±1.3 daN (3 lbf) or ±10% of force. ±2° aileron angle. ±3° spoiler angle.	Ground.	Record results for an uninterrupted control sweep to the stops.		**X**	**X**	Test results should be validated with in-flight data from tests such as engine-out trims, steady state side-slips, etc.
2.a.2.b.	Roll controller position versus force	±0.9 daN (2 lbf) breakout. ±1.3 daN (3 lbf) or ±10% of force.	As determined by sponsor	Record results during initial qualification evaluation for an uninterrupted control sweep to the stops. The recorded tolerances apply to subsequent comparisons on continuing qualification evaluations.	**X**			Applicable only on continuing qualification evaluations. The intent is to design the control feel for Level 5 to be able to manually fly an instrument approach; and not to compare results to flight test or other such data.
2.a.3.a.	Rudder pedal position versus force and surface position calibration.	±2.2 daN (5 lbf) breakout. ±2.2 daN (5 lbf) or ±10% of force. ±2° rudder angle.	Ground.	Record results for an uninterrupted control sweep to the stops.		**X**	**X**	Test results should be validated with in-flight data from tests such as engine-out trims, steady state side-slips, etc.
2.a.3.b.	Rudder pedal position versus force	±2.2 daN (5 lbf) breakout. ±2.2 daN (5 lbf) or ±10% of force.	As determined by sponsor	Record results during initial qualification evaluation for an uninterrupted control sweep to the stops. The recorded tolerances apply to subsequent comparisons on continuing qualification evaluations.	**X**			Applicable only on continuing qualification evaluations. The intent is to design the control feel for Level 5 to be able to manually fly an instrument approach; and not to compare results to flight test or other such data.
2.a.4.a.	Nosewheel Steering Controller Force and Position Calibration.	±0.9 daN (2 lbf) breakout. ±1.3 daN (3 lbf) or ±10% of force. ±2° NWA.	Ground.	Record results of an uninterrupted control sweep to the stops.			**X**	
2.a.4.b.	Nosewheel Steering Controller Force	±0.9 daN (2 lbf) breakout. ±1.3 daN (3 lbf) or ±10% of force.	Ground.	Record results of an uninterrupted control sweep to the stops.		**X**		
2.a.5.	Rudder Pedal Steering Calibration.	±2° NWA.	Ground.	Record results of an uninterrupted control sweep to the stops.		**X**	**X**	
2.a.6.	Pitch Trim Indicator vs. Surface Position Calibration.	±0.5° trim angle.	Ground.			**X**	**X**	The purpose of the test is to compare FSTD surface position indicator against the FSTD flight controls model computed value.

2.a.7.	Pitch Trim Rate.	±10% of trim rate (°/s) or ±0.1°/s trim rate.	Ground and approach.	Trim rate to be checked at pilot primary induced trim rate (ground) and autopilot or pilot primary trim rate in-flight at go-around flight conditions. For CCA, representative flight test conditions must be used.			**X**	
2.a.8.	Alignment of cockpit throttle lever versus selected engine parameter.	When matching engine parameters: ±5° of TLA. When matching detents: ±3% N1 or ±.03 EPR or ±3% torque, or ±3% maximum rated manifold pressure, or equivalent. Where the levers do not have angular travel, a tolerance of ±2 cm (±0.8 in) applies.	Ground.	Simultaneous recording for all engines. The tolerances apply against airplane data. For airplanes with throttle detents, all detents to be presented and at least one position between detents/ endpoints (where practical). For airplanes without detents, end points and at least three other positions are to be presented.		**X**	**X**	Data from a test airplane or engineering test bench are acceptable, provided the correct engine controller (both hardware and software) is used. In the case of propeller-driven airplanes, if an additional lever, usually referred to as the propeller lever, is present, it should also be checked. This test may be a series of snapshot tests.
2.a.9.a.	Brake pedal position versus force and brake system pressure calibration.	±2.2 daN (5 lbf) or ±10% of force. ±1.0 MPa (150 psi) or ±10% of brake system pressure.	Ground.	Relate the hydraulic system pressure to pedal position in a ground static test. Both left and right pedals must be checked.			**X**	FTD computer output results may be used to show compliance.
2.a.9.b.	Brake pedal position versus force	±2.2 daN (5 lbf) or ±10% of force.	Ground.	Two data points are required: zero and maximum deflection. Computer output results may be used to show compliance.		**X**		FTD computer output results may be used to show compliance. Test not required unless RTO credit is sought.
2.b.	**Dynamic Control Tests.**							
	Note.— Tests 2.b.1, 2.b.2 and 2.b.3 are not applicable for FTDs where the control forces are completely generated within the airplane controller unit installed in the FTD. Power setting may be that required for level flight unless otherwise specified. See paragraph 4 of Appendix A, Attachment 2.							
2.b.1.	Pitch Control.	**For underdamped systems**: $T(P_0)$ ±10% of P_0 or ±0.05 s. $T(P_1)$ ±20% of P_1 or ±0.05 s. $T(P_2)$ ±30% of P_2 or ±0.05 s. $T(P_n)$ ±10*(n+1)% of P_n	Takeoff, Cruise, and Landing.	Data must be for normal control displacements in both directions (approximately 25% to 50% of full throw or approximately 25% to 50% of maximum allowable pitch controller deflection for flight conditions limited by the maneuvering load envelope). Tolerances apply against the absolute values of each period (considered independently).			**X**	n = the sequential period of a full oscillation. Refer to paragraph 4 of Appendix A, Attachment 2 for additional information. For overdamped and critically damped systems, see Figure A2B of Appendix A for an illustration of the reference measurement.

		or ±0.05 s. $T(A_n)$ ±10% of A_{max}, where A_{max} is the largest amplitude or ±0.5% of the total control travel (stop to stop). $T(A_d)$ ±5% of A_d = residual band or ±0.5% of the maximum control travel = residual band. ±1 significant overshoots (minimum of 1 significant overshoot). Steady state position within residual band. *Note 1.— Tolerances should not be applied on period or amplitude after the last significant overshoot.* *Note 2.— Oscillations within the residual band are not considered significant and are not subject to tolerances.* **For overdamped and critically damped systems only**, the following tolerance applies: $T(P_0)$ ±10% of P_0 or ±0.05 s.						
2.b.2.	Roll Control.	Same as 2.b.1.	Takeoff, Cruise, and Landing.	Data must be for normal control displacement (approximately 25% to 50% of full throw or approximately 25% to 50% of maximum allowable roll controller deflection for flight conditions limited by the maneuvering load envelope).			**X**	Refer to paragraph 4 of Appendix A, Attachment 2 for additional information. For overdamped and critically damped systems, see Figure A2B of Appendix A for an illustration of the reference measurement.
2.b.3.	Yaw Control.	Same as 2.b.1.	Takeoff, Cruise, and Landing.	Data must be for normal control displacement (approximately 25% to 50% of full throw).			**X**	Refer to paragraph 4 of Appendix A, Attachment 2 for additional information.

								For overdamped and critically damped systems, see Figure A2B of Appendix A for an illustration of the reference measurement.
2.b.4.	Small Control Inputs – Pitch.	±0.15°/s body pitch rate or ±20% of peak body pitch rate applied throughout the time history.	Approach or Landing.	Control inputs must be typical of minor corrections made while established on an ILS approach (approximately 0.5 to 2°/s pitch rate). Test in both directions. Show time history data from 5 s before until at least 5 s after initiation of control input. If a single test is used to demonstrate both directions, there must be a minimum of 5 s before control reversal to the opposite direction. **CCA**: Test in normal and non-normal control state.			**X**	
2.b.5.	Small Control Inputs – Roll.	±0.15°/s body roll rate or ±20% of peak body roll rate applied throughout the time history.	Approach or landing.	Control inputs must be typical of minor corrections made while established on an ILS approach (approximately 0.5 to 2°/s roll rate). Test in one direction. For airplanes that exhibit non-symmetrical behavior, test in both directions. Show time history data from 5 s before until at least 5 s after initiation of control input. If a single test is used to demonstrate both directions, there must be a minimum of 5 s before control reversal to the opposite direction. **CCA**: Test in normal and non-normal control state.			**X**	
2.b.6.	Small Control Inputs – Yaw.	±0.15°/s body yaw rate or ±20% of peak body yaw rate applied throughout the time history.	Approach or landing.	Control inputs must be typical of minor corrections made while established on an ILS approach (approximately 0.5 to 2°/s yaw rate). Test in both directions. Show time history data from 5 s before until at least 5 s after initiation of control input. If a single test is used to demonstrate both directions, there must be a minimum of 5 s before control reversal to the opposite direction. **CCA:** Test in normal and non-normal control state.			**X**	

2.c.	**Longitudinal Control Tests.**							
	Power setting is that required for level flight unless otherwise specified.							
2.c.1.a.	Power Change Dynamics.	±3 kt airspeed. ±30 m (100 ft) altitude. ±1.5° or ±20% of pitch angle.	Approach.	Power change from thrust for approach or level flight to maximum continuous or go-around power. Time history of uncontrolled free response for a time increment equal to at least 5 s before initiation of the power change to the completion of the power change + 15 s. **CCA:** Test in normal and non-normal control mode			**X**	
2.c.1.b.	Power Change Force.	±5 lb (2.2 daN) or, ±20% pitch control force.	Approach.	May be a series of snapshot test results. Power change dynamics test as described in test 2.c.1.a. will be accepted. **CCA:** Test in Normal and Non-normal control mode.	**X**	**X**		
2.c.2.a.	Flap/Slat Change Dynamics.	±3 kt airspeed. ±30 m (100 ft) altitude. ±1.5° or ±20% of pitch angle.	Takeoff through initial flap retraction, and approach to landing.	Time history of uncontrolled free response for a time increment equal to at least 5 s before initiation of the reconfiguration change to the completion of the reconfiguration change + 15 s. **CCA:** Test in normal and non-normal control mode			**X**	
2.c.2.b.	Flap/Slat Change Force.	±5 lb (2.2 daN) or, ±20% pitch control force.	Takeoff through initial flap retraction, and approach to landing.	May be a series of snapshot test results. Flap/Slat change dynamics test as described in test 2.c.2.a. will be accepted. **CCA:** Test in Normal and Non-normal control mode.	**X**	**X**		
2.c.3.	Spoiler/Speedbrake Change Dynamics.	±3 kt airspeed. ±30 m (100 ft) altitude. ±1.5° or ±20% of pitch angle.	Cruise.	Time history of uncontrolled free response for a time increment equal to at least 5 s before initiation of the configuration change to the completion of the configuration change +15 s. Results required for both extension and retraction. **CCA:** Test in normal and non-normal control mode			**X**	
2.c.4.a.	Gear Change Dynamics.	±3 kt airspeed. ±30 m (100 ft) altitude. ±1.5° or ±20% of pitch angle.	Takeoff (retraction), and Approach (extension).	Time history of uncontrolled free response for a time increment equal to at least 5 s before initiation of the configuration change to the completion of the configuration change + 15 s. **CCA:** Test in normal and non-normal control mode			**X**	
2.c.4.b.	Gear Change Force.	±5 lb (2.2 daN) or, ±20% pitch control force.	Takeoff (retraction) and Approach (extension).	May be a series of snapshot test results. Gear change dynamics test as described in test 2.c.4.a. will be accepted.	**X**	**X**		

				CCA: Test in Normal and Non-normal control mode.				
2.c.5.	Longitudinal Trim.	±1° elevator angle. ±0.5° stabilizer or trim surface angle. ±1° pitch angle. ±5% of net thrust or equivalent.	Cruise, Approach, and Landing.	Steady-state wings level trim with thrust for level flight. This test may be a series of snapshot tests. Level 5 FTD may use equivalent stick and trim controllers in lieu of elevator and trim surface. **CCA**: Test in normal or non-normal control mode, as applicable.	**X**	**X**	**X**	
2.c.6.	Longitudinal Maneuvering Stability (Stick Force/g).	±2.2 daN (5 lbf) or ±10% of pitch controller force. Alternative method: ±1° or ±10% of the change of elevator angle.	Cruise, Approach, and Landing.	Continuous time history data or a series of snapshot tests may be used. Test up to approximately 30° of roll angle for approach and landing configurations. Test up to approximately 45° of roll angle for the cruise configuration. Force tolerance not applicable if forces are generated solely by the use of airplane hardware in the FTD. Alternative method applies to airplanes which do not exhibit stick-force-per-g characteristics. **CCA:** Test in normal or non-normal control mode		**X**	**X**	
2.c.7.	Longitudinal Static Stability.	±2.2 daN (5 lbf) or ±10% of pitch controller force. Alternative method: ±1° or ±10% of the change of elevator angle.	Approach.	Data for at least two speeds above and two speeds below trim speed. The speed range must be sufficient to demonstrate stick force versus speed characteristics. This test may be a series of snapshot tests. Force tolerance is not applicable if forces are generated solely by the use of airplane hardware in the FTD. Alternative method applies to airplanes which do not exhibit speed stability characteristics. Level 5 must exhibit positive static stability, but need not comply with the numerical tolerance. **CCA:** Test in normal or non-normal control mode, as applicable.	**X**	**X**	**X**	
2.c.8.a.	Approach to Stall Characteristics	±3 kt airspeed for initial buffet, stall warning, and stall speeds. Control inputs must be plotted and demonstrate	Second Segment Climb, High Altitude Cruise (Near Performance Limited Condition), and Approach or Landing	Each of the following stall entry methods must be demonstrated in at least one of the three required flight conditions: ▪ Stall entry at wings level (1g) ▪ Stall entry in turning flight of at least 25° bank angle (accelerated stall)			**X**	Tests may be conducted at centers of gravity typically required for airplane certification stall testing.

		correct trend and magnitude. ±2.0° pitch angle ±2.0° angle of attack ±2.0° bank angle ±2.0° sideslip angle Additionally, for those simulators with reversible flight control systems: ±10% or ±5 lb (2.2 daN)) Stick/Column force (prior to "g break" only).		▪ Stall entry in a power-on condition (required only for turboprop aircraft) The required cruise condition must be conducted in a flaps-up (clean) configuration. The second segment climb and approach/landing conditions must be conducted at different flap settings. For airplanes that exhibit stall buffet as the first indication of a stall, for qualification of this task, the FTD must be equipped with a vibration system that meets the applicable subjective and objective requirements in Appendix A of this Part.				
2.c.8.b.	Stall Warning (actuation of stall warning device.)	±3 kts. airspeed, ±2° bank for speeds greater than actuation of stall warning device or initial buffet.	Second Segment Climb, and Approach or Landing.	The stall maneuver must be entered with thrust at or near idle power and wings level (1g). Record the stall warning signal and initial buffet if applicable. **CCA:** Test in Normal and Non-normal control states.	**X**	**X**		
2.c.9.a.	Phugoid Dynamics.	±10% of period. ±10% of time to one half or double amplitude or ±0.02 of damping ratio.	Cruise.	Test must include three full cycles or that necessary to determine time to one half or double amplitude, whichever is less. **CCA:** Test in non-normal control mode.		**X**	**X**	
2.c.9.b.	Phugoid Dynamics.	±10% period, Representative damping.	Cruise.	The test must include whichever is less of the following: Three full cycles (six overshoots after the input is completed), or the number of cycles sufficient to determine representative damping. **CCA:** Test in non-normal control mode.	**X**			
2.c.10	Short Period Dynamics.	±1.5° pitch angle or ±2°/s pitch rate. ±0.1 g normal acceleration	Cruise.	**CCA:** (Level 7 FTD) Test in normal and non-normal control mode. (Level 6 FTD) Test in non-normal control mode.		**X**	**X**	
2.c.11.	**(Reserved)**							
2.d.	**Lateral Directional Tests.**							
	Power setting is that required for level flight unless otherwise specified.							
2.d.1.	Minimum control speed, air (V_{mca}) or landing (V_{mcl}), per applicable airworthiness requirement or low speed engine-inoperative handling characteristics in the air.	±3 kt airspeed.	Takeoff or Landing (whichever is most critical in the airplane).	Takeoff thrust must be set on the operating engine(s). Time history or snapshot data may be used. **CCA**: Test in normal or non-normal control state, as applicable.			**X**	Minimum speed may be defined by a performance or control limit which prevents demonstration of V_{mca} or V_{mcl} in the conventional manner.

2.d.2.	Roll Response (Rate).	±2°/s or ±10% of roll rate. For airplanes with reversible flight control systems (Level 7 FTD only): ±1.3 daN (3 lbf) or ±10% of wheel force.	Cruise, and Approach or Landing.	Test with normal roll control displacement (approximately one-third of maximum roll controller travel). This test may be combined with step input of flight deck roll controller test 2.d.3.	**X**	**X**	**X**	
2.d.3.	Step input of flight deck roll controller.	±2° or ±10% of roll angle.	Approach or Landing.	This test may be combined with roll response (rate) test 2.d.2. **CCA:** (Level 7 FTD) Test in normal and non-normal control mode. (Level 6 FTD) Test in non-normal control mode.		**X**	**X**	With wings level, apply a step roll control input using approximately one-third of the roll controller travel. When reaching approximately 20° to 30° of bank, abruptly return the roll controller to neutral and allow approximately 10 seconds of airplane free response.
2.d.4.a.	Spiral Stability.	Correct trend and ±2° or ±10% of roll angle in 20 s. If alternate test is used: correct trend and ±2° aileron angle.	Cruise, and Approach or Landing.	Airplane data averaged from multiple tests may be used. Test for both directions. As an alternative test, show lateral control required to maintain a steady turn with a roll angle of approximately 30°. **CCA:** Test in non-normal control mode.			**X**	
2.d.4.b.	Spiral Stability.	Correct trend and ±3° or ±10% of roll angle in 20 s.	Cruise	Airplane data averaged from multiple tests may be used. Test for both directions. As an alternative test, show lateral control required to maintain a steady turn with a roll angle of approximately 30°. **CCA:** Test in non-normal control mode.		**X**		
2.d.4.c.	Spiral Stability.	Correct trend	Cruise	Airplane data averaged from multiple tests may be used. **CCA:** Test in non-normal control mode.	**X**			
2.d.5.	Engine Inoperative Trim.	±1° rudder angle or ±1° tab angle or equivalent rudder pedal. ±2° side-slip angle.	Second Segment Climb, and Approach or Landing.	This test may consist of snapshot tests.			**X**	Test should be performed in a manner similar to that for which a pilot is trained to trim an engine failure condition. 2nd segment climb test should be at takeoff thrust. Approach or landing test should be at thrust for level flight.
2.d.6.a.	Rudder Response.	±2°/s or ±10% of yaw rate.	Approach or Landing.	For Level 7 FTD: Test with stability augmentation on and off.		**X**	**X**	

				Test with a step input at approximately 25% of full rudder pedal throw. Not required if rudder input and response is shown in Dutch Roll test (test 2.d.7). **CCA:** Test in normal and non-normal control mode				
2.d.6.b.	Rudder Response.	Roll rate ±2°/sec, bank angle ±3°.	Approach or Landing.	May be roll response to a given rudder deflection. **CCA:** Test in Normal and Non-normal control states.	**X**			May be accomplished as a yaw response test, in which case the procedures and requirements of test 2.d.6.a. will apply.
2.d.7.	Dutch Roll	±0.5 s or ±10% of period. ±10% of time to one half or double amplitude or ±.02 of damping ratio. (Level 7 FTD only): ±1 s or ±20% of time difference between peaks of roll angle and side-slip angle.	Cruise, and Approach or Landing.	Test for at least six cycles with stability augmentation off. **CCA:** Test in non-normal control mode.		**X**	**X**	
2.d.8.	Steady State Sideslip.	For a given rudder position: ±2° roll angle; ±1° side-slip angle; ±2° or ±10% of aileron angle; and ±5° or ±10% of spoiler or equivalent roll controller position or force. For airplanes with reversible flight control systems (Level 7 FTD only): ±1.3 daN (3 lbf) or ±10% of wheel force.	Approach or Landing.	This test may be a series of snapshot tests using at least two rudder positions (in each direction for propeller-driven airplanes), one of which must be near maximum allowable rudder. (Level 5 and Level 6 FTD only): Sideslip angle is matched only for repeatability and only on continuing qualification evaluations.	**X**	**X**	**X**	

		±2.2 daN (5 lbf) or ±10% of rudder pedal force.						
2.e.	**Landings.**							
2.e.1.	Normal Landing.	±3 kt airspeed. ±1.5° pitch angle. ±1.5° AOA. ±3 m (10 ft) or ±10% of height. For airplanes with reversible flight control systems: ±2.2 daN (5 lbf) or ±10% of column force.	Landing.	Test from a minimum of 61 m (200 ft) AGL to nosewheel touchdown. **CCA:** Test in normal and non-normal control mode, if applicable.			**X**	Two tests should be shown, including two normal landing flaps (if applicable) one of which should be near maximum certificated landing mass, the other at light or medium mass.
2.e.2.	Minimum Flap Landing.	±3 kt airspeed. ±1.5° pitch angle. ±1.5° AOA. ±3 m (10 ft) or ±10% of height. For airplanes with reversible flight control systems: ±2.2 daN (5 lbf) or ±10% of column force.	Minimum Certified Landing Flap Configuration.	Test from a minimum of 61 m (200 ft) AGL to nosewheel touchdown. Test at near maximum certificated landing weight.			**X**	
2.e.3.	Crosswind Landing.	±3 kt airspeed. ±1.5° pitch angle. ±1.5° AOA. ±3 m (10 ft) or ±10% of height. ±2° roll angle. ±2° side-slip angle. ±3° heading angle.	Landing.	Test from a minimum of 61 m (200 ft) AGL to a 50% decrease in main landing gear touchdown speed. It requires test data, including wind profile, for a crosswind component of at least 60% of airplane performance data value measured at 10 m (33 ft) above the runway. Wind components must be provided as headwind and crosswind values with respect to the runway.			**X**	In those situations where a maximum crosswind or a maximum demonstrated crosswind is not known, contact the responsible Flight Standards office.

		For airplanes with reversible flight control systems: ±2.2 daN (5 lbf) or ±10% of column force. ±1.3 daN (3 lbf) or ±10% of wheel force. ±2.2 daN (5 lbf) or ±10% of rudder pedal force.						
2.e.4.	One Engine Inoperative Landing.	±3 kt airspeed. ±1.5° pitch angle. ±1.5° AOA. ±3 m (10 ft) or ±10% of height. ±2° roll angle. ±2° side-slip angle. ±3° heading angle.	Landing.	Test from a minimum of 61 m (200 ft) AGL to a 50% decrease in main landing gear touchdown speed.			**X**	
2.e.5.	Autopilot landing (if applicable).	±1.5 m (5 ft) flare height. ±0.5 s or ± 10% of Tf. ±0.7 m/s (140 ft/min) rate of descent at touchdown. ±3 m (10 ft) lateral deviation during roll-out.	Landing.	If autopilot provides roll-out guidance, record lateral deviation from touchdown to a 50% decrease in main landing gear touchdown speed. Time of autopilot flare mode engage and main gear touchdown must be noted.			**X**	See Appendix F of this part for definition of T_f.
2.e.6.	All-engine autopilot go-around.	±3 kt airspeed. ±1.5° pitch angle. ±1.5° AOA.	As per airplane performance data.	Normal all-engine autopilot go-around must be demonstrated (if applicable) at medium weight.			**X**	
2.e.7.	One engine inoperative go around.	±3 kt airspeed. ±1.5° pitch angle. ±1.5° AOA. ±2° roll angle.	As per airplane performance data.	Engine inoperative go-around required near maximum certificated landing weight with critical engine inoperative. Provide one test with autopilot (if applicable) and one without autopilot.			**X**	

		±2° side-slip angle.		**CCA**: Non-autopilot test to be conducted in non-normal mode.				
2.e.8.	Directional control (rudder effectiveness) with symmetric reverse thrust.	±5 kt airspeed. ±2°/s yaw rate.	Landing.	Apply rudder pedal input in both directions using full reverse thrust until reaching full thrust reverser minimum operating speed.			**X**	
2.e.9.	Directional control (rudder effectiveness) with asymmetric reverse thrust.	±5 kt airspeed. ±3° heading angle.	Landing.	With full reverse thrust on the operating engine(s), maintain heading with rudder pedal input until maximum rudder pedal input or thrust reverser minimum operation speed is reached.			**X**	
2.f.	**Ground Effect.**							
	Test to demonstrate Ground Effect.	±1° elevator angle. ±0.5° stabilizer angle. ±5% of net thrust or equivalent. ±1° AOA. ±1.5 m (5 ft) or ±10% of height. ±3 kt airspeed. ±1° pitch angle.	Landing.	A rationale must be provided with justification of results. **CCA:** Test in normal or non-normal control mode, as applicable.			**X**	See paragraph on Ground Effect in this attachment for additional information.
2.g.	**Reserved**							
2.h.	**Flight Maneuver and Envelope Protection Functions.**							
	Note. — The requirements of 2.h are only applicable to computer-controlled airplanes. Time history results of response to control inputs during entry into each envelope protection function (i.e. with normal and degraded control states if their function is different) are required. Set thrust as required to reach the envelope protection function.							
2.h.1.	Overspeed.	±5 kt airspeed.	Cruise.				**X**	
2.h.2.	Minimum Speed.	±3 kt airspeed.	Takeoff, Cruise, and Approach or Landing.				**X**	
2.h.3.	Load Factor.	±0.1g normal load factor	Takeoff, Cruise.				**X**	
2.h.4.	Pitch Angle.	±1.5° pitch angle	Cruise, Approach.				**X**	
2.h.5.	Bank Angle.	±2° or ±10% bank angle	Approach.				**X**	
2.h.6.	Angle of Attack.	±1.5° angle of attack	Second Segment Climb, and Approach or Landing.				**X**	
3. Reserved								
4. Visual System.								
4.a.	**Visual scene quality**							
4.a.1.	Continuous cross-cockpit visual field of view.	Visual display providing each pilot with a minimum of 176° horizontal and 36° vertical continuous field of view.	Not applicable.	Required as part of MQTG but not required as part of continuing evaluations.			**X**	Field of view should be measured using a visual test pattern filling the entire visual scene (all channels) consisting of a matrix of black and white 5° squares.

								Installed alignment should be confirmed in an SOC (this would generally consist of results from acceptance testing).
4.a.2.	System Geometry	Geometry of image should have no distracting discontinuities.					**X**	
4.a.3	Surface resolution (object detection).	Not greater than 4 arc minutes.	Not applicable.				**X**	Resolution will be demonstrated by a test of objects shown to occupy the required visual angle in each visual display used on a scene from the pilot's eyepoint. The object will subtend 4 arc minutes to the eye. This may be demonstrated using threshold bars for a horizontal test. A vertical test should also be demonstrated. The subtended angles should be confirmed by calculations in an SOC.
4.a.4	Light point size.	Not greater than 8 arc minutes.	Not applicable.				**X**	Light point size should be measured using a test pattern consisting of a centrally located single row of white light points displayed as both a horizontal and vertical row. It should be possible to move the light points relative to the eyepoint in all axes. At a point where modulation is just discernible in each visual channel, a calculation should be made to determine the light spacing. An SOC is required to state test method and calculation.
4.a.5	Raster surface contrast ratio.	Not less than 5:1.	Not applicable.				**X**	Surface contrast ratio should be measured using a raster drawn test pattern filling the entire visual scene (all channels). The test pattern should consist of black and white squares, 5° per square, with a white square in the center of each channel.

								Measurement should be made on the center bright square for each channel using a 1° spot photometer. This value should have a minimum brightness of 7 cd/m^2 (2 ft-lamberts). Measure any adjacent dark squares. The contrast ratio is the bright square value divided by the dark square value. *Note 1. — During contrast ratio testing, FTD aft-cab and flight deck ambient light levels should be as low as possible.* *Note 2. — Measurements should be taken at the center of squares to avoid light spill into the measurement device.*
4.a.6	Light point contrast ratio.	Not less than 10:1.	Not applicable.				**X**	Light point contrast ratio should be measured using a test pattern demonstrating an area of greater than 1° area filled with white light points and should be compared to the adjacent background. *Note. — Light point modulation should be just discernible on calligraphic systems but will not be discernable on raster systems.* Measurements of the background should be taken such that the bright square is just out of the light meter FOV. *Note. — During contrast ratio testing, FTD aft-cab and flight deck ambient light levels should be as low as practical.*
4.a.7	Light point brightness.	Not less than 20 cd/m^2 (5.8 ft-lamberts).	Not applicable.				**X**	Light points should be displayed as a matrix creating a square. On calligraphic systems the light points should just merge.

								On raster systems the light points should overlap such that the square is continuous (individual light points will not be visible).
4.a.8	Surface brightness.	Not less than 14 cd/m^2 (4.1 ft-lamberts) on the display.	Not applicable.				**X**	Surface brightness should be measured on a white raster, measuring the brightness using the 1° spot photometer. Light points are not acceptable. Use of calligraphic capabilities to enhance raster brightness is acceptable.
4.b	**Head-Up Display (HUD)**							
4.b.1	Static Alignment.	Static alignment with displayed image. HUD bore sight must align with the center of the displayed image spherical pattern. Tolerance +/- 6 arc min.					**X**	Alignment requirement only applies to the pilot flying.
4.b.2	System display.	All functionality in all flight modes must be demonstrated.					**X**	A statement of the system capabilities should be provided and the capabilities demonstrated
4.b.3	HUD attitude versus FTD attitude indicator (pitch and roll of horizon).	Pitch and roll align with aircraft instruments.	Flight				**X**	Alignment requirement only applies to the pilot flying.
4.c	**Enhanced Flight Vision System (EFVS)**							
4.c.1	Registration test.	Alignment between EFVS display and out of the window image must represent the alignment typical of the aircraft and system type.	Takeoff point and on approach at 200 ft.				**X**	Alignment requirement only applies to the pilot flying. *Note.— The effects of the alignment tolerance in 4.b.1 should be taken into account.*
4.c.2	EFVS RVR and visibility calibration.	The scene represents the EFVS view at 350 m (1,200 ft) and 1,609 m (1 sm) RVR including correct light intensity.	Flight				**X**	Infra-red scene representative of both 350 m (1,200 ft), and 1,609 m (1 sm) RVR. Visual scene may be removed.
4.c.3	Thermal crossover.	Demonstrate thermal crossover effects during day to night transition.	Day and night				**X**	The scene will correctly represent the thermal

								characteristics of the scene during a day to night transition.
4.d	**Visual ground segment**							
4.d.1	Visual ground segment (VGS).	Near end: the correct number of approach lights within the computed VGS must be visible. Far end: ±20% of the computed VGS. The threshold lights computed to be visible must be visible in the FTD.	Trimmed in the landing configuration at 30 m (100 ft) wheel height above touchdown zone on glide slope at an RVR setting of 300 m (1,000 ft) or 350 m (1,200 ft).	This test is designed to assess items impacting the accuracy of the visual scene presented to a pilot at DH on an ILS approach. These items include: 1) RVR/Visibility; 2) glide slope (G/S) and localizer modeling accuracy (location and slope) for an ILS; 3) for a given weight, configuration and speed representative of a point within the airplane's operational envelope for a normal approach and landing; and 4) Radio altimeter. *Note. — If non-homogeneous fog is used, the vertical variation in horizontal visibility should be described and included in the slant range visibility calculation used in the VGS computation.*			**X**	Pre-position for this test is encouraged but may be achieved via manual or autopilot control to the desired position.
4.e	**Visual System Capacity**							
4.e.1	System capacity – Day mode.	Not less than: 10,000 visible textured surfaces, 6,000 light points, 16 moving models.	Not applicable				**X**	Demonstrated through use of a visual scene rendered with the same image generator modes used to produce scenes for training. The required surfaces, light points, and moving models should be displayed simultaneously.
4.e.2	System capacity – Twilight/night mode.	Not less than: 10,000 visible textured surfaces, 15,000 light points, 16 moving models.	Not applicable				**X**	Demonstrated through use of a visual scene rendered with the same image generator modes used to produce scenes for training. The required surfaces, light points, and moving models should be displayed simultaneously.
5. Sound System. The sponsor will not be required to repeat the operational sound tests (i.e., tests 5.a.1. through 5.a.8. (or 5.b.1. through 5.b.9.) and 5.c., as appropriate) during continuing qualification evaluations if frequency response and background noise test results are within tolerance when compared to the initial qualification evaluation results, and the sponsor shows that no software changes have occurred that will affect the FTD's sound system. If the frequency response test method is chosen and fails, the sponsor may elect to fix the frequency response problem and repeat the test or the sponsor may elect to repeat the operational sound tests. If the operational sound tests are repeated during continuing qualification								

evaluations, the results may be compared against initial qualification evaluation results. All tests in this section must be presented using an unweighted 1/3-octave band format from band 17 to 42 (50 Hz to 16 kHz). A minimum 20 second average must be taken at a common location from where the initial evaluation sound results were gathered.								
5.a.	**Turbo-jet airplanes.**							All tests in this section should be presented using an unweighted 1/3-octave band format from at least band 17 to 42 (50 Hz to 16 kHz). A measurement of minimum 20 s should be taken at the location corresponding to the approved data set. Refer to paragraph 7 of Appendix A, Attachment 2.
5.a.1.	Ready for engine start.	Initial evaluation: Subjective assessment of 1/3 octave bands. Recurrent evaluation: cannot exceed ±5 dB difference on three consecutive bands when compared to initial evaluation and the average of the absolute differences between initial and recurrent evaluation results cannot exceed 2 dB.	Ground.	Normal condition prior to engine start. The APU must be on if appropriate.			**X**	
5.a.2.	All engines at idle.	Initial evaluation: Subjective assessment of 1/3 octave bands. Recurrent evaluation: cannot exceed ±5 dB difference on three consecutive bands when compared to initial evaluation and the average of the absolute differences between initial and recurrent evaluation results cannot exceed 2 dB.	Ground.	Normal condition prior to takeoff.			**X**	
5.a.3.	All engines at maximum allowable thrust with brakes set.	Initial evaluation: Subjective assessment of 1/3 octave bands. Recurrent evaluation: cannot exceed ±5 dB difference on three consecutive bands when	Ground.	Normal condition prior to takeoff.			**X**	

		compared to initial evaluation and the average of the absolute differences between initial and recurrent evaluation results cannot exceed 2 dB.						
5.a.4.	Climb	Initial evaluation: Subjective assessment of 1/3 octave bands. Recurrent evaluation: cannot exceed ±5 dB difference on three consecutive bands when compared to initial evaluation and the average of the absolute differences between initial and recurrent evaluation results cannot exceed 2 dB.	En-route climb.	Medium altitude.			**X**	
5.a.5.	Cruise	Initial evaluation: Subjective assessment of 1/3 octave bands. Recurrent evaluation: cannot exceed ±5 dB difference on three consecutive bands when compared to initial evaluation and the average of the absolute differences between initial and recurrent evaluation results cannot exceed 2 dB.	Cruise.	Normal cruise configuration.			**X**	
5.a.6.	Speed brake/spoilers extended (as appropriate).	Initial evaluation: Subjective assessment of 1/3 octave bands. Recurrent evaluation: cannot exceed ±5 dB difference on three consecutive bands when compared to initial evaluation and the average of the absolute differences between initial and recurrent evaluation results cannot exceed 2 dB.	Cruise.	Normal and constant speed brake deflection for descent at a constant airspeed and power setting.			**X**	
5.a.7	Initial approach.	Initial evaluation: Subjective assessment of 1/3 octave bands.	Approach.	Constant airspeed, gear up, flaps/slats as appropriate.			**X**	

		Recurrent evaluation: cannot exceed ±5 dB difference on three consecutive bands when compared to initial evaluation and the average of the absolute differences between initial and recurrent evaluation results cannot exceed 2 dB.						
5.a.8	Final approach.	Initial evaluation: Subjective assessment of 1/3 octave bands. Recurrent evaluation: cannot exceed ±5 dB difference on three consecutive bands when compared to initial evaluation and the average of the absolute differences between initial and recurrent evaluation results cannot exceed 2 dB.	Landing.	Constant airspeed, gear down, landing configuration flaps.			**X**	
5.b	**Propeller-driven airplanes**							All tests in this section should be presented using an unweighted 1/3-octave band format from at least band 17 to 42 (50 Hz to 16 kHz). A measurement of minimum 20 s should be taken at the location corresponding to the approved data set. Refer to paragraph 7 of Appendix A, Attachment 2.
5.b.1.	Ready for engine start.	Initial evaluation: Subjective assessment of 1/3 octave bands. Recurrent evaluation: cannot exceed ±5 dB difference on three consecutive bands when compared to initial evaluation and the average of the absolute differences between initial and recurrent evaluation results cannot exceed 2 dB.	Ground.	Normal condition prior to engine start. The APU must be on if appropriate.			**X**	

5.b.2	All propellers feathered, if applicable.	Initial evaluation: Subjective assessment of 1/3 octave bands. Recurrent evaluation: cannot exceed ±5 dB difference on three consecutive bands when compared to initial evaluation and the average of the absolute differences between initial and recurrent evaluation results cannot exceed 2 dB.	Ground.	Normal condition prior to take-off.			**X**	
5.b.3.	Ground idle or equivalent.	Initial evaluation: Subjective assessment of 1/3 octave bands. Recurrent evaluation: cannot exceed ±5 dB difference on three consecutive bands when compared to initial evaluation and the average of the absolute differences between initial and recurrent evaluation results cannot exceed 2 dB.	Ground.	Normal condition prior to takeoff.			**X**	
5.b.4	Flight idle or equivalent.	Initial evaluation: Subjective assessment of 1/3 octave bands. Recurrent evaluation: cannot exceed ±5 dB difference on three consecutive bands when compared to initial evaluation and the average of the absolute differences between initial and recurrent evaluation results cannot exceed 2 dB.	Ground.	Normal condition prior to takeoff.			**X**	
5.b.5	All engines at maximum allowable power with brakes set.	Initial evaluation: Subjective assessment of 1/3 octave bands. Recurrent evaluation: cannot exceed ±5 dB difference on three consecutive bands when compared to initial evaluation and the	Ground.	Normal condition prior to takeoff.			**X**	

		average of the absolute differences between initial and recurrent evaluation results cannot exceed 2 dB.						
5.b.6	Climb.	Initial evaluation: Subjective assessment of 1/3 octave bands. Recurrent evaluation: cannot exceed ±5 dB difference on three consecutive bands when compared to initial evaluation and the average of the absolute differences between initial and recurrent evaluation results cannot exceed 2 dB.	En-route climb.	Medium altitude.			**X**	
5.b.7	Cruise	Initial evaluation: Subjective assessment of 1/3 octave bands. Recurrent evaluation: cannot exceed ±5 dB difference on three consecutive bands when compared to initial evaluation and the average of the absolute differences between initial and recurrent evaluation results cannot exceed 2 dB.	Cruise.	Normal cruise configuration.			**X**	
5.b.8	Initial approach.	Initial evaluation: Subjective assessment of 1/3 octave bands. Recurrent evaluation: cannot exceed ±5 dB difference on three consecutive bands when compared to initial evaluation and the average of the absolute differences between initial and recurrent evaluation results cannot exceed 2 dB.	Approach.	Constant airspeed, gear up, flaps extended as appropriate, RPM as per operating manual.			**X**	
5.b.9	Final approach.	Initial evaluation: Subjective assessment of 1/3 octave bands.	Landing.	Constant airspeed, gear down, landing configuration flaps, RPM as per operating manual.			**X**	

		Recurrent evaluation: cannot exceed ±5 dB difference on three consecutive bands when compared to initial evaluation and the average of the absolute differences between initial and recurrent evaluation results cannot exceed 2 dB.						
5.c.	**Special cases.**	Initial evaluation: Subjective assessment of 1/3 octave bands. Recurrent evaluation: cannot exceed ±5 dB difference on three consecutive bands when compared to initial evaluation and the average of the absolute differences between initial and recurrent evaluation results cannot exceed 2 dB.	As appropriate.				X	This applies to special steady-state cases identified as particularly significant to the pilot, important in training, or unique to a specific airplane type or model.
5.d	**FTD background noise**	Initial evaluation: background noise levels must fall below the sound levels described in Appendix A, Attachment 2, Paragraph 7.c (5). Recurrent evaluation: ±3 dB per 1/3 octave band compared to initial evaluation.		Results of the background noise at initial qualification must be included in the QTG document and approved by the responsible Flight Standards office. The measurements are to be made with the simulation running, the sound muted and a dead cockpit.			X	The simulated sound will be evaluated to ensure that the background noise does not interfere with training. Refer to paragraph 7 of this Appendix A, Attachment 2. This test should be presented using an unweighted 1/3 octave band format from band 17 to 42 (50 Hz to 16 kHz).
5.e	**Frequency response**	Initial evaluation: not applicable. Recurrent evaluation: cannot exceed ±5 dB difference on three consecutive bands when compared to initial evaluation and the average of the absolute differences between initial and recurrent evaluation results cannot exceed 2 dB.					X	Only required if the results are to be used during continuing qualification evaluations in lieu of airplane tests. The results must be approved by the responsible Flight Standards office during the initial qualification. This test should be presented using an unweighted 1/3 octave band format from band 17 to 42 (50 Hz to 16 kHz).

* * * * *

6	**SYSTEMS INTEGRATION**							
6.a.	**System response time**							
6.a.1	Transport delay.	Instrument response: 100 ms (or less) after airplane response. Visual system response: 120 ms (or less) after airplane response.	Pitch, roll and yaw.				**X**	One separate test is required in each axis. Where EFVS systems are installed, the EFVS response should be within + or - 30 ms from visual system response, and not before motion system response. *Note.— The delay from the airplane EFVS electronic elements should be added to the 30 ms tolerance before comparison with visual system reference.*
6.a.2	Transport delay.	300 milliseconds or less after controller movement.	Pitch, roll and yaw.		**X**	**X**		If transport delay is the chosen method to demonstrate relative responses, the sponsor and the responsible Flight Standards office will use the latency values to ensure proper FTD response when reviewing those existing tests where latency can be identified (e.g., short period, roll response, rudder response).

Table B2F

Alternative Data Sources, Procedures, and Instrumentation Level 6 FTD		
QPS REQUIREMENTS The standards in this table are required if the data gathering methods described in paragraph 9 of Appendix B are not used.		**INFORMATION**
Objective Test Reference Number and Title	**Alternative Data Sources, Procedures, and Instrumentation**	**Notes**

* * * * * * *

2.a.1.a. Handling qualities. Static control tests. Pitch controller position vs. force and surface position calibration	Surface position data may be acquired from flight data recorder (FDR) sensor or, if no FDR sensor, at selected, significant column positions (encompassing significant column position data points), acceptable to the responsible Flight Standards office, using a control surface protractor on the ground. Force data may be acquired by using a hand held force gauge at the same column position data points.	For airplanes with reversible control systems, surface position data acquisition should be accomplished with winds less than 5 kts.
2.a.2.a. Handling qualities. Static control tests. Wheel position vs. force and surface position calibration.	Surface position data may be acquired from flight data recorder (FDR) sensor or, if no FDR sensor, at selected, significant wheel positions (encompassing significant wheel position data points), acceptable to the responsible Flight Standards office, using a control surface protractor on the ground. Force data may be acquired by using a hand held force gauge at the same wheel position data points.	For airplanes with reversible control systems, surface position data acquisition should be accomplished with winds less than 5 kts.
2.a.3.a. Handling qualities. Static control tests. Rudder pedal position vs. force and surface position calibration.	Surface position data may be acquired from flight data recorder (FDR) sensor or, if no FDR sensor, at selected, significant rudder pedal positions (encompassing significant rudder pedal position data points), acceptable to the responsible Flight Standards office, using a control surface protractor on the ground. Force data may be acquired by using a hand held force gauge at the same rudder pedal position data points.	For airplanes with reversible control systems, surface position data acquisition should be accomplished with winds less than 5 kts.

* * * * * * *

* * * * *

Attachment 3 to Appendix B to Part 60—Flight Training Device (FTD) Subjective Evaluation

* * * * *

Table B3C

Table of Functions and Subjective Tests Level 4 FTD	
QPS requirements	
Entry No.	**Operations tasks** **Tasks in this table are subject to evaluation if appropriate for the airplane system or systems simulated as indicated in the SOQ Configuration List as defined in Appendix B, Attachment 2 of this part.**
1.	Level 4 FTDs are required to have at least one operational system. The responsible Flight Standards office will accomplish a functions check of all installed systems, switches, indicators, and equipment at all crewmembers' and instructors' stations, and determine that the flight deck (or flight deck area) design and functions replicate the appropriate airplane.

* * * * *

Attachment 4 to Appendix B to Part 60—Sample Documents

* * * * *

Attachment 4 to Appendix B to Part 60—Figure B4A—Sample Letter, Request for Initial, Upgrade, or Reinstatement Evaluation

Information

Date _____

RE: Request for Initial/Upgrade Evaluation Date

This is to advise you of our intent to request an (initial or upgrade) evaluation of our (FTD Manufacturer), (Aircraft Type/Level) Flight Training Device (FTD), (FAA ID Number, if previously qualified), located in (City, State) at the (Facility) on (Proposed Evaluation Date). (The proposed evaluation date shall not be more than 180 days following the date of this letter.) The FTD will be sponsored by (Name of Training Center/Air Carrier), FAA Designator (4 Letter Code). The FTD will be sponsored as follows; (Select One)

☐ The FTD will be used within the sponsor's FAA approved training program and placed on the sponsor's Training/Operations Specifications.

☐ The FTD will be used for dry lease only.

We agree to provide the formal request for the evaluation to your staff as follows: (check one)

☐ For QTG tests run at the factory, not later, than 45 days prior to the proposed evaluation date with the additional "l/3 on-site" tests provided not later than 14 days prior to the proposed evaluation date.

☐ For QTG tests run on-site, not later than 30 days prior to the proposed evaluation date.

We understand that the formal request will contain the following documents:

1. Sponsor's Letter of Request (*Company Compliance Letter*).
2. Principal Operations Inspector (POI) or Training Center Program Manager's (TCPM) endorsement.
3. Complete QTG.

If we are unable to meet the above requirements, we understand this may result in a significant delay, perhaps 45 days or more, in rescheduling and completing the evaluation.

(The sponsor should add additional comments as necessary).

Please contact (Name Telephone and Fax Number of Sponsor's Contact) to confirm the date for this initial evaluation. We understand a member of your National Simulator Program staff will respond to this request within 14 days.

A copy of this letter of intent has been provided to (Name), the Principal Operations Inspector (POI) and/or Training Center Program Manager (TCPM).

Sincerely,

Attachment: FTD Information and Characteristics Form

cc: POI/TCPM

* * * * *

Attachment 4 to Appendix B to Part 60—
Figure B4C—Sample Letter of Compliance

Information

(Date)

Mr. (Name of Training Program Approval Authority):
(Name of responsible Flight Standards office)
(Address)
(City/State/Zip)

Dear Mr. (Name of TPAA):

RE: Letter of Compliance

(Operator Sponsor Name) requests evaluation of our (Aircraft Type) FTD for Level (__) qualification. The (FTD Manufacturer Name) FTD with (Visual System Manufacturer Name/Model) system is fully defined on the FTD Information page of the accompanying Qualification Test Guide (QTG). We have completed the tests of the FTD and certify that it meets all applicable requirements of FAR parts 121, 125, or 135), and the guidance of (AC 120-40B or 14 CFR Part 60). Appropriate hardware and software configuration control procedures have been established. Our Pilot(s), (Name(s)), who are qualified on (Aircraft Type) aircraft have assessed the FTD and have found that it conforms to the (Operator/Sponsor) (Aircraft Type) flight deck configuration and that the simulated systems and subsystems function equivalently to those in the aircraft. The above named pilot(s) have also assessed the performance and the flying qualities of the FTD and find that it represents the respective aircraft.

(Added Comments may be placed here)

Sincerely,

(Sponsor Representative)

Attachment 4 to Appendix B to Part 60—Figure B4D—Sample Qualification Test Guide Cover Page

Information

SPONSOR NAME

SPONSOR ADDRESS

FAA QUALIFICATION TEST GUIDE

(SPECIFIC AIRPLANE MODEL)
for example
Stratos BA797-320A

(Type of FTD)

(FTD Identification Including Manufacturer, Serial Number, Visual System Used)

(FTD Level)

(Qualification Performance Standard Used)

(FTD Location)

FAA Initial Evaluation

Date: _____

_____ Date: _____

(Sponsor)

_____ Date: _____

FAA

* * * * *

Attachment 4 to Appendix B to Part 60—Figure B4E—Sample Statement of Qualification—Certificate

Information

Federal Aviation Administration

Certificate of Qualification

This is to certify that representatives of the FAA Completed an evaluation of the

Go-Fast Airlines
Farnsworth Z-100 Flight Training Device

FAA Identification Number 998

And pursuant to 14 CFR Part 60 found it to meet its original qualification basis, AC 120-45A (MM/DD/YY)

The Master Qualification Test Guide and the attached Configuration List and Restrictions List Provide the Qualification Basis for this device to operate at

Level 6

Until March 31, 2010

Unless sooner rescinded or extended by the FAA

February 15, 2009	*B. Williamson*
(date)	(for the FAA)

* * * * *

■ 42. In appendix C to part 60:
■ a. In the introductory ''Begin Information'' text:
■ i. Remove the word ''NSPM'' and add in its place the words ''Flight Standards Service'' in the first sentence; and
■ ii. In the last sentence, remove the phrase ''NSPM, or a person assigned by the NSPM,'' and add in its place the words ''responsible Flight Standards office''.
■ b. In section 1:
■ i. Remove and reserve paragraph b.;
■ ii. Remove the last sentence of paragraph c.;
■ iii. In paragraph d.(10), add the words ''Flightcrew Member'' after ''as amended,''; and
■ iv. Revise paragraph d.(25).
■ c. In section 11:
■ i. In paragraph o. introductory text, remove the words ''an NSP pilot'' and add in their place the words ''a pilot from the responsible Flight Standards office'' and remove the word ''NSP'';
■ ii. In paragraph r.(1), remove the word ''NSP''; and
■ iii. In paragraph v., remove the phrase ''NSPM or visit the NSPM website'' and add in its place the words ''responsible Flight Standards office''.
■ d. In attachment 1, in table C1A, revise the entries for 4.a., 6.c., 6.d., and 6.u.;
■ e. In attachment 2:
■ i. In section 8, paragraph d., remove the first instance of the word ''NSPM'' and add in its place the words ''the responsible Flight Standards office'';
■ ii. In table C2A, revise the entries for 1.j.4., 2.a., and 4.a.2;
■ iii. In table C2E, revise the entry for 1.b.2.;
■ f. In attachment 3:
■ i. In section 2, in the first paragraph (h), remove the last sentence and redesignate the second paragraph h. and paragraph i. as paragraphs i. and j, respectively; and
■ ii. In table C3C, revise the introductory text.
■ g. In attachment 4:
■ i. Revise the table of contents entry for Figure C4H to read ''Figure C4H [Reserved]'';
■ ii. Revise figures C4A C4C, C4D, and C4E; and
■ iii. Remove and reserve figure C4H.
■ h. Remove the word ''NSPM'' and in its place add the words ''responsible Flight Standards office'' in the following places:
■ i. Section 1, paragraph c., the first two instances;
■ ii. Section 9, paragraphs d., d.(1), d.(2), g., h., and i.;
■ iii. Section 10, paragraph a;
■ iv. Section 11, paragraphs b.(2), b.(3), d., e.(2), f., g.(1), h., j. k., l., m., n., n.(2), o., p., q., r.(2), s., t., and w.;
■ v. Section 13, paragraphs a.(1), a.(3), a.(4), a.(5), d., and i.;
■ vi. Section 14, paragraphs a., d., e., and e.(1);
■ vii. Section 17, paragraphs b.(1) and b.(2);
■ viii. Section 19;
■ ix. Section 20;
■ x. Attachment 2, section 1, paragraph b.;
■ xi. Attachment 2, section 2, paragraphs a., h., j., k., and l.;
■ xii. Attachment 2, section 4, paragraph b.(1);
■ xiii. Attachment 2, section 6, paragraph d.(2);
■ xiv. Attachment 2, section 8, paragraphs b., c., the second instance of d., f., and g.;
■ xv. Attachment 2, section 9, paragraphs a., b., b.(2) and c.(2)(i);
■ xvi. Attachment 2, section 12, paragraph a.;
■ xvii. Attachment 2, section 14, paragraph b.(4)(d);
■ xviii. Attachment 2, section 16, paragraphs a.(2) and b.(2);
■ xix. Attachment 2, section 17, paragraphs c., d.(2), e., and g.;
■ xx. Attachment 3, section 1, paragraphs f. and g.; and
■ xxi. Attachment 3, section 2, paragraph b.
■ i. In appendix C to part 60, remove the word ''NSP'' from the following places:
■ i. Section 14, paragraph g.; and
■ ii. Attachment 3, paragraphs 2.d. and 2.f.

The revisions read as follows:

Appendix C to Part 60 Qualification Performance Standards for Helicopter Full Flight Simulators

* * * * *

1. Introduction

* * * * *

d. * * *

(25) FAA Airman Certification Standards and Practical Test Standards for Airline Transport Pilot, Type Ratings, Commercial Pilot, and Instrument Ratings.

* * * * *

Attachment 1 to Appendix C to Part 60—General Simulator Requirements

* * * * *

Table C1A

Minimum Simulator Requirements					
	QPS REQUIREMENTS	**Simulator Levels**			**INFORMATION**
Entry Number	**General Simulator Requirements**	**B**	**C**	**D**	**Notes**
* * * * * * *					
4.a.	In addition to the flight crewmember stations, the simulator must have at least two suitable seats for the instructor/check airman and FAA inspector. These seats must provide adequate vision to the pilot's panel and forward windows. All seats other than flight crew seats need not represent those found in the helicopter but must be adequately secured to the floor and equipped with similar positive restraint devices.	**X**	**X**	**X**	The responsible Flight Standards office will consider alternatives to this standard for additional seats based on unique flight deck configurations
* * * * * * *					
6.c.	The simulator must provide a continuous visual field-of-view of at least 146° horizontally and 36° vertically per pilot seat. Both pilot seat visual systems must be operable simultaneously. Horizontal field-of-view is centered on the zero degree azimuth line relative to the aircraft fuselage. The minimum horizontal field-of-view coverage must be plus and minus one-half (½) of the minimum continuous field-of-view requirement, centered on the zero degree azimuth line relative to the aircraft fuselage. An SOC must explain the geometry of the installation. Capability for a field-of-view in excess of the minimum is not required for qualification at Level C. However, where specific tasks require extended fields of view beyond the 146° by 36° (e.g., to accommodate the use of "chin windows" where the accommodation is either integral with or separate from the primary visual system display), then the extended fields of view must be provided. When considering the installation and use of augmented fields of view, the sponsor must meet with the NSPM to determine the training, testing, checking, and experience tasks for which the augmented field-of-view capability may be required. An SOC is required.		**X**		Optimization of the vertical field-of-view may be considered with respect to the specific helicopter flight deck cut-off angle. The sponsor may request the responsible Flight Standards office to evaluate the FFS for specific authorization(s) for the following: (1) Specific areas within the database needing higher resolution to support landings, take-offs and ground cushion exercises and training away from a heliport, including elevated heliport, helidecks and confined areas. (2) For cross-country flights, sufficient scene details to allow for ground to map navigation over a sector length equal to 30

					minutes at an average cruise speed. (3) For offshore airborne radar approaches (ARA), harmonized visual/radar representations of installations.
6.d.	The simulator must provide a continuous visual field-of-view of at least 176° horizontally and 56° vertically per pilot seat. Both pilot seat visual systems must be operable simultaneously. Horizontal field-of-view is centered on the zero degree azimuth line relative to the aircraft fuselage. The minimum horizontal field-of-view coverage must be plus and minus one-half (½) of the minimum continuous field-of-view requirement, centered on the zero degree azimuth line relative to the aircraft fuselage. An SOC must explain the geometry of the installation. Capability for a field-of-view in excess of the minimum is not required for qualification at Level D. However, where specific tasks require extended fields of view beyond the 176º by 56º (e.g., to accommodate the use of "chin windows" where the accommodation is either integral with or separate from the primary visual system display), then the extended fields of view must be provided. When considering the installation and use of augmented fields of view, the sponsor must meet with the responsible Flight Standards office to determine the training, testing, checking, and experience tasks for which the augmented field-of-view capability may be required. An SOC is required.			**X**	Optimization of the vertical field-of-view may be considered with respect to the specific helicopter flight deck cut-off angle. The sponsor may request the responsible Flight Standards office to evaluate the FFS for specific authorization(s) for the following: (1) Specific areas within the database needing higher resolution to support landings, take-offs and ground cushion exercises and training away from a heliport, including elevated heliport, helidecks and confined areas. (2) For cross-country flights, sufficient scene details to allow for ground to map navigation over a sector length equal to 30 minutes at an average cruise speed. (3) For offshore airborne radar approaches (ARA), harmonized visual/radar representations of installations.

* * * * * * *

6.u.	The simulator must present visual scenes of wet and snow-covered runways, including runway lighting reflections for wet conditions, and partially obscured lights for snow conditions.		**X**	**X**	The responsible Flight Standards office will consider suitable alternative effects.

* * * * * * *

* * * * *

Attachment 2 to Appendix C to Part 60—FFS Objective Tests

* * * * *

Table C2A

Full Flight Simulator (FFS) Objective Tests								
QPS REQUIREMENTS								INFORMATION
Test		Tolerance(s)	Flight Condition	Test Details	Simulator Level			Notes
Entry Number	Title				B	C	D	
* * * * * * *								
1.j.4.	Autorotational Landing.	Torque - ±3%, Rotor Speed - ±3%, Vertical Velocity - ±100 fpm (0.50m/sec) or 10%, Pitch Attitude - ±2°, Bank Attitude - ±2°, Heading - ±5°, Longitudinal Control Position - ±10%, Lateral Control Position - ±10%, Directional Control Position - ±10%, Collective Control Position - ±10%.	Landing.	Record the results of an autorotational deceleration and landing from a stabilized autorotational descent, to touch down. If flight test data containing all required parameters for a complete power-off landing is not available from the aircraft manufacturer for this test and other qualified flight test personnel are not available to acquire this data, the sponsor may coordinate with the responsible Flight Standards office to determine if it is appropriate to accept alternative testing means.		**X**	**X**	Alternative approaches for acquiring this data may be acceptable, depending on the aircraft as well as the personnel and the data recording, reduction, and interpretation facilities to be used, are: 1) a simulated autorotational flare and reduction of rate of descent (ROD) at altitude; or 2) a power-on termination following an autorotational approach and flare.
* * * * * * *								
2.a.	**Control System Mechanical Characteristics.**							
	For simulators requiring Static or Dynamic tests at the controls (i.e., cyclic, collective, and pedal), special test fixtures will not be required during initial or upgrade evaluations if the							Contact the responsible Flight

	sponsor's QTG/MQTG shows both test fixture results and the results of an alternative approach, such as computer plots produced concurrently showing satisfactory agreement. Repeat of the alternative method during the initial or upgrade evaluation satisfies this test requirement. For initial and upgrade evaluations, the control dynamic characteristics must be measured at and recorded directly from the flight deck controls, and must be accomplished in hover, climb, cruise, and autorotation.				Standards office for clarification of any issue regarding helicopters with reversible controls or where the required validation data is not attainable.

* * * * * * *

4.a.2.	**Transport Delay**				
					If Transport Delay is the chosen method to demonstrate relative responses, the sponsor and the responsible Flight Standards office will use the latency values to ensure proper simulator response when reviewing those existing tests where latency can be identified (e.g., short period, roll response, rudder response).

* * * * * * *

Table C2E

Alternative Data Sources, Procedures, and Instrumentation			
QPS REQUIREMENTS The standards in this table are required if the data gathering methods described in paragraph 9 of Appendix C are not used.			**INFORMATION**
--Table of Objective Tests -- **Test Entry Number and Title**	**Level B Only**	**Alternative Data Sources, Procedures, and Instrumentation**	**Notes**

* * * * * * *

1.b.2. Performance. On Surface Taxi Rate of Turn vs. Nosewheel Steering Angle	**X**	Data may be acquired by using a constant tiller position (measured with a protractor), or full pedal application for steady state turn, and synchronized video of heading indicator. If less than full pedal is used, pedal position must be recorded.	A single procedure may not be adequate for all rotorcraft steering systems. Appropriate measurement procedures must be devised and proposed for responsible Flight Standards office concurrence.

* * * * * * *

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Attachment 3 to Appendix C to Part 60—Simulator Subjective Evaluation

* * * * *

Table C3C

Functions and Subjective Tests				
QPS REQUIREMENTS				
Entry Number	**Visual Scene Content** **Additional Airport or Landing Area Models Beyond Minimum Required for Qualification** **Class II Airport or Landing Area Models**	**Simulator Level**		
		B	**C**	**D**

This table specifies the minimum airport or helicopter landing area visual model content and functionality necessary to add visual models to a simulator's visual model library (i.e., beyond those necessary for qualification at the stated level) without the necessity of further involvement of the responsible Flight Standards office or TPAA.

* * * * * * *

* * * * *

Attachment 4 to Appendix C to Part 60—Figure C4A—Sample Letter, Request for Initial, Upgrade, or Reinstatement Evaluation

Information

Date _____

RE: Request for Initial/Upgrade Evaluation Date

This is to advise you of our intent to request an (initial or upgrade) evaluation of our (FFS Manufacturer), (Aircraft Type/Level) Full Flight Simulator (FFS), (FAA ID Number, if previously qualified), located in (City, State) at the (Facility) on (Proposed Evaluation Date). (The proposed evaluation date shall not be more than 180 days following the date of this letter.) The FFS will be sponsored by (Name of Training Center/Air Carrier), FAA Designator (4 Letter Code). The FFS will be sponsored as follows; (Select One)

☐ The FFS will be used within the sponsor's FAA approved training program and placed on the sponsor's Training/Operations Specifications.

☐ The FFS will be used for dry lease only.

We agree to provide the formal request for the evaluation to your staff as follows: (check one)

☐ For QTG tests run at the factory, not later, than 45 days prior to the proposed evaluation date with the additional "l/3 on-site" tests provided not later than 14 days prior to the proposed evaluation date.

☐ For QTG tests run on-site, not later than 30 days prior to the proposed evaluation date.

We understand that the formal request will contain the following documents:

1. Sponsor's Letter of Request (*Company Compliance Letter*).
2. Principal Operations Inspector (POI) or Training Center Program Manager's (TCPM) endorsement.
3. Complete QTG.

If we are unable to meet the above requirements, we understand this may result in a significant delay, perhaps 45 days or more, in rescheduling and completing the evaluation.

(The sponsor should add additional comments as necessary).

Please contact (Name Telephone and Fax Number of Sponsor's Contact) to confirm the date for this initial evaluation. We understand a member of your National Simulator Program staff will respond to this request within 14 days

A copy of this letter of intent has been provided to (Name), the Principal Operations Inspector (POI) and/or Training Center Program Manager (TCPM).

Sincerely,

Attachment: FFS Information Form

cc: POI/TCPM

* * * * *

Attachment 4 to Appendix C to Part 60—
Figure C4C—Sample Letter of Compliance

Information

(Date)

Mr. (Name of Training Program Approval Authority):
(Name of responsible Flight Standards office)
(Address)
(City/State/Zip)

Dear Mr. (Name of TPAA):

RE: Letter of Compliance

(Operator Sponsor Name) requests evaluation of our (Aircraft Type) FFS for Level (__) qualification. The (FFS Manufacturer Name) FFS with (Visual System Manufacturer Name/Model) system is fully defined on the FFS Information page of the accompanying Qualification Test Guide (QTG). We have completed the tests of the FFS and certify that it meets all applicable requirements of FAR parts 121, 125, or 135), and the guidance of (AC 120-40B or 14 CFR Part 60). Appropriate hardware and software configuration control procedures have been established. Our Pilot(s), (Name(s)), who are qualified on (Aircraft Type) aircraft have assessed the FFS and have found that it conforms to the (Operator/Sponsor) (Aircraft Type) flight deck configuration and that the simulated systems and subsystems function equivalently to those in the aircraft. The above named pilot(s) have also assessed the performance and the flying qualities of the FFS and find that it represents the respective aircraft.
(Added Comments may be placed here)

Sincerely,
(Sponsor Representative)

Attachment 4 to Appendix C to Part 60—Figure C4D—Sample Qualification Test Guide Cover Page

Information

SPONSOR NAME

SPONSOR ADDRESS

FAA QUALIFICATION TEST GUIDE

(SPECIFIC Helicopter MODEL)
for example
Farnsworth Z-100

(Type of Simulator)

(Simulator Identification Including Manufacturer, Serial Number, Visual System Used)

(Simulator Level)

(Qualification Performance Standard Used)

(Simulator Location)

FAA Initial Evaluation

Date: _____

_____ Date: _____
(Sponsor)

_____ Date: _____
FAA

Attachment 4 to Appendix C to Part 60—Figure C4E—Sample Statement of Qualification—Certificate

Information

Federal Aviation Administration

Certificate of Qualification

This is to certify that representatives of the FAA Completed an evaluation of the

Go-Fast Airlines
Farnsworth Z-100 Full Flight Simulator

FAA Identification Number 0999

And pursuant to 14 CFR Part 60 found it to meet its original qualification basis, AC 120-63 (MM/DD/YY)

The Master Qualification Test Guide and the attached Configuration List and List of Qualified Tasks Provide the Qualification Basis for this device to operate at

Level D

Until April 30, 2010

Unless sooner rescinded or extended by the FAA

March 15, 2009	C. *Nordlie*
(date)	(for the FAA)

* * * * *

■ 43. In appendix D to part 60:

■ a. In the introductory ''Begin Information'' text:

■ i. Remove ''NSPM'' and add in its place the words ''Flight Standards Service'' in the first sentence; and

■ ii. Remove the phrase ''NSPM, or a person or persons assigned by the NSPM'' and add in its place the words ''responsible Flight Standards office'' in the last sentence.

■ b. In section 1:

■ i. Remove and reserve paragraph b.;

■ ii. Remove the last sentence of paragraph c.;

■ iii. In paragraph d.(12), add the words ''Flightcrew Member'' after ''as amended,''; and

■ iv. Revise paragraph d.(28;

■ c. In section 11:

■ i. In paragraph o. introductory text, remove the words ''an NSP pilot'' and add in their place the words ''a pilot from the responsible Flight Standards office'' and remove the second instance of the word ''NSP'';

■ ii. In paragraph r.(1), remove the word ''NSP''; and

■ iii. In paragraph v., remove the phrase ''NSPM or visit the NSPM website'' and add in its place the words ''responsible Flight Standards office''.

■ d. In section 17, paragraph c., remove the word ''D4H'' and add in its place the word ''D4I'';

■ e. In attachment 1, in table D1A, revise the entry for 6.c.;

■ f. In attachment 2, in table D2A, revise the entries for 1.j.4. and 2.a.;

■ g. In attachment 3:

■ i. In section 1, paragraph g., remove the first instance of the word ''NPSM'' and add in its place the words ''responsible Flight Standards office'' and remove the last sentence; and

■ ii. Revise the introductory text to table D3C.

■ h. In attachment 4:

■ i. Remove the table of contents entry ''Figure A4C Sample Letter of Compliance'' and add in its place ''Figure D4C Sample Letter of Compliance'';

■ ii. Revise the table of contents entry ''Figure D4H Sample Continuing Qualification Evaluation Requirements Page'' to read ''Figure D4H [Reserved]'';

■ iii. Revise figures D4A, D4C, D4D, and D4E;

■ iv. Redesignate Figure A4H as Figure D4H; and

■ v. Remove and reserve newly redesignated Figure D4H.

■ i. Remove the word ''NSPM'' and in its place add the words ''responsible Flight Standards office'' in the following places:

■ i. Section 1, paragraph c., the first two instances;

■ ii. Section 9, paragraphs d., d.(1), d.(1)(a), g., h., and i.;

■ iii. Section 10, paragraph a.;

■ iv. Section 11, paragraphs b.(2), b.(3), d., e.(2), f., g.(1), h., j., k., l., m., n., n.(2), o., p., q., r.(2), s., t., and w.;

■ v. Section 13, paragraphs a.(1), a.(3), a.(4), a.(5), d., i., and j.;

■ vi. Section 14, paragraphs a., d., h.;

■ vii. Section 17, paragraphs b.(1) and (2);

■ viii. Section 19 and 20;

■ ix. Attachment 2, section 2, paragraphs a., h., i., j., and k.; and

■ x. Attachment 3, section 1, paragraph f.

■ j. In appendix D to part 60, remove the word ''NSP'' from the following places:

■ i. Section 14, paragraph f.; and

■ ii. Attachment 3, paragraphs 2.c. and 2.d.

Appendix D to Part 60 Qualification Performance Standards for Helicopter Flight Training Devices

* * * * *

1. Introduction

* * * * *

d. * * *

(28) FAA Airman Certification Standards and Practical Test Standards for Airline Transport Pilot, Type Ratings, Commercial Pilot, and Instrument Ratings.

* * * * *

Attachment 1 to Appendix D to Part 60—General FTD Requirements

* * * * *

Table D1A

Minimum FTD Requirements						
QPS REQUIREMENTS						INFORMATION
Entry Number	General FTD Requirements	FTD Level				Notes
		4	5	6	7	
* * * * * * *						
6.c.	The FTD must provide a continuous visual field-of-view of at least 146° horizontally and 36° vertically for both pilot seats, simultaneously. The minimum horizontal field-of-view coverage must be plus and minus one-half (½) of the minimum continuous field-of-view requirement, centered on the zero degree azimuth line relative to the aircraft fuselage. Additional horizontal field-of-view capability may be added at the sponsor's discretion provided the minimum field-of-view is retained. Capability for a field-of-view in excess of these minima is not required for qualification at Level 7. However, where specific tasks require extended fields of view beyond the 146° by 36° (e.g., to accommodate the use of "chin windows" where the accommodation is either integral with or separate from the primary visual system display), then such extended fields of view must be provided. An SOC is required and must explain the geometry of the installation.				**X**	Optimization of the vertical field-of-view may be considered with respect to the specific helicopter flight deck cut-off angle. When considering the installation/use of augmented fields of view, as described here, it will be the responsibility of the sponsor to meet with the responsible Flight Standards office to determine the training, testing, checking, or experience tasks for which the augmented field-of-view capability may be critical to that approval.
* * * * * * *						

* * * * *

Attachment 2 to Appendix D to Part 60—Flight Training Device (FTD) Objective Tests

* * * * *

Table D2A

Flight Training Device (FTD) Objective Tests								
QPS REQUIREMENTS								INFORMATION
Test		Tolerances	Flight Conditions	Test Details	FTD Level			Notes
Entry Number	Title				5	6	7	
* * * * * * *								
1.j.4.	Autorotational Landing.	Torque - ±3%, Rotor Speed - ±3%, Vertical Velocity - ±100 fpm (0.50 m/sec) or 10%, Pitch Attitude - ±2°, Bank Attitude - ±2°, Heading - ±5°, Longitudinal Control Position - ±10%, Lateral Control Position - ±10%, Directional Control Position - ±10%, Collective Control Position - ±10%.	Landing.	Record the results of an autorotational deceleration and landing from a stabilized autorotational descent, to touch down.			**X**	If flight test data containing all required parameters for a complete power-off landing is not available from the aircraft manufacturer for this test, and other qualified flight test personnel are not available to acquire this data, the sponsor must coordinate with the responsible Flight Standards office to determine if it would be appropriate to accept alternative testing means. Alternative approaches to this

								data acquisition that may be acceptable are: 1) a simulated autorotational flare and reduction of rate of descent (ROD) at altitude; or 2) a power-on termination following an autorotational approach and flare.
2.	**Handling Qualities.**							
2.a.	Control System Mechanical Characteristics.	Contact the responsible Flight Standards office for clarification of any issue regarding helicopters with reversible controls.						

* * * * * * *

* * * * *

Attachment 3 to Appendix D to Part 60—Flight Training Device (FTD) Subjective Evaluation

* * * * *

Table D3C

Table of Functions and Subjective Tests Level 7 FTD Visual Requirements Additional Visual Models Beyond Minimum Required for Qualification Class II Airport or Helicopter Landing Area Models	
QPS REQUIREMENTS	
Entry Number	**Operations Tasks**

This table specifies the minimum airport or helicopter landing area visual model content and functionality necessary to add visual models to an FTD's visual model library (i.e., beyond those necessary for qualification at the stated level) without the necessity of further involvement of the responsible Flight Standards office or TPAA.

* * * * * * *

* * * * *

Attachment 4 to Appendix D to Part 60—Sample Documents

Table of Contents

* * * * *

Figure D4C Sample Letter of Compliance

* * * * *

Figure D4H [Reserved]

* * * * *

Attachment 4 to Appendix D to Part 60—Figure D4A—Sample Letter, Request for Initial, Upgrade, or Reinstatement Evaluation

Information

Date _____

RE: Request for Initial/Upgrade Evaluation Date

This is to advise you of our intent to request an (initial or upgrade) evaluation of our (FTD Manufacturer), (Aircraft Type/Level) Flight Training Device (FTD), (FAA ID Number, if previously qualified), located in (City, State) at the (Facility) on (Proposed Evaluation Date). (The proposed evaluation date shall not be more than 180 days following the date of this letter.) The FTD will be sponsored by (Name of Training Center/Air Carrier), FAA Designator (4 Letter Code). The FTD will be sponsored as follows; (Select One)

☐ The FTD will be used within the sponsor's FAA approved training program and placed on the sponsor's Training/Operations Specifications.

☐ The FTD will be used for dry lease only.

We agree to provide the formal request for the evaluation to your staff as follows: (check one)

☐ For QTG tests run at the factory, not later, than 45 days prior to the proposed evaluation date with the additional "l/3 on-site" tests provided not later than 14 days prior to the proposed evaluation date.

☐ For QTG tests run on-site, not later than 30 days prior to the proposed evaluation date.

We understand that the formal request will contain the following documents:

1. Sponsor's Letter of Request (*Company Compliance Letter*).
2. Principal Operations Inspector (POI) or Training Center Program Manager's (TCPM) endorsement.
3. Complete QTG.

If we are unable to meet the above requirements, we understand this may result in a significant delay, perhaps 45 days or more, in rescheduling and completing the evaluation.

(The sponsor should add additional comments as necessary).

Please contact (Name Telephone and Fax Number of Sponsor's Contact) to confirm the date for this initial evaluation. We understand a member of your National Simulator Program staff will respond to this request within 14 days.

A copy of this letter of intent has been provided to (Name), the Principal Operations Inspector (POI) and/or Training Center Program Manager (TCPM).

Sincerely,

Attachment: FTD Information Form
cc: POI/TCPM

* * * * *

Attachment 4 to Appendix D to Part 60—
Figure D4C—Sample Letter of Compliance

Information

(Date)

Mr. (Name of Training Program Approval Authority):
(Name of responsible Flight Standards office)
(Address)
(City/State/Zip)

Dear Mr. (Name of TPAA):

RE: Letter of Compliance

(Operator Sponsor Name) requests evaluation of our (Aircraft Type) FTD for Level (__) qualification. The (FTD Manufacturer Name) FTD with (Visual System Manufacturer Name/Model) system is fully defined on the FTD Information page of the accompanying Qualification Test Guide (QTG). We have completed the tests of the FTD and certify that it meets all applicable requirements of FAR parts 121, 125, or 135), and the guidance of (AC 120-40B or 14 CFR Part 60). Appropriate hardware and software configuration control procedures have been established. Our Pilot(s), (Name(s)), who are qualified on (Aircraft Type) aircraft have assessed the FTD and have found that it conforms to the (Operator/Sponsor) (Aircraft Type) flight deck configuration and that the simulated systems and subsystems function equivalently to those in the aircraft. The above named pilot(s) have also assessed the performance and the flying qualities of the FTD and find that it represents the respective aircraft.

(Added Comments may be placed here)

Sincerely,
(Sponsor Representative)

Attachment 4 to Appendix D to Part 60—Figure D4D—Sample Qualification Test Guide Cover Page

Information

SPONSOR NAME

SPONSOR ADDRESS

FAA QUALIFICATION TEST GUIDE

(SPECIFIC HELICOPTER MODEL)

(*for example*)

(Vertiflite AB-320)

(FTD Identification Including Manufacturer, Serial Number, Visual System Used)

(FTD Level)

(Qualification Performance Standard Used)

(FTD Location)

FAA Initial Evaluation

Date: _____

_____ Date: _____

(Sponsor)

_____ Date: _____

FAA

Attachment 4 to Appendix D to Part 60—Figure D4E—Sample Statement of Qualification—Certificate

Information

Federal Aviation Administration

Certificate of Qualification

This is to certify that representatives of the FAA Completed an evaluation of the

Go-Fast Training Center
Vertiflite AB-320 Flight Training Device

FAA Identification Number 889

And found it to meet the standards set forth in

14 CFR Part 60, Appendix D

Qualification Performance Standards

The Master Qualification Test Guide and the attached Configuration List and List of Qualified Tasks Provide the Qualification Basis for this device to operate at

Level 6

Until April 30, 2010

Unless sooner rescinded or extended by the FAA

March 15, 2009	C. *Nordlie*
(date)	(for the FAA)

* * * * *

■ 44. In appendix E to part 60:

■ a. Remove the word ''NSPM'' and in its place add the words ''responsible Flight Standards office'' in paragraphs a., b., d.(2), d.(3), e., f., g., h., h.(4), i.(1), j.(2)(b), and j.(4)(d).

■ b. Remove the word ''NSPM'' in paragraphs h.(1) and (2).

■ c. Remove paragraph i.(4).

■ d. Revise table E1.

The revision reads as follows:

Appendix E to Part 60 Qualification Performance Standards for Quality Management Systems for Flight Simulation Training Devices

* * * * *

TABLE E1—FSTD QUALITY MANAGEMENT SYSTEM

Entry No.	QPS Requirement	Information (Reference)
E1.1.	A QMS manual that prescribes the policies, processes, or procedures outlined in this table.	§ 60.5(a).
E1.2.	A policy, process, or procedure specifying how the sponsor will identify deficiencies in the QMS.	§ 60.5(b).
E1.3.	A policy, process, or procedure specifying how the sponsor will document how the QMS program will be changed to address deficiencies.	§ 60.5(b).
E1.4.	A policy, process, or procedure specifying how the sponsor will address proposed program changes (for programs that do not meet the minimum requirements as notified by the responsible Flight Standards office) to the responsible Flight Standards office and receive approval prior to their implementation.	§ 60.5(c).
E1.5.	A policy, process, or procedure specifying how the sponsor will document that at least one FSTD is used within the sponsor's FAA-approved flight training program for the aircraft or set of aircraft at least once within the 12-month period following the initial or upgrade evaluation conducted by the responsible Flight Standards office and at least once within each subsequent 12-month period thereafter.	§ 60. 7(b)(5).
E1.6.	A policy, process, or procedure specifying how the sponsor will document that at least one FSTD is used within the sponsor's FAA-approved flight training program for the aircraft or set of aircraft at least once within the 12-month period following the first continuing qualification evaluation conducted by the responsible Flight Standards office and at least once within each subsequent 12-month period thereafter.	§ 60.7(b)(6).
E1.7.	A policy, process, or procedure specifying how the sponsor will obtain an annual written statement from a qualified pilot (who has flown the subject aircraft or set of aircraft during the preceding 12-month period) that the performance and handling qualities of the subject FSTD represents the subject aircraft or set of aircraft (within the normal operating envelope). Required only if the subject FSTD is not used in the sponsor's FAA-approved flight training program for the aircraft or set of aircraft at least once within the preceding 12-month period.	§ 60.5(b)(7) and § 60.7(d)(2).
E1.8.	A policy, process, or procedure specifying how independent feedback (from persons recently completing training, evaluation, or obtaining flight experience; instructors and check airmen using the FSTD for training, evaluation or flight experience sessions; and FSTD technicians and maintenance personnel) will be received and addressed by the sponsor regarding the FSTD and its operation.	§ 60.9(b)(1).
E1.9.	A policy, process, or procedure specifying how and where the FSTD SOQ will be posted, or accessed by an appropriate terminal or display, in or adjacent to the FSTD.	§ 60.9(b)(2).
E1.10.	A policy, process, or procedure specifying how the sponsor's management representative (MR) is selected and identified by name to the responsible Flight Standards office.	§ 60.9(c) and Appendix E, paragraph(d).
E1.11.	A policy, process, or procedure specifying the MR authority and responsibility for the following:	§ 60.9(c)(2), (3), and (4).
E1.11.a.	Monitoring the on-going qualification of assigned FSTDs to ensure all matters regarding FSTD qualification are completed as required by this part.	
E1.11.b.	Ensuring that the QMS is properly maintained by overseeing the QMS policies, practices, or procedures and modifying as necessary.	
E1.11.c.	Regularly briefing sponsor's management on the status of the on-going FSTD qualification program and the effectiveness and efficiency of the QMS.	
E1.11.d.	Serving as the primary contact point for all matters between the sponsor and the responsible Flight Standards office regarding the qualification of assigned FSTDs.	
E1.11.e.	Delegating the MR assigned duties to an individual at each of the sponsor's locations, as appropriate.	
E1.12.	A policy, process, or procedure specifying how the sponsor will:	§ 60.13; QPS Appendices A, B, C, and D.
E1.12.a.	Ensure that the data made available to the responsible Flight Standards office (the validation data package) includes the aircraft manufacturer's flight test data (or other data approved by the responsible Flight Standards office) and all relevant data developed after the type certificate was issued (*e.g.,* data developed in response to an airworthiness directive) if the data results from a change in performance, handling qualities, functions, or other characteristics of the aircraft that must be considered for flight crewmember training, evaluation, or experience requirements.	
E1.12.b.	Notify the responsible Flight Standards office within 10 working days of becoming aware that an addition to or a revision of the flight related data or airplane systems related data is available if this data is used to program or operate a qualified FSTD.	
E1.12.c.	Maintain a liaison with the manufacturer of the aircraft being simulated (or with the holder of the aircraft type certificate for the aircraft being simulated if the manufacturer is no longer in business), and if appropriate, with the person who supplied the aircraft data package for the FFS for the purposes of receiving notification of data package changes.	
E1.13.	A policy, process, or procedure specifying how the sponsor will make available all special equipment and qualified personnel needed to conduct tests during initial, continuing qualification, or special evaluations.	§ 60.14.

TABLE E1—FSTD QUALITY MANAGEMENT SYSTEM—Continued

Entry No.	QPS Requirement	Information (Reference)
E1.14.	A policy, process, or procedure specifying how the sponsor will submit to the responsible Flight Standards office a request to evaluate the FSTD for initial qualification at a specific level and simultaneously request the TPAA forward a concurring letter to the responsible Flight Standards office; including how the MR will use qualified personnel to confirm the following:.	§ 60.15(a)–(d); § 60.15(b); § 60.15(b)(i); § 60.15(b)(ii); § 60.15(b)(iii).
E1.14.a.	That the performance and handling qualities of the FSTD represent those of the aircraft or set of aircraft within the normal operating envelope.	
E1.14.b.	The FSTD systems and sub-systems (including the simulated aircraft systems) functionally represent those in the aircraft or set of aircraft.	
E1.14.c.	The flight deck represents the configuration of the specific type or aircraft make, model, and series aircraft being simulated, as appropriate.	
E1.15.	A policy, process, or procedure specifying how the subjective and objective tests are completed at the sponsor's training facility for an initial evaluation.	§ 60.15(e).
E1.16.	A policy, process, or procedure specifying how the sponsor will update the QTG with the results of the FAA-witnessed tests and demonstrations together with the results of the objective tests and demonstrations after the responsible Flight Standards office completes the evaluation for initial qualification.	§ 60.15(h).
E1.17.	A policy, process, or procedure specifying how the sponsor will make the MQTG available to the responsible Flight Standards office upon request.	§ 60.15(i).
E1.18.	A policy, process, or procedure specifying how the sponsor will apply to the responsible Flight Standards office for additional qualification(s) to the SOQ.	§ 60.16(a); § 60.16(a)(1)(i); and § 60.16(a)(1)(ii).
E1.19.	A policy, process, or procedure specifying how the sponsor completes all required Attachment 2 objective tests each year in a minimum of four evenly spaced inspections as specified in the appropriate QPS.	§ 60.19(a)(1) QPS Appendices A, B, C, or D.
E1.20.	A policy, process, or procedure specifying how the sponsor completes and records a functional preflight check of the FSTD within the preceding 24 hours of FSTD use, including a description of the functional preflight.	§ 60.19(a)(2) QPS Appendices A, B, C, or D.
E1.21.	A policy, process, or procedure specifying how the sponsor schedules continuing qualification evaluations with the responsible Flight Standards office.	§ 60.19(b)(2).
E1.22.	A policy, process, or procedure specifying how the sponsor ensures that the FSTD has received a continuing qualification evaluation at the interval described in the MQTG.	§ 60.19(b)(5)–(6).
E1.23.	A policy, process, or procedure describing how discrepancies are recorded in the FSTD discrepancy log, including.	§ 60.19(c); § 60.19(c)(2)(i); § 60.19(c)(2)(ii).
E1.23.a.	A description of how the discrepancies are entered and maintained in the log until corrected.	
E1.23.b.	A description of the corrective action taken for each discrepancy, the identity of the individual taking the action, and the date that action is taken.	
E1.24.	A policy, process, or procedure specifying how the discrepancy log is kept in a form and manner acceptable to the Administrator and kept in or adjacent to the FSTD. (An electronic log that may be accessed by an appropriate terminal or display in or adjacent to the FSTD is satisfactory.).	§ 60.19(c)(2)(iii).
E1.25.	A policy, process, or procedure that requires each instructor, check airman, or representative of the Administrator conducting training, evaluation, or flight experience, and each person conducting the preflight inspection, who discovers a discrepancy, including any missing, malfunctioning, or inoperative components in the FSTD, to write or cause to be written a description of that discrepancy into the discrepancy log at the end of the FSTD preflight or FSTD use session.	§ 60.20.
E1.26.	A policy, process, or procedure specifying how the sponsor will apply for initial qualification based on the final aircraft data package approved by the aircraft manufacturer if operating an FSTD based on an interim qualification.	§ 60.21(c).
E1.27.	A policy, process, or procedure specifying how the sponsor determines whether an FSTD change qualifies as a modification as defined in § 60.23.	§ 60.23(a)(1)–(2).
E1.28.	A policy, process, or procedure specifying how the sponsor will ensure the FSTD is modified in accordance with any FSTD Directive regardless of the original qualification basis.	§ 60.23(b).
E1.29.	A policy, process, or procedure specifying how the sponsor will notify the responsible Flight Standards office and TPAA of their intent to use a modified FSTD and to ensure that the modified FSTD will not be used prior to:.	§ 60.23(c)(1)(i),(ii), and (iv).
E1.29.a.	Twenty-one days since the sponsor notified the responsible Flight Standards office and the TPAA of the proposed modification and the sponsor has not received any response from either the responsible Flight Standards office or the TPAA; or.	
E1.29.b.	Twenty-one days since the sponsor notified the responsible Flight Standards office and the TPAA of the proposed modification and one has approved the proposed modification and the other has not responded; or.	
E1.29.c.	The FSTD successfully completing any evaluation the responsible Flight Standards office may require in accordance with the standards for an evaluation for initial qualification or any part thereof before the modified FSTD is placed in service.	
E1.30	A policy, process, or procedure specifying how, after an FSTD modification is approved by the responsible Flight Standards office, the sponsor will:	§ 60.23(d)–(e).

TABLE E1—FSTD QUALITY MANAGEMENT SYSTEM—Continued

Entry No.	QPS Requirement	Information (Reference)
E1.30.a.	Post an addendum to the SOQ until as the responsible Flight Standards office issues a permanent, updated SOQ.	
E1.30.b.	Update the MQTG with current objective test results and appropriate objective data for each affected objective test or other MQTG section affected by the modification.	
E1.30.c.	File in the MQTG the requirement from the responsible Flight Standards office to make the modification and the record of the modification completion.	
E1.31.	A policy, process, or procedure specifying how the sponsor will track the length of time a component has been missing, malfunctioning, or inoperative (MMI), including:.	§ 60.25(b)–(c), and QPS Appendices A, B, C, or D.
E1.31.a.	How the sponsor will post a list of MMI components in or adjacent to the FSTD	
E1.31.b.	How the sponsor will notify the responsible Flight Standards office if the MMI has not been repaired or replaced within 30 days.*.	
E1.32.	A policy, process, or procedure specifying how the sponsor will notify the responsible Flight Standards office and how the sponsor will seek requalification of the FSTD if the FSTD is moved and reinstalled in a different location.	§ 60.27(a)(3).
E1.33.	A policy, process, or procedure specifying how the sponsor will maintain control of the following: (The sponsor must specify how these records are maintained in plain language form or in coded form; but if the coded form is used, the sponsor must specify how the preservation and retrieval of information will be conducted.).	§ 60.31.
E1.33.a.	The MQTG and each amendment	
E1.33.b.	A record of all FSTD modifications required by this part since the issuance of the original SOQ.	
E1.33.c.	Results of the qualification evaluations (initial and each upgrade) since the issuance of the original SOQ.	
E1.33.d.	Results of the objective tests conducted in accordance with this part for a period of 2 years.	
E1.33.e.	Results of the previous three continuing qualification evaluations, or the continuing qualification evaluations from the previous 2 years, whichever covers a longer period..	
E1.33.f.	Comments obtained in accordance with § 60.9(b);	
E1.33.g.	A record of all discrepancies entered in the discrepancy log over the previous 2 years, including the following:	
E1.33.g.1.	A list of the components or equipment that were or are missing, malfunctioning, or inoperative.	
E1.33.g.2.	The action taken to correct the discrepancy	
E1.33.g.3.	The date the corrective action was taken	
E1.33.g.4.	The identity of the person determining that the discrepancy has been corrected.	

* **Note:** If the sponsor has an approved discrepancy prioritization system, this item is satisfied by describing how discrepancies are prioritized, what actions are taken, and how the sponsor will notify the responsible Flight Standards office if the MMI has not been repaired or replaced within the specified timeframe.

Appendix F to Part 60—[Amended]

■ 45. In appendix F to part 60:

■ a. In section 2, remove the word ''NSPM'' and in its place add the words ''responsible Flight Standards office'' and remove the phrase ''National Simulator Program Manager (NSPM)—the FAA manager responsible for the overall administration and direction of the National Simulator Program (NSP), or a person approved by that FAA manager.''; and

■ b. In section 3, remove the phrase ''NSPM National Simulator Program Manager''.

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

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

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

§ 61.58 [Amended]

■ 47. Amend § 61.58 by removing paragraphs (j) and (k).

§ 61.313 [Amended]

■ 48. Amend § 61.313 in paragraph (h)(1) by removing the word ''light'' and adding in its place the word ''flight''.

PART 67—MEDICAL STANDARDS AND CERTIFICATION

■ 49. The authority citation for part 67 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45303.

§ 67.4 [Amended]

■ 50. Amend § 67.4 in paragraph (b) by removing the numbers ''26200'' and adding in their place the numbers ''25082''.

§ 67.409 [Amended]

■ 51. Amend § 67.409 in paragraph (a) by removing the phrase ''and in duplicate'' and by removing the numbers ''26080'' and adding in their place the numbers ''25082''.

PART 73—SPECIAL USE AIRSPACE

■ 52. The authority citation for part 73 continues to read as follows:

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

■ 53. Amend § 73.19 by revising paragraphs (a), (b) introductory text, and (c) to read as follows:

§ 73.19 Reports by using agency.

(a) Each using agency must prepare a report on the use of each restricted area assigned thereto during any part of the preceding 12-month period ended September 30, and transmit it by the following January 31 of each year to the Manager, Operations Support Group in

the ATO Service Center office of the Federal Aviation Administration having jurisdiction over the area in which the restricted area is located, with a copy to the Manager, Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

(b) In the report under this section the using agency must:

* * * * *

(c) If it is determined that the information submitted under paragraph (b) of this section is not sufficient to evaluate the nature and extent of the use of a restricted area, the FAA may request the using agency to submit supplementary reports. Within 60 days after receiving a request for additional information, the using agency must submit such information as the FAA Service Center Operations Support Group Manager considers appropriate. Supplementary reports must be sent to the FAA officials designated in paragraph (a) of this section.

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 54. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, Pub. L. 114–190, 130 Stat. 615 (49 U.S.C. 44703 note); articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

§ 91.9 [Amended]

■ 55. Amend § 91.9 in paragraph (c) by removing the phrase ''part 45'' and adding in its place the phrase ''part 45 or 48''.

§ 91.157 [Amended]

■ 56. Amend § 91.157 in paragraph (b)(4) introductory text by adding the word ''less'' after the phrase ''6 degrees or'' and by removing the word ''more'' before the phrase ''below the horizon''.

§ 91.203 [Amended]

■ 57. Amend § 91.203 in paragraph (a)(1) by removing the phrase ''part 47'' and adding in its place the phrase ''part 47 or 48''.

§ 91.511 [Amended]

■ 58. Amend § 91.511 in paragraph (a) introductory text by adding the words ''operating under this subpart'' after the word ''person'' in the first sentence.

§ 91.609 [Amended]

■ 59. Amend § 91.609 in paragraph (g) by adding the words ''49 CFR'' before both instances of the words ''part 830''.

§ 91.1001 [Amended]

■ 60. Amend § 91.1001 in paragraph (b)(9) by removing ''(b)(1)(v)'' and adding in its place ''(b)(5)(vi)''.

PART 97—STANDARD INSTRUMENT PROCEDURES

■ 61. The authority citation for part 97 continues to read as follows:

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

§ 97.20 [Amended]

■ 62. Amend § 97.20 in paragraph (b) by:

■ a. Removing the phrase ''FAA's Rules Docket (AGC–200) and at the National Flight Data Center, 800 Independence Avenue SW., Washington, DC 20590'' and adding in its place the phrase ''U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590, and at Aeronautical Information Services, 1305 East-West Highway, Silver Spring, MD 20910''; and

■ b. Removing the phrase ''call 202–741–6030'' and adding in its place the words phrase ''email: *fedreg.legal@nara.gov*''.

PART 101—MOORED BALLOONS, KITES, AMATEUR ROCKETS, UNMANNED FREE BALLOONS

■ 63. The authority citation for part 101 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40101 note, 40103, 40113–40114, 45302, 44502, 44514, 44701–44702, 44721, 46308.

§ 101.21 [Amended]

■ 64. Amend § 101.21 in paragraph (a) by removing citation ''§ 101.25(b)(7)(ii)'' and adding in its place citation ''§ 101.25(g)(2)''.

PART 107—SMALL UNMANNED AIRCRAFT SYSTEMS

■ 65. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 106(f), 40101 note, 40103(b), 44701(a)(5), 44807.

■ 66. Revise the heading for § 107.9 to read as follows:

§ 107.9 Safety event reporting.

* * * * *

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

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

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

§ 121.310 [Amended]

■ 68. Amend § 121.310 in paragraph (b)(2)(iii) by removing the words ''turbopropeller powered'' and adding in their place the words ''turbopropeller-powered''.

§ 121.311 Seats, safety belts, and shoulder harnesses. [Amended]

■ 69. Amend § 121.311 in paragraph (b)(2)(ii)(C) introductory text by removing the citation ''(B)(2)(ii)(A)'' and adding in its place the citation ''(b)(2)(ii)(A)''.

§ 121.359 [Amended]

■ 70. Amend § 121.359 in paragraph (h) by adding the phrase ''49 CFR'' before both instances of the phrase ''part 830''.

§ 121.391 [Amended]

■ 71. Amend § 121.391 in paragraph (d) by removing the word ''exists'' and adding in its place the word ''exits''.

§ 121.523 [Amended]

■ 72. Amend § 121.523 in paragraph (c) by removing the second instance of the word ''duty'' in the third sentence and adding in its place the word ''during''.

§ 121.703 [Amended]

■ 73. Amend § 121.703 in paragraph (f) by removing the citation ''14 CFR part 830'' and adding in its place the citation ''49 CFR part 830''.

§ 121.909 [Amended]

■ 74. Amend § 121.909 in paragraph (a) by removing the phrase ''made, through the FAA office responsible for approval of the certificate holder's operations specifications, to the Manager of the Air Transportation Division'' and adding in its place the phrase ''made to the responsible Flight Standards office''.

§ 121.923 [Amended]

■ 75. Amend § 121.923 in paragraph (a)(2) by removing the phrase ''made, through the FAA office directly responsible for oversight of the training provider, to the Manager of the Air Transportation Division'' and adding in

its place the phrase ''made to the responsible Flight Standards office''.

■ 76. Amend § 121.1115 by revising table 2 to read as follows:

§ 121.1115 Limit of validity.

* * * * *

TABLE 2—AIRPLANES EXCLUDED FROM § 26.21

Airplane model	Default LOV [flight cycles (FC) or flight hours (FH)]
Airbus:	
Caravelle	15,000 FC/24,000 FH
Avions Marcel Dassault:	
Breguet Aviation Mercure 100C	20,000 FC/16,000 FH
Boeing:	
Boeing 707 (–100 Series and –200 Series)	20,000 FC
Boeing 707 (–300 Series and –400 Series)	20,000 FC
Boeing 720	30,000 FC
Bombardier:	
CL–44D4 and CL–44J	20,000 FC
BD–700	15,000 FC
Bristol Aeroplane Company:	
Britannia 305	10,000 FC
British Aerospace Airbus, Ltd.:	
BAC 1–11 (all models)	85,000 FC
British Aerospace (Commercial Aircraft) Ltd.:	
Armstrong Whitworth Argosy A.W. 650 Series 101	20,000 FC
BAE Systems (Operations) Ltd.:	
BAe 146–100A (all models)	50,000 FC
BAe 146–200–07	50,000 FC
BAe 146–200–07 Dev	50,000 FC
BAe 146–200–11	50,000 FC
BAe 146–200–07A	47,000 FC
BAe 146–200–11 Dev	43,000 FC
BAe 146–300 (all models)	40,000 FC
Avro 146–RJ70A (all models)	40,000 FC
Avro 146–RJ85A and 146–RJ100A (all models)	50,000 FC
D & R Nevada, LLC:	
Convair Model 22	1,000 FC/1,000 FH
Convair Model 23M	1,000 FC/1,000 FH
deHavilland Aircraft Company, Ltd.:	
D.H. 106 Comet 4C	8,000 FH
Gulfstream:	
GV	40,000 FH
GV–SP	40,000 FH
Ilyushin Aviation Complex:	
IL–96T	10,000 FC/30,000 FH
Lockhead:	
300–50A01(USAF C 141A)	20,000 FC

* * * * *

PART 125— CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 77. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

§ 125.285 [Amended]

■ 78. Amend § 125.285 in paragraph (d) by removing the citation ''(c)(3)'' and adding in its place the citation ''(c)(2)''.

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

■ 79. The authority citation for part 129 continues to read as follows:

Authority: 49 U.S.C. 1372, 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901–44904, 44906, 44912, 46105, Pub. L. 107–71 sec. 104.

§ 129.18 [Amended]

■ 80. Amend § 129.18 in paragraph (b) introductory text by removing the word ''or'' and adding in its place the word ''of''.

■ 81. Amend § 129.115 by revising table 2 to read as follows:

§ 129.115 Limit of validity.

* * * * *

TABLE 2—AIRPLANES EXCLUDED FROM § 26.21

Airplane model	Default LOV [flight cycles (FC) or flight hours (FH)]
Airbus:	
Caravelle	15,000 FC/24,000 FH
Avions Marcel Dassault:	
Breguet Aviation Mercure 100C	20,000 FC/16,000 FH
Boeing:	
Boeing 707 (–100 Series and –200 Series)	20,000 FC
Boeing 707 (–300 Series and –400 Series)	20,000 FC
Boeing 720	30,000 FC
Bombardier:	
CL–44D4 and CL–44J	20,000 FC
BD–700	15,000 FC
Bristol Aeroplane Company:	
Britannia 305	10,000 FC
British Aerospace Airbus, Ltd.:	
BAC 1–11 (all models)	85,000 FC
British Aerospace (Commercial Aircraft) Ltd.:	
Armstrong Whitworth Argosy A.W. 650 Series 101	20,000 FC
BAE Systems (Operations) Ltd.:	
BAe 146–100A (all models)	50,000 FC
BAe 146–200–07	50,000 FC
BAe 146–200–07 Dev	50,000 FC
BAe 146–200–11	50,000 FC
BAe 146–200–07A	47,000 FC
BAe 146–200–11 Dev	43,000 FC
BAe 146–300 (all models)	40,000 FC
Avro 146–RJ70A (all models)	40,000 FC
Avro 146–RJ85A and 146–RJ100A (all models)	50,000 FC
D & R Nevada, LLC:	
Convair Model 22	1,000 FC/1,000 FH
Convair Model 23M	1,000 FC/1,000 FH
deHavilland Aircraft Company, Ltd.:	
D.H. 106 Comet 4C	8,000 FH
Gulfstream:	
GV	40,000 FH
GV–SP	40,000 FH
Ilyushin Aviation Complex:	
IL–96T	10,000 FC/30,000 FH
Lockheed:	
300–50A01 (USAF C 141A)	20,000 FC

* * * * *

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 82. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 41706, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722, 44730, 45101–45105; Public Law 112–95, 126 Stat. 58 (49 U.S.C. 44730).

§ 135.415 [Amended]

■ 83. Amend § 135.415 in paragraph (f) by adding the words ''49 CFR'' before the words ''part 830''.

PART 141—PILOT SCHOOLS

■ 84. The authority citation for part 141 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701–44703, 44707, 44709, 44711, 45102–45103, 45301–45302.

■ 85. Amend appendix I to part 141 by revising paragraph 4.(a)(3)(ii) and adding paragraphs 4.(i)(2)(i) and (ii) to read as follows:

Appendix I to Part 141—Additional Aircraft Category and/or Class Rating Course

* * * * *

4. Flight Training

(a) * * *

(3) * * *

(ii) Ten hours of training in a complex airplane, a turbine-powered airplane, or a technically advanced airplane that meets the requirements of § 61.129(j), or any combination thereof. The airplane must be appropriate to land or sea for the rating sought;

* * * * *

(i) * * *

(2) * * *

(i) Five training flights in a glider with a certificated flight instructor on the launch/tow procedures approved for the course and on the appropriate approved areas of operation listed in appendix D of part 141, paragraph 4.(d)(6); and

(ii) Three training flights in a glider with a certificated flight instructor in preparation for the practical test within 2 calendar months preceding the date of the test.

* * * * *

PART 183—REPRESENTATIVES OF THE ADMINISTRATOR

■ 86. The authority citation for part 183 continues to read as follows:

Authority: 31 U.S.C. 9701; 49 U.S.C. 106(f), 106(g), 40113, 44702, 45303.

§ 183.11 [Amended]

■ 87. Amend § 183.11 in paragraph (d) by:

■ a. Removing the words ''Associate Administrator for Air Traffic'' and adding in their place the words ''Associate Administrator for Aviation Safety''; and

■ b. Adding the word ''Designated'' before the phrase ''Air Traffic Control Tower Operator Examiners''.

■ 88. Amend § 183.25 by revising paragraph (c) to read as follows:

§ 183.25 Technical personnel examiners.

* * * * *

(c) A designated air traffic control tower operator examiner may—

(1) Accept applications for, and conduct, written and practical tests necessary for issuing control tower operator certificates under part 65 of this chapter; and

(2) In the discretion of the Associate Administrator for Aviation Safety issue temporary control tower operator certificates to qualified applicants.

* * * * *

PART 440—FINANCIAL RESPONSIBILITY

■ 89. The authority citation for part 440 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

■ 90. Amend § 440.19 by adding paragraphs (a)(1) and (2) to read as follows:

§ 440.19 United States payment of excess third-party liability claims.

(a) * * *

(1) Exceeds the amount of insurance required under § 440.9(b); and

(2) Is not more than $1,500,000,000 (as adjusted for inflation occurring after January 1, 1989) above that amount.

* * * * *

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703 in Washington, DC, on October 21, 2022.

Brandon Roberts,

Executive Director, Office of Rulemaking.

[FR Doc. 2022–23327 Filed 12–8–22; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL REGISTER

Vol. 87 Friday,

No. 236 December 9, 2022

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 648

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Amendment 23; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.: 221121–0246]

RIN 0648–BK17

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Amendment 23

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

ACTION: Final rule.

SUMMARY: NMFS is implementing regulations for Amendment 23 to the Northeast Multispecies Fishery Management Plan, which the New England Fishery Management Council adopted and NMFS approved. This action adjusts the existing industry-funded at-sea monitoring program for groundfish sectors to improve the accuracy of collected catch data (landings and discards) and catch accounting. The measures implementing Amendment 23 are intended to ensure there is a precise and accurate representation of catch to set catch limit levels that prevent overfishing and determine when catch limits are exceeded.

DATES: This rule is effective January 9, 2023, except for amendatory instruction 4 (§ 648.11(l)(5)), which is effective December 15, 2022.

ADDRESSES: The New England Fishery Management Council (Council) prepared an Environmental Impact Statement (EIS) for this action that describes the proposed measures in Amendment 23 to the Northeast Multispecies Fishery Management Plan (FMP) and other considered alternatives, and analyzes the impacts of the proposed measures and alternatives. The Council submitted the amendment to NMFS, including the EIS, a description of the Council's preferred alternatives, the Council's rationale for selecting each alternative, and a Regulatory Impact Review (RIR). Copies of supporting documents used by the Council, including the EIS and RIR, are available from: Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950 and accessible via the internet in documents available at: *https://www.nefmc.org/library/amendment-23.*

Copies of this final rule and the small entity compliance guide prepared for permit holders are available from: Michael Pentony, Regional Administrator, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01938 and accessible via the internet at: *https://www.fisheries.noaa.gov/new-england-mid-atlantic/commercial-fishing/northeast-groundfish-monitoring-program.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to the Greater Atlantic Regional Fisheries Office and to: *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Mark Grant, Fishery Policy Analyst, (978) 281–9145.

SUPPLEMENTARY INFORMATION:

Amendment 23 Summary

The Council initiated Amendment 23 to consider changes to the groundfish monitoring and reporting system to ensure it is providing accurate catch information necessary to manage the fishery effectively. The measures the Council chose in this action adjust the existing industry-funded sector monitoring program to improve the accuracy of collected catch data (landings and discards) and catch accounting. To address these issues, the Council adopted Amendment 23 at its September 2020 meeting. On April 12, 2022, we approved Amendment 23, including all measures adopted by the Council. In this final rule, we implement the approved measures in Amendment 23. The implementing regulations in this final rule:

- Replace the current process for calculating an annual at-sea monitoring (ASM) coverage target with a fixed monitoring coverage target as a percentage of trips, dependent on Federal funding.
- Approve additional electronic monitoring (EM) technologies as an alternative to human at-sea monitors;
- Exclude from the monitoring requirement all trips in geographic areas with expected low groundfish catch;
- Require periodic evaluation of the monitoring program and exclusions from the monitoring requirement;
- Remove the management uncertainty buffer from the portion of the acceptable biological catch (ABC) allocated to the sector catch share, if warranted, when the monitoring coverage target is 100 percent; and
- Grant authority to the Greater Atlantic Regional Administrator to revise sector reporting requirements to streamline reporting for the industry.

NMFS published a proposed rule (87 FR 11014, February 28, 2022) that discussed the proposed measures in detail and included proposed implementing regulations deemed necessary by the Council. Under the Magnuson-Stevens Fishery Conservation and Management Act, we approve, disapprove, or partially approve measures that the Council proposes, based on consistency with the Act and other applicable law. We review proposed regulations for consistency with the fishery management plan, plan amendment, the Magnuson-Stevens Act, other applicable law, and publish the proposed regulations, solicit public comment, and promulgate the final regulations. On April 12, 2022, we approved Amendment 23, including all the management measures recommended by the Council.

Approved Measures

ASM Coverage Target

The regulations implemented by this final rule replace the current method for determining the ASM coverage target for deploying human at-sea monitors, including the coefficient of variation (CV) standard, stock status criteria, and the annual determination by NMFS, with a fixed coverage target as a percentage of trips, dependent on Federal funding. To address bias, the coverage target will be 100 percent of trips for 4 years, provided Federal funding can support NMFS and industry costs. The ASM coverage target in years 1–4 may be less than 100 percent, and will be set at the maximum level for which there are sufficient Federal funds to support all NMFS and industry costs. The ASM coverage target will default to 40 percent in years 1–4 if Federal funding cannot completely support all industry costs for a coverage target greater than 40 percent. In year 5 and beyond, the coverage target will be 40 percent unless replaced by a subsequent Council action. However, Amendment 23 also allows for increased ASM coverage in year 5 and beyond, when Federal funding is available to support industry costs. For years with a 40-percent ASM coverage target, Federal funding will be used to first pay NMFS costs and then to support as much of industry costs as possible.

Each year, NMFS will evaluate available Federal funding. NMFS will determine how much Federal funding is

available for the groundfish sector monitoring program and then use that in conjunction with other available information (*e.g.,* recent monitoring costs, estimate of the number of vessels choosing EM) to calculate the ASM coverage target between 40 and 100 percent for the coming fishing year. This funding-based determination replaces the former annual process for determining the ASM coverage target for the sector monitoring program. NMFS will announce the ASM coverage target at least 3 weeks before the annual sector enrollment deadline set by NMFS, if Federal funding information is available (see *Determining Total Monitoring Coverage at a Time Certain* below).

On November 14, 2022, NMFS announced that the ASM coverage target for the sector monitoring program would be 80 percent of all sector trips subject to the ASM program. The 80-percent coverage target is based on the spending plan approved by Congress for funds appropriated for fiscal year 2022. NMFS determined that the 80-percent ASM coverage target, in conjunction with EM, will continue to help address monitoring bias, support the collection of information and data to help with future determinations of appropriate ASM coverage levels, and monitor sector operations, to the extent practicable, to reliably estimate overall catch by sector vessels. NMFS will continue to reimburse 100 percent of sector ASM and EM costs through the Atlantic States Marine Fisheries Commission.

Electronic Monitoring

This rule authorizes sector vessels to use the audit model and the maximized retention model of EM (MREM), in place of human ASM, to satisfy the sector monitoring requirement. Implementing EM models as alternatives to human ASM provides each sector the flexibility to choose the monitoring options (ASM, audit model EM, MREM) that best meet the needs of its members and ensure catch accountability. Through their operations plans, sectors must develop monitoring plans that describe how the sector will use the chosen monitoring tools. EM is expected to provide important information for NMFS and the Council to consider during the first four years and to provide a suitable basis for sector monitoring programs, as an alternative to human ASM, to ensure catch accountability. A vessel using EM remains subject to Northeast Fishery Observer Program (NEFOP) coverage, which is set at a level to meet the standardized bycatch reporting methodology requirements of the FMP and the Magnuson-Stevens Act. Amendment 23 does not remove or alter the existing authority for the Regional Administrator to deem types of EM technology sufficient, or to require EM if necessary, to be used in place of human at-sea monitors. The Regional Administrator may approve or disapprove additional forms of EM, consistent with the Administrative Procedure Act (APA). The Council may also approve additional forms of EM in a future action.

The audit model is one of the EM models included in Amendment 23. As discussed in the proposed rule, NMFS previously determined the EM audit model is sufficient to verify a vessel's submission of information on groundfish discards and other relevant information (*e.g.,* date and time, gear category, location) for the purpose of catch accounting, provided that the vessel's captain and crew adhere to catch handling and reporting requirements as described in the vessel monitoring plan (VMP) (86 FR 16686, March 31, 2021). Additional details of the audit model requirements are contained in the Fishing Years 2021–2022 Sector Operations Plan, Contract, and Environmental Assessment Requirements guide (*https://bit.ly/3pdau1L*). In this final rule, we are making an administrative change to require audit model vessels to report discards at the sub-trip level, rather than the haul level (see *Changes from the Proposed Action*) below.

This rule also implements the availability for use of the MREM model. MREM verifies compliance with catch retention requirements and uses dockside monitoring (DSM) to collect information on allocated groundfish at the dock that otherwise would be collected at sea. Under the MREM model, the vessel operator and crew are required to retain and land all catch of allocated groundfish on all sector EM trips, including fish below the minimum size specified at 50 CFR 648.83, that otherwise would be required to be discarded. Unallocated regulated species, ocean pout, and non-groundfish species must be handled in accordance with standard commercial fishing operations. Any allowable discards must occur at designated discard control points on the vessel, described in the VMP. EM data from the trip are reviewed by the EM service provider to verify that the vessel operator and crew complied with the catch retention requirements. A human dockside monitor meets the vessel at port upon its return from each trip to observe the offload and collect information on the catch (particularly fish below the minimum size). The dealer must report to NMFS landings of all fish by MREM vessels, including fish below the minimum size specified in the regulations. This rule implements MREM consistent with the NMFS MREM program detailed in the draft Sector Operations Plan, Contract, and Environmental Assessment Requirements guide for fishing year 2022 available at: *https://media.fisheries.noaa.gov/2022-01/210826_SectorOpsEAGuidanceFY2021_2022_Revised.pdf.*

A vessel may use the audit model or MREM to meet the sector monitoring requirement only if that EM model is included in the sector's approved operations plan. In order to effectively administer the ASM and EM systems, the Regional Administrator may approve only sector operations plans that adopt EM systems that limit switching between ASM and EM within the same fishing year. Thus, each operations plan that allows vessels to use EM must require such vessels to opt into an EM program for an entire fishing year, with two exceptions. First, a sector may allow a vessel a single opportunity to opt in/out of EM at any time during a fishing year if the sector operations plan includes both an approved ASM and EM plan. Second, if a vessel changes to a gear type not covered in the VMP, the vessel may temporarily use ASM until the VMP authorizing the use of the new gear type is approved. We would consider requests to switch from one EM program to another during a fishing year on a case-by-case basis that considers minimizing disruption and whether the switch is feasible within the current system. The Regional Administrator may provide written approval of adjustments to the restrictions on joining or leaving the EM program along with publishing such changes on the NMFS regional website, consistent with the current process for administrative changes to sector operations plans.

Vessels using EM must have their EM system operational and running on every sector groundfish trip, including trips that would be excluded from the ASM requirement (see *Exclusion from Monitoring Requirements for Certain Vessels Under Certain Conditions* below), unless issued a waiver by NMFS. During each sector EM trip taken by a vessel, the EM system records all fishing activity on board the vessel. The vessel operator and crew sort fish and make any allowable discards within view of the cameras in accordance with the catch handling protocols described in the VMP.

MREM vessels must also participate in a DSM program. The vessel operator

must notify the DSM program of its intention to sail prior to beginning a sector EM trip. Either the vessel operator or dealer must provide an offload time to the DSM program in advance of landing. The advance notice of landing and offload schedule will be dependent on the nature of the vessel's activity (*e.g.,* day boat vs. trip boat vessels) and will be defined in the vessel's VMP. The vessel operator, crew, and dealer must offload all allocated groundfish in the presence of the dockside monitor. The vessel operator and crew may not begin offloading unless a dockside monitor is present or they have received a waiver from the DSM program. The vessel operator must allow the dockside monitor access to the fish hold immediately following the offload in order to confirm all allocated groundfish were offloaded. The vessel operator and crew, or dealer personnel, must sort fish below the minimum size specified at § 648.83 by species (see *Changes from Proposed Action* below) and must separate unmarketable fish from fish below the minimum size.

In fishing years 2022 and 2023, NMFS intends to operate the dockside monitoring program for all MREM vessels. During these two years, NMFS will work with partners to provide dockside monitoring to all MREM vessels and to develop the infrastructure and requirements for an industry-funded third party dockside monitoring program. During fishing years 2022 and 2023, NMFS will determine who will provide DSM (*e.g.,* NMFS, partner) for each MREM vessel and will assign vessels accordingly. Subsequently, an industry-funded DSM model will be implemented and sectors will be required to contract with approved DSM providers to cover their MREM vessels. Detailed requirements for DSM programs for sector monitoring plans will be included in future sector operations plan guidance documents. If necessary, monitoring program regulations may be revised by the Regional Administrator in a manner consistent with the Administrative Procedure Act.

This rule also implements requirements for Northeast multispecies dealers to facilitate DSM for MREM vessels. During MREM vessel offloads, dealers must allow dockside monitors access to their premises, scales, and any fish received from vessels participating in the MREM program for the purpose of collecting fish species and weights of fish received by the dealer, fish length measurements, and the collection of age structures such as otoliths or scales. The primary dealer must retain all sublegal allocated groundfish catch in order to be weighed and sampled by the dockside monitor. Dealers must clearly mark all containers containing sublegal catch to facilitate tracking. This requirement provides a means for federally permitted dealers who purchase from MREM vessels or other federally permitted dealers who purchase from the primary dealer to demonstrate compliance with the minimum size requirements by ensuring all small fish can be traced to the landing MREM vessel.

Dealers must provide dockside monitors with access to facilities equivalent to what is provided to the dealer's staff, including: A safe sampling station, with shelter from weather, for dockside monitors to conduct their duties and process catch; access to bathrooms; and access to facilities for washing equipment with fresh water. The intent of the dealer requirements is not to require dealers to create or provide facilities that do not already exist, but to ensure dockside monitors have access to facilities equivalent to what is available to the dealer's staff.

Determining Total ASM Coverage at a Time Certain

NMFS will announce the ASM coverage target at least 3 weeks before the annual sector enrollment deadline set by NMFS. NMFS will use all Federal funding information available at the time it makes its determination, including any remaining funding from previous appropriations, to determine the ASM coverage target for the following fishing year. For example, if Congress has not approved a final budget for the fiscal year when NMFS makes its determination of the coverage target for the next fishing year, NMFS will use the Federal funding status at that time to set the target coverage level for the upcoming year. NMFS will adjust the coverage level as necessary and appropriate based on final Federal funding and appropriations to NMFS. At this time, NMFS has sufficient funding from prior years' ASM appropriations to continue to reimburse sectors for the costs of ASM and EM in fishing year 2022.

Review Process for Monitoring Coverage Targets

The Council will undertake a review to evaluate the effectiveness of the increased ASM coverage target once two full fishing years of data are available (likely in year 3 following implementation), and periodically thereafter. The Council review process is intended to be flexible and somewhat general, but includes establishing metrics and indicators of how well the monitoring program improved accuracy while maximizing value and minimizing costs. The intent of the review process is to evaluate whether the revised groundfish sector monitoring program, and particularly the increased ASM coverage target, is meeting the Council's goal of improved accuracy of catch data and catch monitoring while maximizing the value of the data collected and minimizing the costs of the monitoring program. The Council is currently developing the review process metrics. Results of the review will support a potential future Council action to refine the groundfish sector monitoring program or revise the ASM coverage target. NMFS may also review the sector monitoring program to assist the Council in its review and to ensure the sector monitoring program meets requirements of the Magnuson-Stevens Act, particularly the requirement to specify annual catch limits (ACLs) at a level that prevent overfishing, including measures to ensure accountability.

Waivers From Monitoring Requirements

This rule implements a system for waivers exempting individual vessels from industry-funded monitoring requirements, for either a trip or the fishing year, if coverage would be unavailable due to insufficient funding for NMFS administrative costs to meet the ASM coverage target. The waivers would include coverage for ASM and EM, including DSM for MREM vessels. As described above, NMFS will evaluate available Federal funding each year (see *ASM Coverage Target* above). If NMFS determines that there is insufficient funding to pay for its cost responsibilities, as defined in § 648.11(g)(3), for an ASM coverage target of at least 40 percent, then vessels will continue to be required to notify NMFS of all trips through the pre-trip notification system (PTNS), but NMFS will issue a waiver for a sector trip exempting the vessel from the sector monitoring program coverage requirements. If NMFS waives monitoring requirements due to insufficient funding, as part of its review the Council will consider whether changes to the FMP are necessary to ensure effective management if the ASM coverage target is less than 40 percent.

Exclusion From Monitoring Requirements for Certain Vessels Under Certain Conditions

Amendment 23 excludes sector fishing trips fished in their entirety west of 71°30′ W Longitude from the ASM requirement. Vessels are required to notify NMFS of all trips through PTNS,

but NMFS will issue a waiver for a sector trip exempting the vessel from ASM on a trip fishing exclusively west of 71°30′ W Longitude. Vessels on a trip excluded from the ASM requirement under this provision are required to comply with the vessel monitoring system (VMS) declaration requirements at § 648.10(g)(3), and the transiting requirements at § 648.81(e) when east of 71°30′ W Longitude. Vessels using EM to satisfy the sector monitoring requirement are required to have their system turned on and to comply with their VMP on all trips, including trips fishing exclusively west 71°30′ W Longitude. The 30-day delay in effectiveness is waived for this provision (see **DATES**).

Review Process for Vessels Excluded From Commercial Groundfish Monitoring Program Requirements

Amendment 23 establishes a process for reviewing measures that exclude certain vessels from the groundfish monitoring program requirements based on catch composition. This includes the gear-based exclusion from the ASM requirement, implemented by Framework 55, for sector trips that exclusively fish using gillnets of 10-inch (24.5-cm) or larger mesh in the Inshore Georges Bank and/or the Southern New England Broad Stock Areas; and the Amendment 23 provision excluding sector fishing trips taken in their entirety west of 71°30′ W Longitude (see *Exclusion from Monitoring Requirements for Certain Vessels Under Certain Conditions* above). The intent of the review process is to evaluate whether the trips excluded from the ASM requirement continue to catch small amounts of groundfish. The Council will conduct this review after two years of fishing data are available and every three years after that.

Increased Monitoring Coverage if Federal Funds Are Available

Amendment 23 authorizes NMFS to increase ASM coverage beyond the target coverage level selected by the Council, up to 100 percent, if NMFS determines funding is available to cover the additional administrative costs to NMFS and sampling costs to industry in a given year. This measure will apply to year 5 and later, when the ASM coverage target would otherwise be 40 percent of sector trips. Each year, NMFS will evaluate available Federal funding and determine how much Federal funding is available for the groundfish sector monitoring program and then use that in conjunction with other available information (*e.g.,* recent monitoring costs, estimate of the number of vessels choosing EM) to calculate the ASM coverage target for the coming fishing year.

Elimination of Management Uncertainty Buffer for Sector ACLs

Amendment 23 includes a measure to set revise the management uncertainty buffer for the sector portion of the ACL for each allocated groundfish stock to zero. The revised management uncertainty buffers apply only to sectors, and not to the common pool component of the fishery, or other sub-ACLs or sub-components for any stocks. In years that the ASM coverage target is set at 100 percent, the management uncertainty buffer will default to zero for the sector sub-ACL for allocated stocks, unless the Council specifies a different management uncertainty buffer through an action for a sector sub-ACL. The need for a management uncertainty buffer for the sector sub-ACL will continue to be evaluated as part of each specification action. The process by which the Council evaluates and sets management uncertainty buffers remains unchanged and the Council may adjust management uncertainty buffers in future actions.

NMFS will make an annual determination prior to the start of the fishing year as to whether the buffers will be eliminated based on the ASM coverage target set for the fishing year and whether the Council has taken action to set a different management uncertainty buffer for a sector sub-ACL. If Federal funds are not available for 100 percent ASM coverage and a lower target coverage level is set, the management uncertainty buffers will be in place for that fishing year, subject to the Council's review as part of each specification action.

The management uncertainty buffers for the sector portion of the ACL for each allocated groundfish stock previously set by Council remain in effect for fishing year 2022 (May 1, 2022, through April 30, 2023).

Sector Reporting Streamlining

Amendment 23 specifies the Regional Administrator's authority under section 305(d) of the Magnuson-Stevens Act to modify the sector monitoring requirements previously codified at § 648.87(b)(1)(v) and the sector reporting requirements previously codified at § 648.87(b)(1)(vi) to streamline the sector reporting process. This final rule moves the requirements previously codified at § 648.87(b)(1)(v) to § 648.11(l)(10)(iii) and redesignates the sector reporting requirements previously codified at § 648.87(b)(1)(vi) as § 648.87(b)(1)(v). Any changes to the requirements in § 648.11(l)(10)(iii) or § 648.87(b)(1)(v) will be made consistent with the Administrative Procedure Act.

As discussed above (see *Electronic Monitoring*), and in the proposed rule, the Regional Administrator is using this authority to require vessels using the audit model to report discards at the sub-trip level, rather than the haul level. During development of the audit model, under an exempted fishing permit, we determined trip-level reporting was sufficient and reduced the burden on vessels.

Additions to List of Framework Items

The regulations at § 648.90 list management measures that may be changed or implemented through specifications or framework actions. This rule adds all alternatives considered in Amendment 23 to the list of FMP items that may be considered in a future framework. Specifically, this includes:

- The addition of new sector monitoring tools (*e.g.,* EM, other technologies or approaches) that meet or exceed the Council's selected monitoring standard;
- Setting vessel-specific coverage targets instead of coverage targets applicable at the sector level; and
- All the Amendment 23 measures discussed in detail above.

Regulatory Adjustments and Corrections Under Regional Administrator Authority

In this final rule, NMFS is implementing several administrative changes to the regulations consistent with section 305(d) of the Magnuson-Stevens Act, which provides that the Secretary of Commerce may promulgate regulations necessary to ensure that amendments to an FMP are carried out in accordance with the FMP and the Magnuson-Stevens Act. These adjustments do not make any substantive changes to the current regulations, but are intended to improve the clarity of the regulations.

First, we revise § 648.2 to add definitions of terms related to EM that are used in the implementing regulations for Amendment 23 and clarify and consolidate definitions related to individuals that collect data for NMFS. Second, we move the sector monitoring program regulations from § 648.87 to § 648.11. Third, we revise § 648.11 to update the names of divisions within NMFS. Fourth, we revise §§ 648.2, 648.10, 648.11, 648.14, 648.51, 648.80, 648.86, and 648.202 to clarify that all regulations applicable to certified monitors also apply to monitoring staff in training. Finally, we

revise § 648.14(k) to correct a typographical error where text is missing and to clarify application of the prohibitions to EM.

Finally, due to the extensive regulatory changes in this action, we are updating references throughout the groundfish regulations that will change based on the regulatory adjustments.

Comments and Responses

We received 26 unique comment letters in response to the notice of availability (NOA) for Amendment 23 and the proposed rule. We also received one comment that was not germane to Amendment 23. Comments are grouped and summarized by topic.

General Comments on Amendment 23

Comment 1: Twelve comments generally supported approval and focused on the need for, and benefits of, the preferred alternative to set a fixed ASM coverage target of 100 percent of sector groundfish trips for 4 years. Seven comments generally opposed approval of Amendment 23 and focused on the cost to industry of the preferred alternative to set a fixed monitoring at-sea monitoring coverage target of 100 percent of sector groundfish trips; the negative effects of those costs on industry members and ports; and the lack of a guaranteed increase in quota resulting from increased monitoring. More specifically, six commercial fishing industry organizations generally opposed Amendment 23 and one commercial fishing industry organization generally supported the action. One individual member of the fishing industry commented in support while another commented that if 100-percent monitoring is implemented, then the monitoring data must be used in stock assessments. Seven comments were submitted by students from colleges, universities, and law schools with a mix of support and opposition. Four environmental non-governmental organizations (eNGO) submitted comments supporting partial approval of the amendment. These eNGO comments supported the increase in monitoring, but opposed the default coverage target of 40 percent, setting coverage based on Federal funding, and removing the uncertainty buffer, and excluding some trips from the monitoring requirement until bias was completely removed from the fishery. One eNGO also submitted comments signed by 1,251 individual members that support implementing a 100-percent at-sea monitoring coverage target.

Response: On April 12, 2022, we approved Amendment 23, including all the management measures recommended by the Council. In this rule we are implementing Amendment 23 as proposed, with minor changes to the implementing regulations (see *Changes from the Proposed Rule* below). We respond in detail to specific comments on the ASM coverage target below (see *Comments on the ASM Coverage Target*).

National Environmental Policy Act (NEPA) Comments

Comment 2: The Northeast Seafood Coalition (NSC) commented that the EIS does not comply with NEPA requirements and raised several concerns. First, NSC claims that scoping comments were ignored in the EIS and that Amendment 23 is an attempt to justify a pre-determined political objective. NSC alleges that the analyses focus on fishing effort and enforcement, which are not related to the purpose and need of the action. NSC argues that the alternatives were not reasonably compared to each other and the status quo. NSC also states the analyses do not provide evidence of widespread underreported catch, and that a peer review by a subset of the Council's Scientific and Statistical Committee (SSC) suggested additional analyses were needed to determine the frequency and magnitude of underreported catch. NSC also argues that increased monitoring will introduce additional bias to catch data and will not improve stock assessments. Finally, NSC highlights that the Council selected an alternative that was not in the draft EIS and that the final EIS includes analyses that were not part of the draft EIS.

Response: We disagree with NSC's positions. The record of development of this action demonstrates the Council did not initiate Amendment 23 with a pre-determined political objective. The Council engaged in a rigorous scoping process, including consideration of all comments before determining the purpose and need of the action. The purpose and need are clearly focused on reliable and accurate catch accounting to support the conservation and management requirements of the FMP. Amendment 23 represents a long and inclusive process, begun in 2015, of evaluating potential revisions to improve the reliability and accuracy of catch data while minimizing economic costs to industry.

A comprehensive evaluation of the alternatives in relation to the purpose and need of the action includes fishing mortality and enforcement, among other metrics, in the analyses evaluating the impacts of the different monitoring coverage alternatives. The Affected Environment is described in the final EIS based on valued ecosystem components (VECs), including: Regulated groundfish species; non-groundfish species/bycatch; the physical environment and essential fish habitat; protected resources; and human communities. VECs represent the resources, areas, and human communities that may be affected by the alternatives under consideration. VECs are the focus because they are the ''place'' where management action impacts occur. Within each section, the final EIS compares all alternatives to each other and to the No Action alternative. In Amendment 23, No Action is not necessarily the same as the status quo. For instance, the No Action alternative for setting an ASM coverage target requires an annual calculation that may range up to a 99-percent coverage target for which industry is responsible for costs as detailed in the regulations. However, the status quo is that the coverage target in fishing year 2021 was 40 percent of sector groundfish trips and sectors were reimbursed for all industry monitoring costs.

Bias analyses conducted by the Council's Groundfish Plan Development Team (PDT) were peer reviewed by a subset of the Council's SSC. That peer review determined that, in aggregate, the analyses demonstrated differences both in discarding behavior and in fishing behavior between observed and unobserved trips; and that the analyses suggest that discard estimates from observed trips should not be used to estimate discards from unobserved trips. The peer review noted that the analyses did not quantify the magnitude of unaccounted discards and that, with additional refinement and testing, two of the analyses could be used to provide estimates of the total quantity of unreported discards relative to annual catch limits or acceptable biological catches. In response to the recommendations of the peer review, the Council tasked the Groundfish PDT with further work to provide an estimate of an upper bound of the potential magnitude for missing legal-sized discards of Gulf of Maine cod in order to provide some characterization of the bounds of the discarding problem, and contracted an additional analysis for the final EIS titled ''Evaluating the Impact of Inaccurate Catch Information on New England Groundfish Management.'' The Council considered the analyses showing that current coverage could not provide a sufficiently accurate estimate of what is currently unseen on unobserved trips. Indeed, Amendment

23 seeks to improve the accuracy of catch information, which is necessary to ensure catch accountability and meet a core Magnuson-Stevens Act requirement to prevent overfishing. The Council's choice to seek further data that should be sufficient for assessing the magnitude of bias by increasing at-sea monitoring coverage up to 100 percent was reasonable.

Comprehensive monitoring with coverage up to 100 percent of trips will minimize bias in catch data by minimizing the opportunity for differences between observed and unobserved fishing activity. Removing bias from catch data improves one source of data included in stock assessments, but it is impossible to predict the outcomes of future stock assessments prior to acquiring unbiased or minimally biased data.

Additional analyses were completed during the comment period of the draft EIS and were included in the final EIS, but this is neither unusual generally, nor problematic in this instance. The Council created and selected a new alternative during the meeting where it made a final decision, but the new alternative was a combination of an existing alternative with an additional measure that fell within the range of the other alternatives evaluated in the draft EIS and did not introduce any new concepts or impacts. This new alternative was created to incorporate and address public comments.

Executive Orders (E.O.)

Comment 3: NSC commented that the amendment is not consistent with E.O.s 13777, 13840, and 13921. Specifically, NSC argued that Amendment 23 is inconsistent with E.O. 13777 because it would eliminate jobs, is unnecessary, would be ineffective, and has costs exceeding the benefits. NSC also alleged that Amendment 23 would not facilitate economic growth of coastal communities and promote ocean industries and would not ensure productive and sustainable use of ocean, coastal, and Great Lakes waters, as required by E.O. 13840. Last, NSC alleged Amendment 23 was in direct contravention of E.O. 13921, which required the Council to submit a prioritized list of recommended actions to reduce burdens on domestic fishing and to increase production within sustainable fisheries, because it would increase burdens on domestic fishing and decrease production by small vessels.

Response: We disagree. E.O. 13777 was revoked in January 2021. E.O.s 13840 and 13921, cited by the NSC, are consistent with the requirements of the Magnuson-Stevens Act's national standards and procedures for developing and implementing fishery management plans and amendments. None of the E.O.s cited by NSC eliminate or revise the requirements or authorities of the Magnuson-Stevens Act. Amendment 23 is consistent with the Magnuson-Stevens Act requirements as described in the proposed rule and this final rule. Further, Amendment 23's development, conservation and management measures, and implementation are consistent with the policies and requirements of E.O.s 13840 and 13921. Amendment 23 facilitates long-term economic growth by improving our ability to prevent overfishing and achieve optimum yield on a continuing basis (see response to Comment 5, below). As noted throughout this rule and the proposed rule, Amendment 23 measures are necessary to improve catch documentation in a cost-effective manner that is expected to improve the fishery's efficiency, productivity, and competitiveness.

National Standard (NS) 1 Comments

Comment 4: NSC commented that Amendment 23 is contrary to NS 1 because the economic analyses do not show that Amendment 23 will achieve optimal yield.

Response: We disagree that Amendment 23 is contrary to NS 1. NS 1 states ''Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.'' Optimum yield is the maximum sustainable yield as reduced by economic, social, or ecological factors, with the most important limitation being the requirement to prevent overfishing. Nothing in Amendment 23 prevents the Northeast Multispecies FMP from achieving optimum yield. To the contrary, Amendment 23 measures are intended to improve the long-term management of the fishery, including collecting more accurate and precise information to improve our ability to prevent overfishing and achieve optimum yield on a continuing basis. Further, NS 1 guidelines require the setting of status determination criteria (*e.g.,* overfishing level, acceptable biological catch, annual catch limit) and accountability measures, and accurately setting these determination criteria relies, in part, on the improved information that Amendment 23 will provide. Because of the bias in observer data, documented in the final EIS, it is not possible at this time to calculate an ASM coverage target less than 100 percent that would eliminate or minimize bias sufficiently to ensure catch accountability because the current catch data are not representative of the entirety of the sector fishery. Setting the ASM coverage target as high as possible, up to 100 percent, is expected to provide coverage sufficient to better assess the magnitude and nature of the bias that exists at current coverage levels that available information does not allow us to quantify. All of this information will better inform future management and coverage levels for the fishery. Thus, the measures in Amendment 23 were selected to improve the FMP's ability to meet NS 1 requirements.

NS 2 Comments

Comment 5: NSC asserted that there is insufficient information in the draft EIS to show increased monitoring would improve assessments and management performance or that under-reported catch was widespread. NSC also argued it was inconsistent for Amendment 23 to raise concerns about potential high bycatch of stocks that are low in abundance. Further, NSC raised concern that the EIS states catch misreporting has occurred in the past, but uses data from those years to analyze economic impacts. Northeast Fishery Sector (NEFS) XII alleged that the analyses are flawed and not based in economic reality.

Response: Amendment 23 is consistent with National Standard 2's requirement that ''Conservation and management measures shall be based upon the best scientific information available.'' The analyses included in the final EIS are based on the best scientific information available and are consistent with the Information Quality Act. The analyses in the Amendment 23 final EIS were prepared using data from accepted sources, and the analyses have been reviewed by members of the PDT and by the Council's SSC, where appropriate, including a peer review of the bias analyses. NSC does not identify any objective or peer-reviewed information that the Council or NMFS ignored. The analyses use all available fishery data and information to predict economic impacts of the various alternatives in Amendment 23 on the fishing industry. The Council acknowledged that available fishery-dependent data is biased and undertook Amendment 23 specifically to address the problem of bias in fishery-dependent data. While it is impossible to predict the effect of more accurate data on future assessments, ensuring catch accountability and minimizing bias will reduce uncertainty in the fishery

dependent data used in assessments as well as Council evaluation of economic effects of future actions. In addition to fishery-dependent data, assessments that inform management of the fishery use fishery-independent data that is not subject to observer bias. NS 2 guidelines acknowledge that there may be gaps in data, or uncertainty, along with the need to weigh relevance, inclusiveness, objectivity, transparency, timeliness, and verification and validation of data to the extent possible. Given these considerations, the Council process and final EIS information include sufficient analyses and the best available scientific information that support Amendment 23's measures. The economic analyses in the final EIS look at the effects of increased monitoring, with and without government subsidies, at the vessel, port, and sector level. Members of the public could use this information to estimate costs either generally or for their specific fishing business.

We disagree with NSC's premise that it is impossible for the commercial fishery to have high interactions with an overfished stock in need of rebuilding. While species differ, species managed under the Northeast Multispecies FMP, including cod, are known to contract their geographic range in response to declining population size and to congregate during various life stages, including during spawning. Improved monitoring will contribute to determining the level of interaction between the fishery and stocks.

NS 6 Comments

Comment 6: NSC commented that Amendment 23 is contrary to NS 6 because the EIS fails to assess the changes in behavior that are likely to result from its increased monitoring coverage. Specifically, NSC asserts that the baseline information that would be collected by comprehensive monitoring to inform a review of the monitoring program would not be an accurate reflection of the fishery and would not help to improve the management of the fishery. Further, NSC commented that requiring all vessels to meet the 100-percent ASM requirement is not fair and equitable.

Response: We disagree that Amendment 23 is inconsistent with NS 6's requirement to take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches. NS 6 guidance acknowledges uncertainty that may arise from changed fishing behaviors and notes that data acquisition and analysis will help the development of management measures to compensate for variations and to reduce the need for uncertainty buffers. Amendment 23 intends to acquire additional monitoring information for analysis to address uncertainty in current catch information consistent with NS 6.

Available analyses identified several biases in the current monitoring program and demonstrated monitoring data is not representative of the whole fishery. Observed trips are not representative of unobserved trips and monitoring data from observed trips cannot be extrapolated to the whole of the fishery, unless the level of observed trips is high enough to address biases that exist with lower coverage levels. NSC argues that higher ASM coverage introduces new bias because it influences where and when fishing occurs, and the stocks fishermen will target. However, NSC also argues that the final EIS contains no information on potential bias from achieving less than 100-percent coverage due to either a lack of Federal funds in years 1–4, or logistical challenges, or when the ASM coverage target defaults to 40 percent beginning in year 5. Requiring ASM on all sector groundfish trips would minimize, help identify or quantify, or eliminate monitoring bias.

NSC provides no suggested alternative for sufficiently addressing bias. NSC's notion that more comprehensive monitoring would only provide biased information, and is therefore improper, in effect argues that any level of monitoring is faulty and improper because it changes fishing behavior. NSC's position acknowledges the differences in observed and unobserved trips that Amendment 23 is designed to address, but its argument is inconsistent with NS 6. Without offering suitable alternatives, its position unacceptably leaves the fishery without any means of addressing the uncertainty arising from bias or ensuring catch accountability. Instead, Amendment 23 is responsibly seeking further information that is necessary to better account for variations and contingencies in the fishery. Amendment 23's approach is consistent with NS 6 guidance that ''continual data acquisition and analysis will help the development of management measures to compensate for variations. . . .'' In addition, Amendment 23 provides for variations in use of monitoring by authorizing the use of EM as an alternative to human ASM.

NSC seems to be misconstruing discussion of fairness and equity in the EIS with its concern that 100-percent monitoring would not be fair and equitable. The analysis in the EIS describes that if monitoring increases compliance with the FMP, it would create a fairer and more equitable fishery because all participants would be held to the same standards, thus preventing misreporting or illegal discarding behavior that results in an unfair competitive advantage. The additional observed information provided by Amendment 23 may also provide the basis for identifying inequities and for a more accurately managed fishery that benefits all participants.

NS 7 Comments

Comment 7: NSC and representatives of NEFS XII commented that Amendment 23 is not consistent with National Standard 7 because it does not contain a cost-benefit analysis. NSC also commented that the EIS is inadequate because the economic analyses consider gross revenues, rather than net revenues, and it lacks a break-even analysis to justify vessel monitoring costs. Further, NSC commented that the EIS fails to demonstrate that Amendment 23's changes to the monitoring program justify its costs, does not allow the public to ascertain clearly the types and levels of burdens on different groups, and does not explain why monitoring coverage levels measures considered unnecessary in previous actions were selected by the Council in Amendment 23. Finally, NSC commented that the EIS fails to justify industry costs by providing meaningful benefits to industry members and science, arguing it is irrational to suggest that improved data resulting from a reduction in observer bias could lead to improved economic outcomes through improved stock assessments.

Response: We disagree with the commenters that Amendment 23 is inconsistent with NS 7. NS 7 states, ''Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.'' NS 7 does not require a formal cost-benefit analysis. NS 7 guidance states that ''supporting analyses for FMPs should demonstrate that the benefits of fishery regulation are real and substantial relative to the added research, administrative, and enforcement costs, as well as costs to the industry of compliance. In determining the benefits and costs of management measures, each management strategy considered and its impacts on different user groups in the fishery should be evaluated. This requirement need not produce an elaborate, formalistic cost-benefit analysis. Rather, an evaluation of effects and costs, especially of differences among workable alternatives, including the status quo, is adequate.''

Amendment 23 evaluates the differences between the alternatives and supports the Council's choice as the most practicable means of ensuring catch accountability. The benefit of Amendment 23 is providing sufficient information and a means of meeting NS 1 requirements to set status determination criteria (*e.g.,* overfishing level, acceptable biological catch, annual catch limit) and to ensure catch accountability to prevent overfishing. Analyses in the final EIS show that the current system for setting ASM coverage targets, including achieving a 30-percent coefficient of variation on discard estimates, is not effective for providing accurate catch data for catch accountability. Thus, the resulting data could adversely affect core Magnuson-Stevens Act requirements. As a result, the EIS includes a cost efficiency analysis, rather than a formal cost-benefit analysis, that examines the most efficient way to achieve the levels of monitoring considered in Amendment 23 for ensuring catch accountability, and the effects on the groundfish fishery participants. The economic analyses in the EIS examine the effects of increased monitoring, with and without government subsidies, at the vessel, port, and sector level for the different alternatives. The economic analyses of the costs for the alternatives includes both static and dynamic approaches. The dynamic approach reports operating profit (net revenues). Further, Amendment 23 caps the level of coverage for which industry would pay at 40 percent, which minimizes the economic impacts on vessels while still meeting the critical need for monitoring to improve conservation and management of the groundfish fishery. These considerations were thorough and helped identify and evaluate differences between the alternatives in order to minimize costs to the extent practicable, consistent with NS 7.

NS 8 Comments

Comment 8: Four comments included concerns about Amendment 23 meeting the requirements of NS 8. NSC commented that the community impacts were hard to understand, that it was counterintuitive to conclude that gross ex-vessel revenues would increase due to increased monitoring, that Amendment 23 does not provide for sustained participation by communities, and that if the required monitoring is not economically viable for every industry member, then distributional and allocative impacts must be considered. Another comment stated the EIS had not adequately considered the social and economic harm to fishing communities of the EM provision, and urged us to make EM mandatory and to subsidize EM start-up costs for low-engagement fishing communities. NEFS XII commented that the economic analyses are not based in economic reality because a 40-percent coverage target is not affordable without government subsidy and noted the EIS did not consider the benefits of local seafood being sold and consumed locally. NEFS X and XIII commented that Amendment 23 would consolidate the fleet, force out small family operators, and cause the permanent loss of shore side support industries. NSC also commented that Amendment 23 is contrary to the Council's fleet diversity policy.

Response: We disagree that Amendment 23 is inconsistent with NS 8. NS 8 states, ''Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities by utilizing economic and social data that meet the requirements of paragraph (2), in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.'' NS 8 requires consideration of the importance of fishery resources consistent with the conservation requirement of the Magnuson-Stevens Act. The NS 8 guidance specifies that deliberations regarding the importance of fishery resources to fishing communities must not compromise the achievement of conservation requirements and goals of the FMP.

The potential for increased industry costs associated with monitoring or even some consolidation is consistent with the FMP's fleet diversity goal. The groundfish monitoring plan goals include achieving coverage levels sufficient to minimize effects of potential monitoring bias to the extent possible while maintaining as much flexibility as possible to enhance fleet viability. The FMP's fleet diversity goal does not ensure the participation of every participant, but rather seeks to provide flexibility to enhance fleet viability. Amendment 23 measures were developed to provide the balance that this goal seeks. It provides alternative means of monitoring that have differing costs and a sector may choose the combination of human ASM, audit EM, and MREM that best suits the operations of the sector and its member vessels. It seeks to minimize those costs when Federal funding is unavailable. It includes an evaluation that is expected to provide an opportunity to assess the effects on bias, fleet operations, and the benefits or costs of this program that does not exclude an assessment of fleet viability.

As discussed above, the economic analyses in the EIS consider the effects of increased monitoring, with and without government subsidies, at the vessel, port, and sector level. The analyses forecasted that less-profitable fishing operations would lease quota to more-profitable operations with a net result of increasing gross revenues for the fishery. The FMP goals include managing the stocks at a sustainable level and creating a management system that supports a fleet capacity commensurate with resource status, as well as an objective to maintain, to the extent possible, a diverse groundfish fishery, including different gear types, vessel sizes, geographic locations, and levels of participation. Amendment 23 maintained these goals and focused on goal 1 of the groundfish monitoring program: Improve documentation of catch. Amendment 23 looked at a range of options that adjust the current monitoring program to improve accounting and accuracy of collected catch data. The range included variable and fixed target coverage levels based on catch or trips, human ASM, two types of EM, and flexibility to allow sectors to choose the tools used to meet the sector monitoring requirement. Ultimately, the Council chose a fixed coverage target as high as could be achieved at zero cost to industry to form the basis of an analysis to further evaluate the fishery and its monitoring program. The Council also set a new lower cap on the coverage target that will be set when industry is paying for monitoring, as well as approving two EM models that sectors could choose to use to provide for sustained participation and minimize adverse economic impacts on communities to the extent practicable.

NS 10 Comments

Comment 9: NSC commented regarding NS 10 that the safety implications and incentives of the various alternatives were not compared and stated that vessels may choose to fish in dangerous weather to minimize monitoring costs associated with waiting out weather.

Response: We disagree that Amendment 23 is inconsistent with NS 10. NS 10 states, ''Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.'' NS 10 requires

management actions include measures, to the extent practicable, that avoid situations that may create pressures for fishermen to fish under conditions they would otherwise avoid due to safety. For practicability, measures must be consistent with the legal and practical requirements of conservation and management of the resource. Amendment 23 includes an ASM coverage target that is conditioned on the availability of Federal funding for NMFS' and industry costs. It provides for the use of human ASM and EM as an alternative to ensure catch accountability and affordability, to the extent practicable. In the event that reduced Federal funding leads to industry paying for its costs, the Council's preferred alternative caps the level of ASM coverage industry would pay for at 40 percent. Fishing is an inherently dangerous occupation where not all hazardous situations can be foreseen or avoided. NSC commented that vessels carrying an observer might choose to continue fishing in bad weather to earn revenue to pay for monitoring costs when Federal funding is not available. Importantly, vessels may also choose to postpone a trip, or can end a trip in progress at any time, if safety is a concern. Vessels may also choose to adopt EM and eliminate the costs associated with having a human at-sea monitor aboard during a weather layover.

Comments on the ASM Coverage Target

Comment 10: NSC commented that NMFS had previously argued in court that the incremental biological benefits of 100-percent monitoring did not justify the costs and that EM was not a viable option, and asked why 100-percent monitoring was now economically viable and beneficial.

Response: In *Oceana, Inc.* v. *Ross, 275 F.Supp.3d 270, 290–91 (D.D.C. 2017)* (Oceana), NMFS argued that EM was, at that time, not sufficiently developed or suitable to be a viable replacement for human at-sea observers for the purpose of the standardized bycatch reporting methodology (SBRM). The SBRM is distinct from the groundfish sector monitoring program as it applies universally to all federally managed fisheries in the Greater Atlantic region rather than just to groundfish sector vessels. The data collected by SBRM observers include information (such as weights of fish, scales, and otoliths, among other things) that cannot effectively be collected via EM systems. Because of this, even groundfish sector vessels electing to use EM as an alternative to human ASM must still carry an SBRM observer when selected. Continued development of EM specifically for the groundfish sector fleet since the time of that case has resulted in two EM models that we have deemed suitable as alternatives to human ASM for the groundfish sector monitoring program. Specifically, the audit model requires fishermen that choose the model to place all discards on a measuring board in view of the camera to allow capture of length information while MREM prohibits discards of allocated groundfish stocks and is coupled with DSM to capture information not obtainable by cameras. Further, this rule does not require any vessel to use EM, but implements the Amendment 23 provision allowing a sector to choose the combination of human ASM, audit EM, and MREM that best suits the operations of the sector and its member vessels.

In addition, since the lawsuit, new information and analysis raised questions and concerns about the efficacy of the groundfish sector monitoring program. Most importantly, bias analyses conducted by the PDT demonstrated differences both in discarding behavior and in fishing behavior between observed and unobserved trips at fleet-wide coverage levels that were generally below 35 percent. The analyses suggest that discard estimates from observed trips should not be used to estimate discards from unobserved trips when coverage rates are at low levels. The Council is revising the groundfish sector monitoring program, including increasing the ASM coverage target up to 100 percent of trips, to address bias and inform future action.

Comment 11: NSC commented that the EIS did not provide evidence to support a conclusion that substantially increased levels of monitoring would meet the stated goals of the action to improve groundfish stock assessments and management of the fishery, or that unmonitored fishing activity was negatively affecting resource conservation.

Response: We disagree that the ASM coverage target implemented by Amendment 23 is inconsistent with the stated purpose and need. Amendment 23 states the purpose of the action is to ''. . . adjust the current monitoring program to improve accounting and accuracy of collected catch data. It is the Council's intent that the catch reporting requirements are fair and equitable for all commercial groundfish fishermen, while maximizing the value of collected catch data, and minimizing costs for the fishing industry and the National Marine Fisheries Service.'' Amendment 23 states the need is ''. . . to implement measures to improve the reliability and accountability of catch reporting in the commercial groundfish fishery to ensure there is precise and accurate representation of catch (landings and discards). Accurate catch data are necessary to ensure that catch limits are set at levels that prevent overfishing and to determine when catch limits are exceeded.''

Amendment 23 maintains the current goals and objectives of the groundfish monitoring program, but addresses Goal 1 to improve documentation of catch, described as ''improved catch accounting'' during the scoping process. The objectives associated with that goal are: (1) determine total catch and effort, for each sector and the common pool, of target or regulated species; and (2) achieve coverage level sufficient to minimize effects of potential monitoring bias to the extent possible while maintaining as much flexibility as possible to enhance fleet viability. Amendment 23 adopts the highest ASM coverage target practicable, and provides for the use of EM, to inform future changes to the monitoring program and ensure catch accountability while balancing the effects of monitoring costs on the fishery. As discussed above, the Council chose a fixed coverage target as high as could be achieved at zero cost to industry to reliably and accurately estimate catch and to form the basis of an analysis to further evaluate the fishery and its monitoring program. The Council also set a new lower cap on the coverage target that will be set when industry is paying for monitoring, as well as approving two EM models that sectors could choose to use to provide for sustained participation and minimize adverse economic impacts on communities to the extent practicable.

Amendment 23 measures are meant to improve the long-term management of the fishery, including collecting more accurate and precise information to improve our ability to prevent overfishing and achieve optimum yield on a continuing basis. As discussed above, analyses of bias suggest that discard estimates from observed trips at low coverage levels should not be used to estimate discards from unobserved trips. Thus, when observer coverage levels are low, catch from unmonitored fishing cannot be reliably estimated from observed trips. NS 1 guidelines require the setting of status determination criteria, and accurately setting these determination criteria relies on the improved information that Amendment 23 will provide.

Comment 12: The Cape Cod Commercial Fishermen's Alliance

(CCCFA) supported the increased monitoring required under Amendment 23 and asserted that uncertainty over accurate and precise catch information and an inconsistent survey have combined to make management of the Northeast multispecies complex unable to rebuild key stocks. The Nature Conservancy (TNC) supported replacing the current method for determining the ASM coverage target for deploying human at-sea monitors with a fixed coverage target and setting the ASM coverage target at 100 percent for 4 years, but opposed setting the ASM coverage target based on funding and argued that target coverage rates should be based on the level of monitoring needed to achieve the goals and objectives of Amendment 23. The Environmental Defense Fund (EDF) and the Conservation Law Foundation (CLF) supported the 100-percent coverage target, but opposed defaulting to 40-percent coverage in the absence of Federal funding. CLF also submitted a comment on behalf of 1,251 members who had individually signed a letter supporting the 100-percent monitoring target. EDF highlighted that the final EIS stated that statistical analyses ''cannot quantify the differences between observed and unobserved trips in a way that allows for either a mathematical correction to the data or a survey design that resolves bias.'' EDF went on to interpret this to mean there is no mechanism to account for observer coverage bias except to eliminate it. Oceana supported the coverage target, but commented that 100-percent coverage would not completely remove bias due to unobserved tows or hauls. NSC opposed the coverage target based on issues related to NEPA and the National Standards (see above) and raised a concern that if the target coverage is not achieved there is no defined plan to ensure the monitoring program provides unbiased data.

Response: We agree that sector monitoring programs must ensure that monitoring coverage is sufficient for monitoring catch and discards, and that the current method for determining the ASM coverage target based on a CV analysis should be replaced for total catch accounting under the sector program. Analyses included in the final EIS documented that using a 30-percent CV was an insufficient basis for determining the necessary at-sea monitoring coverage target, without modification, because observer bias resulted in observed trips not being representative of unobserved trips. This differs from using a CV to determine review rates for EM programs where cameras are on and catch handling protocols are followed on 100 percent of groundfish trips; and from the SBRM program where there is limited incentive for vessels to fish differently on trips carrying an observer than on trips when without an observer. Using a method based on a CV to determine ASM target coverage levels is not effective to estimate total catch because observed trips at low levels of coverage are not representative of unobserved trips and there is an incentive for vessels to fish differently when carrying an at-sea monitor than on trips without an at-sea monitor. Because the catch data collected from low coverage levels are not representative of the entirety of the sector fishery, we cannot calculate an ASM coverage target that we can be reasonably confident would eliminate or minimize bias sufficiently to ensure catch accountability. The Council chose a fixed ASM coverage target of up to 100 percent to address bias by establishing a baseline of accurate and precise catch information for the fishery. The ASM coverage targets are coupled with a review process to evaluate the monitoring program once two full years of data are available. The preferred alternative adopts the highest level of ASM practicable, while balancing the effects of monitoring costs on the fishery, to inform future changes to the monitoring program and ensure catch accountability.

We disagree that the ASM coverage target should be 100 percent of trips regardless of Federal funding and that the 40-percent default coverage target should be disapproved. Monitoring coverage targets should be designed to achieve their stated purpose, ensuring catch accountability in as cost-effective manner as practicable. We have learned that setting ASM coverage targets based on coefficients of variation does not account for bias. The Council approved a new manner of determining ASM coverage targets designed to provide sufficient data to ensure catch accountability and determine what targets might be suitable under 100 percent.

Monitoring is always dependent on the availability of Federal funds, because even under industry-funded monitoring programs, NMFS incurs costs associated with administering monitoring programs. The coverage target in Amendment 23 is 100 percent of trips, so long as NMFS and industry costs for that coverage are funded with Federal appropriations. The 40-percent default coverage target in years 1–4 is the point at which available Federal funding would be solely applied to NMFS' costs in the event that a lack of funding would otherwise result in less than 40-percent coverage. ASM coverage targets of at least 40 percent on a consistent basis would be an increase from attained coverage levels to date.

Importantly, EM is available as an alternative to human ASM to ensure catch accountability. Sector monitoring programs must be satisfactory for monitoring catch and discards. This includes the potential use of EM as an alternative or if determined to be necessary as part of a future evaluation.

Comment 13: CCCFA supported NMFS covering industry costs when Federal funding is available because the industry is struggling economically and needs to minimize costs until groundfish stocks are rebuilt. One fisherman commented that basing the ASM coverage target on Federal funding creates an incentive for the industry to try to reduce funding for NMFS so that coverage levels will decrease. The commenter suggested the Council should establish an affordable level of industry monitoring costs, similar to the model used in the scallop fishery, to obtain the long-term benefits of accountability.

Response: We agree that the Federal funds appropriated for industry costs will facilitate industry transitioning to comprehensive monitoring. Making the coverage target contingent on Federal funding for industry costs balances the need for improved monitoring with the economic effects to the fishery. Combined with the option for vessels to use EM and removing the management uncertainty buffers from the sector portion of the ACL, the increased cost to industry is reduced. ASM coverage targets of at least 40-percent on a consistent basis would be an increase from attained coverage levels to date. Higher ASM coverage, even for a limited time, along with data from EM, could improve the cost-effectiveness of the monitoring system by providing a baseline of accurate and precise catch information for the evaluation of the program. Amendment 23 includes a requirement to evaluate the efficacy of sector monitoring coverage rates, to occur once two full fishing years of data is available. The intent of that review is evaluation of whether the monitoring program is meeting the goal of improved accuracy of catch data, while maximizing value and minimizing costs of the program through a future action. The Council wants to be sure enhanced levels of monitoring data are working as intended and the increased costs to industry are providing expected benefits from improved accuracy and reduced potential for bias in catch data. The Council could choose to reevaluate the

funding structure of the groundfish sector monitoring program as part of that review.

Comment 14: Oceana commented that any assumptions of completely removing bias by at-sea monitors observing 100 percent of trips is flawed and should be amended. Oceana specified that no observer can observe every tow or haul, and noted unobserved fishing happens on trips carrying observers, particularly on multi-day trips where observers are limited in the number of hours that they can work.

Response: We agree that requiring a single human at-sea monitor on 100-percent of trips does not assure every tow or haul is observed. However, we disagree that the language of the final EIS and amendment needs to be revised. The amount of catch and discards that an at-sea monitor may miss for various reasons (*e.g.,* fish being discarded while the at-sea monitor is not looking or is below deck) does not necessarily introduce bias because it does not change where and how vessels fish. Also, only some trips (33 percent in 2021) occur over multiple days where a human at-sea monitor will sleep or otherwise does not observe catch or discards. Further, some vessels, including a portion of vessels taking trips over multiple days, will be using EM rather than human at-sea monitors. All vessels using EM are required to have the camera system operational for the entirety of all sector groundfish trips. In particular, because all sector vessels are subject to human observer coverage as part of the SBRM, there may be opportunities to evaluate the possible effect by comparing EM and observer data on trips where a human at-sea monitor does not observe all tows. While 100-percent monitoring coverage might not completely remove the possibility for unobserved catch and discards, it does meet the Council's goal ''. . . to achieve a monitoring coverage level that ensures precise and accurate catch (landings and discards) estimation and minimizes the potential for biases in the estimates.''

Comment 15: NSC commented in opposition to the 40-percent ASM coverage target in the absence of Federal funding and argued that there was no basis to conclude that industry could afford to pay for 40-percent coverage. NEFS XII commented that the sector could not afford the current cost of monitoring without the subsidy provided by Federal appropriations, and that the sector's contracted ASM cost equates to a standardized daily cost of 13 to 18 percent of gross revenue on every trip.

Response: The Council selected a minimum ASM coverage target of 40 percent in the event that Federal funds are not available in a given year to ensure accurate catch information is still provided while addressing concerns about industry costs. The minimum target level of 40 percent will be funded by either sectors (if no Federal funds are available) or a combination of sectors and Federal funds. Making the coverage target contingent on Federal funding for industry costs balances the need for improved monitoring with the economic effects to the fishery. In years with a 40-percent ASM coverage target, Federal funding would be used to first pay NMFS costs for administering the monitoring programs and then support as much of industry costs as possible. Combined with the option for vessels to use EM, the increased cost to industry is mitigated to the extent practicable. Further, this change from the current maximum possible industry-funded ASM coverage target of 99 percent represents a reduction in the maximum monitoring costs that industry could have to pay. Further, all human observer coverage assigned to sector trips under the SBRM counts towards achieving the human ASM coverage target and this coverage is Federally funded.

A 40-percent ASM coverage target is an improvement from the average ASM coverage target from fishing years 2010–2017, which was 22 percent. The effects of 40-percent coverage on regulated groundfish would fall somewhere between the impacts of 25-percent coverage and 50-percent coverage, which were analyzed in the EIS. Thus, 40-percent coverage would have neutral to low positive effects on groundfish stocks, relative to No Action, because this target coverage level would represent an increase from the average realized coverage. However, with 40-percent coverage, there may be sources of unaccounted mortality in the fishery and an incentive to discard fish illegally when not monitored.

Comment 16: NSC commented that the proposed action is inconsistent with the regulatory requirements for an industry-funded monitoring program because the EIS did not analyze whether individual participants or ports could afford the industry costs associated with a 40-percent coverage target, and that not all participants could pay for the monitoring while remaining profitable. In particular, NSC alleged that Amendment 23 threatens the continued existence of the fishery and will diminish the net benefits to the nation.

Response: The industry-funded monitoring regulations at 50 CFR 648.11(g) apply to the development of new industry-funded monitoring programs by the Council. These regulations were implemented after the implementation of the groundfish sector monitoring program. Nevertheless, the groundfish sector monitoring program is consistent with the industry-funded monitoring provisions.

The groundfish sector monitoring program is necessary to monitor catch, discards, and utilization of sector annual catch entitlement (ACE). It helps ensure catch accountability and prevent overfishing as required by the Magnuson-Stevens Act. Objective design criteria are enumerated in § 648.11(l). As discussed above, the EIS includes a cost efficiency analysis that examines the most efficient way to achieve the levels of monitoring considered in Amendment 23 for ensuring catch accountability, and the impacts on the groundfish fishery participants. Further, the Council's preferred alternative caps the level of coverage industry would pay for at 40 percent, which minimizes the economic impacts on vessels while still meeting the critical need for monitoring to improve conservation and management of the groundfish fishery. Additionally, when the selected coverage target is combined with other measures in Amendment 23 (specifically EM and removal of management uncertainty buffers), the increased costs to industry are minimized. We will continue to grant waivers from the monitoring requirement for logistical reasons and in the event that coverage is not available due to a lack of Federal funding for NMFS' costs. The sector monitoring program requires sectors to directly contract with monitoring service providers rather than establishing a cost collection. Standards for monitoring providers are enumerated at § 648.11(h) and (l)(10)(ii). Additional implementation measures are also specified in § 648.11(l). Last, the groundfish sector monitoring program revised by Amendment 23 applies only to vessels participating in the voluntary sector catch share program. Each year, each vessel issued a limited access Northeast multispecies permit may opt to fish as part of a sector or to fish as part of the common pool fishery that is managed with a combination of effort controls and does not have an industry-funded monitoring requirement.

Comment 17: NSC commented that the impacts of the new coverage target are unclear because the status of Federal funding for later years is unknown.

Response: We agree that it is not possible to predict precisely the exact costs of the coverage target in future

years because the coverage may fluctuate for the industry as a whole and individual sectors or vessels; however, the EIS explicitly discusses that the economic effects of the coverage target depend on the availability of Federal funds to reimburse sectors for monitoring costs and the actual coverage targets set in each year. If there is no Federal funding to subsidize industry monitoring costs, then industry would be responsible for the full costs of a 40-percent coverage target, except for any observer coverage provided under the SBRM. The EIS uses both a linear model and a dynamic model to estimate costs to industry in this scenario. If full subsidy continues at any coverage target, then the effects would be neutral relative to status quo, because in past years most monitoring costs were reimbursed. While direct economic effects may be offset by any subsidy available for monitoring, indirect negative effects may also occur, if monitoring creates additional tasks or delays in at-sea operations. Overall, if there is no subsidy, fleet-wide ASM costs are estimated to be approximately $2.09 million per year, a negative impact relative to No Action ($0.9 million), due to the increase in the coverage target from the average coverage target in recent fishing years. Economic effects may be positive relative to No Action if there is more than $1.2 million available for monitoring, since if any less is available, then the No Action would be less expensive. The costs of monitoring of up to 40 percent coverage will not be uniformly borne by the fleet because those fishing more will generally pay more. There are also differences in how much of the total coverage will be accounted for by SBRM observer coverage on a sector and individual vessel level. In general, those fishing less also earn less on groundfish trips and groundfish trips may represent a higher proportion of total groundfish revenue as compared to higher grossing vessels. In general, vessels with low engagement in the fishery tend to be smaller and are also less reliant on groundfish fishery revenue, so effects from increases in monitoring coverage may mean those vessels are more likely to shift into other fisheries and lease their share of sector quota to active participants. Costs by homeport, engagement level, vessel size, and sector were estimated and included in the EIS. These are thorough estimates that inform the public sufficiently of potential costs and benefits of the action.

Comment 18: NSC alleges that there is no analysis or acknowledgment in the EIS that the increased monitoring will drive many current participants permanently out of the fishery with corresponding impacts on small coastal fishing communities with limited opportunities for alternate employment.

Response: We disagree. As NSC points out elsewhere in its comments, the EIS states that coverage levels based on a percentage of trips may have effects that are ''disproportionately negative for commercial groundfish sector program day boat participants, typically those operating smaller vessels or vessels contributing relatively small proportions to overall groundfish landings.'' Costs by homeport, engagement level, vessel size, and sector were estimated and included in the EIS. The EIS specifically highlights the ports that may have relatively greater negative social impacts as a result of monitoring coverage on a higher percentage of trips.

Comment 19: CCCFA commented that NMFS must ensure that there is increased observer capacity in order to minimize waivers and meet human ASM targets to achieve a robust monitoring program. NEFS V and XI commented that achieved ASM coverage levels will not reach or approach 100 percent due to existing logistical issues and ASM staffing.

Response: We agree that we must increase observer capacity and that in certain circumstances we may not meet a monitoring coverage target, particularly in the first year as we ramp up coverage and may face logistical complications. We have increased the number of at-sea monitor training sessions and contracted out training to increase the number of certified at-sea monitors available to support the increased ASM coverage target. Currently, there are 83 trained at-sea monitors, we have the potential this year to train 80 additional new at-sea monitors, and the potential to cross train an additional 40 observers or industry-funded scallop observers to be at-sea monitors. We will continue to issue waivers from ASM for selected trips in specific circumstances, including logistical reasons such as a late observer, safety, or if an observer or at-sea monitor is not available to cover the trip, consistent with current practice.

The Council chose a fixed ASM coverage target of up to 100 percent to address bias by establishing a baseline of accurate and precise catch information for the fishery, but the Council designed the groundfish sector monitoring program to have an ASM coverage target, and to allow waivers to be issued, because it did not wish to create a requirement that could prevent vessels from participating in the groundfish fishery if monitoring coverage was not available. The ASM coverage target will be set at the maximum level for which there are sufficient Federal funds to support all NMFS and industry costs. ASM coverage targets of at least 40-percent on a consistent basis would be an increase from attained coverage levels to date. Higher ASM coverage, even for a limited time, along with data from EM, could improve the cost-effectiveness of the monitoring system by providing a baseline of accurate and precise catch information to be used in the evaluation of the program that is planned.

The availability of EM also provides a potential option for sector monitoring programs to meet their obligation to develop and implement an ASM or EM program that is satisfactory to, and approved by, NMFS for monitoring catch and discards and utilization of sector ACE sufficiently to ensure catch accountability.

Comment 20: NEFS V and XI commented that higher ASM coverage targets are necessary, but suggested that a 100-percent coverage target would change the landscape of the Northeast groundfish fishery permanently. They noted that, during the development of Amendment 23, discussion centered on bias of observed versus unobserved groundfish trips, but that there was no detailed discussion on the specifics of which vessels were involved, when bias occurred, where bias occurred, or the magnitude of the bias. Further, they commented that not all vessels alter fishing practices on observed trips and, therefore, should not pay a price for the behavior of others. They concluded that further discussion of the magnitude of the problem would have resulted in the development of a more robust, efficient, and cost effective monitoring program.

Response: We agree it is possible that the increased monitoring coverage in Amendment 23 may change the fishery, but disagree that the development of Amendment 23 lacked thorough discussion of the issues around bias. The Council chose a fixed ASM coverage target of up to 100 percent to address bias by establishing a baseline of accurate and precise catch information for the fishery because the current biased catch data makes it impossible, at this time, to calculate an ASM coverage target less than 100 percent that would eliminate or minimize bias sufficiently to ensure catch accountability. Increased ASM coverage targets, up to 100 percent, would increase the accuracy of catch

estimates and reduce the potential for bias more than any other coverage target considered. Setting the coverage target up to 100 percent also simplifies compliance and enforceability of the monitoring program by removing a complex system of stratified random sampling. Higher ASM coverage, even for a limited time, along with data from EM, could improve the cost-effectiveness of the monitoring system by providing a baseline of accurate and precise catch information to be used in the evaluation of the program that is planned.

Comment 21: NEFS V and XI commented that an ASM coverage target of 100 percent would result in a significant portion of fishermen leaving the groundfish fishery to retire or focus on other fisheries. They clarified that the exodus would not be because monitoring would require behavioral changes affecting fishing activity, but because industry members feel the monitoring is a burden imposed because of the activities of a small number of dishonest fishermen.

Response: We disagree with the assertion that Amendment 23 is focused on the activities of dishonest fishermen. In January 2016, the Council first tasked its Groundfish PDT to evaluate the current ASM program against the goals and objectives for the program as clarified in Framework Adjustment 55. In November 2016, the Council initiated Amendment 23. The Council engaged in a rigorous scoping process, including consideration of all comments before determining the purpose and need of the action. The purpose and need are focused on reliable and accurate catch accounting to support the conservation and management requirements of the FMP. Analyses conducted for Amendment 23 determined that observer bias is a problem in the sector monitoring program. One objective of the program is to achieve a coverage level sufficient to minimize effects of potential monitoring bias to the extent possible while maintaining as much flexibility as possible to enhance fleet viability, but the monitoring program and Amendment 23 are not enforcement tools. Vessels that find the groundfish sector monitoring program burdensome may opt to fish as part of the common pool in which case they are not required to participate in, or pay for, the groundfish sector monitoring program. Amendment 23 also approves two types of EM as alternatives to provide flexibility for sectors to determine the monitoring tools that best fit their operations.

Comments on EM

Comment 22: Three members of the public, one industry member, CCCFA, EDF, CLF, and Oceana commented in general support of EM. CLF noted that making EM available in addition to ASM can reduce costs and also submitted a comment on behalf of 1,251 members who had individually signed nearly identical comment letters that supported EM. One member of the public argued that EM is a cost-effective alternate to human ASM and may be of particular value to larger vessels.

Response: We agree EM should be approved. We previously implemented the audit model of EM, and through this final rule, we are implementing the MREM model for the reasons given in the proposed rule.

Amendment 23 provides an additional EM choice that sector monitoring plans may include so that individual vessels may choose whether to use human at-sea monitors, the audit model, or MREM for a fishing year. EM allows flexibility for those individual vessels to determine which monitoring tool is the best option to ensure catch accountability based on economics, individual fishing operations, and personal preference. Amendment 23 does not require any business to adopt EM, however.

Amendment 23 does not remove the requirement for sectors to develop and implement an ASM or EM program that is satisfactory to, and approved by, NMFS for monitoring catch and discards and utilization of sector ACE. It is conceivable that a future monitoring program review may find that EM is necessary in some circumstances to ensure catch accountability. The Amendment 23 approval of MREM as an option does not prevent a future Council from requiring EM as necessary to address such a finding. Amendment 23 also does not prevent the Regional Administrator from approving EM as a requirement if found necessary to ensure that sector monitoring programs are satisfactory for monitoring catch, discards, and utilization of sector ACE. On April 2, 2021, we announced our policy for EM cost reimbursement that includes purchase and installation of EM equipment in addition to video review and technical support costs.

Comment 23: One individual commented that we should not approve EM as an option to use in lieu of human at-sea monitors unless adequate research has determined the efficacy of EM. This individual also commented that while EM is offered as a cost-effective replacement for human at-sea monitors, EM could eliminate jobs and may be expensive to maintain and repair over time. A group of law students commented in opposition to Amendment 23 based on a misunderstanding that EM would be required of all vessels, asserted that the costs were too great for industry to bear, particularly small businesses, and argued we should implement EM only when Federal funding is available to defray industry costs.

Response: We have worked collaboratively with industry members and other partners since 2010 to develop the audit and MREM models. The analyses included in the EIS document the estimated costs of EM, including installation, operation, maintenance, and periodic replacement. Further, the economic analyses compare the costs of EM and human at-sea monitors across the fishery as a whole and at a vessel level. The blended approach to monitoring allows individual fishing businesses to choose whether to use human at-sea monitors, the audit model, or MREM. EM allows flexibility for those businesses to determine which monitoring tool is the best option to ensure catch accountability based on economics, individual fishing operations, and personal preference. EM costs are highest in the first year, due to the need to purchase and install equipment, and decline in following years. However, Federal funds are available now to reimburse the full costs of purchasing and installing EM equipment, in addition to on-going operational costs for EM and human ASM. These funds are limited, however, and we cannot guarantee their availability in the future.

Comment 24: NSC commented that EM is not a viable option for commercial operations. Specifically, NSC claimed that the costs of catch foregone to allow storage of unmarketable fish on MREM vessels were not considered in the EIS; the analyses failed to consider the various components and costs associated with DSM; the complete costs of EM are not known, may escalate over time, and may not be cheaper than human at-sea monitors; and that EM data will not make a meaningful contribution to improving estimates of stock abundance.

Response: We disagree. We previously approved the audit EM model for use by sectors for fishing year 2021 and this action approves MREM for use by sectors. Analyses in the EIS include total costs of each of the EM and ASM options, including the scenario where EM equipment and installation costs are subsidized, as they are now with funds

appropriated by Congress. Monitoring costs by homeport, engagement level, vessel size, and sector were estimated and included in the EIS.

The cost analyses do not explicitly estimate the cost of potential catch foregone by an MREM vessel to accommodate the requirement to land all allocated groundfish, including unmarketable fish. To date, vessels participating in the MREM program have not identified this issue as affecting their fishing operations, or choice to use MREM. This may be at least in part because MREM vessels have landed only small amounts of unmarketable fish. Individual vessel fishing practices and physical configurations can differ substantially, along with actual costs and opportunity costs. Each fishing business would need to determine whether potential foregone catch would make the MREM program too costly in relation to ASM or the EM audit model.

Cost estimates for MREM in the final EIS include DSM costs. These estimates use information developed in the detailed analysis of the alternatives for a mandatory dockside monitoring program for the fishery (sectors and common pool). The Council chose not to implement a mandatory DSM program for the entire fishery, but the economic estimates remain informative and were used in estimating overall costs for MREM.

Counter to NSC's assertion that EM costs may escalate over time, we anticipate that EM costs are likely to decline over time for multiple reasons. First, costs of technology, including hardware, transmission costs, and data storage costs, have continuously declined over time. Second, review rates for EM vessel trips are not static and could be reduced or increased in response to an individual vessel's performance with EM.

Comment 25: In its comment, the Council requested an update on the requirement for MREM vessels to discard any red hake in excess of the possession limit, the inability of current EM systems to distinguish red hake from white hake using cameras, and how this issue is being addressed under the MREM exempted fishing permit (EFP). CCCFA commented that the Council should consider this issue as part of its review of Amendment 23 and suggested that the approach used in the audit model could be used in the interim.

Response: A percentage of MREM trips taken under the EFP carry at-sea monitors to estimate discards of non-allocated groundfish stocks. Data from those trips are used to create discard ratios in order to calculate discards for non-allocated stocks that are applied to MREM trips without at-sea monitors. Under the EFP, participating MREM vessels are required to retain all red hake. After further reviewing this practice and available data, we have developed a different approach that is implemented by this rule for the operational MREM program. MREM vessels will be required to comply with the red hake trip limits, meaning they will be required to discard red hake over the applicable possession limit. A portion of MREM trips will carry a NEFOP observer. Discards of non-allocated stocks (including red hake) from MREM trips that carry an observer will be calculated based on the observer data. Discards of non-allocated stocks on MREM trips, and discards of unallocated stocks on trips where the EM system fails or footage is not usable, will be calculated, by stratum, based on MREM and other trips that carry an observer.

Allocated stocks are assigned a discard rate of zero on unmonitored trips, including white hake (for which there is no minimum size). Thus, sector vessels are required to land all white hake, and discards of hake on MREM trips will not be counted as white hake. Rather, we will presume all discarded hake are not white hake, unless there is sufficient information (*e.g.,* observer data, clear video of discarded hake larger than red hake and spotted hake) to suggest otherwise, and that all discarded hake are red hake or spotted hake. We intend to collect data on hake discards in the first year(s) of the operational MREM program, including comparing catch of hake on NEFOP observed trips to MREM trips, to better understand the volume and nature of discards and will share that information with the Council for use in its review of Amendment 23.

Comment 26: Teem Fish and CCCFA commented that discards of allocated groundfish that occur on MREM trips should be considered operational discards, and recorded as such during EM review, when they fall within the example situations noted in the proposed rule (fish that drop out of the gear into the ocean, fish taken by birds) because these are extenuating circumstances that are mostly outside the control of the vessel.

Response: Some discards of allocated groundfish may at times occur on any observed or monitored trips. NEFOP, ASM, MREM, and audit EM trips may include operational discards (fish that drop out of the gear into the ocean, fish taken by birds), accidental discards, or intentional discards. These discards cannot always be estimated using current EM technology. We agree that operational discards should be annotated during review of EM footage, should not count against sector allocations, and should not trigger enforcement action. The EM reviewer guidance will be updated to treat MREM and audit model trips the same. However, the Council should consider how to account for all discards on EM trips in the overall management of the fishery.

Comment 27: CCCFA and Teem Fish commented that we should revise the requirement for a vessel owner or operator to ''make the electronic monitoring system, associated equipment, electronic monitoring data, or vessel monitoring plan available to NMFS for inspection, upon request,'' to state explicitly that the service provider of the EM system should be included in NMFS' request and allowed to be present for the requested inspection.

Response: We disagree and have approved the regulatory requirement as proposed. This is an existing regulatory requirement that was previously codified at 50 CFR 648.87(b)(5)(iii)(A)(*3*)(*v*) and is only moved by this rule to § 648.11(l)(10)(i)(B)(*5*) as part of a reorganization of the regulations, but was not proposed to be changed. This requirement applies to all EM vessels at all times, including when boarded at sea. Requiring inclusion of EM service providers in the request for the opportunity to be present could hamper real-time enforcement and present problems for documenting the chain of custody if the EM system, equipment, data, and vessel monitoring plan were not immediately turned over upon request. The regulatory requirement does not prevent a vessel from requesting their EM service provider's assistance.

Comment 28: CCCFA and Teem Fish requested that we clarify the specific facilitation requirement proposed as part of the implementing regulations at § 648.11(l)(5)(vii)(P)(*1*). Specifically, each asked about the roles of EM providers and NMFS, and whether we intend for the role of troubleshooting and system issue resolution to be handed over to NMFS.

Response: The implementing regulations at § 648.11(l)(5)(vii)(P)(*1*) require monitoring service providers to facilitate fully functioning EM systems by providing to NMFS, upon request, ''Assistance in electronic monitoring system operations, diagnosing/resolving technical issues, and recovering lost or corrupted data.'' The intent of this requirement is administrative. EM

service providers are best positioned to provide NMFS with information or guidance for resolving technical issues relating to NMFS' access to and use of the EM providers' systems or systems' data. At this time, there is no intention for NMFS to take on the role of troubleshooting or resolving an EM provider's or vessel's EM system issues. A workable EM system is essential to an effective EM program. An EM service provider must be able to provide for the successful provision of data on a vessel's behalf to help ensure the vessel is able to comply with EM requirements and provide NMFS with all required information.

Comment 29: CCCFA and Teem Fish requested that we define ''electronic monitoring data'' to clarify the data retention requirements and download requirements so that all parties would be aware of the exact attributes, relative amount of data that must be retained, and what must be provided to NMFS upon request.

Response: The term ''electronic monitoring data'' is defined in § 648.2 as ''the data that are created in the collection of fishery-dependent data by electronic monitoring systems during fishing operations, including the video, images, and other sensor data, as well as the metadata that provides information (*e.g.,* trip sail date, vessel information) about the raw data.'' The metadata do not include the data sets that are delivered to the software application using the application programming interface (API). An EM provider may choose to keep a copy of any submitted reports for their own records, but this is not a vessel requirement.

Comment 30: CCCFA and Teem Fish highlighted that the preamble discussion of the audit model incorrectly stated that ''The EM data are compared to verify the eVTR-reported catch and discards.'' Each noted that the audit program uses EM to verify only discards and not kept catch.

Response: We agree. The preamble discussion is incorrect. The definition of electronic monitoring audit model at § 648.2 correctly states that ''. . . electronic monitoring data are compared to the area fished, regulated species and ocean pout discards, and other information reported on the vessel trip report on a subset of trips for validation.'' The audit model is designed to verify discards, not catch.

Comment 31: Teem Fish and CCCFA commented that we should revise the proposed requirement for a pre-trip EM system check because captains should not be expected to know the exact amount of data needed for their fishing trip and should conduct checks only to ensure system functionality and recording availability.

Response: We agree that it may be difficult for a vessel owner or operator to estimate the amount of data storage necessary for each trip. In this final rule we have revised the proposed implementing regulation text at § 648.11(l)(10)(i)(A)(*2*) to remove the requirement for a vessel owner or operator using EM to determine that there is sufficient video storage capacity to retain the recording of the entire fishing trip. We will monitor this issue and may propose changes in future if it is determined this issue undermines the effectiveness of the EM program. It remains the responsibility of vessel owners and operators to ensure that the EM system is operational, recording, and retaining the recording for the entire trip. Because a failure to comply with the requirement to record and retain data for entire EM trips may result in an enforcement action, vessel operators or owners conducting system checks and actively managing EM systems to ensure proper operation for an entire trip should be part of a vessel's regular operations notwithstanding our revision.

Comment 32: The Gulf of Maine Research Institute (GMRI) urged us to develop VMP guidance that allows for minor modifications without requiring the resubmission and approval of VMPs through NMFS. GMRI noted that it has found that instituting small changes to improve performance, such as slight adjustments to camera angles or discard points, can be cumbersome (implying that such changes should be able to be more easily incorporated into VMPs without in depth NMFS review and approval). GMRI suggested that allowing minor modifications to VMPs through NMFS' Vessel Management Application (VMAN) would lead to greater efficiencies and save time for industry, NMFS, and service providers.

Response: In this final rule we have revised the regulatory text at § 648.11(l)(10)(i)(B). The new text requires that ''Vessels must submit vessel monitoring plans and revisions to vessel monitoring plans for NMFS review and approval, as instructed by the Regional Administrator.'' This language requires submitting substantial VMP changes for review and approval, but allows the Regional Administrator to identify in our written VMP guidance the scope of changes that would require resubmission and approval of the VMP.

Comment 33: The Council supported the proposal to require EM vessels to have their EM turned on for 100-percent of trips, including trips west of 71° 30' W. Longitude. The Council highlighted that the EIS identified that the proposed EM options minimize the potential for bias in the catch estimates because EM operates on 100 percent of trips and that proposed monitoring tools are intended to meet or exceed the selected monitoring coverage target. NEFS V commented that trips that would be excluded from the human ASM requirement should also be excluded from EM.

Response: We agree that vessels using EM should follow their VMP on all trips and have approved the measure as proposed for the reasons explained in the proposed rule. Throughout the development of EM, we have found that vessels are most successful at complying with their VMP when it is followed on all groundfish trips. Vessels that are interested in fishing in ways that would be excluded from ASM may choose to use ASM, rather than adopting EM, and be excluded from the sector monitoring requirement on trips excluded from the human ASM requirement.

Comment 34: CCCFA and GMRI opposed the requirement for monitoring service providers to submit EM reports within 10 business days of a trip being selected for video review, as proposed at § 648.11(l)(10)(ii)(B). GMRI explained that it is challenging and expensive for EM providers to file a report on a multi-day trip within 10 days. GMRI requested that the deadline for filing electronic monitoring reports be removed from the rule and handled in the electronic monitoring reviewer guidance. CCCFA stated that the 10-day window makes sense for the audit model, but might not make sense for MREM, where trips may be longer than seven days. CCCFA noted that additional flexibility in the timing of EM report submission should be acceptable because the data in the EM report for MREM vessels is not used by sector managers for catch accounting. CCCFA concluded that review deadlines should be tied to the amount of video being reviewed.

Response: We agree that a 10-day window for submitting EM reports for MREM trips may not be necessary or practical, for the reasons stated by GMRI and CCCFA. However, setting a deadline is necessary for the efficient operation of the program. The proposed regulatory text stated that EM reports must be submitted to NMFS within 10 business days of a trip being selected for video review ''or as otherwise instructed by the Regional Administrator.'' This allows flexibility for us to change the timing requirement through the EM reviewer guidance document. We will continue to work with sectors and monitoring service providers to develop an appropriate window. Accordingly,

we have approved the regulatory requirement as proposed.

Comment 35: GMRI opposed the portion of the proposed implementing regulations at § 648.11(l)(10)(iv), requiring dealers to facilitate DSM, that states dealers must make all fish from MREM vessels available to dockside monitors for ''the collection of age structures such as otoliths or scales.'' GMRI argued that these age structures could be collected by NEFOP observers deployed on MREM vessels or by the NMFS portside biosampling program. GMRI suggested that making this a requirement of dockside monitors would greatly increase the costs of the program and require that dockside monitors have additional training and qualifications that are not needed to meet the underlying catch accounting goal of the program.

Response: We disagree and have approved the regulatory requirements at § 648.11(l)(10)(iv) as proposed. While it is possible that some age structures could be obtained through the portside biosampling program, the current program is not designed to handle the volume or the needs of MREM trips. To prevent duplication of effort, the portside biosampling program will exclude landings from MREM trips. However, we intend to continue operating the NMFS-based DSM program during fishing years 2022 and 2023, and will be working with GMRI to run a pilot study to develop requirements for a third-party industry-funded DSM program to replace the NMFS-operated DSM program. We intend to test alternative protocols to develop efficiencies and potential cost-savings during the pilot program. Amendment 23 and its implementing regulations include a process for NMFS to revise the at-sea and electronic monitoring operations standards, if we identify improvements to the regulations implemented by this final rule.

Comment 36: GMRI opposed the proposed implementing regulation that would require Federally permitted Northeast multispecies dealers to first offload from MREM vessels all fish below the minimum size specified at § 648.83 before other fish that meet the minimum size. GMRI noted that offloading the undersized fish last could be more cost effective by allowing for a single DSM to witness an offload rather than the multiple monitors that are frequently deployed under the current program. GMRI suggested that operational details be specified in dockside monitoring guidance developed during the pilot project.

Response: We agree and have revised the regulation at § 648.11(l)(10)(iv)(B)(*1*) to remove the requirement for dealers to offload fish below the minimum size before other fish. Our intent is to allow MREM vessels and dealers to determine the most efficient way to offload MREM trips. This will also facilitate having a third party DSM program in the future where DSM providers may negotiate the offload process with sectors.

Comment 37: GMRI supported the proposed measure for dealers offloading MREM vessels, at § 648.11(l)(10)(iv)(B)(*2*), to allow redfish, haddock, and pollock below the minimum size specified at § 648.83 to be mixed with the same species of fish in the smallest market category. GMRI also requested the provision be expanded to all allocated groundfish species landed by MREM vessels. GMRI also suggested the proposed regulatory text be further modified to state, ''fish treated in this manner must be available for a monitor to sample.'' rather than the proposed language stating, ''provide the dockside monitor access to those at the safe sampling station.''

Response: We disagree. This final rule revises the regulation at § 648.11(l)(10)(iv)(B)(*2*) to require dealers to separate, by species, all fish below the minimum size specified at § 648.83. This change removes the option for a dealer to report a mix of fish below the minimum size specified at § 648.83 along with fish of the smallest market size meeting the minimum size. This change requires dealers to separately report all fish below the minimum size, by species. Under the current EFP, reporting a mix of fish below the minimum size and the smallest market category has been permitted, but dealers have stopped using the mixed category in reporting because there was an economic benefit to separating fish below the minimum size from larger fish. Further, continued work to implement Amendment 23 has determined that the catch accounting process required to implement the MREM program requires reporting fish below the minimum size separately from other categories of fish of the same species to facilitate the inclusion of MREM trips in the SBRM program. MREM vessels will not be a unique fleet in SBRM, and therefore NMFS must be able to delineate the catch of fish below the minimum size on MREM trips to incorporate those trips into the existing SBRM fleets. As discussed above, the implementing regulations include a process for NMFS to revise the at-sea and electronic monitoring operations standards, if we identify improvements to the regulations implemented by this final rule.

Comment 38: CCCFA and one fisherman commented that a formal process is necessary to compare DSM data, ASM data, and EM data to vessel trip report (VTR) data and dealer data to accurately account for catch. The fisherman suggested that the audit EM model should be updated to include a broad estimate or characterization of the catch by the EM video reviewer.

Response: We agree with the importance of eliminating or minimizing to the extent possible the potential for misreporting. Existing data protocols will continue, and we plan to implement an automated comparison of DSM data and dealer data as part of the MREM program to meet the Council's intent for MREM to ensure compliance with the requirement to land all allocated groundfish and verify dealer-reported catch.

We disagree that the proposed regulations for the audit model must be changed to sufficiently address that potential. We will continue to evaluate EM operations to look for opportunities to ensure full and accurate reporting. The goal of Amendment 23 is to improve catch accounting with two objectives: 1. Determine total catch and effort for each sector and the common pool; and 2. Achieve a coverage level sufficient to minimize bias to the extent possible while maintaining as much flexibility as possible to enhance fleet viability. While it is likely that increased monitoring will lead to increased compliance with at-sea reporting requirements, in addition to increasing the accuracy and precision of catch information, Amendment 23 is not revising the sector monitoring program as a whole to be an enforcement tool. NOAA's Office of Law Enforcement will continue to enforce all regulations and investigate potential violations.

Comment 39: The Council commented that it is unclear what we intended to address with the proposed requirements for dealers to clearly mark all containers containing sublegal catch to facilitate tracking and to provide settlement documents to the DSM program for any allocated groundfish forwarded to secondary dealers. The Council asked how far down the supply chain the requirement would apply, and asked us to define 'secondary dealers.'

Response: This final rule implements the MREM model. Vessels participating in MREM are required to land all fish from allocated groundfish stocks, including fish below the minimum sizes specified in the regulations at § 648.83. As part of implementing Amendment 23, the regulations authorize only

Federally permitted Northeast dealers to purchase, possess, and/or receive undersized fish that are landed by MREM vessels. Non-MREM vessels are prohibited from landing fish below the minimum sizes. We proposed the requirement for federally permitted dealers to identify, mark, or label all containers containing fish below the minimum size to provide a means for federally permitted dealers who purchase fish from MREM vessels to demonstrate compliance with the minimum size requirements by ensuring all small fish can be traced to the landing MREM vessel.

The definition of dealer at § 648.2 refers to the person who receives fish, for a commercial purpose (other than solely for transport on land), from the owner or operator of a vessel. Any federally permitted dealer may only possess undersized fish from federally permitted vessels if the fish is from an MREM vessel. The reference to ''secondary dealers'' was a shorthand reference to any Northeast multispecies federally permitted dealer that receives Northeast multispecies from another federally permitted dealer, rather than directly from a vessel. For example, if dealer A offloads and purchases catch from an MREM vessel, sorts and keeps the haddock, pollock, and redfish for sale to retailers or the public, but sells all other groundfish species to dealer B, then dealer B is a secondary purchaser of the fish landed and purchased by dealer A from the MREM vessel. To show that the fish purchased from dealer A is legally possessed, federally permitted dealer B must have any container with fish below the minimum size labeled or tagged as described in the regulations. This container identification allows federally permitted dealers to demonstrate compliance and to legally possess undersized fish that were originally landed by MREM vessels and sold to a federally permitted dealer. Only entities issued a Federal dealer permit are subject to the requirement to identify containers with small fish. Other entities without a Federal dealer permit for Northeast multispecies who purchase from a federally permitted dealer rather than purchasing or receiving from MREM vessels, such as wholesalers and retailers, are not subject to the labeling requirement. In this final rule, we have revised the proposed regulatory text to clarify these issues. The permit holder bulletin for Amendment 23 contains guidance for dealers.

Comment 40: The Northeast Sector Services Network (NESSN) commented that the EM implementation issues we highlighted in the proposed rule for comment were known during the development of Amendment 23. NESSN questioned why these items, along with other comments and questions raised during the draft EIS public comment period, were ignored by the Council.

Response: We disagree that the Council failed to properly address comments on the draft EIS or that the Council ignored implementation issues. The process for Amendment 23 was consistent with the policies, procedures, and applicable laws that apply to developing actions. The Council discussed comments on the draft EIS at its September 2020 meeting. Many changes and additions were made to the final EIS to improve the draft EIS, as discussed in the responses to other comments. The Council considered a number of different alternatives prior to selecting the preferred alternatives. The Council's Groundfish PDT developed, and analyzed in the EIS, the alternatives selected by the Council for inclusion in Amendment 23. Implementation questions sometimes arise subsequent to selecting preferred alternatives. NMFS is responsible for implementing all approved measures, including developing systems and processes consistent with existing and future systems. Final implementation work by NMFS sometimes uncovers unforeseen administrative issues.

In the proposed rule, we highlighted implementation issues for comment by the Council and the public prior to finalizing the implementing regulations. NMFS approved Amendment 23 in full, and this final rule contains the necessary implementing regulations. As discussed in this preamble, the changes from the proposed rule improve implementation and are consistent with NMFS' responsibility to carry out fishery management plan amendments. The implementation issues highlighted in the proposed rule are worth monitoring and evaluating, consistent with the Council's intent to evaluate the groundfish sector monitoring program changes in Amendment 23 through a future action.

Comment 41: In its comments, CCCFA asked whether the proposed requirement for monitoring service providers to have an availability report available and accessible to NMFS electronically 24 hours a day, 7 days a week, applies to electronic monitoring review.

Response: The proposed implementing regulation at § 648.11(h)(5)(vii)(E) states ''The monitoring service provider must report to NMFS any inability to respond to an industry request for observer or monitor coverage due to the lack of available observers or monitors as soon as practicable. Availability report must be available and accessible to NMFS electronically 24 hours a day, 7 days a week.'' This is an existing requirement and the intent is for ASM providers to have an availability report that is accessible to NMFS. This requirement does not apply to the availability of EM reviewers because EM reviewer availability is not dependent on the timing of the fishing trip.

Comments on Determining Monitoring Coverage at a Time Certain

Comment 42: NESSN, NEFS V, and NEFS XI supported having the ASM coverage target announced at a time certain before the annual sector enrollment deadline. NESSN requested that, in years when Federal funding information was not available to set the ASM coverage target ahead of the enrollment deadline, NMFS provide estimated industry costs prior to the sector enrollment deadline. NEFS V and NEFS XI commented that NMFS should always prioritize and complete the funding-based determination of the ASM coverage target before the sector enrollment deadline.

Response: We agree the ASM coverage target should be announced at a time certain before the annual sector enrollment deadline. As stated previously, NMFS will announce the ASM coverage target at least 3 weeks before the annual sector enrollment deadline set by NMFS. NMFS will use all Federal funding information available at the time it makes its determination, including any remaining funding from previous appropriations, to determine the ASM coverage target for the following fishing year. For example, if Congress has not approved a final budget for the fiscal year when NMFS makes its determination of the coverage target for the next fishing year, NMFS will use the Federal funding status at that time to set the target coverage level for the upcoming year. NMFS will adjust the coverage level as necessary and appropriate based on final Federal funding and appropriations to NMFS. If Federal funding for ASM and EM coverage is insufficient to pay for industry costs, the ASM coverage target will be 40 percent of all sector groundfish trips.

Comment 43: CLF commented that the EM video review rate should be 100 percent during the first year to account for the vessel learning curve for EM. NEFS V and NEFX XII commented that the EM video review rate should start at 50 percent and reflect the captain's ability to estimate discards accurately. EDF commented that human review of

EM video could be one of the most significant costs of an EM program. EDF highlighted that an EM video review rate of 10–20 percent is common in EM programs to balance costs and accuracy goals. Further, EDF raised concerns about our secondary review of EM video and suggested we implement the lowest secondary EM video review rate necessary to adequately audit monitoring service providers.

Response: On June 14, 2022, we notified the Council that the fishing year 2022 video review rate for the audit model electronic monitoring program is 35 percent of trips for experienced vessels and 50 percent of trips for newer vessels. Experienced vessels are defined as those that participated in the EM program while it operated under an exempted fishing permit and took a minimum of one sector trip in the operational audit model program in fishing year 2021. Experienced vessels typically have multiple years of experience with EM and the associated catch handling and reporting requirements. Vessels that are newer to the audit model will remain at the 50-percent video review rate to allow more opportunities for feedback on their catch handling and reporting performance. The fishing year 2022 video review rate for MREM vessels is 50 percent of trips, as announced in the Draft Fishing Year 2022 Sector Operations Plan, Contract, and Environmental Assessment Requirements.

Our video review rate determination is based on an analysis of past performance to provide a reasonable expectation of achieving a CV of 30 percent, or better, precision level for each groundfish species. Using a CV analysis for determining video review rates is suitable because a vessel is uncertain of which trips are reviewed, and thus there is not the same bias as experienced with ASM. Based on the results of the analysis, the minimum review rate required to achieve a 30-percent CV for all groundfish species in fishing year 2020 was 35 percent of sector trips. While we used a 30-percent CV standard to select video review rates for fishing year 2022, we are not required to use this standard and may employ a different approach in future fishing years based on data collected and evaluated under an operational program. We will continue to explore metrics for evaluating and categorizing vessel performance to inform video review rates in future fishing years.

Comments on the Review Process for Monitoring Coverage Targets

Comment 44: CLF, CCCFA, EDF, Oceana, TNC, NEFS V, and NEFS XI supported the review process for monitoring coverage targets. CCCFA commented that regular Council review is necessary to refine ASM coverage targets, determining uncertainty buffers, and address issues raised in the proposed rule. Oceana urged that the review take place once two full years of data are available, regardless of the coverage targets.

Response: We agree and have approved the measure as proposed for the reasons explained in the proposed rule.

Comment 45: CCCFA commented that NMFS and the Council should monitor realized coverage and waivers in the first year to refine the program for the second year.

Response: We monitor achieved coverage and waivers in real time, and meet with monitoring providers monthly to improve the likelihood of achieving monitoring coverage targets.

Comment 46: CLF and Oceana commented that Amendment 23 should specify the terms of reference for the review. CCCFA supported leaving the review metrics out of Amendment 23, but suggested several metrics that should be used, including the number of waivers issued, overall industry and NMFS costs, and changes in groundfish fleet composition. NEFS V suggested the review compare and contrast the groundfish discard estimates generated by all components of the approved monitoring program (NEFOP, ASM, audit EM, and MREM), and include an analysis of costs per trip or sea day between ASM, audit EM, and MREM.

Response: We disagree that the review metrics should be specified in Amendment 23 or the implementing regulations. The Groundfish Committee and PDT are currently developing the review metrics through the Council's inclusive public process.

Comments on Waivers From Monitoring Requirements

Comment 47: NEFS V and NEFS XI supported granting waivers when funding is not available for NMFS' costs. CCCFA commented in support of waivers for logistical challenges, but raised concern that too many waivers would undermine the goal of the monitoring program, suggested EM as an alternative to issuing waivers from ASM, and urged that NMFS track waivers in real time to prevent abuse of waivers to avoid monitoring. One fisherman commented in support of waivers, but suggested waivers be phased out after the first year. One law student stated that waivers should not be issued to EM vessels on the basis of cost.

Response: We agree that monitoring waivers should be considered for vessels if NMFS is unable to fund some of its own costs associated with the sector monitoring program. If NMFS cannot pay for any of its costs to administer the groundfish sector monitoring program, the program cannot operate. In this unlikely situation, we would waive all sector trips from the requirements for ASM, EM, and DSM until such time as we had funding to administer the groundfish sector monitoring program. If NMFS waives monitoring requirements due to insufficient funding, as part of the review of the changes to the monitoring program, the Council and NMFS will consider whether changes to the FMP are necessary to ensure effective management if the ASM coverage target is less than 40 percent. We have approved the measure as proposed for the reasons explained in the proposed rule. Monitoring is always dependent on the availability of Federal funds, because even under industry-funded monitoring programs, NMFS incurs costs associated with administering monitoring programs. Therefore, we disagree that waivers should be phased out after the first year.

NMFS may also issue waivers from the human ASM and EM requirements for other reasons. These can be administrative waivers, safety waivers, and logistical waivers. For example, we may waive the requirement to carry an observer or monitor if the facilities on a vessel for housing the observer or monitor, or for carrying out observer or monitor functions, are so inadequate or unsafe that the health or safety of the observer or monitor, or the safe operation of the vessel, would be jeopardized. We have a policy where we may waive the human ASM requirement for a trip if the observer or monitor fails to arrive at the vessel at the confirmed sail time. We also may issue waivers from the ASM requirement for logistical reasons, such as a lack of available human at-sea monitors or from the EM requirement in limited circumstances related to equipment issues. If observer requirements are waived, NMFS monitors fishing effort and catch data, and other relevant information, to ensure that there are no significant adverse environmental consequences and consider alternative fishery management measures should such consequences arise.

Comments on Exclusion From Monitoring Requirements for Certain Vessels Under Certain Conditions

Comment 48: CLF and Oceana opposed removing human ASM coverage for trips occurring exclusively west of 71°30′ W Longitude. The commenters argued that accurate and precise catch information is not available to justify the exemption.

Response: We disagree and have approved the measure as proposed for the reasons explained in the proposed rule. The Council included this provision to minimize the costs of the overall increase in monitoring because the majority of groundfish are caught in waters east of this boundary. This measure may create some degree of uncertainty in discard estimates for the affected stocks, as discussed in the biological effects section of the EIS, but the effect is expected to be small given the low percentage of catch from this area. If negative effects are found during the Council's review, this exclusion from monitoring could be adjusted in a future action. The Council will consider uncertainty from this measure when evaluating the need for a management uncertainty buffer for sector sub-ACLs as part of each specification action. Amendment 23 includes a review for vessels excluded from the ASM requirement that provides a formal process to evaluate the effects of excluding some trips from ASM and could support future action to address issues, if necessary.

Comment 49: The Council commented that the proposed measure to remove human ASM coverage for trips fishing exclusively west of 71°30′ W Longitude includes a VMS declaration requirement and suggested that the declaration of these trips should make it possible to create discard strata for these trips, similar to discard strata for different gear types. The Council noted this would complicate the process for estimating discards, but suggested its consideration for addressing discard estimation in the area. The Council also noted that Amendment 23 includes a review process for the measures that remove monitoring coverage for a portion of the fleet that is intended to verify whether the intent of the measures (*e.g.,* that the catch composition has little to no groundfish) is being met, and that should the review indicate otherwise, the Council could consider addressing this in a future action.

Response: We are not creating a new VMS declaration to identify trips excluded from the ASM requirement, consistent with the Regional Administrator's authority to streamline sector reporting. Creating VMS declarations specific to sector trips excluded from the ASM requirement would not provide advance notice to us for the selection or waiving of trips and would significantly complicate the VMS system by substantially increasing the number of potential VMS codes. Sector vessels are required to use the PTNS to notify NMFS at least 48 hours in advance of all groundfish trips. We use the PTNS to select trips for NEFOP observer coverage as well as ASM coverage. When notifying us of a trip in the PTNS, users will be asked whether the trip will fish exclusively west of 71°30′ W Longitude. We will use the PTNS notification to determine trips that are excluded from the sector human ASM requirement for the purpose of assigning at-sea monitors. Data from the PTNS is available to other systems for efficient collection, storage, and transmission; and may be used to identify ASM-excluded sector trips in our systems. In addition, we will require sector vessels on trips excluded from the ASM requirement to submit a trip-start hail (TSH) through their VMS to confirm the trip will fish in compliance with the ASM waiver granted. Some statistical areas are entirely west of 71°30′ W Longitude (*e.g.,* 611, 613), and we can use VTRs to stratify these. Other statistical areas (*e.g.,* 533, 537, 539) are bisected by 71°30′ W Longitude, which prevents us from using the VTR for stratification and catch accounting. Therefore, a TSH is necessary for NMFS to stratify the trip and assign discards for catch accounting. It also provides the added benefit of reaffirming the operator's PTNS notification to ensure they are fishing in the manner for which they notified.

The TSH, in combination with the VTR, will allow identification of trips excluded from the ASM requirement to support stratification of these trips. Developing discard rates for these new strata will be challenging because there will be limited NEFOP coverage of ASM-excluded trips to form the basis of the discard rates. Stratification is necessary for the affected stocks to prevent catch on monitored trips from overwhelming catch from unmonitored trips. We agree that the review will provide a formal process to evaluate the effects of excluding some trips from ASM and could support future action to address issues, if necessary. As discussed in the biological effects section of the EIS, this will create additional uncertainty in discard estimates for the affected stocks that will be considered when evaluating the need for a management uncertainty buffer for sector sub-ACLs as part of each specification action.

Comment 50: NEFS 5 recommended simplifying this exemption by including the whole of statistical areas 533 and 539 to make it easier for vessels to notify NMFS of their intent of where they expect to fish with respect to this exemption and to facilitate the monitoring of compliance with is exemption by sector vessels.

Response: We disagree and have approved the measure as proposed for the reasons explained in the proposed rule. NMFS may only approve, partially approve, or disapprove Amendment 23. The ability to partially disapprove Amendment 23 is limited and does not allow us to approve only pieces of individual alternatives or to select an alternative not selected by the Council. Thus, we cannot expand this exemption to the whole of statistical areas 533 and 539 nor limit the geographic area of this exemption to align with stock areas.

Comments on Review Process for Vessels Excluded From Commercial Groundfish Monitoring Program Requirements

Comment 51: CLF commented in support of reviewing all exclusions from that ASM requirement for sector groundfish trips.

Response: We agree and have approved this provision for the reasons given in the proposed rule.

Comments on Increased Monitoring Coverage if Federal Funds Are Available

Comment 52: CCCFA supported allowing us to increase ASM coverage in year 5 and beyond, when Federal funding is available to support NMFS' and industry costs.

Response: We agree and have approved this provision for the reasons given in the proposed rule.

Comments on Elimination of Management Uncertainty Buffer for Sector ACLs

Comment 53: The Council commented on the issue of removing the uncertainty buffer for all stocks when the ASM coverage target is 100 percent, while trips fishing exclusively west of 71° 30′ W Longitude are excluded from the ASM requirement. The Council noted that while eliminating ASM coverage in this geographic area may increase the uncertainty about catches of these stocks, it would have a small effect on the overall catch estimate. The Council highlighted that, for southern New England yellowtail flounder and winter flounder, southern windowpane flounder, and ocean pout, catch west of

71° 30′ W Longitude has been over 25 percent of total catch of those stocks in some recent years, but that total catch of these stocks by sector vessels was roughly half or less of the sub-ACL in fishing year 2020. The Council argued that this means that the portion of the ACL caught west of the boundary was at most 12.5 percent of the sub-ACL and pointed out that these trips are still subject to NEFOP coverage. The Council concluded that removing the uncertainty buffer is not likely to increase the risk of exceeding the ABC for these stocks, unless the catches increase significantly from recent years. The Council also noted that Amendment 23 includes a review process for the measures that remove monitoring coverage for a portion of the fleet that is intended to verify if the intent of the measures (*e.g.,* that the catch composition has little to no groundfish) is still being met, and that should the review indicate otherwise, the Council could consider addressing this in a future action. The Council reiterated that this alternative was selected to minimize the costs of increased monitoring overall, and balanced monitoring costs with limited potential impacts on total groundfish catch.

Response: As discussed above in responses to comments on excluding certain vessels from the ASM requirements under certain conditions, NMFS data systems will allow identification of trips excluded from the ASM requirement to support stratification of these trips, but developing discard rates for these new strata will be challenging. This will create additional uncertainty in discard estimates for the affected stocks that the Council will consider when evaluating the need for a management uncertainty buffer for sector sub-ACLs as part of each specification action.

Comment 54: CLF and Oceana opposed the provision allowing us to revise the management uncertainty buffer for the sector portion of the ACL for each allocated groundfish stock to be set to zero in years in which the ASM coverage target is 100 percent. CLF and Oceana argued that uncertainty would remain due to unobserved fishing and other factors. CLF also argued that increasing monitoring coverage to 100 percent only addresses three of the five elements included in the management uncertainty buffer (monitoring adequacy, precision, and enforceability), and suggested that issues raised in the proposed rule demonstrate that management uncertainty could never be reduced to zero. NEFS V and XI commented that retaining the management uncertainty buffers would allow us to focus on developing a solution to the buffer concern for vessels exempted from ASM and remove the need to address changes to sector ACE carryover. NESSN, NEFS V, and NEFS XI commented that the increased allocations resulting from removing the management uncertainty buffer would not be a meaningful increase and would not offset the significant additional costs of increased monitoring.

CLF, TNC, and two members of the public commented that we should remove the management uncertainty buffers only when the realized monitoring coverage is 100 percent, rather than when the ASM coverage target is 100 percent. Further, they requested we explain the process and criteria we would use to adjust the management uncertainty buffer if realized coverage rates are lower than the target coverage rates. CCCFA encouraged NMFS to eliminate the uncertainty buffer only once certain criteria are met, including over 90 percent of trips have an observer or working EM cameras.

Response: We disagree that the uncertainty buffer should only be removed when the fishery achieves 100-percent monitoring coverage because that determination cannot be made until the end of the fishing year, thus eliminating the benefit to the fishery of removing the buffers to allow additional harvest. Further information may also show a level of coverage below 100 percent that still allows for removal of the uncertainty buffer. We are actively increasing monitoring coverage to achieve high levels of coverage in fishing year 2022, and we are not removing the uncertainty buffer for fishing year 2022 because the ASM coverage target will be 80 percent of trips.

We agree that removing uncertainty from catch data is important to improving management of the fishery. However, this measure does not remove the uncertainty buffer when it is not warranted. This provision allows for the removal of the uncertainty buffer when the ASM coverage target is 100 percent and when available information indicates this is appropriate and warranted. Achieving an ASM coverage target of 100 percent will minimize bias in fishery-dependent data. As discussed in the proposed rule, the management uncertainty buffer accounts for the possibility that management measures will result in a level of catch greater than expected. The revised management uncertainty buffers would apply only to sectors, and not to the common pool component of the fishery, or other sub-ACLs or subcomponents for any stocks, which means a certain level of uncertainty buffer will continue to exist for each ACL and sub-ACL. The process by which the Council evaluates and sets management uncertainty buffers for each fishery component in specification actions remains unchanged, and the Council could adjust management uncertainty buffers in future actions. The Council is still required to review whether the removal is warranted in each action that sets specifications, which may include consideration of concerns identified by the commenters. As discussed below (see *Changes from Proposed Rule*), we have revised the proposed implementing regulations to clarify the uncertainty buffer will not default to zero if the Council specifies a different management uncertainty buffer is warranted to help ensure catch does not exceed a sector sub-annual catch limit.

We agree that the increased revenues associated with removing the uncertainty buffers will not fund industry costs of monitoring because the buffers may only be removed in years where the ASM coverage target is 100 percent. In any year that industry pays a portion of its at-sea monitoring costs, the ASM coverage target will be set at 40 percent. Therefore, in any year that industry pays a portion of its at-sea monitoring costs, the buffers will remain in place. However, combined with options to use EM, capping the ASM coverage target at 40 percent when Federal funds do not subsidize industry costs, and incorporating SBRM observer coverage, Amendment 23 reduces the potential increase in costs to industry through a range of considerations and factors.

Comment 55: CCCFA suggested the Council and NMFS should reconsider the removal of the uncertainty buffer for groundfish trips occurring in statistical areas 533, 537, and 539, because these areas will have ASM coverage east of 71° 30′ W Longitude, but no ASM coverage west of the line.

Response: We disagree. Uncertainty buffers are not applied at the trip level, and this was not contemplated or considered in this action. As discussed above, a certain level of uncertainty buffer will continue to exist for each ACL and the process by which the Council evaluates and sets management uncertainty buffers remains unchanged. The Council is still required to review whether the removal is warranted in each action that sets specifications and the Council could adjust management uncertainty buffers in future actions, if it is deemed necessary. Further, NMFS may only approve, partially approve, or

disapprove Amendment 23. The ability to partially disapprove Amendment 23 is limited and does not allow us to approve only pieces of individual alternatives or to select an alternative not selected by the Council. Thus, we could not approve the measure allowing removal of the uncertainty buffer and disapprove that measure only for trips occurring in certain areas because the Council did not choose such a measure.

Comments on Sector Reporting Streamlining

Comment 56: One member of the public commented that Amendment 23's process for the Regional Administrator to make changes to the sector monitoring and reporting requirements in the regulations does not comply with the requirements set forth by the APA. The commenter expressed concern that Amendment 23 would allow for the Regional Administrator to modify the sector monitoring and reporting requirements without specifying exactly how the objective of preventing overfishing would be met. TNC, NEFS V, and NEFS XI commented in support of authority for the Regional Administrator to streamline sector reporting requirements. NEFS V and XI also noted in their comments that a sector has a reporting responsibility to its members, as well as to NMFS; highlighted that comparing NMFS data sets to sector data sets is an effective data reconciliation process; and stated that having sector managers searching for data errors blindly would not streamline the process.

Response: We disagree that Amendment 23 does not comply with the APA. Any future changes to the sector monitoring and reporting requirements in the regulations would be made consistent with the requirements of the APA. In the proposed rule, we solicited comment regarding using the Regional Administrator's authority to require audit model vessels to report discards at the sub-trip level, rather than the haul level. In addition, as discussed above, we are not creating a new VMS declaration to identify trips excluded from the ASM requirement, consistent with the Regional Administrator's authority.

We agree that the Regional Administrator should use the authority to revise sector monitoring and reporting requirements to streamline reporting, under section 305(d) of the Magnuson-Stevens Act, if alternative methods can be found to satisfy the requirements. As discussed in the proposed rule, any changes to streamline reporting are limited to meeting the primary goal of the sector monitoring program to verify area fished, as well as catch and discards by species and gear type, in the most cost-effective means practicable.

Comment 57: CCCFA, Teem Fish, NEFS V, NEFS XI, and the Council supported our proposal to allow vessels using the audit EM model to continue reporting discards at the sub-trip level, rather than the haul level, using the Regional Administrator's authority to modify sector monitoring requirements to streamline the sector reporting process. The Council also recommended that we approve the ''electronic monitoring audit model'' definition language requiring haul-level eVTR reporting so that if it is determined that haul-level information is needed in the future, the requirement can be implemented.

Response: We agree that sub-trip level reporting is sufficient for audit model EM vessels. We disagree that the electronic monitoring audit model definition should specify that vessels must submit eVTRs at the haul level. Using the authority granted to the Regional Administrator to streamline sector reporting requirements requires we comply with the Administrative Procedure Act when making changes. Thus, leaving the requirement for haul-level eVTRs in the regulatory definition would not offer an advantage in restoring the requirement in future, if it that were deemed necessary. Further, having the requirement codified in the regulations, but not in effect, could create confusion. Accordingly, we have modified the proposed regulatory definition of electronic monitoring audit model to eliminate the requirement for audit EM vessels to report haul-level eVTRs in this final rule.

Comments On Additions to the List Of Framework Items

Comment 58: CLF commented in support of approving additional monitoring tools through a framework if the tools can achieve 100 percent monitoring coverage. CCCFA supported adding the Amendment 23 measures to the list of items that can be addressed through a framework if the changes to the measures are preceded by the Council framework review process.

Response: We agree and have approved the measure as proposed for the reasons explained in the proposed rule.

Changes From the Proposed Action

In this final rule, we have made a number of changes to the proposed implementing regulations. Some of the changes correct errors, address inconsistencies, or clarify the proposed regulatory text. Other changes to the proposed implementing regulations are in response to further consideration of implementation needs and public comments. In this final rule, we make the following changes to the proposed implementing regulations:

- Revise the proposed definition at § 648.2 for *electronic monitoring audit model* to remove the requirement to report discards at the haul level. This change from the proposed regulatory text streamlines the eVTR reporting requirement for EM audit model vessels and is consistent with how sectors are operating under the current operational audit model program. During development of this model under an exempted fishing permit, we determined trip-level reporting was sufficient and reduced the burden on vessels.
- Revise proposed text at § 648.11(h)(5)(vii)(I) to apply to all EM staff rather than only video reviewers. This provides NMFS with the opportunity to request a copy of valid contracts between monitoring service providers and all their staff to ensure a service provider meets all performance requirements, rather than limiting that opportunity to only video reviewers.
- Revise proposed text at § 648.11(h)(7)(v) to add video reviewers to the list of monitoring provider staff whose decertification may be considered by NMFS when determining whether to remove a monitoring service provider from the list of approved service providers.
- Revise proposed text at § 648.11(l)(2) to remove vessel monitoring plans from the list of items required to be approved as part of sector operations plans to be consistent with current practice and other proposed regulatory text. The proposed text was inconsistent with current practice and the other proposed EM requirements.
- Revise proposed text at § 648.11(l)(4) to clarify EM vessels cannot leave the dock without a functioning EM system, unless granted a waiver. The proposed text was inconsistent with current practice and the other proposed EM requirements.
- Revise proposed text at § 648.11(l)(5)(i) to clarify that NMFS will determine, and announce, EM video review rates separately from the ASM coverage target.
- Revise the proposed text at § 648.11(l)(10)(i)(A)(*2*) to remove the proposed requirement for vessel owners/operators to determine during their pre-trip electronic monitoring system check that the system has sufficient storage space available for the

entire trip. Rather, vessels must perform a pre-trip system check to ensure the electronic monitoring system is operational prior to departing on a fishing trip. This change is being made in response to comments, as discussed above (see *Comments and Responses* above).

• Revise proposed text at § 648.11(l)(10)(i)(B) to clarify the proposed vessel monitoring plan approval process. The revised regulation clarifies that all changes to a VMP must be submitted to NMFS for review.

• Revise proposed text at § 648.11(l)(10)(i)(B)(*7*) to correct the internal citation to § 648.11(l)(10)(i)(A) and (B) to encompass electronic monitoring system requirements and vessel monitoring plan requirements for EM vessels.

• Revise proposed text at § 648.11(l)(10)(i)(C) to correct internal regulatory citations to regulations moved as part of this final rule.

• Added new text at § 648.11(l)(10)(i)(D)(*1*) to require a dockside monitor to be present before the vessel operator or crew begins offloading an MREM vessel, unless NMFS has issued the trip a waiver from the DSM program. This requirement was listed in the preamble of the proposed rule, but was inadvertently left out of the proposed regulations.

• Added new text at § 648.11(l)(10)(i)(D)(*2*) to require a vessel operator and crew to allow the dockside monitor access to the fish hold immediately following the offload in order to confirm all allocated groundfish were offloaded unless NMFS has issued the trip a waiver from the dockside monitoring program. This requirement was listed in the preamble of the proposed rule, but was inadvertently left out of the proposed regulations.

• Revise proposed text at § 648.11(l)(10)(iv)(B)(*1*) to remove the proposed requirement that dealers offload fish below the minimum size from maximized retention electronic monitoring vessels before offloading other fish. This change is being made in response to comments (see *Comments and Responses* above) to allow industry members to determine the most efficient way to offload.

• Revise the proposed text at § 648.11(l)(10)(iv)(B)(*2*) to remove the proposed provision that allows dealers to report a mix of fish below the minimum size and the smallest market category of fish meeting the minimum size rather than reporting all fish below the minimum size as a separate market category. Elimination of this mixed reporting category is necessary to implement MREM as an operational program in our existing data systems. Further, dealers participating in the MREM EFP have opted to separate fish below the minimum size for market reasons.

• Revise the proposed prohibition at § 648.14(e)(3) to correct grammar.

• Revise the proposed prohibition at § 648.14(k)(2)(vii) to clarify that it is unlawful for any person to fish in a manner inconsistent with the requirements for vessels granted a waiver from the at-sea monitoring requirement on trips that are excluded from the at-sea monitoring requirement. This change is consistent with the Council's intent to exclude from the human ASM requirement only trips fishing in compliance with all requirements and is designed to help facilitate enforcement.

• Move the prohibition proposed to be codified at § 648.14(k)(2)(vii) to § 648.14(k)(14)(xvi) to keep prohibitions related to the sector program grouped together.

• Revise proposed text at § 648.14(k)(3)(iii) to remove ocean pout from the list of species dealers may receive from MREM vessels. This change is consistent with the Council's intent for MREM vessels to discard zero possession stocks for which possession is prohibited (*i.e.,* zero-possession stocks) and is designed to help facilitate enforcement.

• Revise proposed text at § 648.14(k)(3)(v) to correct a typographical error.

• Added new text at § 648.14(k)(14)(xiv) and (xv) to add prohibitions complementing the new § 648.11(l)(10)(i)(D)(*1*) and (*2*). Those requirements were listed in the preamble of the proposed rule, but were inadvertently left out of the proposed regulations.

• Revise the proposed text at § 648.90(a)(4)(i)(B) to clarify that the management uncertainty buffer for the sector portion of the ACL for each allocated groundfish stock will default to zero in years in which the at-sea monitoring coverage target is 100 percent unless the Council determines a different management uncertainty buffer is warranted to help ensure catch does not exceed a sector sub-annual catch limit. This change clarifies the interaction between the default management uncertainty buffer and the Council process for setting management uncertainty buffers.

Classification

NMFS is issuing this rule pursuant to sections 304(b)(3) and 305(d) of the Magnuson-Stevens Act, which provide specific authority for implementing this action. Pursuant to Magnuson-Stevens Act section 305(d), this action is necessary to carry out the Northeast Multispecies FMP, through administrative changes revising the existing implementing regulations for the groundfish sector monitoring program to be consistent with the industry-funded monitoring program regulations, moving the groundfish monitoring program implementing regulations to the same chapter as other industry-funded monitoring programs, and improving the clarity of the existing regulations. The NMFS Assistant Administrator has determined that this final rule is consistent with the Northeast Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

Because this rule relieves a restriction by allowing sector groundfish trips fishing exclusively west of 71°30′ W Longitude to fish without carrying an at-sea monitor, that measure is not subject to the 30-day delayed effectiveness requirement of the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d)(1). Currently, all groundfish trips by sector vessels are subject to the at-sea monitoring requirement and restricted from fishing without an at-sea monitor without a waiver, except those exclusively fishing using gillnets with a mesh size of 10 inches (25.4 cm) or greater in either the Inshore Georges Bank Stock Area, as defined at § 648.10(k)(3)(ii), and/or the Southern New England Broad Stock Area, as defined at § 648.10(k)(3)(iv). As explained in the EIS, monitoring places burdens of fishing vessels. The burdens include logistical planning; changing vessel operations to ensure safety of a human at-sea monitor; physically accommodating and feeding a human at-sea monitor; and the cost of hiring an at-sea monitor. Implementing the geographic exclusion from the at-sea monitoring program at § 648.11(l)(5)(iii) relieves the restriction against fishing without an at-sea monitor, thereby allowing vessels fishing exclusively west of 71°30′ W Longitude to fish without hiring a human at-sea monitor, and thus relieves vessels of the at-sea monitoring burdens. Fishing behavior in recent years provides insight into the benefit of relieving this restriction. In fishing years 2016 through 2021, the number of groundfish vessels that would have benefited from relieving this restriction ranged from 19 to 30 vessels annually. During those years, 181 to 488 trips per year would have been excluded from the human ASM requirement. As of July 27, 2022, 9 vessels would have been excluded from

the human ASM requirement on 51 groundfish trips during the current fishing year that began on May 1, 2022. Therefore, there is good cause under 5 U.S.C. 553(d)(1) to establish an effective date less than 30 days after date of publication to exclude sector groundfish trips fishing exclusively west of 71°30′ W Longitude from the requirement to carry an at-sea monitor.

The New England Fishery Management Council prepared a final EIS for Amendment 23 to the Northeast Multispecies FMP. The FEIS was filed with the Environmental Protection Agency on January 10, 2022; a notice of availability was published on January 21, 2022 (87 FR 3298). In approving Amendment 23 on April 12, 2022, NMFS issued a record of decision (ROD) identifying the selected alternatives. A copy of the ROD is available from NMFS (see **ADDRESSES**). A brief summary of the impacts follows.

A human ASM target coverage of up to 100 percent, higher than past and current coverage levels, will be in place, if sufficient Federal funds are available, which should result in more accurate information on catch (landings and discards) of target and non-target species, and fully account for discard mortality. In the short term, improved catch accounting is expected to reduce fishing effort and fishing mortality, which in the long term should allow for rebuilding of overfished stocks. In the longer-term, analytical assessments should improve with better catch data. If the increased human ASM coverage target results in reduced groundfish fishing activity, then it may provide some minor short-term benefits to habitat. Over the long term, if achieving higher human ASM coverage contributes to higher catch limits, fishing effort could increase in the future, which could have negative impacts to habitat. The modifications in management measures may indirectly affect protected resources, but are not expected to have substantial impacts on protected resources. This action is expected to have a range of potential socioeconomic impacts, depending on the availability of Federal funding for monitoring and the ultimate at-sea monitoring coverage target. A target at-sea monitoring coverage rate of up to 100 percent will be in place, if sufficient Federal funds are available, which will result in relatively neutral impacts on operating costs compared to those under past and current coverage levels. However, if no Federal funding were available to support industry costs, the ASM coverage rate target would be 40 percent, which would increase fleet wide operating costs by an estimated $2.09 million per year. Economic effects could be lower if any subsidy is available to offset the cost of monitoring, or depending on the number of vessels that use EM in lieu of human at-sea monitors. Initial costs of installing and purchasing EM equipment may be high, which may have negative impacts in the short term, if not subsidized, but over the long term, EM may be more cost effective than human at-sea monitors. EM is expected to be more cost effective for vessels who fish more in the groundfish fishery (*i.e.,* more than 20 days per year). The human ASM coverage target for fishing year 2022 is 80 percent of sector groundfish trips subject to the monitoring requirement. NMFS will continue to reimburse sectors for 100 percent of their ASM and EM costs in fishing year 2022 through the Atlantic States Marine Fisheries Commission. In addition, increased monitoring coverage may be seen as overly burdensome by fishing communities. However, increased monitoring coverage, up to 100-percent monitoring coverage, improves the enforceability of the FMP and reduces the risk of non-compliance, which should improve the fairness and equitability of management measures. In the short term, economic impacts of increased monitoring coverage on human communities would be reduced while Federal reimbursements for monitoring costs are available. Impacts over the long term will vary depending on whether Federal reimbursements of monitoring costs continue into the future.

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

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), including all the analyses in the final EIS, the IRFA summary in the proposed rule, a summary of the significant issues raised by the public comments in response to the IRFA, our responses to those comments, and the information below. A copy of the IRFA, contained in the Environmental Impact Statement, is available from the Council (see **ADDRESSES**). A description of the action, statement of the necessity for the action, and the objectives of this action, are contained in Amendment 23, the IRFA, the beginning of this section in the preamble, and in the **SUMMARY** section of the preamble. No relevant Federal rules duplicate, overlap, or conflict with this rule. A summary of the analysis follows.

A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments

We received several comments expressing concern about the economic effects of this action and we have summarized these comments in the comments and responses section of this rule. None of these comments were directly related to the IRFA, or provided information that changed the conclusions of the IRFA. The Chief Counsel for the Office of Advocacy of the Small Business Administration (SBA) did not file any comments. We made no changes to the proposed rule measures in response to those comments.

Description and Estimate of the Number of Small Entities to Which This Rule Would Apply

This action would regulate all commercial fishing businesses issued a Federal limited access Northeast multispecies vessel permit and/or a Northeast multispecies dealer permit. As of June 1, 2020, NMFS had issued 828 commercial limited access groundfish permits associated with vessels and 148 permits associated with dealers. Therefore, 976 permits are regulated by this action. Each vessel or dealer may be individually owned or part of a larger corporate ownership structure, and for RFA purposes, it is the ownership entity that ultimately would be regulated by the action. Ownership entities are identified on June 1 of each year, based on the list of all permit numbers, for the most recent complete calendar year, that have applied for any type of Northeast Federal fishing permit. The current ownership data set is based on calendar year 2019 permits and contains gross sales associated with those permits for calendar years 2017 through 2019.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (North American Industry Classification System (NAICS) code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide. The determination as to whether the

entity is large or small is based on the average annual revenue for the three years from 2017 through 2019. Ownership data collected from vessel permit holders indicate that there are 667 distinct business entities that hold at least one vessel permit regulated by the action. Of these, all are engaged primarily in commercial fishing, and 80 did not have any revenues (were inactive) in 2019. Of these distinct business entities, 661 are categorized as small entities and 6 are categorized as large entities, per the NMFS guidelines. Ownership data collected from dealer permit holders indicate there are 148 distinct business entities that hold at least one dealer permit regulated by this action. Of these, 135 distinct businesses are categorized as small entities and 13 are categorized as large entities, per the NMFS guidelines.

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

The New England Fishery Management Council selected all alternatives that met the objectives of the action, and minimized costs, to provide regulated businesses the ability to choose the monitoring options that best suit their operations while meeting the catch accounting requirements.

The implementing regulations in this final rule:

- Replace the current process for calculating an annual ASM coverage target with a fixed monitoring coverage target as a percentage of trips, dependent on Federal funding.
- Approve additional EM technologies as an alternative to human at-sea monitors;
- Exclude from the monitoring requirement all trips in geographic areas with expected low groundfish catch;
- Require periodic evaluation of the monitoring program and exclusions from the monitoring requirement;
- Remove the management uncertainty buffer from the portion of the ABC allocated to the sector catch share, if warranted, when the monitoring coverage target is 100 percent; and
- Grant authority to the Northeast Regional Administrator to revise sector reporting requirements to streamline reporting for the industry.

Amendment 23 examined a range of options that adjust the current monitoring program to improve accounting and accuracy of collected catch data. The range included variable and fixed target coverage levels (25, 50, 75, and 100 percent) based on catch or trips, human ASM, two types of EM, and flexibility to allow sectors to choose the tools used to meet the sector monitoring requirement. Ultimately, the Council chose a fixed coverage target as high as could be achieved at zero cost to industry to reliably estimate catch and to form the basis of a future analysis to further evaluate the fishery and its monitoring program. In years that the ASM coverage target is set at 100 percent, the management uncertainty buffer will default to zero for the sector sub-ACL for allocated stocks, and will remain at zero if warranted, thereby increasing sector quotas and potential revenues. The Council also set a new lower cap on the coverage target that will be set when industry is paying for monitoring, as well as approving two EM models that sectors could choose to use to provide for sustained participation and minimize adverse economic impacts on communities to the extent practicable. Amendment 23 excludes sector fishing trips fished in their entirety west of 71° 30′ W Longitude from the ASM requirement.

The effects of this action depend on available Federal funding to defray industry costs and the number of vessels that use EM in lieu of human at-sea monitors. EM is predicted to be substantially more cost effective, particularly for the subset of most active vessels in the groundfish fishery (those fishing more than 30–50 days per year). However, combined with options to use EM, capping the ASM coverage target at 40 percent when Federal funds do not subsidize industry costs, and incorporating SBRM observer coverage, Amendment 23 reduces the potential increase in costs to industry through a range of considerations and factors.

If industry costs are fully subsidized and the ASM coverage target is 100 percent, the fishery is predicted to generate approximately $5 million in additional revenues compared to the status quo (estimated $51.3 million operational profit for the fleet in 2018), primarily due to the removal of the management uncertainty buffer from the sector quotas. These additional revenues are predicted to increase profits by approximately $4.9 million because the industry would not pay for its monitoring costs. At all coverage levels less than 100 percent, the management uncertainty buffers are not removed.

This action implements a minimum ASM coverage target of 40 percent, which applies in years 5 and later, or in years 1–4 if Federal funds cannot fully subsidize industry costs for a higher coverage target and industry is required to pay for its monitoring costs. Under the scenario where the coverage target is 40 percent and industry is required to pay for its full monitoring costs because of an absence of Federal funding to defray any industry costs, the fleet is predicted to generate between $1.5–2.0 million less profit than under the status quo, or about a 4-percent reduction.

Vessels that opt to make fishing trips exclusively west of 71° 30′ W Longitude are excluded from the ASM requirement. This may increase profits if the minimum coverage target of 40 percent is implemented due to a lack of Federal subsidies for industry monitoring costs. Similarly, when the ASM coverage target is set higher than 40 percent, vessels opting to fish in this geographic area will reduce monitoring costs subsidized by Federal funds, allowing Federal funding to cover monitoring for a longer duration or at a higher coverage target.

Description of the Projected Reporting, Record-Keeping, and Other Compliance Requirements of This Rule

A description of the projected reporting, recordkeeping, and other compliance requirements of this action, including an estimate of the classes of small entities that will be subject to the requirements is contained in the Information Collection List for 0648–0800 available on the Office of Information and Regulatory Affairs (OIRA) website at reginfo.gov and summarized below.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides. The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Greater Atlantic Regional Fisheries Office (see **ADDRESSES**), and the guide, *i.e.,* permit holder letter, will be sent to all holders of permits for the fishery. The guide and this final rule will be available upon request.

This final rule contains a new temporary collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) control number 0648–0800. This temporary information collection was created due to timing

conflicts with OMB Control Number 0648–0605, Northeast Multispecies Amendment 16, which is currently up for renewal. Once 0648–0605 is renewed and this final rule temporary collection is approved, NOAA will submit a request to merge this temporary collection (0648–0800) into 0648–0605. This rule creates two new requirements related to the new maximized retention electronic monitoring model. The first requirement is for maximized retention electronic monitoring vessels to have dockside monitoring and includes notifications, database requirements, and the costs of monitoring. The second requirement is for monitoring and reporting service providers to apply to NMFS for approval to provide dockside monitoring service to groundfish sectors, including responding to any denial of an application. The estimated average public reporting burden for the requirements, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information is presented in the table below.

Requirement	Responses	Hours	Dollars
Dockside Monitoring Notifications, Database Requirements, and Monitoring Costs	49,200	16,236	2,805,876
Service Provider Application and Response to Denial	4	40	12
Total	49,204	16,276	2,805,888

We invite 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. Written comments and recommendations for this information collection should be submitted on the following website: *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review'' or by using the search function and entering the title of the collection.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person by 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.

List of Subjects in 50 CFR part 648Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 29, 2022.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 648 as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. Effective January 9, 2023, amend § 648.2 by:

■ a. Revising the definition for ''Electronic monitoring'';

■ b. Adding the definitions for ''Electronic monitoring audit model'', ''Electronic monitoring maximized retention model'', and ''Electronic monitoring provider staff'' in alphabetical order;

■ c. Revising the definition for ''Observer or monitor'';

■ d. Removing the definition for ''Observer/sea sampler'';

■ e. Republishing in alphabetical order the definition of ''Ocean quahog'';

■ f. Revising the definition for ''Slippage in the Atlantic herring fishery'' and placing the definition into alphabetical order;

■ g. Revising the definition for ''Slip(s) or slipping catch in the Atlantic herring fishery''; and

■ h. Revising the definition for ''Video reviewer''.

The revisions, additions, and republication read as follows:

§ 648.2 Definitions.

* * * * *

Electronic monitoring means a network of equipment that uses a software operating system connected to one or more technology components, including, but not limited to, cameras and recording devices to collect data on catch and vessel operations. With respect to the groundfish sector monitoring program, electronic monitoring means any equipment that is used to meet sector monitoring requirements in § 648.11 in lieu of at-sea monitors as part of an approved sector at-sea monitoring program, including the audit model and maximized retention model.

Electronic monitoring audit model with respect to the groundfish sector monitoring program means a program in which all eligible trips must be electronically monitored; fish must be handled in view of cameras; allowed discarding must occur at controlled points in view of cameras; species identification and length must be collected for regulated species and ocean pout discards for catch estimation; discards are reported at the sub-trip level; and electronic monitoring data are compared to the area fished, regulated species and ocean pout discards, and other information reported on the vessel trip report on a subset of trips for validation.

* * * * *

Electronic monitoring maximized retention model with respect to the groundfish sector monitoring program, means a program in which all eligible trips are electronically monitored; fish must be handled in view of cameras; allowed discarding must occur at controlled points in view of cameras; all allocated regulated species stocks must be retained; electronic monitoring is used to verify compliance; and offloads are subject to observation by dockside monitors.

Electronic monitoring provider staff means any video reviewer, or any person employed or contracted by an electronic monitoring service provider to provide electronic monitoring services to vessels.

* * * * *

Observer or monitor means any person authorized by NMFS to collect observer information, operational fishing data, biological data, or economic data for conservation and management purposes on or from fishing vessels or federally permitted dealers as required by the regulations, including, but not limited to, observers, at-sea monitors, observer/sea samplers, portside samplers, or dockside monitors.

Ocean quahog means the species *Arctica islandica.*

* * * * *

Slippage in the Atlantic herring fishery means discarded catch from a

vessel issued an Atlantic herring permit that is carrying an observer or monitor prior to the catch being brought on board or prior to the catch being made available for sampling and inspection by an observer or monitor after the catch is on board. Slippage also means any catch that is discarded during a trip prior to it being sampled portside by a portside sampler on a trip selected for portside sampling coverage by NMFS. Slippage includes releasing catch from a codend or seine prior to the completion of pumping the catch aboard and the release of catch from a codend or seine while the codend or seine is in the water. Fish that cannot be pumped and remain in the codend or seine at the end of pumping operations are not considered slippage. Discards that occur after the catch is brought on board and made available for sampling and inspection by an observer or monitor are also not considered slippage.

Slip(s) or slipping catch in the Atlantic herring fishery means discarded catch from a vessel issued an Atlantic herring permit that is carrying an observer or monitor prior to the catch being brought on board or prior to the catch being made available for sampling and inspection by an observer or monitor after the catch is on board. Slip(s) or slipping catch also means any catch that is discarded during a trip prior to it being sampled portside by a portside sampler on a trip selected for portside sampling coverage by NMFS. Slip(s) or slipping catch includes releasing fish from a codend or seine prior to the completion of pumping the fish on board and the release of fish from a codend or seine while the codend or seine is in the water. Slippage or slipped catch refers to fish that are slipped. Slippage or slipped catch does not include operational discards, discards that occur after the catch is brought on board and made available for sampling and inspection by an observer or monitor, or fish that inadvertently fall out of or off fishing gear as gear is being brought on board the vessel.

* * * * *

Video reviewer means any electronic monitoring service provider staff approved/certified or training to be approved/certified by NMFS for providing electronic monitoring video review services consistent with electronic monitoring program requirements.

* * * * *

■ 3. Effective January 9, 2023, amend § 648.10 by revising paragraph (f)(4)(i) to read as follows:

§ 648.10 VMS and DAS requirements for vessel owners/operators.

* * * * *

(f) * * *

(4) * * *

(i) For trips greater than 24 hours, the owner or operator of a limited access or LAGC scallop vessel with an IFQ permit that fishes for, possesses, or retains scallops, and is not fishing under a Northeast Multispecies DAS or sector allocation, must submit reports through the VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished, including open area trips, access area trips as described in § 648.59(b)(9), Northern Gulf of Maine research set-aside (RSA) trips, and trips accompanied by an observer. The reports must be submitted for each day (beginning at 0000 hr and ending at 2400 hr) and not later than 0900 hr of the following day. Such reports must include the following information:

(A) Vessel trip report (VTR) serial number;

(B) Date fish were caught;

(C) Total pounds of scallop meats kept; and

(D) Total pounds of all fish kept.

* * * * *

■ 4. Effective December 15, 2022, amend § 648.11 by adding reserved paragraph (l)(4) and paragraph (l)(5) to read as follows:

§ 648.11 Monitoring coverage.

* * * * *

(l) * * *

(4) [Reserved]

(5) *Sector monitoring coverage levels.* (i) through (ii) [Reserved]

(iii) *Geographic exclusion from the at-sea monitoring program.* Vessels fishing exclusively west of 71°30′ W Longitude on a sector trip are excluded from the requirement to carry an at-sea monitor. Vessels on a trip excluded from the at-sea monitoring requirement under this paragraph (l)(5)(iii) must comply with the VMS declaration requirements at § 648.10(g)(3), and the transiting requirements at § 648.81(e) when east of 71°30′ W Longitude. Vessels using electronic monitoring to satisfy the sector monitoring requirement in this section must have their system turned on and comply with their vessel monitoring plan on all trips, including trips fishing exclusively west of 71°30′ W Longitude.

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■ 5. Effective January 9, 2023, further amend § 648.11 by:

■ a. Revising paragraphs (a), (b), (d), (h)(1), (h)(3)(vii), and (h)(3)(ix) and (x);

■ b. Adding introductory text to paragraph (h)(5);

■ c. Revising paragraphs (h)(5)(i) through (iv), (vi), and (vii), (h)(7), (i) heading, (i)(1) and (2), (i)(3)(i), (i)(4)(ii), and (i)(5) and (6);

■ d. Adding paragraph (i)(7); and

■ e. Revising paragraphs (j), (k)(4)(i) and (ii), (l), (m)(1)(i) introductory text, (m)(1)(v), (m)(2)(iii)(A), (m)(4)(i), (m)(6) introductory text, and (n)(2) introductory text.

The revisions and additions read as follows:

§ 648.11 Monitoring coverage.

(a) *Coverage.* The Regional Administrator may request any vessel holding a permit for Atlantic sea scallops, Northeast multispecies, monkfish, skates, Atlantic mackerel, squid, butterfish, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, tilefish, Atlantic surfclam, ocean quahog, or Atlantic deep-sea red crab; or a moratorium permit for summer flounder; to carry a fisheries observer. A vessel holding a permit for Atlantic sea scallops is subject to the additional requirements specific in paragraph (g) of this section. Also, any vessel or vessel owner/operator that fishes for, catches or lands hagfish, or intends to fish for, catch, or land hagfish in or from the exclusive economic zone must carry a fisheries observer when requested by the Regional Administrator in accordance with the requirements of this section. The requirements of this section do not apply to vessels with only a Federal private recreational tilefish permit.

(b) *Facilitating coverage.* If requested by the Regional Administrator or their designees, including observers, monitors, and NMFS staff, to be sampled by an observer or monitor, it is the responsibility of the vessel owner or vessel operator to arrange for and facilitate observer or monitor placement. Owners or operators of vessels selected for observer or monitor coverage must notify the appropriate monitoring service provider before commencing any fishing trip that may result in the harvest of resources of the respective fishery. Notification procedures will be specified in selection letters to vessel owners or permit holder letters.

* * * * *

(d) *Vessel requirements associated with coverage.* An owner or operator of a vessel on which an observer or monitor is embarked must:

(1) Provide accommodations and food that are equivalent to those provided to the crew.

(2) Allow the observer or monitor access to and use of the vessel's communications equipment and personnel upon request for the

transmission and receipt of messages related to the observer's or monitor's duties.

(3) Provide true vessel locations, by latitude and longitude or loran coordinates, as requested by the observer or monitor, and allow the observer or monitor access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position.

(4) Notify the observer or monitor in a timely fashion of when fishing operations are to begin and end.

(5) Allow for the embarking and debarking of the observer or monitor, as specified by the Regional Administrator, ensuring that transfers of observers or monitors at sea are accomplished in a safe manner, via small boat or raft, during daylight hours as weather and sea conditions allow, and with the agreement of the observers or monitors involved.

(6) Allow the observer or monitor free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish.

(7) Allow the observer or monitor to inspect and copy any the vessel's log, communications log, and records associated with the catch and distribution of fish for that trip.

* * * * *

(h) * * *

(1) *General.* An entity seeking to provide monitoring services, including services for IFM Programs described in paragraph (g) of this section, must apply for and obtain approval from NMFS following submission of a complete application. Monitoring services include providing observers, monitors (at-sea monitors and portside samplers), and/or electronic monitoring. A list of approved monitoring service providers shall be distributed to vessel owners and shall be posted on the NMFS Fisheries Sampling Branch (FSB) website: *https://www.fisheries.noaa.gov/resource/data/observer-providers-northeast-and-mid-atlantic-programs.*

* * * * *

(3) * * *

(vii) Evidence of holding adequate insurance to cover injury, liability, and accidental death for any observers, monitors (at-sea or dockside/roving monitors), or electronic monitoring provider staff who provide electronic monitoring services onboard vessels, whether contracted or directly employed by the service provider, during their period of employment (including during training).

(A) A monitoring service provider must hold Workers' Compensation and Maritime Employer's Liability for observers, monitors, vessel owners, and their operations. The minimum combined coverage required is $5 million.

(B) An electronic monitoring service provider must hold Worker's Compensation and commercial general liability coverage for electronic monitoring provider staff. The minimum combined coverage required is $1 million.

(C) Upon request by a vessel owner, operator, or vessel manager, a monitoring service provider must provide a certificate of insurance, or other evidence, that demonstrates they have the required coverages under paragraphs (h)(3)(vii)(A) and (B) of this section as appropriate.

* * * * *

(ix) The names of its fully equipped certified observers, monitors, or video reviewers on staff; or a list of its training candidates (with resumes) and a request for an appropriate NMFS-certified training class. All training classes have a minimum class size of eight individuals, which may be split among multiple vendors requesting training. Requests for training classes with fewer than eight individuals will be delayed until further requests make up the full training class size.

(x) An Emergency Action Plan (EAP) describing its response to an emergency with an observer, monitor, or electronic monitoring provider staff on a vessel at sea or in port, including, but not limited to, personal injury, death, harassment, or intimidation. The EAP shall include communications protocol and appropriate contact information in an emergency.

* * * * *

(5) *Responsibilities of monitoring service providers.* To maintain an approved monitoring service provider status, a monitoring service provider, including electronic monitoring service providers, must demonstrate an ability to provide or support the following monitoring services:

(i) *Certified observers or monitors.* Provide observers or monitors that have passed a NMFS-certified Observer or Monitor Training class pursuant to paragraph (i) of this section for deployment in a fishery when contacted and contracted by the owner, operator, or vessel manager of a fishing vessel, unless the monitoring service provider refuses to deploy an observer or monitor on a requesting vessel for any of the reasons specified at paragraph (h)(5)(viii) of this section.

(ii) *Support for observers, monitors, or electronic monitoring provider staff.* Ensure that each of its observers, monitors, or electronic monitoring provider staff procures or is provided with the following:

(A) All necessary transportation, lodging costs and support for arrangements and logistics of travel for observers, monitors, or electronic monitoring provider staff to and from the initial location of deployment, to all subsequent vessel assignments, to any debriefing locations, and for appearances in Court for monitoring-related trials as necessary;

(B) Lodging, per diem, and any other services necessary for observers, monitors, or electronic monitoring provider staff assigned to a fishing vessel or to attend an appropriate NMFS training class;

(C) The required observer, monitor, or electronic monitoring equipment, in accordance with equipment requirements, prior to any deployment and/or prior to certification training; and

(D) Individually assigned communication equipment, in working order, such as a mobile phone, for all necessary communication. A monitoring service provider may alternatively compensate observers or monitors for the use of the observer's or monitor's personal mobile phone, or other device, for communications made in support of, or necessary for, the observer's or monitor's duties.

(iii) *Deployment logistics.* (A) Assign an available observer or monitor to a vessel upon request. For service providers contracted to meet the requirements of the Northeast multispecies monitoring program in paragraph (l) of this section, assign available at-sea monitors, electronic monitoring provider staff, and other approved at-sea monitoring mechanisms fairly and equitably in a manner that represents fishing activities within each sector throughout the fishing year without regard to any sector manager or vessel representative preference.

(B) Enable an owner, operator, or manager of a vessel to secure monitoring coverage or electronic monitoring technical support when requested, 24 hours per day, 7 days per week via a telephone or other notification system that is monitored a minimum of four times daily to ensure rapid response to industry requests.

(iv) *Observer deployment limitations.* (A) A candidate observer's first several deployments and the resulting data shall be immediately edited and approved after each trip by NMFS prior to any further deployments by that observer. If data quality is considered

acceptable, the observer would be certified.

(B) For the purpose of coverage to meet SBRM requirements in § 648.18, unless alternative arrangements are approved by NMFS, a monitoring service provider must not deploy any observer on the same vessel for more than two consecutive multi-day trips, and not more than twice in any given month for multi-day deployments.

(C) For the purpose of coverage to meet IFM requirements in this section, a monitoring service provider may deploy any observer or monitor on the same vessel for more than two consecutive multi-day trips and more than twice in any given month for multi-day deployments.

* * * * *

(vi) *Observer and monitor training requirements.* Ensure all observers and monitors attend and complete a NMFS-certified Observer or Monitor Training class. Requests for training must be submitted to NMFS 45 calendar days in advance of the requested training. The following information must be submitted to NMFS at least 15 business days prior to the beginning of the proposed training: A list of observer or monitor candidates; candidate resumes, cover letters and academic transcripts; and a statement signed by the candidate, under penalty of perjury, that discloses the candidate's criminal convictions, if any. A medical report certified by a physician for each candidate is required 7 business days prior to the first day of training. CPR/First Aid certificates and a final list of training candidates with candidate contact information (email, phone, number, mailing address and emergency contact information) are due 7 business days prior to the first day of training. NMFS may reject a candidate for training if the candidate does not meet the minimum qualification requirements as outlined by NMFS minimum eligibility standards for observers or monitors as described on the National Observer Program website: *https://www.fisheries.noaa.gov/topic/fishery-observers#become-an-observer.*

(vii) *Reports and requirements*—(A) *Deployment reports.* (*1*) Report to NMFS when, where, to whom, and to what vessel an observer or monitor has been deployed, as soon as practicable, and according to requirements outlined by NMFS. The deployment report must be available and accessible to NMFS electronically 24 hours a day, 7 days a week.

(*2*) Ensure that the raw (unedited) data collected by the observer or monitor is provided to NMFS at the specified time per program. Electronic data submission protocols will be outlined in training and may include accessing Government websites via personal computers/devices or submitting data through Government issued electronics.

(B) *Safety refusals.* Report to NMFS any trip or landing that has been refused due to safety issues (*e.g.,* failure to hold a valid U.S. Coast Guard (USCG) Commercial Fishing Vessel Safety Examination Decal or to meet the safety requirements of the observer's or monitor's safety checklist) within 12 hours of the refusal.

(C) *Biological samples.* Ensure that biological samples, including whole marine mammals, sea turtles, sea birds, and fin clips or other DNA samples, are stored/handled properly and transported to NMFS within 5 days of landing. If transport to NMFS Observer Training Facility is not immediately available then whole animals requiring freezing shall be received by the nearest NMFS freezer facility within 24 hours of vessel landing.

(D) *Debriefing.* Ensure that the observer, monitor, or electronic monitoring provider staff remains available to NMFS, either in-person or via phone, at NMFS' discretion, including NMFS Office of Law Enforcement, for debriefing for at least 2 weeks following any monitored trip/offload or electronic monitoring trip report submission. If requested by NMFS, an observer or monitor that is at sea during the 2-week period must contact NMFS upon his or her return. Monitoring service providers must pay for travel and land hours for any requested debriefings.

(E) *Availability report.* The monitoring service provider must report to NMFS any inability to respond to an industry request for observer or monitor coverage due to the lack of available observers or monitors as soon as practicable. Availability report must be available and accessible to NMFS electronically 24 hours a day, 7 days a week.

(F) *Incident reports.* Report possible observer, monitor, or electronic monitoring provider staff harassment, discrimination, concerns about vessel safety, or marine casualty; concerns with possible electronic monitoring system tampering, data loss, or catch handling protocols; or observer or monitor illness or injury; or other events as specified by the Regional Administrator; and any information, allegations, or reports regarding observer, monitor, or electronic monitoring provider staff conflict of interest or breach of the standards of behavior, to NMFS within 12 hours of the event or within 12 hours of learning of the event.

(G) *Status report.* (*1*) Provide NMFS with an updated list of contact information for all observers or monitors that includes the identification number, name, mailing address, email address, phone numbers, homeports or fisheries/trip types assigned, and must include whether or not the observer or monitor is ''in service,'' indicating when the observer or monitor has requested leave and/or is not currently working for an industry-funded program.

(*2*) Place any federally contracted observer not actively deployed on a vessel for 30 days on Leave of Absence (LOA) status (or as specified by NMFS) according to most recent Information Technology Security Guidelines.

(*3*) Ensure federally contracted observers on LOA for 90 days or more conduct an exit interview with NMFS and return any NMFS issued gear and Common Access Card (CAC), unless alternative arrangements are approved by NMFS. NMFS requires 2-week advance notification when a federally contracted observer is leaving the program so that an exit interview may be arranged and gear returned.

(H) *Vessel contract.* Submit to NMFS, if requested, a copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the monitoring service provider and those entities requiring monitoring services.

(I) *Observer, monitor, or electronic monitoring provider staff contract.* Submit to NMFS, if requested, a copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the monitoring service provider and specific observers, monitors, or electronic monitoring provider staff.

(J) *Additional information.* Submit to NMFS, if requested, copies of any information developed and/or used by the monitoring service provider and distributed to vessels, observers, monitors, or electronic monitoring provider staff such as informational pamphlets, payment notification, daily rate of monitoring or review services, description of observer or monitor duties, etc.

(K) *Discard estimates.* Estimate discards for each trip and provide such information to the sector manager and NMFS when providing monitoring services to meet catch estimation and/or at-sea or electronic monitoring service requirements in paragraph (l) of this section.

(L) *Data system.* If contracted to meet the requirements of the groundfish sector monitoring program in paragraph (l) of this section, maintain an electronic monitoring system to record, retain, and distribute to NMFS upon request for a minimum of 12 months after receiving notice from NMFS that catch data are finalized for the fishing year, the following information:

(*1*) The number of at-sea monitor deployments and other approved monitoring equipment deployments or video reviews, including any refusal to provide service when requested and reasons for such refusals;

(*2*) Incident/non-compliance reports (*e.g.,* failure to offload catch);

(*3*) Vessel hail reports and landings records;

(*4*) Electronic monitoring data and reports; and

(*5*) A means to protect the confidentiality and privacy of data submitted by vessels, as required by the Magnuson-Stevens Act.

(M) *Data retention.* Ensure that electronic monitoring data and reports are retained for a minimum of 12 months after catch data are finalized for the fishing year. NMFS will notify monitoring service providers of the catch data finalization date each year. The electronic monitoring service provider must provide NMFS access to electronic monitoring data or reports upon request.

(N) *Software requirements.* Provide NMFS with all software necessary for accessing, viewing, and interpreting the data generated by the electronic monitoring system, including submitting the agency's secondary review data to the application programming interface and maintenance releases to correct errors in the software or enhance software functionality. The software must:

(*1*) Support a ''dual user'' system that allows NMFS to complete and submit secondary reviews to the application programming interface.

(*2*) Allow for the export or download of electronic monitoring data in order for the agency to make a copy if necessary.

(O) *Software training.* Provide software training for NMFS staff.

(P) *Facilitation.* Provide the following to NMFS upon request:

(*1*) Assistance in electronic monitoring system operations, diagnosing/resolving technical issues, and recovering lost or corrupted data;

(*2*) Responses to inquiries related to data summaries, analyses, reports, and operational issues; and

(*3*) Access to video reviewers for debriefing sessions.

(Q) *Litigation support.* Provide technical and expert information substantiating electronic monitoring system data, testing procedures, error rates, peer review or other issues raised in litigation, including but not limited to, a brief summary of the litigation and any court findings on the reliability of the technology.

* * * * *

(7) *Removal of monitoring service provider from the list of approved service providers.* A monitoring service provider that fails to meet the requirements, conditions, and responsibilities specified in paragraphs (h)(5) and (6) of this section shall be notified by NMFS, in writing, that it is subject to removal from the list of approved monitoring service providers. Such notification shall specify the reasons for the pending removal. A monitoring service provider that has received notification that it is subject to removal from the list of approved monitoring service providers may submit written information to rebut the reasons for removal from the list. Such rebuttal must be submitted within 30 days of notification received by the monitoring service provider that the monitoring service provider is subject to removal and must be accompanied by written evidence rebutting the basis for removal. NMFS shall review information rebutting the pending removal and shall notify the monitoring service provider within 15 days of receipt of the rebuttal whether or not the removal is warranted. If no response to a pending removal is received by NMFS, the monitoring service provider shall be automatically removed from the list of approved monitoring service providers. The decision to remove the monitoring service provider from the list, either after reviewing a rebuttal, or if no rebuttal is submitted, shall be the final decision of NMFS and the Department of Commerce. Removal from the list of approved monitoring service providers does not necessarily prevent such monitoring service provider from obtaining an approval in the future if a new application is submitted that demonstrates that the reasons for removal are remedied. Observers and monitors under contract with observer monitoring service provider that has been removed from the list of approved service providers must complete their assigned duties for any fishing trips on which the observers or monitors are deployed at the time the monitoring service provider is removed from the list of approved monitoring service providers. A monitoring service provider removed from the list of approved monitoring service providers is responsible for providing NMFS with the information required in paragraph (h)(5)(vii) of this section following completion of the trip. NMFS may consider, but is not limited to, the following in determining if a monitoring service provider may remain on the list of approved monitoring service providers:

(i) Failure to meet the requirements, conditions, and responsibilities of monitoring service providers specified in paragraphs (h)(5) and (6) of this section;

(ii) Evidence of conflict of interest as defined under paragraph (h)(6) of this section;

(iii) Evidence of criminal convictions related to:

(A) Embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or

(B) The commission of any other crimes of dishonesty, as defined by state law or Federal law, that would seriously and directly affect the fitness of an applicant in providing monitoring services under this section; and

(iv) Unsatisfactory performance ratings on any Federal contracts held by the applicant; and

(v) Evidence of any history of decertification as either an observer, monitor, video reviewer, or monitoring service provider.

(i) *Observer, monitor, or video reviewer certification*—(1) *Requirements.* To be certified as an observer, or monitor, or video reviewer, a monitoring service provider employee or contractor must meet the criteria in paragraphs (i)(1) through (3) of this section for observers, or paragraphs (i)(1), (2), and (4) of this section for monitors, and paragraphs (i)(1), (2), and (5) of this section for video reviewers, respectively. Observers are deemed to have satisfied the basic minimum eligibility requirements if they meet the NMFS National Minimum Eligibility Standards for observers specified at the National Observer Program website: *https://www.fisheries.noaa.gov/topic/fishery-observers#become-an-observer.*

(2) *Training.* In order to provide observer or monitor services and be deployed on any fishing vessel, a candidate observer or monitor must have passed an appropriate NMFS-certified Observer or Monitor Training course and must adhere to all NMFS program standards and policies. In order to perform electronic monitoring video review, a candidate video reviewer must have passed an appropriate NMFS-certified Video Review Training course and must adhere to all NMFS program

standards and policies. NMFS will immediately notify any candidate that fails training and the monitoring service provider. Observer or monitor training may include an observer training trip, as part of the observer's training, aboard a fishing vessel with a trainer. Contact NMFS for the required number of program specific observer and monitor training certification trips for full certification following training.

(3) * * *

(i) Have a valid NMFS fisheries observer certification pursuant to paragraph (i)(1) of this section;

* * * * *

(4) * * *

(ii) Have a valid NMFS certification pursuant to paragraph (i)(1) of this section;

* * * * *

(5) *Video reviewer requirements.* All video reviewers must:

(i) Hold a high school diploma or legal equivalent;

(ii) Have a valid NMFS certification pursuant to paragraph (i)(1) of this section; and

(iii) Accurately record sampling data, write complete reports, and report accurately any observations relevant to conservation of marine resources or their environment.

(6) *Probation and decertification.* NMFS may review observer, monitor, and video reviewer certifications and issue observer, monitor, and video reviewer certification probations and/or decertifications as described in NMFS policy.

(7) *Issuance of decertification.* Upon determination that decertification is warranted under paragraph (i)(6) of this section, NMFS shall issue a written decision to decertify the observer, monitor, or video reviewer to the observer, monitor, or video reviewer and approved monitoring service provider via certified mail at the observer's, monitor's, or video reviewer's most current address provided to NMFS. The decision shall identify whether a certification is revoked and shall identify the specific reasons for the action taken. Decertification is effective immediately as of the date of issuance, unless the decertification official notes a compelling reason for maintaining certification for a specified period and under specified conditions. Decertification is the final decision of NMFS and the Department of Commerce and may not be appealed.

(j) *Coverage.* In the event that a vessel is requested by the Regional Administrator to carry a fisheries observer pursuant to paragraph (a) of this section and is also selected to carry an at-sea monitor as part of an approved sector at-sea monitoring program specified in paragraph (l) of this section for the same trip, only the fisheries observer is required to go on that particular trip. Vessels using electronic monitoring to satisfy the groundfish sector monitoring program requirement must comply with their vessel monitoring plan on all trips, including a trip that has been selected to carry, or a trip that carries, a fisheries observer.

(k) * * *

(4) * * *

(i) An owner of a scallop vessel required to carry an observer under paragraph (k)(3) of this section must arrange for carrying an observer that has passed a NMFS-certified Observer Training class certified by NMFS from an observer service provider approved by NMFS under paragraph (h) of this section. The owner, operator, or vessel manager of a vessel selected to carry an observer must contact the observer service provider and must provide at least 48-hr notice in advance of the fishing trip for the provider to arrange for observer deployment for the specified trip. The observer service provider will notify the vessel owner, operator, or manager within 18 hr whether they have an available observer. A list of approved observer service providers shall be posted on the NMFS/FSB website: *https://www.fisheries.noaa.gov/resource/data/observer-providers-northeast-and-mid-atlantic-programs.* The observer service provider may take up to 48 hr to arrange for observer deployment for the specified scallop trip.

(ii) An owner, operator, or vessel manager of a vessel that cannot procure an observer within 48 hr of the advance notification to the provider due to the unavailability of an observer may request a waiver from NMFS from the requirement for observer coverage for that trip, but only if the owner, operator, or vessel manager has contacted all of the available observer service providers to secure observer coverage and no observer is available. NMFS shall issue such a waiver within 24 hr, if the conditions of this paragraph (k)(4)(ii) are met. A vessel may not begin the trip without being issued a waiver.

* * * * *

(l) *NE multispecies observer coverage*—(1) *Groundfish sector monitoring program goals and objectives.* The primary goal of the at-sea/electronic monitoring program is to verify area fished, as well as catch and discards by species and gear type, in the most cost-effective means practicable. The following goals and objectives of groundfish monitoring programs are equally-weighted secondary goals by which monitoring programs established for the NE multispecies are to be designed to be consistent with:

(i) Improve documentation of catch:

(A) Determine total catch and effort, for each sector and common pool, of target or regulated species and ocean pout; and

(B) Achieve coverage level sufficient to minimize effects of potential monitoring bias to the extent possible while maintaining as much flexibility as possible to enhance fleet viability.

(ii) Reduce the cost of monitoring:

(A) Streamline data management and eliminate redundancy;

(B) Explore options for cost-sharing and deferment of cost to industry; and

(C) Recognize opportunity costs of insufficient monitoring.

(iii) Incentivize reducing discards:

(A) Determine discard rate by smallest possible strata while maintaining cost-effectiveness; and

(B) Collect information by gear type to accurately calculate discard rates.

(iv) Provide additional data streams for stock assessments:

(A) Reduce management and/or biological uncertainty; and

(B) Perform biological sampling if it may be used to enhance accuracy of mortality or recruitment calculations.

(v) Enhance safety of monitoring program.

(vi) Perform periodic review of monitoring program for effectiveness.

(2) *Sector monitoring programs.* A sector must develop and implement an at-sea and/or electronic monitoring program that may be approved by NMFS as both sufficient to monitor catch, discards, and use of sector ACE; and as consistent with the sector monitoring program goals and objectives. The details of any at-sea or electronic monitoring program must be specified in the sector's operations plan, pursuant to § 648.87(b)(2)(xi), and must meet the operational standards specified in paragraph (l)(10) of this section. Maximized retention electronic monitoring and audit electronic monitoring models, meeting the requirements in paragraph (l)(10) of this section, may be used in place of at-sea monitoring to ensure a sector's monitoring programs may be approved. Other types of electronic monitoring may be used in place of at-sea monitors if the technology is deemed sufficient by NMFS, in a manner consistent with the Administrative Procedure Act, for a specific trip type based on gear type and area fished. The Regional Administrator will approve or disapprove at-sea/

electronic programs as part of a sector's operations plans in a manner consistent with the Administrative Procedure Act.

(3) *Pre-trip notification.* For the purpose of selecting vessels for observer or at-sea monitor deployment, as instructed by the Regional Administrator, the owner, operator, or manager of a vessel (*i.e.,* vessel manager or sector manager) issued a limited access NE multispecies permit that is fishing under a NE multispecies DAS or on a sector trip, as defined in this part, must provide advance notice to NMFS at least 48 hr prior to departing port on any trip declared into the NE multispecies fishery pursuant to § 648.10 or § 648.85 of the following: The vessel name, permit number, and sector to which the vessel belongs, if applicable; contact name and telephone number for coordination of observer or at-sea monitor deployment; date, time, and port of departure; and the vessel's trip plan, including area to be fished, whether a monkfish DAS will be used, and gear type to be used, unless otherwise specified in this paragraph (l) or notified by the Regional Administrator. For trips lasting 48 hr or less in duration from the time the vessel leaves port to begin a fishing trip until the time the vessel returns to port upon the completion of the fishing trip, the vessel owner, operator, or manager may make a weekly notification rather than trip-by-trip calls. For weekly pre-trip notification, a vessel must notify NMFS by 0001 hr of the Friday preceding the week (Sunday through Saturday) that it intends to complete at least one NE multispecies DAS or sector trip during the following week and provide the vessel's trip-plans for that week, including each trip's date, time, port of departure, area to be fished, whether a monkfish DAS will be used, and gear type to be used. Pre-trip notification calls must be made no more than 10 days in advance of each fishing trip. The vessel owner, operator, or manager must notify NMFS of any trip plan changes at least 24 hr prior to vessel departure from port. A vessel may not begin the trip without being issued either an observer notification, an at-sea monitor notification, or a waiver by NMFS.

(4) *Vessel selection for observer or at-sea monitor coverage.* NMFS shall notify the vessel owner, operator, or manager whether the vessel must carry an observer or at-sea monitor for the specified trip within 24 hr of the vessel owner's, operator's or manager's pre-trip notification of the prospective trip, as specified in paragraph (l)(2) of this section. All pre-trip notifications shall be issued a unique confirmation number. A vessel may not fish on a NE multispecies DAS or sector trip with an observer waiver confirmation number that does not match the vessel's trip plan that was called in to NMFS. Confirmation numbers and the vessel's observer or observer waiver status for pre-trip notification calls remain valid for 48 hr from the intended sail date. After a trip begins, that trip's confirmation number and observer or observer waiver status remains valid until the trip ends. If a trip is interrupted and the vessel returns to port due to bad weather or other circumstance beyond the operator's control, the vessel's observer or observer waiver status and confirmation number for the interrupted trip remains the same if the vessel departs within 48 hr from the vessel's return to port. If the layover time is greater than 48 hr, the vessel owner, operator, or manager must provide a new pre-trip notification. If an observer or at-sea monitor is assigned to a particular trip, a vessel may not leave port without the at-sea monitor on board, unless NMFS issues a waiver. If a vessel is using electronic monitoring to comply with the monitoring requirements of this part, it may not leave port without an operational electronic monitoring system on board, unless NMFS issues a waiver.

(5) *Sector monitoring coverage levels.* Coverage levels for an at-sea or electronic monitoring program, including video review requirements, shall be specified by NMFS, pursuant to paragraph (l)(5)(i) of this section.

(i) *At-sea monitoring coverage target.* The at-sea monitoring coverage target for the sector monitoring program will be set as a percentage of all eligible sector trips based on available Federal funding for NMFS and industry cost responsibilities as defined in paragraph (g)(3) of this section. Sectors are responsible for industry costs for at-sea monitoring coverage up to the coverage target for all trips not observed by a Northeast Fishery Observer Program observer. In fishing years 2022, 2023, 2024, and 2025, the at-sea monitoring (ASM) coverage target will be set at the highest level that available Federal funding for NMFS and industry cost responsibilities supports, up to 100 percent of trips. Beginning in fishing year 2026, the target coverage will be set at 40 percent of trips, unless replaced by the New England Fishery Management Council after a review, as detailed in paragraph (l)(5)(v) of this section. In the absence of available Federal funds sufficient to fund both NMFS costs and industry costs associated with a coverage target of at least 40 percent of all sector trips, sectors must pay the industry's costs for coverage necessary to achieve a 40-percent coverage target. As an example, if, after paying NMFS costs, available Federal funding is sufficient only to fund industry costs for 15-percent coverage, sectors must pay the industry costs for the remaining 25-percent coverage to achieve a 40-percent coverage target. Any coverage provided by the Northeast Fisheries Observer Program through deployment of an observer would be deducted from the industry's cost responsibility. To ensure coverage is both sufficient to monitor sector catch, discards, and sector ACE; and consistent with sector monitoring goals and objectives, at-sea monitoring coverage may be higher than the at-sea monitoring coverage target, up to 100 percent of all eligible trips, if available Federal funding is sufficient for NMFS and industry cost responsibilities, respectively. NMFS will announce the coverage target at least 3 weeks before the annual sector enrollment deadline set by NMFS, if Federal funding information is available. NMFS will determine, and announce, EM video review rates separately from the ASM coverage target. NMFS may evaluate and modify video review rates on a regular basis.

(ii) *Gear-based exclusion from the at-sea monitoring program.* A sector vessel that notifies NMFS of its intent to exclusively fish using gillnets with a mesh size of 10-inch (25.4-cm) or greater in either the Inshore Georges Bank (GB) Stock Area, as defined at § 648.10(k)(3)(ii), and/or the Southern New England (SNE) Broad Stock Area, as defined at § 648.10(k)(3)(iv), is not subject to the coverage level for at-sea monitoring specified in paragraph (l)(5)(i) of this section provided that the trip is limited to the Inshore GB and/or SNE Broad Stock Areas and that the vessel only uses gillnets with a mesh size of 10-inches (25.4-cm) or greater. When on such a trip, other gear may be on board provided that it is stowed and not available for immediate use as defined in § 648.2. A sector trip fishing with 10-inch (25.4-cm) mesh or larger gillnets will still be subject to at-sea monitoring coverage if the trip declares its intent to fish in any part of the trip in the Gulf of Maine (GOM) Stock area, as defined at § 648.10(k)(3)(i), or the Offshore GB Stock Area, as defined at § 648.10(k)(3)(iii). Vessels using electronic monitoring to satisfy the sector monitoring requirement in this section must have their system turned on and comply with their vessel monitoring plan on all trips, including a trip that is limited to the Inshore GB and/or SNE Broad Stock Areas where

the vessel only uses gillnets with a mesh size of 10-inches (25.4-cm) or greater.

(iii) *Geographic exclusion from the at-sea monitoring program.* Vessels fishing exclusively west of 71°30′ W Longitude on a sector trip are excluded from the requirement to carry an at-sea monitor. Vessels on a trip excluded from the at-sea monitoring requirement under this paragraph (l)(5)(iii) must comply with the VMS declaration requirements at § 648.10(g)(3), and the transiting requirements at § 648.81(e) when east of 71°30′ W Longitude. Vessels using electronic monitoring to satisfy the sector monitoring requirement in this section must have their system turned on and comply with their vessel monitoring plan on all trips, including trips fishing exclusively west of 71°30′ W Longitude.

(iv) *Waivers.* In addition to the safety waivers in paragraph (c) of this section, NMFS may issue a waiver for a sector trip exempting the vessel from the sector monitoring program coverage requirements for the following reasons.

(A) *Funding waivers.* NMFS will issue a waiver for a sector trip exempting the vessel from the sector monitoring program coverage requirements if coverage is unavailable due to insufficient funding for NMFS cost responsibilities as defined in paragraph (g)(3) of this section.

(B) *Logistics waivers.* NMFS may issue a waiver for a sector trip exempting the vessel from the sector monitoring program coverage requirements in this section for logistical and technical reasons, including, but not limited to: No monitor is available; the assigned observer is unable to make the trip; the trip will have no fishing effort; and electronic monitoring system technical problems.

(C) *Set-only trip waivers.* Vessels on a set-only trip, as defined at § 648.2, are excluded from the groundfish sector monitoring program requirements in paragraph (l) of this section. If a vessel is using electronic monitoring to comply with the monitoring requirements of this part, that vessel may turn off its cameras on a set-only trip.

(v) *Review of exclusions from the at-sea monitoring program.* A New England Fishery Management Council review of the exclusions from the at-sea monitoring program in paragraphs (l)(5)(ii) and (iii) of this section will evaluate whether the exclusions continue to meet the intent of the New England Fishery Management Council to exclude trips with little catch of regulated species and ocean pout. The review will be conducted using complete data from 2 fishing years once the data are available (fishing years 2022 and 2023) and every 3 years after the initial review.

(6) *Groundfish sector monitoring program review.* A New England Fishery Management Council review of the NE multispecies monitoring program will evaluate whether the monitoring program is meeting the goal of improved accuracy of catch data, while maximizing value and minimizing costs of the program, using complete data from 2 fishing years once the data are available (fishing years 2022 and 2023) and periodically after the initial review. The review process should be flexible and general, and include establishing metrics and indicators of how well the monitoring program improved accuracy while maximizing value and minimizing costs.

(7) *Hail reports.* For the purposes of the monitoring requirements specified in paragraph (l)(2) of this section, sector vessels must submit all hail reports for a sector trip in which the NE multispecies catch applies against the ACE allocated to a sector, as specified in this part, to their respective contracted monitoring service providers. The mechanism and timing of the transmission of such hail reports must be consistent with instructions provided by the Regional Administrator for any at-sea or electronic monitoring program required by paragraph (l)(2) of this section, or specified in the annual sector operations plan, consistent with § 648.87(b)(5).

(8) *Notification of monitoring service provider change.* If, for any reason, a sector decides to change approved service providers used to provide at-sea or electronic monitoring services required in paragraph (l)(2) of this section, the sector manager must first inform NMFS in writing in advance of the effective date of the change in approved monitoring service providers in conjunction with the submission of the next weekly sector catch report specified in § 648.87(b)(1)(v)(B). A sector may use more than one monitoring service provider at any time, provided any monitoring service provider employed by or contracted with a sector meets the standards specified in paragraph (b)(4) of this section.

(9) *Discards.* A sector vessel may not discard any legal-sized regulated species or ocean pout allocated to sectors pursuant to § 648.87(b)(1)(i), unless otherwise required pursuant to § 648.86(l). Discards of undersized regulated species or ocean pout by a sector vessel must be reported to NMFS consistent with the reporting requirements specified in § 648.87(b)(1)(v). Discards shall not be included in the information used to calculate a vessel's PSC, as described in § 648.87(b)(1)(i)(E), but shall be counted against a sector's ACE for each regulated species allocated to a sector.

(10) *Sector monitoring program operational standards.* In addition to the monitoring service provider standards specified in paragraph (h)(5) of this section, any at-sea/electronic monitoring program developed as part of a sector's yearly operations plan pursuant to paragraph (l)(2) of this section must meet the following operational standards to be approved by NMFS:

(i) *Vessel requirements*—(A) *Electronic monitoring system requirements.* A vessel owner or operator using electronic monitoring to meet sector monitoring requirements in this section must do the following:

(*1*) Ensure that the electronic monitoring system is fully operational for every sector trip, which means it is operating, recording, and retaining the recording for the duration of every trip. A vessel may not fish without a fully operational electronic monitoring system, unless issued a waiver by NMFS for that trip;

(*2*) Conduct a system check of the electronic monitoring system prior to departing on a fishing trip. An electronic monitoring system check must show that the electronic monitoring system is fully operational and the amount of video storage space available to record the fishing trip;

(*3*) Maintain clear and unobstructed camera views at all times. Ensure lighting is sufficient in all circumstances to illuminate catch so that catch and discards are visible and may be identified and quantified as required; and

(*4*) Ensure no person tampers with, disconnects, or destroys any part of the electronic monitoring system, associated equipment, or recorded data.

(B) *Vessel monitoring plan requirements for electronic monitoring vessels.* A vessel must have a NMFS-approved vessel monitoring plan to use electronic monitoring to meet sector monitoring requirements in this section. NMFS will approve a vessel monitoring plan that sufficiently describes how the electronic monitoring system is configured on a particular vessel applying for approval and how the fishing and monitoring operations will be conducted in a manner to effectively monitor catch in accordance with the EM program requirements and standards in this section. Vessels must submit vessel monitoring plans and revisions to vessel monitoring plans for NMFS review and approval, as

instructed by the Regional Administrator.

(*1*) The vessel monitoring plan must be onboard the vessel at all times.

(*2*) The vessel owner, operator and crew must comply with all catch handling protocols and other requirements described in the vessel monitoring plan, including sorting catch and processing any discards within view of the cameras and consistent with the vessel monitoring plan.

(*3*) Modifications to any vessel monitoring plan must be approved by NMFS prior to such vessel fishing under the conditions of the new vessel monitoring plan.

(*4*) A vessel owner or operator using electronic monitoring to meet sector monitoring requirements in this section must submit all electronic monitoring data to the monitoring service provider in accordance with the electronic monitoring program requirements in this section, or as otherwise instructed by the Regional Administrator.

(*5*) A vessel owner or operator must make the electronic monitoring system, associated equipment, electronic monitoring data, or vessel monitoring plan available to NMFS for inspection, upon request.

(*6*) A vessel owner or operator using electronic monitoring to meet sector monitoring requirements in this section must turn on its camera for 100 percent of sector trips.

(*7*) A vessel owner or operator using electronic monitoring to meet sector monitoring requirements in this section must comply with the requirements in paragraphs (l)(10)(i)(A) and (B) of this section or the Regional Administrator may withdraw approval for the vessel to use electronic monitoring.

(*8*) The Regional Administrator may revise vessel monitoring plan requirements and approval standards in this section consistent with the Administrative Procedure Act. Any revisions will be published on the agency's website.

(C) *Safety hazards.* The operator of a sector vessel must detail and identify any safety hazards to any at-sea monitor assigned pursuant to paragraph (l)(2) of this section prior to leaving port. A vessel may not begin a trip if it has failed a review of safety issues pursuant to paragraph (l)(10)(ii)(D) of this section, until the identified safety deficiency has been resolved, pursuant to § 600.746(i) of this chapter.

(D) *Dockside monitoring.* Vessels using maximized retention electronic monitoring must participate in either an independent third party dockside monitoring program approved by NMFS, or the dockside monitoring program operated by NMFS, as instructed by NMFS.

(*1*) The vessel operator and crew may not begin offloading unless a dockside monitor is present or NMFS has issued the trip a waiver from the dockside monitoring program.

(*2*) The vessel operator and crew must allow the dockside monitor access to the fish hold immediately following the offload in order to confirm all allocated groundfish were offloaded unless NMFS has issued the trip a waiver from the dockside monitoring program.

(E) *Retention of fish.* Vessels using maximized retention electronic monitoring must retain all fish from each allocated regulated species, regardless of length.

(ii) *Sector monitoring plan monitoring service provider requirements.* In addition to the monitoring service provider standards in paragraph (h) of this section, sector monitoring plans must include the following operational requirements for any monitoring provider contracted to meet sector monitoring program requirements in this paragraph (l):

(A) *At-sea monitoring report.* Within 48 hours of the completion of a trip, or as otherwise instructed by the Regional Administrator, electronic submission to NMFS and the sector a report detailing the area fished and the amount of each species kept and discarded. A standard format for submission shall be specified by NMFS and distributed to all monitoring service providers and sectors. NMFS will accept only monitoring data that passes automated NMFS data quality checks.

(B) *Electronic monitoring report.* A report detailing area fished and the amount of each species discarded must be submitted electronically in a standard acceptable form to the appropriate sector and NMFS within 10 business days of a trip being selected for video review, or as otherwise instructed by the Regional Administrator. The format for submission shall be specified by NMFS and distributed to all monitoring service providers and sectors. NMFS will accept only monitoring data that passes automated NMFS data quality checks.

(C) *Vessel feedback report.* A report must be submitted to the vessel owner following a trip with detailed feedback on the vessel operator's and crew's catch handling, camera maintenance, and vessel monitoring plan compliance. A copy must be submitted to NMFS upon request.

(D) *Safety hazards.* Completion by an at-sea monitor of a pre-trip vessel safety checklist provided by NMFS before an at-sea monitor can leave port onboard a vessel on a sector trip. If the vessel fails a review of safety issues pursuant to this paragraph (l)(10)(ii)(D), an at-sea monitor cannot be deployed on that vessel for that trip.

(E) *Gear.* Provision of all equipment specified by the Northeast Fisheries Science Center to each at-sea monitor before the at-sea monitor may be deployed on a vessel. A list of such equipment is available from the Northeast Fisheries Science Center upon request. This gear shall be inspected by NMFS upon the completion of training required pursuant to paragraph (i)(2) of this section.

(F) *Adjustment to service provider requirements and approval standards.* The Regional Administrator may revise monitoring service provider requirements and approval standards in this section consistent with the Administrative Procedure Act.

(iii) *Sector requirements.* Each sector shall monitor catch by participating sector vessels to ensure that ACEs are not exceeded during the fishing year, as specified in this paragraph (l)(10)(iii). The sector shall summarize trips validated by dealer reports; oversee the use of electronic monitoring equipment and review of associated data; maintain a database of VTR, dealer, observer, and electronic monitoring reports; determine all species landings by stock areas; apply discard estimates to landings; deduct catch from ACEs allocated to sectors; and report sector catch on a weekly basis to NMFS, as required in paragraph (b)(1)(v) of this section. Unless otherwise specified in this paragraph (l)(10), all catches of stocks allocated to sectors by vessels on a sector trip shall be deducted from the sector's ACE for each regulated species stock regardless of the fishery the vessel was participating in when the fish was caught. For the purposes of this paragraph (l)(10), any regulated species or ocean pout caught using gear capable of catching NE multispecies (*i.e.,* gear not listed as exempted gear under this part) would be deducted from a sector's ACE if such catch contributed to the specification of PSC, as described in § 648.87(b)(1)(i)(E), and would not apply to another ACL sub-component pursuant to § 648.90(a)(4). For example, any regulated species or ocean pout landed while fishing for or catching skates or monkfish pursuant to the regulations in this chapter for those fisheries would be deducted from the sector's ACE for each stock because such regulated species or ocean pout were caught while also operating under a NE multispecies DAS. However, for example, if a sector vessel is issued a limited access General Category Atlantic

Sea Scallop permit and fishes for scallops under the provisions specific to that permit, any yellowtail flounder caught by the vessel on such trips would be deducted from the appropriate non-groundfish component, such as the other sub-component or the appropriate yellowtail flounder stock's ACL specified for the Atlantic Sea Scallop fishery and not from the yellowtail flounder ACE for the sector.

(iv) *Dealer requirements.* Federally permitted NE multispecies dealers must allow dockside monitors access to their premises, scales, and any fish received from vessels participating in the maximized retention electronic monitoring program for the purpose of collecting fish species and weights of fish received by the dealer, fish length measurements, and the collection of age structures such as otoliths or scales.

(A) *Facilitation.* Federally permitted NE multispecies dealers must facilitate dockside monitoring for vessels participating in a maximized retention electronic monitoring program, including, but not limited to, the following requirements:

(*1*) Provide a safe sampling station, including shelter from weather, for dockside monitors to conduct their duties and process catch, that is equivalent to the accommodations provided to the dealer's staff.

(*2*) Allow dockside monitors access to bathrooms equivalent to the accommodations provided to the dealer's staff.

(*3*) Allow dockside monitors access to any facilities for washing equipment with fresh water that are provided to the dealer's staff.

(B) *Processing, sorting, labeling, and reporting.* Federally permitted NE multispecies dealers must process, and may possess, fish for vessels participating in a maximized retention electronic monitoring program consistent with and including, but not limited to, the following requirements:

(*1*) Offload from vessels participating in the maximized retention monitoring program all fish below the minimum size specified at § 648.83, report fish below the minimum size specified at § 648.83 by species, and provide the dockside monitor access to those fish below the minimum size at the safe sampling station.

(*2*) Sort by species all unmarketable fish from other fish, when identifiable to species.

(*3*) Clearly identify, mark, or label all containers with fish below the minimum size specified in § 648.83 as containing undersized fish, the fishing vessel from which they were offloaded, and the date of offloading.

(*4*) Report all fish below the minimum size specified in § 648.83, and all unmarketable fish, as instructed by NMFS.

(v) *Adjustment to operational standards.* The at-sea/electronic monitoring operational standards specified in paragraph (l)(10) of this section may be revised by the Regional Administrator in a manner consistent with the Administrative Procedure Act.

(m) * * *

(1) * * *

(i) In addition to the requirement for any vessel holding an Atlantic herring permit to carry an observer described in paragraph (a) of this section, vessels issued a Category A or B Herring Permit are subject to industry-funded monitoring (IFM) requirements in this section on declared Atlantic herring trips, unless the vessel is carrying an observer to fulfill Standard Bycatch Reporting Methodology requirements in § 648.18. An owner of a midwater trawl vessel, required to carry an observer when fishing in Northeast Multispecies Closed Areas at § 648.202(b), may purchase an IFM high volume fisheries (HVF) observer to access Closed Areas on a trip-by-trip basis. General requirements for IFM programs in New England Council FMPs are specified in paragraph (g) of this section. Possible IFM monitoring for the Atlantic herring fishery includes observers, at-sea monitors, and electronic monitoring and portside samplers, as defined in § 648.2.

* * * * *

(v) To provide the required IFM coverage aboard declared Atlantic herring trips, observers and monitors must hold a high volume fisheries certification from NMFS.

(2) * * *

(iii) * * *

(A) For IFM observer coverage aboard vessels fishing with midwater trawl gear to access the Northeast Multispecies Closed Areas, consistent with requirements at § 648.202(b), at any point during the trip;

* * * * *

(4) * * *

(i) An owner of an Atlantic herring vessel required to have monitoring under paragraph (m)(3) of this section must arrange for monitoring by an observer from a monitoring service provider approved by NMFS under paragraph (h) of this section. The owner, operator, or vessel manager of a vessel selected for monitoring must contact a monitoring service provider prior to the beginning of the trip and the monitoring service provider will notify the vessel owner, operator, or manager whether monitoring is available. A list of approved monitoring service providers shall be posted on the NMFS website: *https://www.fisheries.noaa.gov/resource/data/observer-providers-northeast-and-mid-atlantic-programs.*

* * * * *

(6) *Sampling requirements for observers and monitors.* In addition to the requirements in paragraphs (d)(1) through (7) of this section, an owner or operator of a vessel issued a limited access herring permit on which an observer or monitor is embarked must provide observers or monitors:

* * * * *

(n) * * *

(2) *Sampling requirements for limited access Atlantic mackerel and longfin squid/butterfish moratorium permit holders.* In addition to the requirements in paragraphs (d)(1) through (7) of this section, an owner or operator of a vessel issued a limited access Atlantic mackerel or longfin squid/butterfish moratorium permit on which an observer is embarked must provide observers:

* * * * *

■ 6. Effective January 9, 2023, amend § 648.14 by:

■ a. Revising paragraph (a)(7);

■ b. Removing the heading from paragraph (a)(10);

■ c. Revising paragraphs (e), (i)(1)(ix)(B), (k)(3), and (k)(14)(ix) through (xiii);

■ d. Adding paragraphs (k)(14)(xiv) through (xvi); and

■ e. Revising paragraph (r)(2)(v).

The revisions and additions read as follows:

§ 648.14 Prohibitions.

(a) * * *

(7) Possess, import, export, transfer, land, or have custody or control of any species of fish regulated pursuant to this part that do not meet the minimum size provisions in this part, unless such species were harvested exclusively within state waters by a vessel that does not hold a valid permit under this part, or are species included in the NE Multispecies Fishery Management Plan that were either harvested by a vessel participating in the maximized retention electronic monitoring program consistent with § 648.11(l)(10)(i)(E) or harvested by a vessel issued a valid High Seas Fishing Compliance permit that fished exclusively in the NAFO Regulatory Area.

* * * * *

(e) *Observer program.* It is unlawful for any person to do any of the following:

(1) Assault, resist, oppose, impede, harass, intimidate, or interfere with or bar by command, impediment, threat, or

coercion any observer or monitor conducting his or her duties; any electronic monitoring provider staff who collects data required under this part; any authorized officer conducting any search, inspection, investigation, or seizure in connection with enforcement of this part; any official designee of the Regional Administrator conducting his or her duties, including those duties authorized in §§ 648.7(g) and 648.11(l)(10)(v).

(2) Refuse monitoring coverage by an observer or monitor if selected for monitoring coverage by the Regional Administrator or the Regional Administrator's designee.

(3) Fail to provide information, notification, accommodations, access, or reasonable assistance to an observer, monitor, or electronic monitoring provider staff conducting his or her duties as specified in § 648.11.

(4) Submit false or inaccurate data, statements, or reports.

* * * * *

(i) * * *

(1) * * *

(ix) * * *

(B) Fail to provide information, notification, accommodations, access, or reasonable assistance to an observer conducting his or her duties aboard a vessel, as specified in § 648.11.

* * * * *

(k) * * *

(3) *Dealer requirements.* It is unlawful for any person to:

(i) Purchase, possess, import, export, or receive as a dealer, or in the capacity of a dealer, allocated regulated species or ocean pout in excess of the possession limits specified in § 648.82, § 648.85, § 648.86, or § 648.87 applicable to a vessel issued a NE multispecies permit, unless otherwise specified in § 648.17, or unless the regulated species or ocean pout are purchased or received from a vessel that caught them on a sector trip and such species are exempt from such possession limits in accordance with an approved sector operations plan, as specified in § 648.87(c).

(ii) Sell or transfer to another person for a commercial purpose, other than solely for transport on land, any NE multispecies harvested from the EEZ by a vessel issued a Federal NE multispecies permit, unless the transferee has a valid NE multispecies dealer permit.

(iii) Purchase, possess, import, export, or receive as a dealer, or in the capacity of a dealer, allocated regulated species from a vessel participating in the maximized retention electronic monitoring program in § 648.11(l) unless the offload of catch was observed by a dockside monitor or NMFS issued a waiver from dockside monitoring for the trip.

(iv) Assault, resist, oppose, impede, harass, intimidate, or interfere with or bar by command, impediment, threat, or coercion any observer or monitor conducting his or her duties or any electronic monitoring provider staff who collects data required under this part.

(v) Impede a dockside monitor's access to their premises, scales, and any fish received from vessels participating in the maximized retention electronic monitoring program; fail to facilitate dockside monitoring for vessels participating in a maximized retention electronic monitoring program; or fail to process, sort, label, and report fish from vessels participating in the maximized retention monitoring program, as required in § 648.11(l)(10)(iv).

* * * * *

(14) * * *

(ix) Fail to comply with the reporting requirements specified in §§ 648.11(l)(10)(iii) and 648.87(b)(1)(v).

(x) Leave port to begin a trip before an at-sea monitor has arrived and boarded the vessel if assigned to carry an at-sea monitor for that trip, or without an operational electronic monitoring system installed on board, as specified in § 648.11(l)(3) and (l)(10)(i).

(xi) Leave port to begin a trip if a vessel has failed a review of safety issues by an at-sea monitor and has not successfully resolved any identified safety deficiencies, as prohibited by § 648.11(l)(10)(i)(C).

(xii) Fail to comply with the electronic monitoring system requirements as specified in § 648.11(l)(10)(i)(A), including, but not limited to: ensuring the electronic monitoring system is fully operational; conducting a system check of the electronic monitoring system; ensuring camera views are unobstructed and clear; and ensuring that no person tampers with the electronic monitoring system.

(xiii) Fail to comply with the vessel monitoring plan requirements as specified in § 648.11(l)(10)(i)(B), including, but not limited to: carrying the vessel monitoring plan onboard the vessel at all times; complying with all catch handling protocols and other requirements in the vessel monitoring plan; submitting electronic monitoring data as required; and making the electronic monitoring system available to NMFS for inspection upon request.

(xiv) Offload fish without a dockside monitor present or without a waiver issued by NMFS when participating in the maximized retention electronic monitoring program.

(xv) Resist, oppose, impede, harass, intimidate, or interfere with or bar by command, impediment, threat, or coercion any dockside monitor conducting his or her duty to inspect a fish hold after offload.

(xvi) Fish under a waiver from the groundfish sector monitoring program issued under § 648.11(l)(5)(ii) or (iii) without complying with the requirements of § 648.11(l)(5)(ii) or (iii), respectively; the VMS declaration requirements at § 648.10; and the pre-trip notification requirements at § 648.11(l)(1).

* * * * *

(r) * * *

(2) * * *

(v) Fish with midwater trawl gear in any Northeast Multispecies Closed Area, as defined in § 648.81(a)(3) through (5) and (c)(3) and (4), without an observer on board, if the vessel has been issued an Atlantic herring permit.

* * * * *

■ 7. Effective January 9, 2023, amend § 648.51 by revising paragraphs (c)(4) and (e)(3)(iii) to read as follows:

§ 648.51 Gear and crew restrictions.

* * * * *

(c) * * *

(4) An at-sea observer is on board, as required by § 648.11(k).

* * * * *

(e) * * *

(3) * * *

(iii) An at-sea observer is on board, as required by § 648.11(k).

* * * * *

■ 8. Effective January 9, 2023, amend § 648.80 by revising paragraphs (d)(3) and (e)(2)(ii) to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(d) * * *

(3) The vessel carries an observer, if requested by the Regional Administrator;

* * * * *

(e) * * *

(2) * * *

(ii) The vessel carries an observer, if requested by the Regional Administrator;

* * * * *

■ 9. Effective January 9, 2023, amend § 648.83 by revising paragraph (a)(1) to read as follows:

§ 648.83 Multispecies minimum fish sizes.

(a) * * *

(1) Minimum fish sizes for recreational vessels and charter/party

vessels that are not fishing under a NE multispecies DAS are specified in § 648.89. Except as provided in §§ 648.11(l)(10)(i)(E) and 648.17, all other vessels are subject to the following minimum fish sizes, determined by total length (TL):

TABLE 1 TO PARAGRAPH (a)(1)—MINIMUM FISH SIZES (TL) FOR COMMERCIAL VESSELS

Species	Size in inches
Cod	19 (48.3 cm).
Haddock	16 (40.6 cm).
Pollock	19 (48.3 cm).
Witch flounder (gray sole).	13 (33 cm).
Yellowtail flounder	12 (30.5 cm).
American plaice (dab)	12 (30.5 cm).
Atlantic halibut	41 (104.1 cm).
Winter flounder (blackback).	12 (30.5 cm).
Redfish	7 (17.8 cm).

* * * * *

■ 10. Effective January 9, 2023, amend § 648.85 by revising paragraph (e)(1)(viii)(C) to read as follows:

§ 648.85 Special management programs.

* * * * *

(e) * * *

(1) * * *

(viii) * * *

(C) *Administration of thresholds.* (*1*) For the purpose of determining a sector's monthly redfish landings threshold performance described in paragraph (e)(1)(viii)(A)(*1*) of this section and the annual redfish landings threshold described in paragraph (e)(1)(viii)(B)(*1*) of this section, landings of allocated regulated species by vessels participating in a maximized retention electronic monitoring program consistent with § 648.11(l), including landings of allocated stocks below the minimum size at § 648.83(a)(1), will be counted as landings and not discards.

(*2*) For the purpose of determining a sector's monthly discards threshold performance described in paragraph (e)(1)(viii)(A)(*2*) of this section, a trip by a vessel participating in a maximized retention electronic monitoring program consistent with § 648.11(l) will be excluded from evaluation of the monthly discard threshold.

(*3*) If a sector fails to meet the monthly redfish landings threshold or the monthly discards threshold described in paragraphs (e)(1)(viii)(A)(*1*) and (*2*) of this section for four or more months total, or three or more consecutive months, in a fishing year, the Regional Administrator shall prohibit all vessels in that sector from fishing under the provisions of the Redfish Exemption Program for the remainder of the fishing year, and place the sector and its vessels in a probationary status for one fishing year beginning the following fishing year.

(*4*) If a sector fails to meet the annual redfish landings threshold described in paragraph (e)(1)(viii)(B)(*1*) of this section in a fishing year, the Regional Administrator shall place the sector and its vessels in a probationary status for one fishing year beginning the following fishing year.

(*5*) While in probationary status as described in paragraph (e)(1)(viii)(C)(*3*) or (*4*) of this section, if the sector fails to meet the monthly redfish landings threshold or the monthly discards threshold described in paragraphs (e)(1)(viii)(A)(*1*) and (*2*) of this section for four or more months total, or three or more consecutive months, in that fishing year, the Regional Administrator shall prohibit all vessels in that sector from fishing under the provisions of the Redfish Exemption Program for the remainder of the fishing year and the following fishing year.

(*6*) If a sector fails to meet the annual redfish landings threshold in paragraph (e)(1)(viii)(B)(*1*) of this section for any fishing year during which the sector is in a probationary status as described in paragraph (e)(1)(viii)(C)(*3*) or (*4*) of this section, the Regional Administrator shall prohibit all vessels in that sector from fishing under the provisions of the Redfish Exemption Program for the following fishing year.

(*7*) The Regional Administrator may determine a sector has failed to meet required monthly or annual thresholds described in paragraphs (e)(1)(viii)(A) and (B) of this section using available information including, but not limited to, vessel declarations and notifications, vessel trip reports, dealer reports, and observer and electronic monitoring records.

(*8*) The Regional Administrator shall notify a sector of a failure to meet the required monthly or annual thresholds and the sector's vessels prohibition or probation status consistent with the provisions in paragraphs (e)(1)(viii)(C)(*1*) through (*7*) of this section. The Regional Administrator shall also make administrative amendments to the approved sector operations plan and issue sector vessel letters of authorization consistent with the provisions in paragraphs (e)(1)(viii)(C)(*1*) through (*7*) of this section. These administrative amendments may be made during a fishing year or during the sector operations plan and sector contract approval process.

(*9*) A sector may request in writing that the Regional Administrator review and reverse a determination made under the provisions of this section within 30 days of the date of the Regional Administrator's determination. Any such request must be based on information showing the sector complied with the required thresholds, including, but not limited to, landing, discard, observer or electronic monitoring records. The Regional Administrator will review and maintain or reverse the determination and notify the sector of this decision in writing. Any determination resulting from a review conducted under this paragraph (e)(1)(viii)(C)(*9*) is final and may not be reviewed further.

* * * * *

■ 11. Effective January 9, 2023, amend § 648.86 by revising the introductory text and paragraph (a)(3)(ii)(A)(*1*) to read as follows:

§ 648.86 NE Multispecies possession restrictions.

Except as provided in §§ 648.11(l) and 648.17, or elsewhere in this part, the following possession restrictions apply:

(a) * * *

(3) * * *

(ii) * * *

(A) * * *

(*1*) *Haddock incidental catch cap.* When the Regional Administrator has determined that the incidental catch allowance for a given haddock stock, as specified in § 648.90(a)(4)(iii)(D), has been caught, no vessel issued an Atlantic herring permit and fishing with midwater trawl gear in the applicable stock area, *i.e.,* the Herring GOM Haddock Accountability Measure (AM) Area or Herring GB Haddock AM Area, as defined in paragraphs (a)(3)(ii)(A)(*2*) and (*3*) of this section, may fish for, possess, or land herring in excess of 2,000 lb (907.2 kg) per trip in or from that area, unless all herring possessed and landed by the vessel were caught outside the applicable AM Area and the vessel's gear is stowed and not available for immediate use as defined in § 648.2 while transiting the AM Area. Upon this determination, the haddock possession limit is reduced to 0 lb (0 kg) for a vessel issued a Federal Atlantic herring permit and fishing with midwater trawl gear or for a vessel issued a Category A or B Herring Permit fishing on a declared herring trip, regardless of area fished or gear used, in the applicable AM Area, unless the vessel also possesses a NE multispecies permit and is operating on a declared (consistent with § 648.10(g)) NE multispecies trip. In making this determination, the Regional Administrator shall use haddock

catches observed by observers or monitors by herring vessel trips using midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined in § 648.200(f)(1) and (3), expanded to an estimate of total haddock catch for all such trips in a given haddock stock area.

* * * * *

■ 12. Effective January 9, 2023, amend § 648.87 by:

■ a. Revising paragraph (b)(1) introductory text and (b)(1)(v) through (viii);

■ b. Removing paragraph (b)(1)(ix);

■ c. Revising paragraph (b)(2) and (3); and

■ d. Removing paragraphs (b)(4) and (5).

The revisions read as follows:

§ 648.87 Sector allocation.

* * * * *

(b) * * *

(1) All sectors approved under the provisions of paragraph (a) of this section must submit the documents specified in paragraphs (a)(1) and (b)(2) and (3) of this section, comply with the conditions and restrictions of this paragraph (b)(1), and comply with the groundfish sector monitoring program in § 648.11(l).

* * * * *

(v) *Sector reporting requirements.* In addition to the other reporting/recordkeeping requirements specified in this part, a sector's vessels must comply with the reporting requirements specified in this paragraph (b)(1)(v).

(A) *VMS declarations and trip-level catch reports.* Prior to each sector trip, a sector vessel must declare into broad stock areas in which the vessel fishes and submit the VTR serial number associated with that trip pursuant to § 648.10(k). The sector vessel must also submit a VMS catch report detailing regulated species and ocean pout catch by statistical area when fishing in multiple broad stock areas on the same trip, pursuant to § 648.10(k).

(B) *Weekly catch report.* Each sector must submit weekly reports to NMFS stating the remaining balance of ACE allocated to each sector based upon regulated species and ocean pout landings and discards of vessels participating in that sector and any compliance/enforcement concerns. These reports must include at least the following information, as instructed by the Regional Administrator: Week ending date; species, stock area, gear, number of trips, reported landings (landed pounds and live pounds), discards (live pounds), total catch (live pounds), status of the sector's ACE (pounds remaining and percent remaining), and whether this is a new or updated record of sector catch for each regulated species stock allocated to that particular sector; sector enforcement issues; and a list of vessels landing for that reporting week. These weekly catch reports must be submitted no later than 0700 hr on the second Monday after the reporting week, as defined in this part. The frequency of these reports must be increased to more than a weekly submission when the balance of remaining ACE is low, as specified in the sector operations plan and approved by NMFS. If requested, sectors must provide detailed trip-by-trip catch data to NMFS for the purposes of auditing sector catch monitoring data based upon guidance provided by the Regional Administrator.

(C) *Year-end report.* An approved sector must submit an annual year-end report to NMFS and the Council, no later than 60 days after the end of the fishing year, that summarizes the fishing activities of participating permits/vessels, which must include at least the following information: Catch, including landings and discards, of all species by sector vessels; the permit number of each sector vessel that fished for regulated species or ocean pout; the number of vessels that fished for non-regulated species or ocean pout; the method used to estimate discards by sector vessels; the landing port used by sector vessels; enforcement actions; and other relevant information required to evaluate the biological, economic, and social impacts of sectors and their fishing operations consistent with confidentiality requirements of applicable law.

(D) *Streamlining sector reporting requirements.* The reporting/recordkeeping requirements specified in § 648.11(l) and this paragraph (b)(1)(v) may be revised by the Regional Administrator in a manner consistent with the Administrative Procedure Act.

(vi) *Interaction with other fisheries*—(A) *Use of DAS.* A sector vessel must comply with all measures specified for another fishery pursuant to this part, including any requirement to use a NE multispecies DAS. If the regulations in this part for another fishery require the use of a NE multispecies DAS, the DAS allocation and accrual provisions specified in § 648.82(d) and (e), respectively, apply to each trip by a sector vessel, as applicable. For example, if a sector vessel is also issued a limited access monkfish Category C permit and is required to use a NE multispecies DAS concurrent with a monkfish DAS under this part, any NE multispecies DAS used by the sector vessel accrues, as specified in § 648.82(e)(1)(ii) based upon the vessel's NE multispecies DAS allocation calculated pursuant to § 648.82(d)(1)(iv)(B).

(B) *Availability of ACE.* Notwithstanding the requirements in paragraph (b)(1)(vi)(A) of this section, if a sector has not been allocated or does not acquire sufficient ACE available to cover the catch of a particular stock of regulated species while participating in another fishery in which such catch would apply to the ACE allocated to a sector, vessels participating in that sector cannot participate in those other fisheries unless NMFS has approved a sector operations plan that ensures that regulated species or ocean pout will not be caught while participating in these other fisheries.

(vii) *ACE transfers.* All or a portion of a sector's ACE for any NE multispecies stock may be transferred to another sector at any time during the fishing year and up to 2 weeks into the following fishing year (*i.e.,* through May 14), unless otherwise instructed by NMFS, to cover any overages during the previous fishing year. A sector is not required to transfer ACE to another sector. An ACE transfer only becomes effective upon approval by NMFS, as specified in paragraph (b)(1)(vii)(B) of this section.

(A) *Application to transfer ACE.* ACE may be transferred from one sector to another through written request to the Regional Administrator. This request must include the name of the sectors involved, the amount of each ACE to be transferred, the fishing year in which the ACE transfer applies, and the amount of compensation received for any ACE transferred, as instructed by the Regional Administrator.

(B) *Approval of an ACE transfer request.* NMFS shall approve/disapprove a request to transfer ACE based upon compliance by each sector and its participating vessels with the reporting requirements specified in this part. The Regional Administrator shall inform both sectors in writing whether the ACE transfer request has been approved within 2 weeks of the receipt of the ACE transfer request.

(C) *Duration of transfer.* Notwithstanding ACE carried over into the next fishing year pursuant to paragraph (b)(1)(i)(C) of this section, ACE transferred pursuant to this paragraph (b)(1)(vii) is only valid for the fishing year in which the transfer is approved, with the exception of ACE transfer requests that are submitted up to 2 weeks into the subsequent fishing year to address any potential ACE overages from the previous fishing year, as provided in paragraph (b)(1)(iii) of

this section, unless otherwise instructed by NMFS.

(viii) *Trip limits.* With the exception of stocks listed in § 648.86(1) and the Atlantic halibut trip limit at § 648.86(c), a sector vessel is not limited in the amount of allocated NE multispecies stocks that can be harvested on a particular fishing trip, unless otherwise specified in the operations plan.

(2) *Operations plan and sector contract.* To be approved to operate, each sector must submit an operations plan and preliminary sector contract to the Regional Administrator no later than September 1 prior to the fishing year in which the sector intends to begin operations, unless otherwise instructed by NMFS. A final roster, sector contract, and list of Federal and state permits held by participating vessels for each sector must be submitted by December 1 prior to the fishing year in which the sector intends to begin operations, unless otherwise instructed by NMFS. The operations plan may cover a 1- or 2-year period, provided the analysis required in paragraph (b)(3) of this section is sufficient to assess the impacts of sector operations during the 2-year period and that sector membership, or any other parameter that may affect sector operations during the second year of the approved operations plan, does not differ to the point where the impacts analyzed by the supporting National Environmental Policy Act (NEPA) document are compromised. Each vessel and vessel operator and/or vessel owner participating in a sector must agree to and comply with all applicable requirements and conditions of the operations plan specified in this paragraph (b)(2) and the letter of authorization issued pursuant to paragraph (c)(2) of this section. It shall be unlawful to violate any such conditions and requirements unless such conditions or restrictions are identified in an approved operations plan as administrative only. If a proposed sector does not comply with the requirements of this paragraph (b)(2), NMFS may decline to propose for approval such sector operations plans, even if the Council has approved such sector. At least the following elements must be contained in either the final operations plan or sector contract submitted to NMFS:

(i) A list of all parties, vessels, and vessel owners who will participate in the sector;

(ii) A list of all Federal and state permits held by persons participating in the sector, including an indication for each permit whether it is enrolled and will actively fish in a sector, or will be subject to the provisions of the common pool;

(iii) A contract signed by all sector participants indicating their agreement to abide by the operations plan;

(iv) The name of a designated representative or agent of the sector for service of process;

(v) If applicable, a plan for consolidation or redistribution of ACE detailing the quantity and duration of such consolidation or redistribution within the sector;

(vi) A list of the specific management rules the sector participants will agree to abide by in order to avoid exceeding the allocated ACE for each stock, including a plan of operations or cessation of operations once the ACEs of one or more stocks are harvested and detailed plans for enforcement of the sector rules;

(vii) A plan that defines the procedures by which members of the sector that do not abide by the rules of the sector will be disciplined or removed from the sector, and a procedure for notifying NMFS of such expulsions from the sector;

(viii) If applicable, a plan of how the ACE allocated to the sector is assigned to each vessel;

(ix) If the operations plan is inconsistent with, or outside the scope of the NEPA analysis associated with the sector proposal/framework adjustment as specified in paragraph (a)(1) of this section, a supplemental NEPA analysis may be required with the operations plan;

(x) Detailed information about overage penalties or other actions that will be taken if a sector exceeds its ACE for any stock;

(xi) Detailed plans for the monitoring and reporting of landings and discards by sector participants, including, but not limited to, detailed information describing the sector's at-sea/electronic monitoring program for monitoring utilization of ACE allocated to that sector; identification of the independent third-party service providers employed by the sector to provide at-sea/electronic monitoring services; the mechanism and timing of any hail reports; a list of specific ports where participating vessels will land fish, with specific exemptions noted for safety, weather, etc., allowed, provided the sector provides reasonable notification to NMFS concerning a deviation from the listed ports; and any other information about such a program required by NMFS;

(xii) ACE thresholds that may trigger revisions to sector operations to ensure allocated ACE is not exceeded, and details regarding the sector's plans for notifying NMFS once the specified ACE threshold has been reached;

(xiii) Identification of any potential redirection of effort into other fisheries expected as a result of sector operations, and, if necessary, proposed limitations to eliminate any adverse effects expected from such redirection of effort;

(xiv) If applicable, description of how regulated species and ocean pout will be avoided while participating in other fisheries that have a bycatch of regulated species or ocean pout if the sector does not have sufficient ACE for stocks of regulated species or ocean pout caught as bycatch in those fisheries, as specified in paragraph (b)(1)(vi)(B) of this section; and

(xv) A list of existing regulations in this part that the sector is requesting exemption from during the following fishing year pursuant to paragraph (c)(2) of this section.

(3) *NEPA analysis.* In addition to the documents required by paragraphs (a)(1) and (b)(2) of this section, before NMFS can approve a sector to operate during a particular fishing year, each sector must develop and submit to NMFS, in conjunction with the yearly operations plan and sector contract, an appropriate NEPA analysis assessing the impacts of forming the sector and operating under the measures described in the sector operations plan.

* * * * *

■ 13. Effective January 9, 2023, amend § 648.90 by revising paragraphs (a)(2)(iii) and (iv) and (a)(4)(i)(B) to read as follows:

§ 648.90 NE multispecies assessment, framework procedures and specifications, and flexible area action system.

* * * * *

(a) * * *

(2) * * *

(iii) In addition, the PDT may develop ranges of options for any of the management measures in the FMP and the following conditions that may be adjusted through a framework adjustment to achieve FMP goals and objectives including, but not limited to:

(A) Revisions to DAS measures, including DAS allocations (such as the distribution of DAS among the four categories of DAS), future uses for Category C DAS, and DAS baselines, adjustments for steaming time, etc.;

(B) Accumulation limits due to a permit buyout or buyback;

(C) Modifications to capacity measures, such as changes to the DAS transfer or DAS leasing measures;

(D) Calculation of area-specific ACLs (including sub-ACLs for specific stocks and areas (*e.g.,* Gulf of Maine cod)), area management boundaries, and adoption

of area-specific management measures including the delineation of inshore/offshore fishing practices, gear restrictions, declaration time periods;

(E) Sector allocation requirements and specifications, including the establishment of a new sector, the disapproval of an existing sector, the allowable percent of ACL available to a sector through a sector allocation, an optional sub-ACL specific to Handgear A permitted vessels, management uncertainty buffers, and the calculation of PSCs;

(F) Sector administration provisions, including at-sea, electronic, dockside, and other monitoring tools, coverage requirements and processes, monitoring program review, or other measures; sector reporting requirements; vessel-specific coverage levels;

(G) State-operated permit bank administrative provisions;

(H) Measures to implement the U.S./Canada Resource Sharing Understanding, including any specified TACs (hard or target);

(I) Changes to administrative measures;

(J) Additional uses for Regular B DAS;

(K) Reporting requirements;

(L) Declaration requirements pertaining to when and what time period a vessel must declare into or out of a fishery management area;

(M) The GOM Inshore Conservation and Management Stewardship Plan;

(N) Adjustments to the Handgear A or B permits;

(O) Gear requirements to improve selectivity, reduce bycatch, and/or reduce impacts of the fishery on EFH;

(P) Special Access Program (SAP) modifications;

(Q) Revisions to the ABC control rule and status determination criteria, including, but not limited to, changes in the target fishing mortality rates, minimum biomass thresholds, numerical estimates of parameter values, and the use of a proxy for biomass may be made either through a biennial adjustment or framework adjustment;

(R) Changes to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs; and

(S) Any other measures currently included in the FMP.

(iv) Based on the review of the most current scientific information available for the rebuilding plans for GOM cod and American plaice, the PDT shall determine whether the following conditions are met for either stock: The total catch limit has not been exceeded during the rebuilding program; new scientific information indicates that the stock is below its rebuilding trajectory (*i.e.,* rebuilding has not progressed as expected); and $F_{rebuild}$ becomes less than 75% F_{MSY}. If all three of these criteria are met, the PDT, and/or SSC, shall undertake a rebuilding plan review to provide new catch advice that includes the following, in priority order: Review of the biomass reference points and calculation of $F_{rebuild}$ ACLs based on the review of the biomass reference points and the existing rebuilding plan.

* * * * *

(4) * * *

(i) * * *

(B) *ACL recommendations.* The PDT shall develop ACL recommendations based upon ABCs recommended by the SSC and the pertinent recommendations of the Transboundary Management Guidance Committee (TMGC). The ACL recommendations of the PDT shall be specified based upon total catch for each stock (including both landings and discards), if that information is available. The PDT shall describe the steps involved with the calculation of the recommended ACLs and uncertainties and risks considered when developing these recommendations, including whether different levels of uncertainties were used for different sub-components of the fishery and whether ACLs have been exceeded in recent years. Based upon the ABC recommendations of the SSC and the ACL recommendations of the PDT, the Council shall adopt ACLs that are equal to or lower than the ABC recommended by the SSC to account for management uncertainty in the fishery. In years that the coverage target for the groundfish sector monitoring program specified in § 648.11(l) is set at 100 percent, the management uncertainty buffer defaults to zero for the sector sub-ACL for the allocated regulated species stocks specified at § 648.87(b)(1)(i)(A), unless through an action the New England Fishery Management Council specifies a different management uncertainty buffer for a sector sub-ACL to prevent catches from exceeding an ACL when the coverage target is 100 percent. The need for a management uncertainty buffer for the sector sub-ACL will continue to be evaluated as part of each specification action. The PDT will consider whether the 100-percent monitoring coverage target supports a zero percent buffer, or any other factor has a significant potential to result in catches that could exceed ACLs and will recommend an appropriate management uncertainty buffer if necessary.

* * * * *

■ 14. Effective January 9, 2023, amend § 648.202 by revising paragraph (b)(1) to read as follows:

§ 648.202 Season and area restrictions.

* * * * *

(b) * * *

(1) No vessel issued an Atlantic herring permit and fishing with midwater trawl gear, may fish for, possess or land fish in or from the Closed Areas, including Cashes Ledge Closure Area, Western GOM Closure Area, Closed Area I North (February 1–April 15), and Closed Area II, as defined in § 648.81(a)(3), (4), and (5) and (c)(3) and (4), respectively, unless it has declared first its intent to fish in the Closed Areas as required by § 648.11(m)(1), and is carrying onboard an observer.

* * * * *

[FR Doc. 2022–26350 Filed 12–8–22; 8:45 am]

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