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

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Presidential Documents

Title 3—

The President

Memorandum of February 2, 2023

Supporting Access to Leave for Federal Employees

Memorandum for the Heads of Executive Departments and Agencies

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to strengthen the Federal Government as a model ''employer, it is hereby ordered as follows:

Section 1. *Policy*. Workers must have access to paid leave when they face a medical or caregiving need that affects their ability to work. Yet, the United States is one of the few countries in the world that does not guarantee paid leave—and 92 percent of the Nation's lowest wage workers, who are disproportionately women and workers of color, lack access to paid family leave through their employer. Lack of access to paid family and medical leave can risk the health, well-being, and economic security of workers and their families. Paid leave policies benefit both employees and employers and will strengthen our economy as a whole. That is why my Administration supports a national, comprehensive paid family and medical leave program that will ensure that workers have access to paid leave to bond with a new child; care for a seriously ill loved one; deal with a loved one's military deployment; heal from the worker's own serious illness; grieve the death of a loved one; or seek safety and recover from domestic violence, dating violence, sexual assault, or stalking. In addition to recognizing the importance of access to paid leave, my Administration acknowledges that unpaid leave can serve as a critical stopgap, allowing individuals to maintain their employment while attending to family or medical needs.

As the Nation's largest employer, the Federal Government must be a model for providing leave policies, both paid and unpaid, that allow employees time away from work to care for themselves or a loved one. Being a model employer includes updating our workplace policies and practices to reflect the emerging needs of our workforce today and tomorrow. It also requires recognizing an employee's important caregiving relationships with family members, including extended family and other individuals with equivalent relationships. In addition, Federal employees need access to extended family and medical leave, particularly during their first year of Federal service when they may not have accrued sufficient leave and are not yet eligible for leave under the Family and Medical Leave Act of 1993. By supporting Federal employees' access to leave throughout their service, the Federal Government will strengthen its ability to recruit, hire, develop, promote, and retain our Nation's talent and address barriers to equal opportunity, especially with respect to women's participation in the Federal workforce.

Sec. 2. *Supporting Federal Employees' Access to Leave Without Pay*. (a) In furtherance of the policy set forth in section 1 of this memorandum, the heads of executive departments and agencies (agencies) are encouraged to consider providing leave without pay for Federal employees, as appropriate and consistent with applicable law, including in the following circumstances:

(i) to bond with a new child, to care for a family member with a serious health condition, to address an employee's own serious health condition, or to help manage family affairs when a family member is called to active duty, including during an employee's first year of service; and

(ii) bereavement after the death of a family member, including during an employee's first year of service.

(b) The Director of the Office of Personnel Management (OPM) and the Director of the Office of Management and Budget, through the Deputy Director for Management, shall support agencies in carrying out subsection (a) of this section.

(c) Agency heads, or their designees, shall inform the President, through the Assistant to the President and Director of the White House Gender Policy Council, on progress towards implementation of this memorandum within 1 year of its issuance.

Sec. 3. *Supporting Federal Employees' Access to Paid and Unpaid Leave to Seek Safety and Recover from Domestic Violence, Dating Violence, Sexual Assault, or Stalking.* Consistent with applicable law, the Director of OPM shall provide recommendations to the President, through the Assistant to the President and Director of the White House Gender Policy Council, within 180 days of the date of this memorandum, regarding actions OPM and agencies may take to support Federal employees' access to paid leave, such as sick leave, or leave without pay, for purposes related to seeking safety and recovering from domestic violence, dating violence, sexual assault, or stalking—including, for example, obtaining medical treatment (inclusive of mental health treatment), pursuing assistance from organizations that provide services to survivors, seeking relocation, or taking related legal action, as well as assisting a family member in engaging in any of these activities.

Sec. 4. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

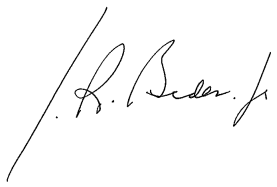
(i) the authority granted by law to an executive department or agency, or the head thereof; or

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

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

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

(d) The Director of OPM is authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, February 2, 2023

[FR Doc. 2023–02670
Filed 2–6–23; 8:45 am]
Billing code 6325–39–P

Presidential Documents

Notice of February 3, 2023

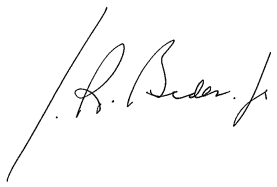
Continuation of the National Emergency With Respect to the Widespread Humanitarian Crisis in Afghanistan and the Potential for a Deepening Economic Collapse in Afghanistan

On February 11, 2022, by Executive Order 14064, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the widespread humanitarian crisis in Afghanistan and the potential for a deepening economic collapse in Afghanistan.

The widespread humanitarian crisis in Afghanistan—including the urgent needs of the people of Afghanistan for food security, livelihoods support, water, sanitation, health, hygiene, shelter and settlement assistance, and COVID–19-related assistance, among other basic human needs—and the potential for a deepening economic collapse in Afghanistan continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. In addition, the preservation of certain property of Da Afghanistan Bank (DAB) held in the United States by United States financial institutions is of the utmost importance to addressing this national emergency and the welfare of the people of Afghanistan. Various parties, including representatives of victims of terrorism, have asserted legal claims against certain property of DAB or indicated in public court filings an intent to make such claims. This property is blocked under Executive Order 14064.

For these reasons, the national emergency declared in Executive Order 14064 of February 11, 2022, must continue in effect beyond February 11, 2023. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 14064 with respect to the widespread humanitarian crisis in Afghanistan and the potential for a deepening economic collapse in Afghanistan.

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



THE WHITE HOUSE,
February 3, 2023.

[FR Doc. 2023–02671
Filed 2–6–23; 8:45 am]
Billing code 3395–F3–P

Rules and Regulations

Federal Register
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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 52

[NRC–2021–0117]

Acceptability of ASME Code, Section III, Division 5, High Temperature Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; NUREG; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Revision 2 to Regulatory Guide (RG), 1.87, ''Acceptability of ASME Code, Section III, Division 5, 'High Temperature Reactors.' '' This RG describes an approach that is acceptable to the NRC staff to assure the mechanical/structural integrity of components that operate in elevated temperature environments and that are subject to time-dependent material properties and failure modes. It endorses, with exceptions and limitations, the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel (BPV) Code (ASME Code) Section III, ''Rules for Construction of Nuclear Facility Components,'' Division 5, ''High Temperature Reactors,'' and Code Cases N–861, N–862, N–872, and N–898. The NRC is also issuing NUREG–2245, ''Technical Review of the 2017 Edition of ASME Section III, Division 5, 'High Temperature Reactors,' '' that documents the NRC staff's review of the 2017 Edition of ASME Section III, Division 5, certain portions of the 2019 Edition, and Code Cases N–861 and N–862. The technical basis for the NRC's endorsement of Code Cases N–872 and N–898 is contained in Technical Letter Report (TLR)-RES/DE/REB–2022–01, ''Review of Code Cases Permitting Use of Nickel-Based Alloy 617 in Conjunction with ASME Section III, Division 5.''

DATES: Revision 2 to RG 1.87 is available on February 7, 2023.

ADDRESSES: Please refer to Docket ID NRC–2021–0117 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–2021–0117. 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 individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's Public Document Room (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 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

Revision 2 to RG 1.87 and the regulatory analysis may be found in ADAMS under Accession Nos. ML22101A263 and ML21091A277, respectively.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Jeffrey Poehler, Office of Nuclear Regulatory Research, telephone: 301–415–8353, email: *Jeffrey.Poehler@nrc.gov* and Robert Roche-Rivera, Office of Nuclear Regulatory Research, telephone: 301–415–8113, email: *Robert.Roche-Rivera@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC is issuing a revision in the NRC's ''Regulatory Guide'' series. This series was developed to describe methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, to explain techniques that the staff uses in evaluating specific issues or postulated events, and to describe information that the staff needs in its review of applications for permits and licenses.

The proposed Revision 2 to RG 1.87 was issued with a temporary identification of Draft Regulatory Guide, DG–1380. This revision (Revision 2) updates the guidance to endorse, with exceptions and limitations, the 2017 Edition of ASME Code Section III, Division 5, as a method acceptable to the staff for the materials, mechanical/structural design, construction, testing, and quality assurance of mechanical systems and components and their supports of high-temperature reactors. The NRC staff is also endorsing use of certain values in the 2019 Edition of ASME Code, Section II, ''Materials,'' Part D, ''Properties (Metric)'' and Mandatory Appendix HBB–I–14 of the 2019 Edition of the ASME Code, Section III, Division 5 for limited use. This revision of the guide also endorses the Code Cases N–861, N–862, N–872, and N–898 related to ASME Code, Section III, Division 5. The technical basis for NRC's endorsement of the ASME Code Section III, Division 5, and code cases N–861 and N–862 is contained in NUREG–2245. The technical basis for the NRC's endorsement of Code Cases N–872 and N–898 is contained in Technical Letter Report (TLR)-RES/DE/REB–2022–01, ''Review of Code Cases Permitting Use of Nickel-Based Alloy 617 in Conjunction with ASME Section III, Division 5,'' dated January 31, 2022. In addition to the above, Revision 2 to RG 1.87 provides guidance for the quality group classification of components in non-LWR designs.

II. Additional Information

The NRC published a notice of the availability of DG–1380 in the **Federal**

Register on August 20, 2021 (86 FR 46888) for a 60-day public comment period. The public comment period closed on October 19, 2021. Subsequent to the public comment period for DG–1380, the NRC staff completed its review of Code Cases N–872 and N–898, related to the use of Nickel-Based Alloy 617. On March 1, 2022, the NRC staff issued a supplemental **Federal Register** notice (87 FR 11490) to DG–1380 requesting public comment on the staff's proposed endorsement of Code Cases N–872 and N–898. Public comments on DG–1380 and the staff responses to the public comments are available in ADAMS (see the ''Availability of Documents'' table in section IV).

As noted in the **Federal Register** on December 9, 2022 (87 FR 75671), this document is being published in the ''Rules'' section of the **Federal Register** to comply with publication requirements under 1 CFR chapter I.

III. Congressional Review Act

This RG is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

IV. Backfitting, Forward Fitting, and Issue Finality

RG 1.87, Revision 2, does not constitute backfitting as defined in section 50.109 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Backfitting,'' and as described in NRC Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests''; constitute forward fitting as that term is defined and described in MD 8.4; or affect the issue finality of any approval issued under 10 CFR part 52, ''Licenses, Certificates, and Approvals for Nuclear Power Plants.''

The guidance does not apply to any current licensees or applicants or existing or requested approvals under 10 CFR part 52, and therefore, its issuance cannot be a backfit or forward fit or affect issue finality. Further, as explained in RG 1.87, Revision 2, applicants and licensees are not required to comply with the positions set forth in RG 1.87, Revision 2.

V. Availability of Documents

Document	ADAMS accession No.
RG 1.87, Revision 2, ''Acceptability of ASME Code, Section III, Division 5, 'High Temperature Reactors,'" dated January 2023.	ML22101A263.
Regulatory Analysis for RG 1.87, Revision 2	ML21091A277.
DG–1380 (Proposed Revision 2 to RG 1.87), ''Acceptability of ASME Code, Section III, Division 5, 'High Temperature Reactors,'" dated August 2021.	ML21091A276.
NUREG–2245, ''Technical Review of the 2017 Edition of ASME Section III, Division 5, 'High Temperature Reactors,'" dated January 2023.	ML23030B636.
TLR–RES/DE/REB–2022–01, ''Review of Code Cases Permitting Use of Nickel-Based Alloy 617 in Conjunction with ASME Section III, Division 5,'' dated January 31, 2022.	ML22031A137.
Response to Public Comments on DG–1380, dated January 2023	ML22101A267.
MD 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests,'' dated September 20, 2019.	ML18093B087.

VI. Submitting Suggestions for Improvement of Regulatory Guides

A member of the public may, at any time, submit suggestions to the NRC for improvement of existing RGs or for the development of new RGs. Suggestions can be submitted on the NRC's public website at *https://www.nrc.gov/reading-rm/doc-collections/reg-guides/contactus.html.* Suggestions will be considered in future updates and enhancements to the ''Regulatory Guide'' series.

Dated: February 1, 2023.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Chief, Regulatory Guide and Programs Management Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2023–02518 Filed 2–6–23; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

10 CFR Part 429

[EERE–2022–BT–CRT–0021]

RIN 1904–AF42

Energy Conservation Program: Consumer Refrigeration and Miscellaneous Refrigeration Products

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: On July 18, 2016, the U.S. Department of Energy (DOE) published a final rule that amended the test procedure for refrigerators and refrigerator-freezers and established both coverage and procedures for testing miscellaneous refrigeration products (''MREFs''). That final rule also established provisions within DOE's certification requirements to provide instructions regarding product category determinations, which were intended to be consistent with the definitions established for MREFs and refrigerators, refrigerator-freezers, and freezers. This final rule corrects certain inconsistencies between the instructions for determining product categories and the corresponding product definitions to avoid confusion regarding the application of those definitions.

DATES: The effective date of this rule is March 9, 2023.

ADDRESSES: The docket, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as those containing information that is exempt from public disclosure.

A link to the docket web page can be found at *www.regulations.gov/docket/EERE-2022-BT-CRT-0021.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT:

Mr. Lucas Adin, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Email: *ApplianceStandardsQuestions@ee.doe.gov*.

Mr. Matthew Schneider, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (240)–597–6265. Email: *matthew.schneider@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

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I. Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B [2] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency. These products include miscellaneous refrigeration products (''MREFs'') along with more common consumer refrigeration products (*i.e.,* refrigerators, refrigerator-freezers, and freezers). These products are the focus of this final rule, and collectively comprise what DOE refers to as ''consumer refrigeration products'' in this document.

In addition to identifying particular consumer products and commercial equipment as covered under the statute, EPCA permits the Secretary of Energy to classify additional types of consumer products as covered products. (42 U.S.C. 6292(a)(20)) EPCA originally included refrigerators, refrigerator-freezers, and freezers as covered products at 42 U.S.C. 6292(a)(1) and prescribed initial energy conservation standards for them at 42 U.S.C. 6295(b), which DOE has since amended through rulemakings. To address additional types of consumer refrigeration products, DOE added MREFs as covered products through a final coverage determination published in the **Federal Register** on July 18, 2016 (''July 2016 Final Rule''). 81 FR 46768. MREFs are consumer refrigeration products, other than refrigerators, refrigerator-freezers, or freezers. 10 CFR 430.2. MREFs include refrigeration products such as coolers (*e.g.,* wine chillers and other specialty products) and combination cooler refrigeration products (*e.g.,* wine chillers and other specialty compartments combined with a refrigerator, freezer, or refrigerator-freezer).

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for (1) certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6295(s)), and (2) making other representations about the efficiency of those consumer products (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the products comply with any relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

This final rule is intended to narrowly clarify and correct inconsistencies in certain product category determination specifications within the certification provisions for the consumer refrigeration products that are the subject of this document.

II. Background

In the July 2016 Final Rule DOE amended the test procedure for refrigerators and refrigerator-freezers and established both coverage and procedures for testing miscellaneous refrigeration products (''MREFs''). 81 FR 46768. The July 2016 Final Rule also established provisions within DOE's certification requirements to provide instructions regarding product category determinations, which were intended to be consistent with the definitions established for MREFs and refrigerators, refrigerator-freezers, and freezers.

On June 13, 2022, DOE published a notice of proposed rulemaking (''NOPR'') applicable to consumer refrigeration products, proposing corrections to certain inconsistencies between the instructions for determining product categories and the corresponding product definitions to avoid confusion regarding the application of those definitions (''June 2022 NOPR''). 87 FR 35678. DOE requested comment from interested parties on the proposal.

DOE received one comment in response to the June 2022 NOPR from the Association of Home Appliance Manufacturers (''AHAM''). A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[3]

III. Scope and Definitions

DOE's regulations generally categorize consumer refrigeration products into different product categories based on operating temperatures, among other criteria. In the June 2022 NOPR, DOE described the various consumer refrigeration products and their definitions. 87 FR 35678, 35679. The various consumer refrigeration product categories are refrigerator, freezer, refrigerator-freezer, cooler, cooler-refrigerator, cooler-freezer, and cooler-refrigerator-freezer. The latter three of the product categories are considered combination cooler refrigeration products. The term ''miscellaneous refrigeration product'' or MREF is defined to mean a consumer refrigeration product other than a

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[3] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop certifications for consumer refrigeration products. (Docket No. EERE–2022–BT–CRT–0021, which is maintained at *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

refrigerator, refrigerator-freezer, or freezer, which includes coolers and combination cooler refrigeration products. *See generally* 10 CFR 430.2.

The amendments in this final rule do not alter any of the definitions associated with the various consumer refrigeration products. Rather, as discussed below, this final rule seeks to narrowly clarify and correct inconsistencies in certain product category determination specifications within the certification provisions.

IV. Discussion of Amendments

A. ''Coldest Temperature'' Requirement

The July 2016 Final Rule established provisions in 10 CFR 429.14 (for refrigerators, refrigerator-freezers, and freezers) and 10 CFR 429.61 (for MREFs) to provide instructions regarding product category determinations, intended to be consistent with the definitions established in 10 CFR 430.2. 81 FR 46768, 46790.

In particular, § 429.61(d)(2) specifies for MREFs that compartment temperatures used to determine product category shall be the mean of the measured compartment temperatures at the ''coldest setting'' for each tested unit of the basic model according to the provisions of appendix A. This reference to the coldest setting is necessary to determine whether a compartment is a cooler because the definition of cooler—by referencing the capability of maintaining compartment temperatures *no lower than* 39 °F (3.9 °C) [emphasis added]—necessarily requires evaluating the coldest setting available for the subject compartment (*i.e.,* testing the coldest setting is necessary to determine the lowest temperature that the compartment is capable of achieving). *See* 10 CFR 430.2. Accordingly, the measurement of the compartment temperature for the purpose of defining a compartment as a ''cooler compartment'' is conducted at ''the coldest setting.''

In the July 2016 Final Rule, DOE inadvertently applied the ''coldest setting'' wording in 10 CFR 429.14 and 10 CFR 429.61 to other types of consumer refrigeration products for which the ''coldest setting'' is not the appropriate setting for determining product classification. Specifically, for consumer refrigerators, refrigerator-freezers, freezers, and for compartments in MREF products other than cooler compartments. In the June 2022 NOPR, DOE provided examples illustrating how determining product classification for these types of consumer refrigeration products is based on the capability of a product to operate within an applicable temperature range and is not specific to the lowest capable operating temperature (*i.e.,* not specific to the ''coldest setting''). 87 FR 35678, 35680. DOE further noted that the rulemaking leading to the July 2016 Final Rule emphasized that DOE did not intend to redefine the scope of coverage for refrigerators, refrigerator-freezers, or freezers, or to amend those definitions in a manner that would affect how a covered product at the time would be classified. 81 FR 46768, 46777 (*See also* 81 FR 11454, 11459–11460).

In the June 2022 NOPR, DOE tentatively determined that the coldest setting instructions as currently included in 10 CFR 429.14(d)(2) and 10 CFR 429.61(d)(2) are inconsistent with the definitions established in the July 2016 Final Rule and therefore proposed to correct this inconsistency. 87 FR 35678, 35680. To address the issue, DOE proposed that the instructions for determining compartment classification would differentiate cooler compartments from other compartments. *Id.* For cooler compartments, DOE proposed no change to the current requirements specified at 10 CFR 429.61(d)(2), since the coldest setting is the appropriate setting with which to evaluate a cooler compartment. *Id.* For compartments other than cooler compartments, DOE proposed to amend 10 CFR 429.14(d)(2) and 10 CFR 429.61(d)(2) to remove the reference to operation at the coldest setting, and to instead specify that the compartment temperature settings used to determine product category would also be used to evaluate the full range of temperatures that the product can maintain within the compartment, thus allowing for accurate application of the definitions for these products. *Id.*

AHAM agreed with DOE that the inclusion of the ''coldest setting'' instruction for compartments other than cooler compartments is an error and agreed that a correction is necessary. AHAM expressed general support for DOE's proposal, but suggested that the proposed wording changes for 10 CFR 429.14(d)(2) and 10 CFR 429.61(d)(2) did not completely resolve the issue. Specifically, AHAM suggested that while it was DOE's intent that a technician use the mean of the measured temperature locations in the compartment during testing, the proposed language makes no mention of how to take those measurements and determine a product category. AHAM noted that for refrigerator and freezer compartments, for example, the unit must be able to achieve temperatures between a certain range when tested. AHAM asserted that a technician at a test laboratory reading the proposed change to 10 CFR 429.14(d)(2) could interpret the text to refer to the compartment temperature at the mean setting, rather than the mean of the measured temperature locations in the compartment, as intended by DOE's proposed language. (AHAM, No. 2 at p. 2–3)

AHAM proposed alternate language for 10 CFR 429.14(d)(2) specifying that compartment temperature used to determine product category is per the definition in 10 CFR 430.2, and shall be the mean of the measured compartment temperatures for each tested unit of the basic model when measured according to section 5.1 of appendix A of subpart B of part 430 for refrigerators and refrigerator-freezers, and section 5.1 of appendix B of subpart B of part 430 for freezers. Similarly, AHAM proposed language for 10 CFR 429.61(d)(2), specifying that compartment temperature used to determine product category is per the definition in 10 CFR 430.2, and shall be the mean of the measured compartment temperatures at the coldest setting for each tested unit of the basic model when measured according to section 5.1 of appendix A to subpart B of part 430. AHAM's proposed language would also specify that for cooler compartments with temperatures below 39 °F (3.9 °C) but no lower than 37 °F (2.8 °C), the compartment temperatures used to determine product category, per the definitions in 10 CFR 430.2, shall also include the mean of the measured compartment temperatures at the warmest setting for each tested unit of the basic model when measured according to section 5.1 of appendix A to subpart B of part 430. (AHAM, No. 2 at p. 3)

AHAM stated that its proposed language reflects DOE's intent to correct inconsistencies between the instructions for determining product categories and the corresponding product definitions, while also providing additional specificity to avoid confusion in testing situations. AHAM further stated that the proposed edits would establish a direct connection between 10 CFR 429.14(d)(2), 10 CFR 429.61(d)(2), and their respective testing provisions of appendices A and B of subpart B of part 430, and the relevant product category definitions in 10 CFR 430.2. (*Id.*)

DOE has determined that the edits suggested by AHAM would provide greater specificity in indicating what settings would be required when making measurements to determine product category, and what procedures would be used when making the measurements. To provide even further

specificity, DOE has determined that the instructions should additionally refer to the specific test conditions of appendix A and/or appendix B, as applicable. Hence, DOE is amending the instructions at 10 CFR 429.14(d)(2) and 10 CFR 429.61(d)(2) to explicitly state that product category determination shall be based on testing under the conditions specified in appendix A and/or appendix B, as applicable, in addition to the language suggested by AHAM. DOE notes that the introductory text in 10 CFR 429.14(d) and 429.61(d) references 10 CFR 430.2 regarding product category definitions, and therefore DOE is not additionally referencing 10 CFR 430.2 within the amended text of 10 CFR 429.14(d)(2) and 429.61(d)(2) as recommended by AHAM.

Furthermore, DOE notes that AHAM's proposed edits to 10 CFR 429.14(d)(2) suggest that the only temperatures needed for determination of product category are the temperatures that would be measured during energy testing of the product. However, in some cases, determining product classification may require determining the full range of a compartment's potential temperatures. For example, measuring the full range of temperatures may be required to determine whether a fresh food or freezer compartment is convertible.[4] DOE also notes that combination cooler refrigeration products are also covered under 10 CFR 429.61(d)(2). Thus, language applicable to fresh food and freezer compartments must also be included in that section. Hence, DOE is also amending 10 CFR 429.14(d)(2) and 10 CFR 429.61(d)(2) to emphasize that determination of compartment status may require determining the full range of compartment temperature.

Finally, in cases where multiple units of a model are evaluated, DOE recognizes that for different units of the same model, a compartment within a given model may have a slightly different temperature range than for the other units. In such cases, DOE expects that the mean of the maximum or minimum temperatures of the compartment across the units in the sample would be considered when determining compartment status. DOE is adopting clarifying amendments in 10 CFR 429.14(d)(2) and 10 CFR 429.61(d)(2) specifying that if the temperature ranges for the same compartment of multiple units of a sample are different, the maximum and minimum compartment temperatures for compartment status determination shall be based on the mean measurements for the units in the sample.

[4] DOE notes that the need to measure the full range of temperatures is already incorporated into AHAM's suggested language for cooler compartments with temperatures below 39 °F (3.9 °C) but no lower than 37 °F (2.8 °C).

B. Products Meeting Multiple Product Category Definitions

In the June 2022 NOPR, DOE proposed to further amend 10 CFR 429.14 and 10 CFR 429.61 to explicitly specify that if a product is capable of operating with compartment temperatures as specified in multiple product category definitions (*i.e.,* a ''convertible product''), the model must be tested and certified to each applicable product category. 87 FR 35678, 35680–81.

DOE received no comments on this proposal. For the reasons presented in the June 2022 NOPR, DOE is amending 10 CFR 429.14(d) and 10 CFR 429.61(d) to specify that products that may be classified as both a fresh food compartment and a freezer compartment must be tested and certified to each applicable product category based on the operation of the compartment(s) as both fresh food and freezer compartments.

DOE notes that the definition of a cooler compartment does not accommodate a compartment being classified as convertible between cooler status and fresh food status—this applies only for compartments that are convertible between fresh food and freezer status.

C. Compartment Volume Determination

In this final rule, DOE is adopting editorial and clarifying amendments to the compartment volume determination instructions in 10 CFR 429.14(d)(1) and 10 CFR 429.61(d)(1) to update and clarify the instructions, specifically as they relate to products with multiple compartments. In adopting these amendments, DOE is not modifying the existing approach, but rather including clarifications to ensure the compartment volume determination is properly performed for all product configurations.

V. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

This final rule is not a ''significant regulatory action'' under any of the criteria set out in section 3(f) of Executive Order 12866, ''Regulatory Planning and Review.'' 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a final regulatory flexibility analysis (''FRFA'') for any final rule where the agency was first required by law to publish a proposed rule for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website: *www.energy.gov/gc/office-general-counsel*. DOE reviewed this final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003.

This final rule makes amendments to address inconsistencies introduced in the July 2016 Final Rule. The corrections do not otherwise affect the scope or substance of the current test procedures for consumer refrigeration products.

Therefore, DOE concludes that the impacts of the amendments in this final rule do not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of a FRFA is not warranted. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of consumer refrigeration products must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including consumer refrigeration products. (*See generally* 10 CFR part 429.) The

collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (''PRA''). This requirement has been approved by OMB under OMB Control Number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

DOE is not amending the certification or reporting requirements for consumer refrigeration products in this final rule.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this final rule, DOE establishes amendments to certification-related provisions for certain consumer refrigeration products. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, DOE has determined that adopting certification requirements for consumer products and industrial equipment is consistent with activities identified in 10 CFR part 1021, appendix A to subpart D, A5 and A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this final rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action resulting in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *www.energy.gov/gc/office-general-counsel*. DOE examined this final rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that this regulation will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations

Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Reporting and recordkeeping requirements.

Signing Authority

This document of the Department of Energy was signed on January 30, 2023, by Francisco Alejandro Moreno, Acting Assistant Secretary for Energy Efficiency and Renewable Energy, U.S. Department of Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on January 30, 2023.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons stated in the preamble, DOE amends part 429 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Section 429.14 is amended by revising paragraph (d) to read as follows:

§ 429.14 Consumer refrigerators, refrigerator-freezers and freezers.

* * * * *

(d) *Product category determination.* Each basic model shall be certified according to the appropriate product category as defined in § 430.2 of this chapter based on compartment volumes and compartment temperatures. If one or more compartments could be classified as both a fresh food compartment and a freezer compartment, the model must be certified to each applicable product category based on the operation of the compartment(s) as both fresh food and freezer compartments.

(1) Compartment volume used to determine product category shall be, for each compartment, the mean of the volumes of that specific compartment for the sample of tested units of the basic model, measured according to the provisions in section 4.1 of appendix A of subpart B of part 430 of this chapter for refrigerators and refrigerator-freezers and section 4.1 of appendix B of subpart B of part 430 of this chapter for freezers, or, for each compartment, the volume of that specific compartment calculated for the basic model in accordance with § 429.72(c).

(2) Determination of the compartment temperature ranges shall be based on operation under the conditions specified and using measurement of compartment temperature as specified in appendix A of subpart B of part 430 of this chapter for refrigerators and refrigerator-freezers and appendix B of subpart B of part 430 of this chapter for freezers. The determination of compartment status may require evaluation of a model at the extremes of the range of user-selectable temperature control settings. If the temperature ranges for the same compartment of multiple units of a sample are different, the maximum and minimum compartment temperatures for compartment status determination shall be based on the mean measurements for the units in the sample.

■ 3. Section 429.61 is amended by revising paragraph (d) to read as follows:

§ 429.61 Consumer miscellaneous refrigeration products.

* * * * *

(d) *Product category determination.* Each basic model of miscellaneous refrigeration product must be certified according to the appropriate product category as defined in § 430.2 of this chapter based on compartment volumes and compartment temperatures. If one or more compartments could be classified as both a fresh food compartment and a freezer compartment, the model must be certified to each applicable product category based on the operation of the compartment(s) as both fresh food and freezer compartments.

(1) Compartment volume used to determine product category shall be, for each compartment, the mean of the volumes of that specific compartment for the sample of tested units of the basic model, measured according to the provisions in section 4.1 of appendix A of subpart B of part 430 of this chapter, or, for each compartment, the volume of that specific compartment calculated for the basic model in accordance with § 429.72(d).

(2) For compartments other than cooler compartments, determination of the compartment temperature ranges shall be based on operation of the product under the conditions specified in appendix A to subpart B of part 430 of this chapter for miscellaneous refrigeration products. The determination of compartment status may require evaluation of a model at the extremes of the range of user-selectable temperature control settings. If the temperature ranges for the same compartment of multiple units of a sample are different, the maximum and minimum compartment temperatures for compartment status determination shall be based on the mean measurements for the units in the sample.

[FR Doc. 2023–02198 Filed 2–6–23; 8:45 am]

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DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2021–BT–TP–0023]

RIN 1904–AF18

Energy Conservation Program: Test Procedure for Cooking Products; Correction

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Correcting amendments.

SUMMARY: On August 22, 2022, the U.S. Department of Energy (''DOE'') published a final rule adopting test procedures for a category of cooking products, *i.e.,* conventional cooking tops. This document corrects errors and omissions in that final rule. Neither the errors and omissions nor the corrections affect the substance of the rulemaking or any conclusions reached in support of the final rule.

DATES: Effective February 7, 2023.

FOR FURTHER INFORMATION CONTACT:

Dr. Carl Shapiro, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–5649. Email: *ApplianceStandardsQuestions@ee.doe.gov*.

Ms. Melanie Lampton, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (240) 751–5157. Email: *Melanie.Lampton@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On August 22, 2022, DOE published a final rule (''August 2022 Final Rule'') establishing a test procedure for cooking tops at title 10 of the Code of Federal Regulations (''CFR'') part 430, subpart B, appendix I1 (''appendix I1''). 87 FR 51492. Since publication of the August 2022 Final Rule, DOE has identified errors and omissions in the regulatory text. DOE is issuing this rule to correct certain technical errors and omissions in the August 2022 Final Rule, specifically in appendix I1 of 10 CFR part 430, and to assist regulated entities with compliance efforts.

In Table 3.1 of the regulatory text of the August 2022 Final Rule, the first column (*i.e.,* Minimum nominal gas burner input rate) was erroneously labeled with a ''less than'' sign (), as it was labeled in Table III.2 in the preamble of the August 2022 Final Rule. 87 FR 51514, 51542. This notice corrects the typographical error.

Additionally, DOE discussed that it was finalizing its proposal to normalize the energy use of the minimum-above-threshold cycle to represent an Energy Test Cycle with a final water temperature of exactly 90 degrees Celsius as proposed in the November 4, 2022 Notice of Proposed Rulemaking. 87 FR 51510–51511; See also 86 FR 60974. However, section 4.1.1.2.2 of appendix I1 as codified in the August 2022 Final Rule inadvertently performs this normalization on the gas volume consumption (represented by the symbol ''V'') rather than on the gas energy consumption (represented by the symbol ''Eg''). Subsequently, the equation for calculating per-cycle active mode gas energy consumption in section 4.1.1.2.4 of appendix I1 as codified by the August 2022 Final Rule uses the normalized gas volume consumption calculated in section 4.1.1.2.2 (multiplied by the gas correction factor ''CF'' and the heating value of the gas ''H'' to determine gas energy consumption). In this notice, DOE is correcting section 4.1.1.2.2 of appendix I1 to calculate the normalized gas energy consumption rather than gas volume consumption; accordingly, DOE is also correcting section 4.1.1.2.4 to use the normalized gas energy consumption value calculated in section 4.1.1.2.2.

Finally, as codified by the August 2022 Final Rule, section 3.3.1.1 of appendix I1 specifies recording the higher heating value (''H'') for the natural gas or propane supply. A complete test of a conventional gas cooking top typically includes multiple test cycles on each cooking zone (*e.g.,* the minimum-above-threshold cycle and maximum-below-threshold cycle), and the higher heating value may differ for each test cycle. The higher heating value is used in the equation in section 4.1.1.2.2 as corrected by this final rule. DOE has determined that the current instruction in section 3.3.1.1 may not provide sufficient clarity that the value of H must be recorded for each test cycle for each cooking zone. Therefore, DOE is adding language in section 3.3.1.1 of appendix I1 to specify recording the higher heating value of the gas ''for each test.''

II. Need for Correction

As published, the regulatory text in August 2022 Final Rule may lead to inaccurately calculated test results due to omitted language and the use of incorrect symbols and formulas. Because this final rule would simply correct errors and omissions in the text without making substantive changes in the August 2022 Final Rule, the changes addressed in this document are technical in nature.

III. Procedural Issues and Regulatory Review

DOE has concluded that the determinations made pursuant to the various procedural requirements applicable to the August 2022 Final Rule remain unchanged for these final rule technical corrections. These determinations are set forth in the August 2022 Final Rule. 87 FR 51492, 51533–51537.

Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b), DOE finds that there is good cause to not issue a separate notice to solicit public comment on those technical corrections contained in this document. Issuing a separate notice to solicit public comment would be impracticable, unnecessary, and contrary to the public interest. As explained previously, the corrections in this document do not affect the substance of or any of the conclusions reached in support of the August 2022 Final Rule. Additionally, given the August 2022 Final Rule is a product of an extensive administrative

record with numerous opportunities for public comment, DOE finds additional comment on the technical corrections is unnecessary. Therefore, providing prior notice and an opportunity for public comment on correcting objective errors and omissions that do not change the substance of the test procedure serves no useful purpose.

Further, this rule correcting errors and omissions makes non-substantive changes to the test procedure in the August 2022 Final Rule. As such, this rule is not subject to the 30-day delay in effective date requirement of 5 U.S.C. 553(d) otherwise applicable to rules that make substantive changes.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business, Energy conservation, Household appliances, Imports, Intergovernmental relations, Small businesses.

Signing Authority

This document of the Department of Energy was signed on January 30, 2023, by Francisco Alejandro Moreno, Acting Assistant Secretary for Energy Efficiency and Renewable Energy, U.S. Department of Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on January 30, 2023.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons stated in the preamble, DOE corrects part 430 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations by making the following correcting amendments:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Appendix I1 to subpart B of part 430 is amended by:

■ a. Revising Table 3.1;

■ b. In section 3.3.1.1, removing the word ''supply'' wherever it appears, and adding in its place the words ''supply, for each test''; and

■ c. Revising sections 4.1.1.2.2 and 4.1.1.2.4.

The additions and revisions read as follows:

Appendix I1 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Conventional Cooking Products

* * * * *

3. * * *

3.1.1.2.2 * * *

TABLE 3.1—TEST VESSEL SELECTION FOR CONVENTIONAL GAS COOKING TOPS

Nominal gas burner input rate (Btu/h)		Test vessel diameter (mm)	Water load mass (g)
Minimum (>)	Maximum (≤)		
	5,600	210	2,050
5,600	8,050	240	2,700
8,050	14,300	270	3,420
14,300	.....	300	4,240

* * * * *

4. * * *

4.1.1.2.2 Conventional gas cooking top per-cooking zone normalized active mode gas energy consumption. For each cooking zone, calculate the per-cooking zone normalized active mode gas energy consumption of a conventional gas cooking top, E_g, in Btu, using the following equation:

$$E_g = E_{gt,MAT} - \frac{E_{gt,MAT} - E_{gt,MBT}}{T_{S,MAT} - T_{S,MBT}} \times (T_{S,MAT} - 90)$$

for cooking zones where a minimum-above-threshold cycle and a maximum-below-threshold cycle were measured in section 3.1.4.5 of this appendix.

Where:

$E_{gt,ETC}$ = the as-tested gas energy consumption of the Energy Test Cycle for the cooking zone, in Btu, calculated as the product of: V, the gas consumption of the Energy Test Cycle, as determined in section 3.1.4.5 of this appendix, in cubic feet; CF, the gas correction factor to standard temperature and pressure for the test, as calculated in section 4.1.1.2.1 of this appendix; and H, either H_n or H_p, the heating value of the gas used in the test as specified in sections 2.2.2.1 and 2.2.2.2 of this appendix, expressed in Btu per standard cubic foot of gas;

$E_{gt,MAT}$ = the as-tested gas energy consumption of the minimum-above-threshold power setting for the cooking zone, in Btu, calculated as the product of: V, the gas consumption of the minimum-above-threshold power setting, as determined in section 3.1.4.5 of this appendix, in cubic feet; CF, the gas correction factor to standard temperature and pressure for the test, as calculated in section 4.1.1.2.1 of this appendix; and H, either H_n or H_p, the heating value of the gas used in the test as specified in sections 2.2.2.1 and 2.2.2.2 of this appendix, expressed in Btu per standard cubic foot of gas;

$E_{gt,MBT}$ = the as-tested gas energy consumption of the maximum-below-threshold power setting for the cooking zone, in Btu, calculated as the product of: V, the gas consumption of the maximum-below-threshold power setting, as determined in section 3.1.4.5 of this appendix, in cubic feet; CF, the gas correction factor to standard

$E_g = E_{gt,ETC}$

for cooking zones where an Energy Test Cycle was measured in section 3.1.4.5 of this appendix, and

temperature and pressure for the test, as calculated in section 4.1.1.2.1 of this appendix; and H, either H_n or H_p, the heating value of the gas used in the test as specified in sections 2.2.2.1 and 2.2.2.2 of this appendix, expressed in Btu per standard cubic foot of gas;

$T_{S,MAT}$ = the smoothened water temperature at the end of the minimum-above-threshold power setting test for the cooking zone, in degrees Celsius; and

$T_{S,MBT}$ = the smoothened water temperature at the end of the maximum-below-threshold power setting test for the cooking zone, in degrees Celsius.

* * * * *

4.1.1.2.4 Conventional gas cooking top per-cycle active mode gas energy consumption. Calculate the per-cycle active mode gas energy consumption of a conventional gas cooking top, E_{CGG}, in Btu, using the following equation:

$$E_{CGG} = \frac{2853g}{n} \times \sum_{z=1}^{n} \frac{E_{gz}}{m_z}$$

Where:

n, m_z, and 2853 are defined in section 4.1.1.1.2 of this appendix; and

E_{gz} = the normalized gas energy consumption representative of the Energy Test Cycle for each cooking zone, as calculated in section 4.1.1.2.2 of this appendix, in Btu.

* * * * *

[FR Doc. 2023–02200 Filed 2–6–23; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Docket No. R–1800]

RIN 7100–AG–53

Policy Statement on Section 9(13) of the Federal Reserve Act

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Final rule.

SUMMARY: The Board is issuing a policy statement interpreting section 9(13) of the Federal Reserve Act and setting out a rebuttable presumption that it will exercise its discretion under that provision to limit state member banks to engaging as principal in only those activities that are permissible for national banks—in each case, subject to the terms, conditions, and limitations placed on national banks with respect to the activity—unless those activities are permissible for state banks by federal statute or under part 362 of the Federal Deposit Insurance Corporation's regulations. The policy statement also reiterates to state member banks that legal permissibility is a necessary, but not sufficient, condition to establish that a state member bank may engage in a particular activity. A state member bank must at all times conduct its business and exercise its powers with due regard to safety and soundness. For instance, it should have in place internal controls and information systems that are appropriate and adequate in light of the nature, scope, and risks of its activities. The **SUPPLEMENTARY INFORMATION** section provides examples of how the policy statement would be applied to certain crypto-asset-related activities.

DATES: This policy statement is effective on February 7, 2023.

FOR FURTHER INFORMATION CONTACT: Asad Kudiya, Assistant General Counsel, (202) 475–6358; Andrew Hartlage, Special Counsel, (202) 452–6483; Kelley O'Mara, Senior Counsel, (202) 973–7497; or Katherine Di Lucido, Attorney, (202) 452–2352, Legal Division; Kavita Jain, Deputy Associate Director, (202) 452–2062, Division of Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th Street and C Streets NW, Washington, DC 20551. For users of TTY–TRS, please call 711 from any telephone, anywhere in the United States.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, the Board has received a number of inquiries, notifications, and proposals from state member banks and applicants for membership regarding potential engagement in novel and unprecedented activities.[1] For example, the Board has received inquiries from banks regarding potentially engaging in certain activities involving crypto-assets.[2] In January 2023, the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Board issued a statement highlighting significant risks associated with crypto-assets and the crypto-asset sector that banking organizations should be aware of, including significant volatility in crypto-asset markets, risks of fraud among crypto-asset sector participants, legal uncertainties, and heightened risks associated with open, public, and/or decentralized networks.[3] As part of its careful review of proposals from banking organizations to engage in activities involving crypto-assets, and in light of these risks, the Board is clarifying its interpretation of section 9(13) of the Federal Reserve Act (Act) and setting out a rebuttable presumption for how it will exercise its authority under that statutory provision. This Supplementary Information also provides examples of how the Board intends to apply this presumption in the context of certain crypto-asset-related activities.

As expressed in the policy statement, the Board generally believes that the same bank activity, presenting the same risks, should be subject to the same regulatory framework, regardless of which agency supervises the bank. This principle of equal treatment helps to level the competitive playing field among banks with different charters and different federal supervisors, and to mitigate the risks of regulatory arbitrage.

In alignment with this principle, the Board generally presumes that it will exercise its discretion under section 9(13) of the Act to limit state member

[1] *See* SR Letter 22–6, CA Letter 22–6: Engagement in Crypto-Asset-Related Activities by Federal Reserve-Supervised Banking Organizations (August 16, 2022) (providing guidance to banking organizations engaging or seeking to engage in crypto-asset-related activities).

[2] Throughout this **SUPPLEMENTARY INFORMATION**, the term ''crypto-assets'' refers to digital assets issued using distributed ledger technology and cryptographic techniques (for example, bitcoin and ether), but does not include such assets to the extent they are more appropriately categorized within a recognized, traditional asset class (for example, securities with an effective registration statement filed under the Securities Act of 1933 that are issued, stored, or transferred through the system of a regulated clearing agency and in compliance with all applicable federal and state securities laws). To the extent transmission using distributed ledger technology and cryptographic techniques changes the risks of a traditional asset (for example, through issuance, storage, or transmission on an open, public, and/or decentralized network, or similar system), the Board reserves the right to treat it as a ''crypto-asset.''

[3] Board, FDIC, and OCC, Joint Statement on Crypto-Asset Risks to Banking Organizations, at 1 (January 3, 2023) (Joint Statement). In the Joint Statement, ''crypto-assets'' refers ''generally to any digital asset implemented using cryptographic techniques.'' The Board believes that these risks similarly apply to crypto-assets as defined in this **SUPPLEMENTARY INFORMATION**. *See supra* note 2.

banks to engaging as principal in only those activities that are permissible for national banks—in each case, subject to the terms, conditions, and limitations placed on national banks with respect to the activity—unless those activities are permissible for state banks by federal statute or under part 362 of the FDIC's regulations. The Board also reiterates to state member banks that legal permissibility is a necessary, but not sufficient, condition to establish that a state member bank may engage in a particular activity. A state member bank must at all times conduct its business and exercise its powers with due regard to safety and soundness.[4] For instance, it should have in place internal controls and information systems that are appropriate in light of the nature, scope, and risks of its activities.[5]

A. Legal Authority

Under section 9(13) of the Act, the Board ''may limit the activities'' of a state member bank and its subsidiaries to those activities that are permissible for a national bank in a manner consistent with section 24 of the Federal Deposit Insurance Act (FDIA).[6] Section 24 of the FDIA generally prohibits insured state banks from engaging as principal in any activity that is not permissible for national banks, unless authorized by federal statute or the FDIC.[7]

The National Bank Act enumerates certain powers that national banks may exercise and authorizes national banks to exercise ''all such incidental powers as shall be necessary to carry on the business of banking.'' [8] The OCC has the authority to interpret provisions of the National Bank Act and is charged with the ''discretion to authorize activities beyond those specifically enumerated,'' within reasonable bounds.[9] Section 7.1000 of the OCC's regulations identifies the criteria that the OCC uses to determine whether an activity is authorized as part of, or incidental to, the business of banking under 12 U.S.C. 24(Seventh).[10] If a national bank has not been authorized by federal law, including the National Bank Act, to engage in an activity, then national banks are not permitted to engage in such activity.

B. Application

This policy statement applies to insured and uninsured state member banks. The statement does not impact the legal obligation of insured state member banks to seek approval from the FDIC when required under section 24 of the FDIA and part 362 of the FDIC's regulations. As established under those provisions, insured state banks may not engage as principal in any type of activity that is not permissible for a national bank unless—(i) the FDIC has determined that the activity would pose no significant risk to the Deposit Insurance Fund; and (ii) the state bank is, and continues to be, in compliance with applicable capital standards.[11]

By issuing this statement, the Board is setting out a clear expectation that state member banks look to federal statutes, OCC regulations, and OCC interpretations to determine whether an activity is permissible for national banks. If no such source authorizes national banks to engage in the activity, then state member banks should look to whether there is authority for state banks to engage in the activity under federal statute or part 362 of the FDIC's regulations. If there also is no authority for a state bank to engage in the activity under federal statute or part 362 of the FDIC's regulations, a state member bank may not engage in the activity unless it has received the permission of the Board under § 208.3(d)(2) of the Board's Regulation H. Under that provision, a state member bank may not, without the permission of the Board, change the general character of its business or the scope of the corporate powers it exercised at the time of its admission to membership. In such instances, insured state banks would be required to submit an application to the FDIC under part 362 of the FDIC's regulations.

In determining whether to grant a state member bank permission to engage in an activity under § 208.3(d)(2) of Regulation H, the Board, consistent with the policy statement, will rebuttably presume that a state member bank is prohibited from engaging as principal in any activity that is impermissible for national banks, unless the activity is permissible for state banks under federal statute or part 362 of the FDIC's regulations. This presumption may be rebutted if there is a clear and compelling rationale for the Board to allow the proposed deviation in regulatory treatment among federally supervised banks, and the state member bank has robust plans for managing the risks of the proposed activity in accordance with principles of safe and sound banking.

In assessing permissibility, the Board is intending to align its process with that of the FDIC under section 24 of the FDIA.[12] If the FDIC, by rule, permits insured state banks to engage in the activity, no Board approval would be required to establish permissibility.[13] However, if the FDIC permits the activity only for a particular bank, separate Board approval would be required for all other state member banks.

In a case where a state member bank determines that an activity is permissible for national banks under federal statute, OCC regulations, or OCC interpretation, the bank may only engage in the activity if the bank adheres to the terms, conditions, and limitations placed on national banks by the OCC with respect to the activity. For example, if the OCC conditions permissibility on a national bank demonstrating, to the satisfaction of its supervisory office, that the bank has controls in place to conduct the activity in a safe and sound manner, and receiving a written nonobjection from OCC supervisory staff before engaging in a particular activity, then the activity would not be permissible for a state member bank unless the bank makes the same demonstration and receives a written nonobjection from Federal Reserve supervisory staff before commencing such activity.

C. Safety and Soundness

In the statement, the Board also reiterates to state member banks that legal permissibility is a necessary, but not sufficient, condition to establish that a state member bank may engage in a particular activity. A state member bank must at all times conduct its business and exercise its powers with due regard to safety and soundness.[14] For instance, it should have in place internal controls and information systems that are appropriate to the nature, scope, and

[4] 12 CFR 208.3(d)(1).

[5] 12 CFR 208, app. D–1.

[6] 12 U.S.C. 330 (as amended by Federal Deposit Insurance Corporation Improvement Act of 1991 § 303(b), Public Law 102–242, 105 Stat. 2236, 2353).

[7] 12 U.S.C. 1831a(a); 12 CFR part 362.

[8] 12 U.S.C. 24(Seventh).

[9] *NationsBank of North Carolina, N.A.* v. *Variable Annuity Life Ins. Co.,* 513 U.S. 251, 258 n.2 (1995).

[10] 12 CFR 7.1000.

[11] 12 U.S.C. 1831a(a)(1).

[12] *See, e.g.,* FDIC FIL–54–2014: Filing and Documentation Procedures for State Banks Engaging, Directly or Indirectly, in Activities or Investments that are Permissible for National Banks (November 19, 2014).

[13] As noted below, legal permissibility is a necessary, but not sufficient, condition to establish that a state member bank may engage in a particular activity. Regardless of the legal permissibility of a proposed activity, if commencing the proposed activity would constitute a change in the general character of the state member bank's business or in the scope of corporate powers it exercised at the time of its admission to membership, prior permission of the Federal Reserve pursuant to § 208.3(d)(2) of Regulation H would be required.

[14] 12 CFR 208.3(d)(1).

risks of its activities.[15] Further, a state member bank must comply at all times with Regulation H, conditions of membership prescribed by the Board,[16] and other applicable laws and regulations, including those related to consumer compliance and anti-money laundering. With respect to any novel and unprecedented activities, such as those associated with crypto-assets or use of distributed ledger technology, it is particularly important for a state member bank to have in place appropriate systems to monitor and control risks, including liquidity, credit, market, operational (including cybersecurity and use of third parties), and compliance risks (including compliance with Bank Secrecy Act and Office of Foreign Asset Control requirements to reduce the risk of illicit financial activity). Federal Reserve supervisors will expect state member banks to be able to explain and demonstrate an effective control environment related to such activities.

D. Specific Activities of Interest

The Board has received inquiries as to the permissibility of certain crypto-asset-related activities for state member banks. Below, the Board discusses how it would presumptively apply section 9(13) of the Act to these activities. In practice, this presumption could be rebutted if there is a clear and compelling rationale for the Board to allow deviations in regulatory treatment among federally supervised banks, and the state member bank has robust plans for managing the risks of such activities in accordance with principles of safe and sound banking. However, the Board has not yet been presented with facts and circumstances that would warrant rebutting its presumption. Nothing in the policy statement would prohibit a state member bank, or an applicant to become a state member bank, once approved, from providing safekeeping services for crypto-assets in a custodial capacity if such activities are conducted in a safe and sound manner and in compliance with consumer, anti-money-laundering, and anti-terrorist-financing laws.

Holding Crypto-Assets as Principal. The Board has not identified any authority permitting national banks to hold most crypto-assets, including bitcoin and ether, as principal in any amount,[17] and there is no federal statute or rule expressly permitting state banks to hold crypto-assets as principal. Therefore, the Board would presumptively prohibit state member banks from engaging in such activity under section 9(13) of the Act.[18]

The Board believes this presumption is bolstered by safety and soundness concerns.[19] The Financial Stability Oversight Council has observed that, in the absence of a fundamental economic use case, the value of most crypto-assets is driven largely by sentiment and future expectations, and not by cash flows from providing goods or services outside the crypto-asset ecosystem.[20] This prevents firms that hold crypto-assets from engaging in prudent risk management based on the underlying value of most crypto-assets, their anticipated discounted cash flows, or the historic behavior of the relevant markets. Moreover, the crypto-asset sector—which is globally dispersed—is largely unregulated or noncompliant with regulation from a market-conduct perspective, and issuers are often not subject to or not compliant with disclosure and accounting requirements. This opacity may make it difficult or impossible to assess market and counterparty exposure risks. Further, engagement in crypto-asset transactions can present significant illicit finance risks, in part due to the pseudonymity of transactors and validators. Finally, crypto-assets that are issued or transacted on open, public, and/or decentralized ledgers may involve significant cybersecurity risks—especially in comparison to traditional asset classes.

Issuing Dollar Tokens. Certain state member banks have proposed to issue dollar-denominated tokens (dollar tokens) using distributed ledger technology or similar technologies. The permissibility of the issuance of dollar tokens to facilitate payments for national banks is subject to OCC Interpretive Letters 1174 and 1179, including the conditions set out therein.[21] A state member bank seeking to issue a dollar token would be required to adhere to all the conditions the OCC has placed on national banks with respect to such activity, including demonstrating, to the satisfaction of Federal Reserve supervisors, that the bank has controls in place to conduct the activity in a safe and sound manner, and receiving a supervisory nonobjection before commencing such activity.

The Board generally believes that issuing tokens on open, public, and/or decentralized networks, or similar systems is highly likely to be inconsistent with safe and sound banking practices.[22] The Board believes such tokens raise concerns related to operational, cybersecurity, and run risks, and may also present significant illicit finance risks, because—depending on their design—such tokens could circulate continuously, quickly, pseudonymously, and indefinitely among parties unknown to the issuing bank. Importantly, the Board believes such risks are pronounced where the issuing bank does not have the capability to obtain and verify the identity of all transacting parties, including for those using unhosted wallets.[23]

List of Subjects in 12 CFR Part 208

Accounting; Agriculture; Banks, Banking; Confidential business information; Consumer protection; Crime; Currency; Federal Reserve System; Flood insurance; Insurance; Investments; Mortgages; Reporting and recordkeeping requirements; Securities.

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the Supplementary Information, part 208 of chapter II of title 12 of the Code of

[15] 12 CFR 208, app. D–1.

[16] 12 CFR 208.3(d)(3).

[17] To date, the OCC has not made a determination addressing the permissibility of a national bank holding crypto-assets as principal, other than ''stablecoins'' to facilitate payments subject to the conditions of OCC Interpretive Letter 1179. *See* OCC Interpretive Letter No. 1174 (January 4, 2021) (Interpretive Letter 1174); OCC Interpretive Letter No. 1179 (November 18, 2021) (Interpretive Letter 1179). The OCC has required a national bank to divest crypto-assets held as principal that it acquired through a merger with a state bank. Specifically, the OCC conditioned its recent approval of the merger between Flagstar Bank, FSB and New York Community Bank into Flagstar Bank, NA on the divestiture of holdings of ''Hash,'' a crypto-asset, after a conformance period, as well as a commitment not to increase holdings of any crypto-related asset or token ''unless and until the OCC determines that . . . Hash or other crypto-related holdings are permissible for a national bank.'' OCC Conditional Approval Letter No. 1299, at 9 (October 27, 2022).

[18] In addition, insured state member banks would need to seek approval to hold crypto-assets, other than those permitted by OCC Interpretive Letters 1174 and 1179, from the FDIC under section 24 of the FDIA and part 362 of the FDIC's regulations.

[19] *See* Joint Statement (noting that holding as principal crypto-assets that are issued, stored, or transferred on an open, public and/or decentralized network, or similar system, is highly likely to be inconsistent with safe and sound banking practices).

[20] Financial Stability Oversight Council, *Report on Digital Asset Financial Stability Risks and Regulation,* at 27 (October 3, 2022); *see also id.,* at 23–28.

[21] Interpretive Letter 1174; Interpretive Letter 1179.

[22] *See* Joint Statement, at 2.

[23] Interpretive Letter 1174, at 4 (quoting President's Working Group on Financial Markets, *Statement on Key Regulatory and Supervisory Issues Relevant to Certain Stablecoins,* at 3 (December 23, 2020)).

Federal Regulations is amended as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

■ 1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1817(a)(3), 1817(a)(12), 1818, 1820(d)(9), 1833(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1831x, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, 3905–3909, 5371, and 5371 note; 15 U.S.C. 78b, 78I(b), 78*l*(i), 780–4(c)(5), 78q, 78q–1, 78w, 1681s, 1681w, 6801, and 6805; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

Subpart J—Interpretations

■ 2. Add § 208.112 to read as follows:

§ 208.112 Policy statement on section 9(13) of the Federal Reserve Act.

(a) Under section 9(13) of the Federal Reserve Act (12 U.S.C. 330), a state member bank may ''exercise all corporate powers granted it by the State in which it was created . . . except that the [Board] may limit the activities of State member banks and subsidiaries of State member banks in a manner consistent with section 24 of the Federal Deposit Insurance Act.'' The Board interprets this provision as vesting the Board with the authority to prohibit or otherwise restrict state member banks and their subsidiaries from engaging as principal in any activity (including acquiring or retaining any investment) that is not permissible for a national bank, unless the activity is permissible for state banks by federal statute or under part 362 of the Federal Deposit Insurance Corporation's (FDIC) regulations, 12 CFR part 362. The Board reminds state member banks of the fundamental canon of federal banking law that activities are permissible for a national bank only if authority is provided under federal law, including the National Bank Act.

(b) The Board generally believes that the same bank activity, presenting the same risks, should be subject to the same regulatory framework, regardless of which agency supervises the bank. This principle of equal treatment helps to level the competitive playing field among banks with different charters and different federal supervisors and to mitigate the risks of regulatory arbitrage.

(c) In alignment with this principle, the Board generally presumes that it will exercise its discretion under section 9(13) of the Federal Reserve Act (12 U.S.C. 330) to limit state member banks and their subsidiaries to engaging as principal in only those activities that are permissible for national banks—in each case, subject to the terms, conditions, and limitations placed on national banks with respect to the activity—unless those activities are permissible for state banks by federal statute or under 12 CFR part 362. For example, if the OCC conditions permissibility on a national bank demonstrating, to the satisfaction of its supervisory office, that the bank has controls in place to conduct the activity in a safe and sound manner, and receiving a written nonobjection from OCC supervisory staff before engaging in a particular activity, then the activity would not be permissible for a state member bank unless the bank makes the same demonstration and receives a written nonobjection from Federal Reserve supervisory staff before commencing such activity.

(d) If a state member bank or its subsidiary proposes to engage in an activity as principal that is not permissible for a national bank or for an insured state member bank under federal statute or part 362 of this title, the state member bank or subsidiary may not engage in the activity unless the bank has received the prior permission of the Board under § 208.3(d)(2). Under that provision, a state member bank may not, without the permission of the Board, change the general character of its business or the scope of the corporate powers it exercises at the time of its admission. In determining whether to grant permission to engage in an activity under § 208.3(d)(2), the Board will rebuttably presume that a state member bank and its subsidiaries are prohibited from engaging as principal in any activity that is impermissible for national banks, unless the activity is permissible for state banks under federal statute or part 362 of this title. This presumption may be rebutted if there is a clear and compelling rationale for the Board to allow the proposed deviation in regulatory treatment among federally supervised banks, and the state member bank has robust plans for managing the risks of the proposed activity in accordance with principles of safe and sound banking. Depending on the applicant and the activity, an application to the FDIC may also be required under section 24 of the Federal Deposit Insurance Act (12 U.S.C. 1831a).

(e) This statement does not impact the legal obligation of insured state member banks to seek approval from the FDIC when required under section 24 of the Federal Deposit Insurance Act and part 362 of this title. As established under those provisions, insured state banks may not engage as principal in any type of activity that is not permissible for a national bank unless—(1) the FDIC has determined that the activity would pose no significant risk to the Deposit Insurance Fund; and (2) the state bank is, and continues to be, in compliance with applicable capital standards.

(f) The Board also reiterates to state member banks that legal permissibility is a necessary, but not sufficient, condition to establish that a state member bank may engage in a particular activity. Under § 208.3(d)(1), a state member bank must at all times conduct its business and exercise its powers with due regard to safety and soundness. Under appendix D–1 of this part, at a minimum, a state member bank should have in place and implement internal controls and information systems that are appropriate for the nature, scope, and risks of its activities. Further, under § 208.3(d)(3), a state member bank must comply at all times with this part and conditions of membership prescribed by the Board; in addition, a state member bank must comply with other applicable laws and regulations, including those related to consumer compliance and anti-money laundering. With respect to any novel and unprecedented activities, appropriate systems to monitor and control risks, including liquidity, credit, market, operational, and compliance risks, are particularly important; Federal Reserve supervisors will expect banks to be able to explain and demonstrate an effective control environment related to such activities.

By order of the Board of Governors of the Federal Reserve System, January 27, 2023.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2023–02192 Filed 2–6–23; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1298; Project Identifier MCAI–2022–00437–T; Amendment 39–22313; AD 2023–02–06]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directives (ADs) 2005–15–11, 2016–07–09, and 2018–19–24, which applied to all BAE Systems (Operations) Limited Model 4101 airplanes. AD 2005–15–11 required repetitive detailed and specialized inspections to detect fatigue damage in the fuselage, replacement of certain bolt assemblies, and corrective actions if necessary. AD 2016–07–09 required a revision of the maintenance or inspection program, as applicable. AD 2018–19–24 required a one-time detailed inspection of a certain fuselage frame and repair, if necessary, and a revision of the maintenance or inspection program, as applicable, to incorporate new or revised maintenance instructions and airworthiness limitations. This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This AD continues to require the actions in ADs 2016–07–09 and 2018–19–24 and requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 14, 2023.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 14, 2023.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of November 7, 2018 (83 FR 49786, October 3, 2018).

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of May 16, 2016 (81 FR 21263, April 11, 2016).

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1298; 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 service information identified in this final rule, contact BAE Systems (Operations) Limited, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email *RApublications@baesystems.com;* website *regional-services.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* under Docket No. FAA–2022–1298.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3228; email *todd.thompson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2005–15–11, Amendment 39–14200 (70 FR 43025, July 26, 2005) (AD 2005–15–11). AD 2005–15–11 applied to all BAE Systems (Operations) Limited Model 4101 airplanes. AD 2005–15–11 required repetitive detailed and specialized inspections to detect fatigue damage in the fuselage, replacement of certain bolt assemblies, and corrective actions if necessary. The FAA issued AD 2005–15–11 to address fatigue damage of the fuselage, door, engine nacelle, empennage, and wing structures, which could result in reduced structural integrity of the airplane.

The FAA also proposed to supersede AD 2016–07–09, Amendment 39–18454 (81 FR 21263, April 11, 2016) (AD 2016–07–09). AD 2016–07–09 applied to all BAE Systems (Operations) Limited Model 4101 airplanes. AD 2016–07–09 required a revision of the maintenance or inspection program. The FAA issued AD 2016–07–09 to address failure of certain structurally significant items, including the main landing gear and nose landing gear, which could result in reduced structural integrity of the airplane; and to prevent fuel vapor ignition sources, which could result in a fuel tank explosion and consequent loss of the airplane.

The FAA also proposed to supersede AD 2018–19–24, Amendment 39–19425 (83 FR 49786, October 3, 2018) (AD 2018–19–24). AD 2018–19–24 applied to all BAE Systems (Operations) Limited Model 4101 airplanes. AD 2018–19–24 required a one-time detailed inspection of a certain fuselage frame and repair, if necessary, and a revision of the maintenance or inspection program, as applicable, to incorporate new or revised maintenance instructions and airworthiness limitations. The FAA issued AD 2018–19–24 to address cracking in fuselage frame 90, which could cause it to fail and thereby compromise the structural integrity of the aircraft pressure hull. The FAA also issued AD 2018–19–24 to address fatigue damage of various airplane structures, which could result in reduced structural integrity of the airplane. AD 2018–19–24 specifies that accomplishing the revision required by that AD terminates all requirements of AD 2005–15–11.

The NPRM published in the **Federal Register** on October 21, 2022 (87 FR 63973). The NPRM was prompted by AD G–2022–0006, dated March 30, 2022, issued by the Civil Aviation Authority (CAA), which is the aviation authority for the United Kingdom (U.K.) (U.K. CAA) (referred to after this as the MCAI). The MCAI states that the repetitive inspection requirements for Structural Significant Items (SSI) 53–10–029 were not addressed in European Union Aviation Safety Agency (EASA) AD 2017–0187, and additional SSI inspections are necessary (inspections for cracking of Hi-Shear (now LISL) collars). The MCAI also states that failure to comply with new or more restrictive actions could result in an unsafe condition.

In the NPRM, the FAA proposed to continue to require the actions in ADs 2016–07–09 and 2018–19–24 and require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA is issuing this AD to address fatigue damage of various airplane structures and failure of certain structurally significant items, which could result in reduced structural integrity of the airplane. The FAA is also issuing this AD to address fuel vapor ignition sources, which could result in a fuel tank explosion and consequent loss of the airplane.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1298.

Discussion of Final Airworthiness Directive

Comments

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

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 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.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Chapter 05, ''Airworthiness Limitations,'' of BAE Systems (Operations) Limited J41 Aircraft Maintenance Manual (AMM), Effectivity Group 403, Revision 44, dated June 15, 2021; and BAE Systems (Operations) Limited J41 AMM, Effectivity Group 408, Revision 44, dated June 15, 2021. This service information specifies airworthiness limitations for fuel tank systems and certification maintenance requirements. ''Effectivity Group'' is not specifically stated on these documents. However, ''403'' and ''408,'' which are stated on the pages of the applicable documents (except for the title pages), refer to the effective groups of airplanes specified within the fleet code listings. These documents are distinct since they apply to different airplanes.

This AD also requires:

- Subjects 05–10–10, ''Airworthiness Limitations''; 05–10–20, ''Certification Maintenance Requirements''; and 05–10–30, ''Critical Design Configuration Control Limitations (CDCCL)—Fuel System''; of Chapter 05, ''Airworthiness Limitations,'' of the BAE Systems (Operations) Limited J41 AMM, Revision 38, dated September 15, 2013, which the Director of the Federal Register approved for incorporation by reference as of May 16, 2016 (81 FR 21263, April 11, 2016);
- BAE Systems (Operations) Limited Service Bulletin J41–51–001, Revision 4, dated July 11, 2017, which the Director of the Federal Register approved for incorporation by reference as of November 7, 2018 (83 FR 49786, October 3, 2018); and
- BAE Systems (Operations) Limited Alert Service Bulletin J41–A53–058, dated December 6, 2016, which the Director of the Federal Register approved for incorporation by reference as of November 7, 2018 (83 FR 49786, October 3, 2018).

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

Costs of Compliance

The FAA estimates that this AD would affect 10 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

The FAA estimates the total cost per operator for the retained actions from AD 2016–07–09 to be $7,650 (90 work-hours × $85 per work-hour).

The FAA estimates the total cost per operator for the retained maintenance or inspection program revision from AD 2018–19–24 to be $7,650 (90 work-hours × $85 per work-hour).

The FAA has determined that revising the 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. Therefore, the agency estimates the average total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

The FAA estimates the total cost per operator for the new actions to be $7,650 (90 work-hours × $85 per work-hour).

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection (Retained actions from AD 2018–19–24).	2 work-hours × $85 per hour = $170	$0	$170	$1,700

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

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 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 (AD) 2005–15–11, Amendment 39–14200 (70 FR 43025, July 26, 2005); AD 2016–07–09, Amendment 39–18454 (81 FR 21263, April 11, 2016); and AD 2018–19–24, Amendment 39–19425 (83 FR 49786, October 3, 2018); and

■ b. Adding the following new AD:

2023–02–06 BAE Systems (Operations) Limited: Amendment 39–22313; Docket No. FAA–2022–1298; Project Identifier MCAI–2022–00437–T.

(a) Effective Date

This airworthiness directive (AD) is effective March 14, 2023.

(b) Affected ADs

(1) This AD replaces AD 2005–15–11, Amendment 39–14200 (70 FR 43025, July 26, 2005) (AD 2005–15–11).

(2) This AD replaces AD 2016–07–09, Amendment 39–18454 (81 FR 21263, April 11, 2016) (AD 2016–07–09).

(3) This AD replaces AD 2018–19–24, Amendment 39–19425 (83 FR 49786, October 3, 2018) (AD 2018–19–24).

(c) Applicability

This AD applies to all BAE Systems (Operations) Limited Model 4101 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address fatigue damage of various airplane structures and failure of certain structurally significant items, which could result in reduced structural integrity of the airplane. The FAA is also issuing this AD to address fuel vapor ignition sources, which could result in a fuel tank explosion and consequent loss of the airplane.

(f) Compliance

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

(g) Retained Revision of the Existing Maintenance or Inspection Program (From AD 2016–07–09), With No Changes

This paragraph restates the requirements of paragraph (i) of AD 2016–07–09, with no changes. Within 90 days after May 16, 2016 (the effective date of AD 2016–07–09): Revise the existing maintenance or inspection program, as applicable, by incorporating Subjects 05–10–10, ''Airworthiness Limitations''; 05–10–20, ''Certification Maintenance Requirements''; and 05–10–30, ''Critical Design Configuration Control Limitations (CDCCL)—Fuel System''; of Chapter 05, ''Airworthiness Limitations,'' of the BAE Systems (Operations) Limited J41 Aircraft Maintenance Manual (AMM), Revision 38, dated September 15, 2013. The initial compliance times for the tasks are at the applicable times specified in paragraphs (g)(1) through (3) of this AD. Accomplishing the revision of the existing maintenance or inspection program required by paragraph (m) of this AD terminates the requirements of this paragraph.

(1) For replacement tasks of life limited parts specified in Subject 05–10–10, ''Airworthiness Limitations,'' of Chapter 05, ''Airworthiness Limitations,'' of the BAE Systems (Operations) Limited J41 AMM, Revision 38, dated September 15, 2013: Prior to the applicable flight cycles (landings) or flight hours (flying hours) on the part specified in the ''Mandatory Life Limits'' column in Subject 05–10–10, or within 90 days after May 16, 2016 (the effective date of AD 2016–07–09), whichever occurs later.

(2) For structurally significant item tasks specified in Subject 05–10–10, ''Airworthiness Limitations,'' of Chapter 05, ''Airworthiness Limitations,'' of the BAE Systems (Operations) Limited J41 AMM, Revision 38, dated September 15, 2013: Prior to the accumulation of the applicable flight cycles specified in the ''Initial Inspection'' column in Subject 05–10–10, or within 90 days after May 16, 2016 (the effective date of AD 2016–07–09), whichever occurs later.

(3) For certification maintenance requirements tasks specified in Subject 05–10–20, ''Certification Maintenance Requirements,'' of Chapter 05, ''Airworthiness Limitations,'' of the BAE Systems (Operations) Limited J41 AMM, Revision 38, dated September 15, 2013: Prior to the accumulation of the applicable flight hours specified in the ''Time Between Checks'' column in Subject 05–10–20, or within 90 days after May 16, 2016 (the effective date of AD 2016–07–09), whichever occurs later; except for tasks that specify ''first flight of the day'' in the ''Time Between Checks'' column in Subject 05–10–20, the initial compliance time is the first flight of the next day after doing the revision required by paragraph (g) of AD 2016–07–09, or within 90 days after May 16, 2016, whichever occurs later.

(h) Retained Restrictions on Alternative Actions, Intervals, and/or CDCCLs, With No Changes

This paragraph restates the requirements of paragraph (j) of AD 2016–07–09, with no changes. Except as required by paragraph (m) of this AD, after the existing maintenance or inspection program, as applicable, has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections), intervals, and/or CDCCLs may be used unless the actions, intervals, and/or CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (o)(1) of this AD.

(i) Retained Inspection, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2018–19–24, with no changes. At the compliance times specified in paragraphs (i)(1) and (2) of this AD, as applicable: Do a detailed inspection of fuselage frame 90 for cracking or fatigue damage, in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Alert Service Bulletin J41–A53–058, dated December 6, 2016. If any cracking or fatigue damage is found: Before further flight, repair using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or BAE Systems (Operations) Limited's EASA Design Organization Approval (DOA). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (m) of this AD terminates the requirements of this paragraph.

(1) For airplanes with 6,300 flight cycles or fewer since Structural Significant Items (SSI) 53–10–029 (Maintenance Planning Document (MPD) 531029–DVl–10010–1) was last accomplished: Within 6,600 flight cycles after the last accomplishment of SSI 53–10–029 (MPD 531029–DVl–10010–1), or within 6 months after November 7, 2018 (the effective date of AD 2018–19–24), whichever is later.

(2) For airplanes with more than 6,300 flight cycles since SSI 53–10–029 (MPD 531029–DVl–10010–1) was last accomplished: Within 300 flight cycles or 4.5 months, whichever is earlier, since the last accomplishment of SSI 53–10–029 (MPD 531029–DVl-10010–1), or within 6 months after November 7, 2018 (the effective date of AD 2018–19–24), whichever is later.

(j) Retained Revision of Existing Maintenance or Inspection Program (From AD 2018–19–24), With No Changes

This paragraph restates the requirements of paragraph (h) of AD 2018–19–24, with no changes. Within 90 days after November 7, 2018 (the effective date of AD 2018–19–24): Revise the existing maintenance or inspection program, as applicable, by incorporating the maintenance tasks and associated thresholds and intervals described in, and in accordance with, the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–51–001, Revision 4, dated July 11, 2017. The initial compliance times for new or revised tasks are at the applicable times specified in BAE Systems (Operations) Limited Service Bulletin J41–51–001, Revision 4, dated July 11, 2017, or within 6 months after November 7, 2018, whichever is later. Accomplishing the revision of the existing maintenance or inspection program required by paragraph (m) of this AD terminates the requirements of this paragraph.

(k) Retained No Alternative Actions and Intervals, With No Changes

This paragraph restates the requirements of paragraph (i) of AD 2018–19–24, with no changes. Except as required by paragraph (m) of this AD: After the existing maintenance or inspection program has been revised as

required by paragraph (j) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an AMOC in accordance with the procedures specified in paragraph (o)(1) of this AD.

(l) Retained No Reporting Requirement, With No Changes

This paragraph restates the requirements of paragraph (k) of AD 2018–19–24, with no changes. Although the Accomplishment Instructions of BAE Systems (Operations) Limited Alert Service Bulletin J41–A53–058, dated December 6, 2016, specify to submit certain information to the manufacturer, this AD does not include that requirement.

(m) New Revision of the Existing Maintenance or Inspection Program

Within 90 days after the effective date of this AD: Revise the existing maintenance or inspection program, as applicable, by incorporating Subjects 05–10–10, ''Airworthiness Limitations''; 05–10–20, ''Certification Maintenance Requirements''; and 05–10–30, ''Critical Design Configuration Control Limitations (CDCCL)—Fuel System''; of Chapter 05, ''Airworthiness Limitations,'' of the BAE Systems (Operations) Limited J41 AMM, Effectivity Group 403, Revision 44, dated June 15, 2021; or BAE Systems (Operations) Limited J41 AMM, Effectivity Group 408, Revision 44, dated June 15, 2021; as applicable. The initial compliance times for the tasks are at the applicable times specified in paragraphs (m)(1) through (3) of this AD. Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the actions required by paragraphs (g), (i) and (j) of this AD.

(1) For replacement tasks of life limited parts specified in Subject 05–10–10, ''Airworthiness Limitations,'' of Chapter 05, ''Airworthiness Limitations,'' of the BAE Systems (Operations) Limited J41 AMM, Effectivity Group 403, Revision 44, dated June 15, 2021; or BAE Systems (Operations) Limited J41 AMM, Effectivity Group 408, Revision 44, dated June 15, 2021; as applicable: Prior to the applicable flight cycles (landings) or flight hours (flying hours) on the part specified in the ''Mandatory Life Limits'' column in Subject 05–10–10, or within 90 days after the effective date of this AD, whichever occurs later.

(2) For structurally significant item tasks specified in Subject 05–10–10, ''Airworthiness Limitations,'' of Chapter 05, ''Airworthiness Limitations,'' of the BAE Systems (Operations) Limited J41 AMM, Effectivity Group 403, Revision 44, dated June 15, 2021; or BAE Systems (Operations) Limited J41 AMM, Effectivity Group 408, Revision 44, dated June 15, 2021; as applicable: Prior to the accumulation of the applicable flight cycles specified in the ''Initial Inspection'' column in Subject 05–10–10, or within 90 days after the effective date of this AD, whichever occurs later.

(3) For certification maintenance requirements tasks specified in Subject 05–10–20, ''Certification Maintenance Requirements,'' of Chapter 05, ''Airworthiness Limitations,'' of the BAE Systems (Operations) Limited J41 AMM, Effectivity Group 403, Revision 44, dated June 15, 2021; or BAE Systems (Operations) Limited J41 AMM, Effectivity Group 408, Revision 44, dated June 15, 2021; as applicable: Prior to the accumulation of the applicable flight hours specified in the ''Time Between Checks'' column in Subject 05–10–20, or within 90 days after the effective date of this AD, whichever occurs later; except for tasks that specify ''first flight of the day'' in the ''Time Between Checks'' column in Subject 05–10–20, the initial compliance time is the first flight of the next day after accomplishing the revision required by paragraph (m) of this AD, or within 90 days after the effective date of this AD, whichever occurs later.

(n) New No Alternative Actions, Intervals, or CDCCLs

After the existing maintenance or inspection program has been revised as required by paragraph (m) of this AD, no alternative actions (*e.g.,* inspections), intervals, or CDCCLs may be used unless the actions, intervals, and CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (o)(1) of this AD.

(o) 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 (p)(2) 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 the United Kingdom Civil Aviation Authority (U.K. CAA); or BAE Systems (Operations) Limited's U.K. CAA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(p) Additional Information

(1) Refer to U.K. CAA AD G–2022–0006, dated March 30, 2022, for related information. This U.K. CAA AD may be found in the AD docket at regulations.gov under Docket No. FAA–2022–1298.

(2) For more information about this AD, contact Todd Thompson, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3228; email *todd.thompson@faa.gov.*

(q) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on March 14, 2023.

(i) Chapter 05, ''Airworthiness Limitations,'' of BAE Systems (Operations) Limited J41 Aircraft Maintenance Manual (AMM), Effectivity Group 403, Revision 44, dated June 15, 2021.

Note 1 to paragraph (q)(3)(i): This note applies to paragraphs (q)(3)(i) and (ii) of this AD. Page 1 of the ''Publications Transmittal'' is the only page that shows the revision level of this document.

Note 2 to paragraph (q)(3)(i): This note applies to paragraphs (q)(3)(i) and (ii) of this AD. ''Effectivity Group'' is not specifically stated on the document. However, ''403'' and ''408,'' which are stated on the pages of the applicable documents (except for the title pages), refer to the effective groups of airplanes specified within the fleet code listings.

(ii) Chapter 05, ''Airworthiness Limitations,'' of BAE Systems (Operations) Limited J41 AMM, Effectivity Group 408, Revision 44, dated June 15, 2021.

(4) The following service information was approved for IBR on November 7, 2018 (83 FR 49786, October 3, 2018).

(i) BAE Systems (Operations) Limited Alert Service Bulletin J41–A53–058, dated December 6, 2016.

(ii) BAE Systems (Operations) Limited Service Bulletin J41–51–001, Revision 4, dated July 11, 2017.

(5) The following service information was approved for IBR on May 16, 2016 (81 FR 21263, April 11, 2016).

(i) Chapter 05, ''Airworthiness Limitations,'' of the BAE Systems (Operations) Limited J41 Aircraft Maintenance Manual (AMM), Revision 38, dated September 15, 2013.

Note 3 to paragraph (q)(5)(i): Page 1 of the ''Publications Transmittal'' is the only page that shows the revision level of this document.

(A) Subject 05–10–10, ''Airworthiness Limitations.''

(B) Subject 05–10–20, ''Certification Maintenance Requirements.''

(C) Subject 05–10–30, ''Critical Design Configuration Control Limitations (CDCCL)—Fuel System.''

(ii) [Reserved]

(6) For service information identified in this AD, contact BAE Systems (Operations) Limited, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email *RApublications@baesystems.com;* website regional-services.com.

(7) 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.

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

Issued on January 20, 2023.

Gaetano A. Sciortino,

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

[FR Doc. 2023–02526 Filed 2–6–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1251; Project Identifier MCAI–2022–00588–T; Amendment 39–22308; AD 2023–02–01]

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 all Bombardier, Inc., Model BD–100–1A10 airplanes. This AD was prompted by an investigation that indicated that one of the springs in the pitch trim switch of the horizontal stabilizer had failed. The failure of the spring could result in the airplane pitching nose down when actually commanded nose up. This AD requires a verification of the serial numbers of certain pitch trim switches, and replacement of the affected pitch trim switches with new ones in the pilot and co-pilot control wheels. This AD would also prohibit the installation of affected parts. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 14, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 14, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1251; 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 service information identified in this final rule, contact Bombardier Business Aircraft Customer Response Center, 400 Côte Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 1–514–855–2999; email *ac.yul@aero.bombardier.com;* internet bombardier.com.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2022–1251.

FOR FURTHER INFORMATION CONTACT: Thomas Niczky, Aerospace Engineer, Avionics and Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7347; 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 all Bombardier, Inc., Model BD–100–1A10 airplanes. The NPRM published in the **Federal Register** on October 5, 2022 (87 FR 60352). The NPRM was prompted by AD CF–2022–24, dated May 2, 2022, (referred to after this as the MCAI) issued by Transport Canada, which is the aviation authority for Canada. The MCAI states that during several in-service events, following a stab trim fault advisory message and an auto-pilot disconnect, both pilot and co-pilot commands to trim the horizontal stabilizer nose-up resulted in a nose-down movement of the horizontal stabilizer. In two events, the horizontal stabilizer reached the full travel nose-down position before the crew recognized the nature of the problem, and quickly recovered control of the airplane for safe landing. As a result, this led to increased crew workload and reduced safety margins.

Subsequent investigation by Bombardier and the supplier of the horizontal stabilizer pitch trim switch determined that one of the springs within the pitch trim switch had failed. The supplier of the springs was changed in 2019. The majority of observed pitch trim switch failures occurred in pitch trim switches that were manufactured after 2019.

In the NPRM, the FAA proposed to require the replacement of the affected pitch trim switches with re-designed pitch trim switches that have reliable springs. The FAA is issuing this AD to address the failure of the springs in the pitch trim switch, which, if not corrected, could result in the airplane pitching nose down when actually commanded nose up, resulting in reduced controllability of the airplane and high control forces. The FAA is issuing this AD to address the failure of the springs in the pitch trim switch. The unsafe condition, if not corrected, could result in the airplane pitching nose down when actually commanded nose up, resulting in reduced controllability of the airplane and high control forces.

You may examine the MCAI in the AD docket at regulations.gov under Docket No. FAA–2022–1251.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from NetJets. The following presents the comment received on the NPRM and the FAA's response.

Request To Correct the Date for Bombardier Service Bulletin 350–27–011

NetJets requested that the proposed AD be revised to correct the date for Bombardier Service Bulletin 350–27–011. The date was entered incorrectly in figure 1 to paragraph (h) of the proposed AD and two times in paragraph (i) of the proposed AD as ''March 21, 2002.''

The FAA agrees with the requested change by the commenter. The FAA has corrected the date for Bombardier Service Bulletin 350–27–011 in figure 1 to paragraph (h) of this AD and two times in paragraph (i) of this AD to ''March 21, 2022.''

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, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Bombardier Service Bulletin 100–27–21, dated March 21, 2022, for Model BD–100–1A10 (CH–300) airplanes, S/Ns 20003 to 20500. This service information specifies procedures for verifying serial numbers (S/Ns) of certain pitch trim switch part numbers in the pilot and co-pilot control wheels, and replacing affected pitch trim switches.

The FAA has also requires Bombardier Service Bulletin 350–27–011, dated March 21, 2022, for Model BD–100–1A10 (CH–350) airplanes, S/Ns 20501 to 20936. This service information describes procedures for verifying S/Ns of certain pitch trim switch part numbers in leather and non-leather covered pilot and co-pilot control wheels, and replacing affected pitch trim switches.

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

Costs of Compliance

The FAA estimates that this AD affects 697 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 per product
Switch inspection	1 work-hour × $85 per hour = $85	N/A	$59,245

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Action	Labor cost	Parts	Cost per product
Switch replacement (Airplane S/Ns 20003–20500)	4 work-hours × $85 per hour = $340	$2,352	$2,692
Switch replacement (Airplane S/Ns 20501–20936)	4 work-hours × $85 per hour = $340	2,442	2,782

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

Authority for This Rulemaking

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

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

Regulatory Findings

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:

2023–02–01 Bombardier, Inc.: Amendment 39–22308; Docket No. FAA–2022–1251; Project Identifier MCAI–2022–00588–T.

(a) Effective Date

This airworthiness directive (AD) is effective March 14, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Bombardier, Inc., Model BD–100–1A10 airplanes, all serial numbers, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Controls.

(e) Unsafe Condition

This AD was prompted by the investigation that one of the springs in the pitch trim switch for the horizontal stabilizer had failed. The FAA is issuing this AD to address the

failure of the springs in the pitch trim switch. The unsafe condition, if not corrected, could result in the airplane pitching nose down when actually commanded nose up, and the flightcrew may not be able to regain control of the horizontal stabilizer, resulting in reduced controllability of the airplane and high control forces.

(f) Compliance

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

(g) Review of the Airplane Records

Within 200 flight hours or 6 months, whichever occurs first, from the effective date of this AD, review the airplane (technical) records for the horizontal stabilizer pitch trim switches and control wheels to determine the date of replacement, if any, of the pilot or co-pilot trim switch and control wheels.

(1) If the pilot or co-pilot pitch trim switch or control wheels were removed after January 1, 2019, and the replacement pitch trim switches have serial numbers 02000 and subsequent, then no further action is required other than compliance with paragraph (j) of this AD.

(2) For airplanes with serial numbers (S/Ns) 20003 through 20780 inclusive: If no pilot or co-pilot pitch trim switch or control wheel was replaced after January 1, 2019, then no further action is required other than compliance with paragraph (j) of this AD.

(3) For airplanes with S/Ns 20901 through 20936 inclusive: If no pilot or co-pilot pitch trim switch or control wheel has been replaced on an airplane, then no further action is required other than compliance with paragraph (j) of this AD.

(h) Verification and Replacement of Pitch Trim Switches

For airplanes not identified in paragraphs (g)(1) through (3) of this AD: Within 200 flight hours or 6 months, whichever occurs first, from the effective date of this AD, identify the serial numbers of both the pilot and co-pilot pitch trim switches, and do the applicable actions specified in paragraph (h)(1) or (2) of this AD.

(1) If the pilot or co-pilot pitch trim switch has a serial number that is not listed in figure 2 to paragraph (h) of this AD, before further flight re-install the pitch trim switch in accordance with Section 2.B. of the Accomplishment Instructions of the applicable service information identified in figure 1 to paragraph (h) of this AD.

(2) If the pilot or co-pilot pitch trim switch has a serial number listed in figure 2 to paragraph (h) of this AD, before further flight, replace the pitch trim switch in accordance with Section 2.B. of the Accomplishment Instructions of the applicable service information identified in figure 1 to paragraph (h) of this AD.

(3) Before further flight perform the operational test in accordance with Section 2.C. of the Accomplishment Instructions of the applicable service information identified Bombardier SB listed in figure 1 to paragraph (h) of this AD.

Figure 1 to paragraph (h) - *Applicable Bombardier Service Bulletins*

Bombardier SB	Airplane Serial number
100-27-21 - Special Check/Modification - Pitch Trim System - Replacement of Pitch Trim Switches on Pilot and Co-Pilot Control Wheels, Basic Issue, dated March 21, 2022	20003 through 20500
350-27-011 - Special Check/Modification - Pitch Trim System - Replacement of Pitch Trim Switches on Pilot and Co-Pilot Control Wheels, Basic Issue, dated March 21, 2022	20501 through 20936

Figure 2 to paragraph (h) - *Serial Numbers of Affected Pitch Trim Switches to be Removed and Replaced*

Pitch Trim Switch Part Number (P/N)	Serial Number (S/N)
83452541	01583 through 01604 inclusive 01610 through 01622 inclusive 01628 through 01635 inclusive
83452548	00001 through 01999 inclusive

(i) Verification/Replacement of Pitch Trim Switches for Airplanes With S/Ns 20501 and Subsequent With Certain Control Wheel P/Ns 83912156 and 83912157

For airplanes with S/Ns 20501 and subsequent with leather-covered control wheels, pilot control wheel P/N 83912156, or co-pilot control wheel P/N 83912157: Within 200 flight hours or 6 months, whichever occurs first, from the effective date of this AD, remove and inspect both the pilot and co-pilot pitch trim switches to determine the part number of the pitch trim switch in accordance with Section 2.B. of the Accomplishment Instructions of Bombardier Service Bulletin 350–27–011, dated March 21, 2022.

(1) If pitch trim switch P/N 83452541 or P/N 83452548 is found installed in either the pilot or the co-pilot control wheel, before further flight, replace the pitch trim switch with pitch trim switch P/N 83452548, serial number 02000 and subsequent, in accordance with Section 2.B. of the Accomplishment Instructions of the applicable service information identified in figure 1 to paragraph (h) of this AD.

(2) Before further flight thereafter perform the operational test in accordance with Section 2.C. of the Accomplishment Instructions of Bombardier Service Bulletin 350–27–011, dated March 21, 2022.

(j) Parts Installation Prohibition

As of the effective date of this AD, no person may install, on any airplane, a trim switch P/N 83452548 or P/N 83452541 with any serial number listed in figure 2 to paragraph (h) of this AD.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(l) Additional Information

(1) Refer to Transport Canada AD CF–2022–24, dated May 2, 2022, for related information. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2022–1251.

(2) For more information about this AD, contact Thomas Niczky, Aerospace Engineer, Avionics and Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7347; email *9-avs-nyaco-cos@faa.gov.*

(m) 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.

(i) Bombardier Service Bulletin 350–27–011, Basic Issue, dated March 21, 2022.

(ii) Bombardier Service Bulletin 100–27–21, Basic Issue, dated March 21, 2022.

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

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

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

Issued on January 18, 2023.

Christina Underwood,

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

[FR Doc. 2023–02525 Filed 2–6–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0766; Project Identifier 2019–NE–23–AD; Amendment 39–22312; AD 2023–02–05]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all General Electric Company (GE) CF34–8C1, CF34–8C5, CF34–8C5A1, CF34–8C5B1, CF34–8C5A2, CF34–8C5A3, CF34–8E2, CF34–8E2A1, CF34–8E5, CF34–8E5A1, CF34–8E5A2, CF34–8E6, and CF34–8E6A1 model turbofan engines. This AD was prompted by a predicted reduction in the cyclic life of the combustion chamber assembly aft flange. This AD requires revisions to the airworthiness limitations section (ALS) of the existing engine manual (EM) and the operator's existing approved maintenance or inspection program, as applicable, to incorporate initial and repetitive fluorescent penetrant inspections (FPIs) of the combustion chamber assembly. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 14, 2023.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 14, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2019–0766; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For GE service information identified in this final rule, contact General Electric Company, 1 Neumann Way, Cincinnati, OH 45215; phone: (513) 552–3272; email: *aviation.fleetsupport@ge.com;* website: *ge.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* by searching for and locating Docket No. FAA–2019–0766.

FOR FURTHER INFORMATION CONTACT: Scott Stevenson, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7132; email: *Scott.M.Stevenson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 by adding an AD that would apply to all GE CF34–8C1, CF34–8C5, CF34–8C5A1, CF34–8C5B1, CF34–C5A2, CF34–8C5A3, CF34–8E2, CF34–8E2A1, CF34–8E5, CF34–8E5A1, CF34–8E5A2, CF34–8E6, and CF34–8E6A1 (CF34–8C and GE CF34–8E) model turbofan engines, including engine models marked on the engine data plate as CF34–8C5/B, CF34–8C5/M, CF34–8C5A1/B, CF34–8C5A1/M, CF34–8C5B1/B, CF34–8C5A2/B, and CF34–8C5A2/M. The SNPRM published in the **Federal Register** on October 07, 2022 (87 FR 60944). The SNPRM was prompted by a predicted reduction in the cyclic life of the combustion chamber assembly aft flange. As a result, the manufacturer incorporated temporary revisions (TRs) into the GE CF34–8C and GE CF34–8E EMs for a scheduled maintenance check. In the SNPRM, the FAA proposed to require revisions to the ALS of the existing EM and the operator's existing approved maintenance or inspection program, as applicable, to incorporate initial and repetitive FPIs of the combustion chamber assembly. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from three commenters. The commenters were Horizon Air, Japan Airlines (JAL), and SkyWest Airlines (SkyWest). The following presents the comments received on the SNPRM and the FAA's response to each comment.

Request To Replace ''ESM'' Reference With ''EM'' Reference

Horizon Air requested that the FAA replace all references of ''ESM'' with ''EM'' in this final rule. Horizon Air reasoned that the SNPRM only defines the acronym ''EM,'' and both acronyms are used interchangeably in the SNPRM.

The FAA clarifies that the reference to ''ESM'' is not an acronym defined by the FAA in the proposed AD and used interchangeably with ''EM.'' ''ESM'' is part of GE's chapter title within each task reference and must be used for an accurate reference. The FAA did not change this AD as a result of this comment.

Request To Add the Date of the Task in Paragraph (g)(3)

Horizon Air requested that the FAA include the task revision date for ''TASK 05–21–03–200–801,'' referenced in paragraph (g)(3)(ii) of the SNPRM. Horizon Air reasoned that adding the task revision date would make the wording consistent with the dates of the tasks in paragraphs (g)(1)(ii) and (2)(ii) of the SNPRM.

The FAA established a shorthand notation in paragraph (g)(2)(ii) of the SNPRM, which contains the full citation, including the task revision date, followed by the shorthand notation ''TASK 05–21–03–200–801.'' The FAA then used the established shorthand notation to reference the task in paragraph (g)(3)(ii) of the SNPRM. The FAA did not change this AD as a result of this comment.

Request To Revise Paragraph (g)(1)(ii), (2)(ii), and (3)(ii) of the AD

Horizon Air requested that the FAA revise paragraphs (g)(1)(ii), (2)(ii), and (3)(ii) of the AD, as those paragraphs do not clearly include that performance of the inspection within 2,200 cycles from the effective date of this AD is only applicable to those combustion chamber assemblies that have exceeded the inspection threshold specified in the tables referenced in TASK 05–21–03–200–801. Similarly, JAL requested that the FAA revise paragraph (g)(1)(ii) for the same reasons articulated by Horizon Air.

In response to these comments, the FAA has revised the language in paragraphs (g)(1)(ii), (2)(ii), and (3)(ii) of this AD to clarify that where the notes to Tables 801, 802, 803, 804, and 805, included in TASK 05–21–03–200–801, specify to perform the inspection within 2,200 cycles from the issuance date of the TR, this AD requires performing the inspection within 2,200 cycles from the effective date of this AD. The FAA further clarifies that the notes are part of the task, and therefore, has removed ''including the notes.''

Request To Correct an Incorrect Reference to a Task in Paragraph (g)(2)(i)

SkyWest requested that the FAA correct an incorrect reference in paragraph (g)(2)(i) of this AD. SkyWest noted that Table 802 does not exist in TASK 05–11–25–200–801, which is specific to GE CF34–8C5 model turbofan engines with/B minor model designation.

In response to this comment, the FAA has revised paragraph (g)(2)(i) of this AD from ''Table 801 in TASK 05–11–05–200–801 and Table 802 in TASK 05–11–25–200–801, dated November 3, 2020, from ESM 05–11–25 Static Structures—BJ Life Limits (TASK 05–11–25–200–801)'' to ''Tables 801 (for –8C1) and 802 (for –8C5) in TASK 05–11–05–200–801, dated March 4, 2021, from ESM 05–11–05 Static Structures—Life Limits (TASK 05–11–05–200–801).''

Conclusion

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed the following tasks:

- TASK 05–11–05–200–801, dated March 4, 2021, from ESM 05–11–05 Static Structures—Life Limits, of GE CF34–8C EM GEK105091, Rev 51, dated April 1, 2022;
- TASK 05–11–05–200–801, dated March 4, 2021, from ESM 05–11–05 Static Structures—Life Limits, of GE CF34–8E EM GEK112031, Rev 43, dated April 1, 2022; and
- TASK 05–11–25–200–801, dated November 3, 2020, from ESM 05–11–25 Static Structures—BJ Life Limits, of GE CF34–8C EM GEK105091, Rev 51, dated April 1, 2022.

These tasks, differentiated by GE CF34–8 turbofan engine model, identify the combustion chamber assembly part number, life limit cycles, and revised inspections.

The FAA also reviewed the following tasks:

- TASK 05–21–03–200–801, dated April 1, 2019, from ESM 05–21–03 Airworthiness Limitations—Mandatory Inspection 001, of GE CF34–8C EM GEK105091, Rev 51, dated April 1, 2022; and
- TASK 05–21–03–200–801, dated April 1, 2019, from ESM 05–21–03 Airworthiness Limitations—Mandatory Inspection 001, of GE CF34–8E EM GEK112031, Rev 43, dated April 1, 2022.

These tasks, differentiated by GE CF34–8 turbofan engine model, describe revised inspection threshold limits and re-inspection interval limits for the combustion chamber assembly.

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**.

Costs of Compliance

The FAA estimates that this AD affects 1,633 GE CF34–8C turbofan engine models and 857 GE CF34–8E turbofan engine models installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Revise the ALS of the EM and operator's existing approved maintenance or inspection program (GE CF34–8C and CF34–8E).	1 work-hour × $85 per hour = $85 ..	$0	$85	$211,650

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:

2023–02–05 General Electric Company: Amendment 39–22312; Docket No. FAA–2019–0766; Project Identifier 2019–NE–23–AD.

(a) Effective Date

This airworthiness directive (AD) is effective March 14, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to General Electric Company (GE) CF34–8C1, CF34–8C5, CF34–8C5A1, CF34–8C5B1, CF34–8C5A2, CF34–8C5A3, CF34–8E2, CF34–8E2A1, CF34–8E5, CF34–8E5A1, CF34–8E5A2, CF34–8E6, and CF34–8E6A1 model turbofan engines, including engine models marked on engine data plate as CF34–8C5/B, CF34–8C5/M, CF34–8C5A1/B, CF34–8C5A1/M, CF34–8C5B1/B, CF34–8C5A2/B, and CF34–8C5A2/M.

(d) Subject

Joint Aircraft System Component (JASC) Code 7240, Turbine Engine Combustion Section.

(e) Unsafe Condition

This AD was prompted by a predicted reduction in the cyclic life of the combustion chamber assembly aft flange. The FAA is issuing this AD to prevent failure of the combustion chamber assembly. The unsafe condition, if not addressed, could result in combustion chamber assemblies failing before reaching their published life limit, uncontained release of the combustion chamber assembly, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

Within 90 days after the effective date of this AD, revise the airworthiness limitations section (ALS) of the existing engine manual (EM) and the operator's existing approved maintenance or inspection program, as applicable, to incorporate the following requirements for fluorescent penetrant inspections of the combustion chamber assembly aft flange.

(1) For combustion chamber assemblies with part numbers (P/Ns) 4145T11G08, 4145T11G09, 4180T27G01, or 4180T27G03 installed on GE CF34–8E model turbofan engines:

(i) Replace Table 801, Static Structures—Life Limits (Table 801), with the revised Table 801 in TASK 05–11–05–200–801, dated March 4, 2021, from ESM 05–11–05 Static Structures—Life Limits (TASK 05–11–05–200–801), of GE CF34–8E EM GEK112031, Rev 43, dated April 1, 2022 (GE CF34–8E EM GEK112031), and

(ii) Add TASK 05–21–03–200–801, dated April 1, 2019, from ESM 05–21–03 Airworthiness Limitations—Mandatory Inspection 001 (TASK 05–21–03–200–801), of GE CF34–8E EM GEK112031. Where the notes to Tables 801 and 802, included in TASK 05–21–03–200–801 of GE CF34–8E EM GEK112031, specify to perform the inspection within 2,200 cycles from the issuance date of the temporary revision (TR), this AD requires performing the inspection within 2,200 cycles from the effective date of this AD.

(2) For combustion chamber assemblies with P/Ns 4126T87G04, 4126T87G05, 4126T87G07, 4126T87G08, 4180T27G04, 4923T82G01, or 4923T82G02 installed on GE CF34–8C1 model turbofan engines, or with P/Ns 4145T11G08, 4145T11G10, 4180T27G02, 4180T27G04, or 4923T82G02 installed on GE CF34–8C5, CF34–8C5/M, CF34–8C5A1, CF34–8C5A1/M, CF34–8C5A2, CF34–8C5A2/M, CF34–8C5A3, or CF34–8C5B1 model turbofan engines:

(i) Replace Tables 801 (for –8C1) and 802 (for –8C5) Static Structures—Life Limits (Table 801 and Table 802), with the revised Tables 801 and 802 in TASK 05–11–05–200–801, dated March 4, 2021, from ESM 05–11–

05 Static Structures—Life Limits (TASK 05–11–05–200–801), of GE CF34–8C EM GEK105091, Rev 51, dated April 1, 2022 (GE CF34–8C EM GEK105091); and

(ii) Add TASK 05–21–03–200–801, dated April 1, 2019, from ESM 05–21–03 Airworthiness Limitations—Mandatory Inspection 001 (TASK 05–21–03–200–801), of GE CF34–8C EM GEK105091. Where the notes to Tables 801, 802, 803, 804, and 805, included in TASK 05–21–03–200–801 of GE CF34–8C EM GEK105091, specify to perform the inspection within 2,200 cycles from the issuance date of the TR, this AD requires performing the inspection within 2,200 cycles from the effective date of this AD.

(3) For combustion chamber assemblies with P/Ns 4145T11G08, 4145T11G10, 4180T27G02, 4180T27G04, or 4923T82G02 installed on GE CF34–8C5B1/B, CF34–8C5/B, CF34–8C5A1/B, or CF34–8C5A2/B model turbofan engines:

(i) Replace Table 801 (for/B –8C5) Static Structures—Life Limits with the revised Table 801 in TASK 05–11–25–200–801, of GE CF34–8C EM GEK105091; and

(ii) Add TASK–05–21–03–200–801, of GE CF34–8C EM GEK105091. Where the notes to Tables 801, 802, 803, 804, and 805, included in TASK 05–21–03–200–801 of GE CF34–8C EM GEK105091, specify to perform the inspection within 2,200 cycles from the issuance date of the TR, this AD requires performing the inspection within 2,200 cycles from the effective date of this AD.

(4) After performing the actions required by paragraphs (g)(1) through (3) of this AD, except as provided in paragraph (i) of this AD, no alternative life limits may be approved.

(h) Credit for Previous Actions

You may take credit for revising the ALS of the existing EM and the operator's existing approved maintenance or inspection program, as applicable, required by paragraphs (g)(1) through (3) of this AD if the actions were completed before the effective date of this AD using GE CF34–8E EM TR 05–0085, dated February 21, 2019; GE CF34–8C TR 05–0141, dated February 21, 2019; GE CF34–8C TR 05–0143, dated February 13, 2019; GE CF34–8E TR 05–0086, dated February 13, 2019; or GE CF34–8C TR 05–0142, dated February 13, 2019.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Related Information

For more information about this AD, contact Scott Stevenson, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7132; email: *Scott.M.Stevenson@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) TASK 05–11–05–200–801, dated March 4, 2021, from ESM 05–11–05 Static Structures—Life Limits, of GE CF34–8C EM GEK105091, Rev 51, dated April 1, 2022.

(ii) TASK 05–11–05–200–801, dated March 4, 2021, from ESM 05–11–05 Static Structures—Life Limits, of GE CF34–8E EM GEK112031, Rev 43, dated April 1, 2022.

(iii) TASK 05–11–25–200–801, dated November 3, 2020, from ESM 05–11–25 Static Structures—BJ Life Limits, of GE CF34–8C EM GEK105091, Rev 51, dated April 1, 2022.

(iv) TASK 05–21–03–200–801, dated April 1, 2019, from ESM 05–21–03 Airworthiness Limitations—Mandatory Inspection 001, of GE CF34–8C EM GEK105091, Rev 51, dated April 1, 2022.

(v) TASK 05–21–03–200–801, dated April 1, 2019, from ESM 05–21–03 Airworthiness Limitations—Mandatory Inspection 001, of GE CF34–8E EM GEK112031, Rev 43, dated April 1, 2022.

(3) For GE service information identified in this AD, contact General Electric Company, 1 Neumann Way, Cincinnati, OH 45215; phone: (513) 552–3272; email: *aviation.fleetsupport@ge.com;* website: *ge.com.*

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

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

Issued on January 19, 2023.

Ross Landes,

Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–02512 Filed 2–6–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0812; Project Identifier MCAI–2022–00445–T; Amendment 39–22208; AD 2022–21–09]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes), and A310 series airplanes. This AD was prompted by a determination that a new airworthiness limitation is necessary. This AD requires revising the existing maintenance or inspection program, as applicable, to incorporate a new airworthiness limitation, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 14, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publications listed in this AD as of March 14, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–0812; 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 material incorporated by reference in this AD, 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 IBR material on the EASA website at *ad.easa.europa.eu.*
- 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–2022–0812.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th Street, Des Moines, WA 98198; telephone 206–231–3225; email *dan.rodina@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A300–600 and A310 series airplanes. The NPRM published in the **Federal Register** on July 8, 2022 (87 FR 40752). The NPRM was prompted by AD 2022–0060, dated April 1, 2022, issued by EASA, which is the Technical Agent for the Member States of the European Union (referred to after this as the MCAI). The MCAI states that a new airworthiness limitation is 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 of hydraulic systems.

In the NPRM, the FAA proposed to require revising the existing maintenance or inspection program, as applicable, to incorporate a new airworthiness limitation, as specified in EASA AD 2022–0060.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–0812.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from the Air Line Pilots Association, International, which 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 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.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0060 specifies procedures for a new airworthiness limitation for airplane hydraulic systems: Certification Maintenance Requirement (CMR) task 291000–00004–1–C ''Main and Auxiliary (Hydraulic Power)—Functional Check of the 3 Hydraulic Reservoirs for Air Leakage.''

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 the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD would affect 120 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

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. Therefore, the agency estimates the average total cost per operator 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

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:

2022–21–09 Airbus SAS: Amendment 39–22208; Docket No. FAA–2022–0812; Project Identifier MCAI–2022–00445–T.

(a) Effective Date

This airworthiness directive (AD) is effective March 14, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS airplanes identified in paragraphs (c)(1) through (5) of this AD, certificated in any category.

(1) Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes.

(2) Model A300 B4–605R and B4–622R airplanes.

(3) Model A300 C4–605R Variant F airplanes.

(4) Model A300 F4–605R and F4–622R airplanes.

(5) Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes.

(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 a new airworthiness limitation is 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 of hydraulic systems.

(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 2022–0060, dated April 1, 2022 (EASA AD 2022–0060).

(h) Exceptions to EASA AD 2022–0060

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2022–0060 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2022–0060 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 2022–0060 is at the applicable ''threshold'' as incorporated by the requirements of paragraph (3) of EASA AD 2022–0060, or within 90 days after the effective date of this AD, whichever occurs later.

(4) The provisions specified in paragraph (4) of EASA AD 2022–0060 do not apply to this AD.

(5) The ''Remarks'' section of EASA AD 2022–0060 does not apply to this AD.

(i) Provisions for Alternative Actions and Intervals

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 2022–0060.

(j) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, 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 Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (k) 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 local flight standards district office/certificate holding district 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, Large Aircraft Section, 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.

(k) Additional Information

For more information about this AD, contact Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th Street, Des Moines, WA 98198; telephone and fax 206–231–3225; email *dan.rodina@faa.gov*.

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0060, dated April 1, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0060, 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*.

(4) 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.

(5) 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 October 3, 2022.

Christina Underwood,

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

Editorial Note: This document was received for publication by the Office of the Federal Register on February 2, 2023.

[FR Doc. 2023–02530 Filed 2–6–23; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1412; Project Identifier MCAI–2022–00805–T; Amendment 39–22314; AD 2023–02–07]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A300 B2K–3C, B2–203, B4–2C, and B4–203 airplanes. This AD was prompted by a determination that internal system pollution can occur, most likely due to corroded unions in the pressurization lines, with an associated risk of contamination of the check valves. This AD requires repetitive inspections (functional checks) of the pressurization of the hydraulic system reservoirs, and corrective actions if necessary, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 14, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 14, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1412; 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 material incorporated by reference in this AD, 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.*
- 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–2022–1412.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3225; email *dan.rodina@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A300 B2–203, A300 B2K–3C, A300 B4–203, and A300 B4–2C airplanes. The NPRM published in the **Federal Register** on November 18, 2022 (87 FR 69222).

The NPRM was prompted by AD 2022–0116, dated June 21, 2022, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2022–0116) (also referred to as the MCAI). The MCAI states that internal system pollution can occur, most likely due to corroded unions at the pressurization lines, with an associated risk of contamination of the check valves. The three hydraulic system reservoirs are pressurized by air coming from the engine or the auxiliary power unit bleed air duct or from the ground connection. Air tightness of the pressurization system of the reservoirs is achieved by check valves that are located on the respective pressurization lines and on top of each hydraulic reservoir.

In the NPRM, the FAA proposed to require repetitive inspections (functional checks) of the pressurization of the hydraulic system reservoirs, and corrective actions if necessary, as specified in EASA AD 2022–0116. The FAA is issuing this AD to address check valve contamination, which could lead to hydraulic reservoir pressurization issues and, if combined with an air pressurization line rupture, could lead to loss of hydraulic systems and possibly result in loss of control of the airplane. See the MCAI for additional background information.

You may examine the MCAI in the AD docket at regulations.gov under Docket No. FAA–2022–1412.

Discussion of Final Airworthiness Directive

Comments

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

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 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.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0116 specifies procedures for repetitive detailed inspections by performing functional checks for air leakage of the hydraulic system reservoirs and corrective actions. Corrective actions include a fault isolation to identify the source of depressurization and replacement of the check valves. EASA AD 2022–0116 also specifies procedures for reporting the inspection findings.

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 the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 2 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
4 work-hours × $85 per hour = $340	$0	$340	$680
1 work-hour × $85 per hour = $85 (reporting)	0	85	170

The FAA has received no definitive data on which to base the cost estimates for the corrective actions specified in this AD.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to take approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

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:

2023–02–07 Airbus SAS: Amendment 39–22314; Docket No. FAA–2022–1412; Project Identifier MCAI–2022–00805–T.

(a) Effective Date

This airworthiness directive (AD) is effective March 14, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS Model A300 B2K–3C, B2–203, B4–2C, and B4–203 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code: 29, Hydraulic power.

(e) Unsafe Condition

This AD was prompted by a determination that internal system pollution can occur, most likely due to corroded unions at pressurization lines level, with an associated risk of contamination of the check valves. The FAA is issuing this AD to address check valve contamination, which could lead to hydraulic reservoir pressurization issues and, if combined with an air pressurization line rupture, could lead to loss of hydraulic systems and possibly result in loss of control 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 2022–0116, dated June 21, 2022 (EASA AD 2022–0116).

(h) Exceptions to EASA AD 2022–0116

(1) Where EASA AD 2022–0116 refers to its effective date, this AD requires using the effective date of this AD.

(2) Paragraph (3) of EASA AD 2022–0116 specifies to report the first functional check (test) results to Airbus within a certain compliance time. For this AD, report the first functional check (test) results at the applicable time specified in paragraph (h)(2)(i) or (ii) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(3) The ''Remarks'' section of EASA AD 2022–0116 does not apply to this AD.

(i) 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 (j) 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.

(3) Required for Compliance (RC): Except as required by paragraph (i)(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.

(j) Additional Information

For more information about this AD, contact Dan Rodina, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3225; email *dan.rodina@faa.gov.*

(k) 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.

(i) European Union Aviation Safety Agency (EASA) AD 2022–0116, dated June 21, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0116, 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.*

(4) 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.

(5) 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 January 20, 2023.

Christina Underwood,

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

[FR Doc. 2023–02529 Filed 2–6–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0396; Project Identifier MCAI–2021–01050–T; Amendment 39–22315; AD 2023–02–08]

RIN 2120–AA64

Airworthiness Directives; ATR–GIE Avions de Transport Régional Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2021–09–13, which applied to certain ATR–GIE Avions de Transport Régional Model ATR42–500 airplanes. AD 2021–09–13 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. This AD was prompted by a determination that additional new or more restrictive airworthiness limitations are necessary. This AD retains the requirement of AD 2021–09–13. This AD also requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 14, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 14, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of June 23, 2021 (86 FR 27031, May 19, 2021).

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–0396; 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 material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*
- You may view this 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* under Docket No. FAA–2022–0396.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3220; email *shahram.daneshmandi@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2021–09–13, Amendment 39–21527 (86 FR 27031, May 19, 2021) (AD 2021–09–13) (which corresponds to EASA AD 2020–0263, dated December 1, 2020). AD 2021–09–13 applied to certain ATR–GIE Avions de Transport Régional Model ATR42–500 airplanes. AD 2021–09–13 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA issued AD 2021–09–13 to prevent reduced structural integrity of the airplane.

The NPRM published in the **Federal Register** on April 8, 2022 (87 FR 20783). The NPRM was prompted by AD 2021–0212, dated September 17, 2021, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2021–0212) to correct an unsafe condition.

In the NPRM, the FAA proposed to retain the requirements of AD 2021–09–13. The NPRM also proposed to require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in EASA AD 2021–0212.

The FAA issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 to supersede AD 2021–09–13. The SNPRM published in the **Federal Register** on November 10, 2022 (87 FR 67842) (the SNPRM). The SNPRM was prompted by a determination that additional new or more restrictive airworthiness limitations are necessary; EASA superseded EASA AD 2021–0212 and issued EASA AD 2022–0063, dated April 8, 2022 (EASA AD 2022–0063). EASA AD 2022–0063 was issued because ATR–GIE Avions de Transport published Revision 16 of the ATR 42–400/–500 Time Limits Document (TLD), which included new or more restrictive maintenance tasks and airworthiness limitations. EASA subsequently superseded EASA AD 2022–0063 and issued EASA AD 2022–0200, dated September 26, 2022 (EASA AD 2022–0200) (also referred to after this as the MCAI). EASA AD 2022–0200 states that since EASA AD 2022–0063 was issued, ATR–GIE Avions de Transport published Revision 17 of the ATR 42–400/–500 TLD, which includes new or more restrictive maintenance tasks and airworthiness limitations. In the SNPRM, the FAA proposed to retain the requirements of AD 2021–09–13. The SNPRM also proposed to require revising the existing maintenance or inspection program, as applicable, to incorporate new and/or more restrictive airworthiness limitations, as specified in EASA AD 2022–0200. The FAA is issuing this AD to prevent reduced structural integrity of the airplane.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–0396.

Discussion of Final Airworthiness Directive

Comments

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

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, 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 SNPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0200 describes new or more restrictive maintenance tasks and airworthiness limitations for

airplane structures and for safe life limits of the components.

This AD also requires EASA AD 2020–0263, dated December 1, 2020, which the Director of the Federal Register approved for incorporation by reference as of June 23, 2021 (86 FR 27031, May 19, 2021).

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

Costs of Compliance

The FAA estimates that this AD affects 9 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

The FAA estimates the total cost per operator for the retained actions from AD 2021–09–13 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 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 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 2021–09–13, Amendment 39–21527 (86 FR 27031, May 19, 2021); and

■ b. Adding the following new airworthiness directive:

2023–02–08 ATR–GIE Avions de Transport Régional: Amendment 39–22315; Docket No. FAA–2022–0396; Project Identifier MCAI–2021–01050–T.

(a) Effective Date

This airworthiness directive (AD) is effective March 14, 2023.

(b) Affected ADs

This AD replaces AD 2021–09–13, Amendment 39–21527 (86 FR 27031, May 19, 2021) (AD 2021–09–13).

(c) Applicability

This AD applies to ATR–GIE Avions de Transport Régional Model ATR42–500 airplanes, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before July 29, 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 prevent reduced structural integrity of the airplane.

(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 a New Terminating Action

This paragraph restates the requirements of paragraph (j) of AD 2021–09–13, with a new terminating action. For airplanes with an original airworthiness certificate or original export certificate of airworthiness dated on or before July 7, 2020: 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 2020–0263, dated December 1, 2020 (EASA AD 2020–0263). 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 2020–0263, With No Changes

This paragraph restates the exceptions specified in paragraph (k) of AD 2021–09–13, with no changes. For airplanes with an original airworthiness certificate or original export certificate of airworthiness dated on or before July 7, 2020, the following exceptions apply:

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2020–0263 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2020–0263 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 23, 2021 (the effective date of AD 2021–09–13).

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA 2020–0263 is at the applicable ''thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2020–0263, or within 90 days after June 23, 2021 (the effective date of AD 2021–09–13), whichever occurs later.

(4) The provisions specified in paragraphs (4) and (5) of EASA AD 2020–0263 do not apply to this AD.

(5) The ''Remarks'' section of EASA AD 2020–0263 does not apply to this AD.

(i) Retained Restrictions on Alternative Actions, Intervals, and Critical Design Configuration Control Limitations (CDCCLs), With New Exception

This paragraph restates the requirements of paragraph (l) of AD 2021–09–13, with a new exception. Except as required by paragraph (j) of this AD, after the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections), intervals, and CDCCLs are allowed unless they are approved as specified in the

provisions of the ''Ref. Publications'' section of EASA AD 2020–0263.

(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 2022–0200, dated September 26, 2022 (EASA AD 2022–0200). 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 2022–0200

(1) The requirements specified in paragraph (1) and (2) of EASA AD 2022–0200 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2022–0200 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 2022–0200 is at the applicable ''limitations'' and ''associated thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2022–0200, 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 2022–0200 do not apply to this AD.

(5) The ''Remarks'' section of EASA AD 2022–0200 does not apply to this AD.

(l) New Provisions for Alternative Actions, Intervals, and CDCCLs

After the existing maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (*e.g.,* inspections), intervals, and CDCCLs are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2022–0200.

(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 ATR–GIE Avions de Transport Régional'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 Shahram Daneshmandi, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3220; email *shahram.daneshmandi@faa.gov.*

(o) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on March 14, 2023.

(i) European Union Aviation Safety Agency (EASA) AD 2022–0200, dated September 26, 2022.

(ii) [Reserved]

(4) The following service information was approved for IBR on June 23, 2021 (86 FR 27031, May 19, 2021).

(i) EASA AD 2020–0263, dated December 1, 2020.

(ii) [Reserved]

(5) For EASA ADs 2022–0200 and 2020–0263, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu.* You may find these EASA ADs on the EASA website at *ad.easa.europa.eu.*

(6) 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.

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

Issued on January 20, 2023.

Christina Underwood,

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

[FR Doc. 2023–02528 Filed 2–6–23; 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

Amendment of Class D and E Airspace; Mesquite and Dallas-Fort Worth, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class D airspace at Mesquite, TX, and the Class E airspace at Dallas-Fort Worth, TX. This action is 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, are also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, April 20, 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.

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: 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 amends the Class D airspace at Mesquite Metro Airport, Mesquite, TX, and the Class E airspace extending upward from 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.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (87 FR 75531; December 9, 2022) for Docket No. FAA–2022–1556 to amend the Class D airspace at Mesquite, TX, and the Class E airspace at Dallas-Fort Worth, TX. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

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.

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

This amendment to 14 CFR 71:

Amends the Class D airspace to within a 4.5-mile (increased from a 3.5-mile) radius of Mesquite Metro Airport, Mesquite, TX; removes the airspace extension south of the airport; removes the city associated with the airport to comply with changes to FAA Order JO 7400.2N, Procedures for Handling Airspace Matters; and replaces the outdated terms ''Notice to Airmen'' with ''Notice to Air Missions'' and ''Airport/Facility Directory'' with ''Chart Supplement'';

And amends 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; removes the Mesquite Metro: RWY 18–LOC and the associated extension from the airspace legal description; and updates 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.

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 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,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration 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 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 February 2, 2022.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2023–02540 Filed 2–6–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0977]

RIN 1625–AA00

Safety Zone; Savannah River, M/V BIGLIFT BAFFIN, Savannah, GA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of the Savannah River, within a 500-yard radius around M/V BIGLIFT BAFFIN. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the transit through the Savannah River to Georgia Port Authority Garden City Terminal Berth No. 1 while carrying large cranes, and for the offload of those cranes to the facility. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Savannah or a designated representative.

DATES: This rule is effective from 7:00 a.m. on February 9, 2023 through 11:59 p.m. on February 26, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0977 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST3 Jesse Dillon, Shoreside Compliance, Marine Safety Unit Savannah, U.S. Coast Guard; telephone 912–652–4353, *jesse.q.dillon@uscg.mil* .

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The Coast Guard lacks sufficient time to provide for a comment period and then consider those comments before issuing the rule since this rule is needed by February 9, 2023. It would be contrary to the public interest since immediate action is necessary to protect the safety of the public, and vessels transiting the waters of the Savannah River, during the planned movement and obstruction created by oversized cranes.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because the vessel is scheduled to arrive at the Port of Savannah on February 9, 2023.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Savannah (COTP) has determined that potential hazards associated with the transit and offload of gantry cranes from M/V BIGLIFT BAFFIN scheduled for February 9, 2023 through February 26, 2023, will be a safety concern for anyone within a 500-yard radius of the vessel. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the vessel is transiting the Savannah River and offloading gantry cranes.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from February, 9, 2023 through February 26, 2023. A moving and fixed temporary safety zone will be established for the vessel M/V BIGLIFT BAFFIN while it is in the Savannah River and would cover all navigable waters within 500 yards of the vessel, up to Georgia Port Authority Garden City Terminal Berth No. 1, and during offload of the cranes. The moving temporary safety zone would only be enforced while the vessel is transiting, and the fixed temporary safety zone will be enforced while it is discharging the cranes. This safety zone may last until February 26, 2023 but it will not be enforced after the cranes have been removed from the vessel. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the movement and obstruction hazard of two oversized cranes transiting the Savannah River, and when the vessel is moored to that facility. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location and scope of the safety zone. The zone is limited in size, location, and duration as it will cover all navigable waters of the Savannah River within 500 yards of the M/V/BIGLIFT BAFFIN while it is underway with cranes onboard, and while it is moored to the terminal, and discharging its cargo. The zone is limited in scope as vessel traffic may be able to safely transit around this safety zone and vessels may seek permission from the COTP to enter the zone. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the safety zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves This rule involves a safety zone within 500 yards of M/V BIGLIFT BAFFIN during transit and offload of cranes. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T07–0977 to read as follows:

§ 165.T07–0977 Safety Zone; Savannah River, M/V BIGLIFT BAFFIN, Savannah, GA.

(a) *Location.* The following is a safety zone: The moving safety zone will include all navigable waters of the Savannah River, within a 500-yard radius of the vessel M/V BIGLIFT BAFFIN while transiting the Savannah River and laden with oversized cranes. The fixed zone will include all navigable waters of the Savannah River, within a 500-yard radius of vessel M/V BIGLIFT BAFFIN while moored at Georgia Port Authority Garden City Terminal Berth No. 1 and laden with oversized cranes.

(b) *Definition.* As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Savannah (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) Persons or vessels desiring to enter, transit through, anchor in, or remain within the safety zone may contact COTP Savannah by telephone at (912) 247–0073, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the COTP Savannah or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP or a designated representative.

(3) The Coast Guard will provide notice of the regulated areas by Broadcast Notice to Mariners, Marine Safety Information Bulletins, and on-scene designated representatives.

(d) *Effective and Enforcement period.* This section is effective from February 9, 2023 through February 26, 2023. The moving zone will be enforced while the vessel is transiting with the cranes embarked, and the fixed zone will be enforced while the vessel is moored at the facility, and the cranes are onboard.

Dated: January 31, 2023.

K.A. Broyles,

Commander, U.S. Coast Guard, Captain of the Port, Savannah, GA.

[FR Doc. 2023–02561 Filed 2–6–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0067]

RIN 1625–AA00

Safety Zone; Upper Mississippi River Mile Marker 490.2–489.7 Davenport, IA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters in the Upper Mississippi River at Mile Marker (MM) 490.2 to MM 489.7. The safety zone is needed to protect personnel, vessels, and the marine environment from all potential hazards associated with electrical line work. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Upper Mississippi River (COTP) or a designated representative.

DATES: This rule is effective without actual notice from February 7, 2023 through March 6, 2023. For the purposes of enforcement, actual notice will be used from February 6, 2023 until February 7, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0067 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Richard Cherkauer, Sector Upper Mississippi River Waterways Management Division, U.S. Coast Guard; telephone 314–269–2560, email *Richard.G.Cherkauer@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of The Port Sector Upper Mississippi River
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The work for this project has already begun and the NPRM process would hinder the progress of the ongoing work and compromise public safety. We must establish this temporary safety zone immediately and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to the public interest due to potential safety hazards associated with the ongoing electrical line work.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Upper Mississippi River (COTP) has determined that potential hazards associated with electrical line work will be a safety concern for anyone operating or transiting within the Upper Mississippi River from MM 490.2 to MM 489.7. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while electrical line work is being conducted.

IV. Discussion of the Rule

This rule establishes a safety zone during an electric power line installation project over the Upper Mississippi River. The safety zone will cover all navigable waters from MM 490.2 to MM 489.7. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while electrical line work is being conducted. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard (USCG) assigned to units under the operational control of USCG Sector Upper Mississippi River. To seek

permission to enter, contact the COTP or a designated representative via VHF–FM channel 16, or through USCG Sector Upper Mississippi River at 314–269–2332. Persons and vessels permitted to enter the safety zone must comply with all lawful orders or directions issued by the COTP or designated representative. The COTP or a designated representative will inform the public of the effective period for the safety zone as well as any changes in the dates and times of enforcement, as well as reductions in the size of the safety zone as conditions improve, through Local Notice to Mariners (LNMs), Broadcast Notices to Mariners (BNMs), and/or Safety Marine Information Broadcast (SMIB), as appropriate.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on a safety zone located on the Upper Mississippi River MM 490.2 to MM 489.7 near Davenport, IA . The Safety Zone will be active only while work associated with the power line crossing is being conducted, from February 6, 2023 until March 6, 2023.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone encompassing the width of the Upper Mississippi River from MM 490.2 to MM 489.7. It is categorically excluded from further review under paragraph L60 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security Measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T08–0789 to read as follows:

§ 165.T08–0789 Safety Zone; Upper Mississippi River, Mile Markers 490.2–489.7, Davenport, IA.

(a) *Location.* The following area is a safety zone: all navigable waters within the Upper Mississippi River, Mile Markers (MM) 490.2–489.7.

(b) *Enforcement period.* This section is subject to enforcement from February 6, 2023 through March 6, 2023.

(c) *Regulations.* (1) In accordance with the general safety zone regulations in § 165.23, entry of persons or vessels into this safety zone described in paragraph (a) of this section is prohibited unless authorized by the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard (USCG) assigned to units under the operational control of USCG Sector Upper Mississippi River.

(2) To seek permission to enter, contact the COTP or a designated representative via VHF–FM channel 16, or through USCG Sector Upper Mississippi River at 314–269–2332. Persons and vessels permitted to enter the safety zone must comply with all lawful orders or directions issued by the COTP or designated representative.

(d) *Informational broadcasts.* The COTP or a designated representative will inform the public of the effective period for the safety zone as well as any changes in the dates and times of enforcement, as well as reductions in size or scope of the safety zone as ice or flood conditions improve, through Local Notice to Mariners (LNMs), Broadcast Notices to Mariners (BNMs), and/or Safety Marine Information Broadcast (SMIB) as appropriate.

Dated: February 1, 2023.

A.R. Bender,

Captain, U.S. Coast Guard, Captain of the Port Sector Upper Mississippi River.

[FR Doc. 2023–02496 Filed 2–6–23; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 111

Address Correction Notices

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is amending *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) sections 507.4.2.6 and 705.23, to update information regarding address correction requests and to remove hardcopy address correction notice options for Full-Service and Seamless Acceptance mailers.

DATES: *Effective Date:* July 9, 2023.

FOR FURTHER INFORMATION CONTACT: Starlene Blackwood at (901) 681–4475 or Garry Rodriguez at (202) 268–7281.

SUPPLEMENTARY INFORMATION: On November 9, 2022, the Postal Service published a notice of proposed rulemaking (87 FR 67615–67617) to update information regarding address correction requests and to remove hardcopy address correction notice options for Full-Service and Seamless Acceptance mailers. In response to the proposed rule, the Postal Service received two formal responses containing several comments as follows:

Comment: Incorrect address information has plagued the system for decades. ACS data even lags local information sources, which may cause a list to be updated to an old address. Publishers find the hard-copy notices preferable due to them being easier to read, issues with notice can easily be identified before updating a database. An automated process carries substantial risk that error will not be spotted.

Response: ACS and Manual address corrections are generated using the same data source. Manual notices are delayed due to the process required to print, mail, and deliver the forms. Automated download of ACS notices is an option but not required. The SingleSource ACS™ fulfillment option, available on *PostalPro* at *postalpro.usps.com,* offers customers an option to download and review a printable report prior to updating.

Comment: Publishers are wary of automatic download because some may not have the knowledge to manage this type of set-up.

Response: Automated download of ACS notices is an option but not required. The SingleSource ACS fulfillment option, available on *PostalPro* offers customers an option to download and review a printable report prior to updating.

Comment: Electronic records require electronic skills. The smaller newspapers do not have the technical staff on site and no available personnel with the skills to merge records electronically. The hard-copy notices keep them in business.

Response: ACS and Manual address corrections are generated using the same data source. Manual notices are delayed due to the process required to print, mail, and deliver the forms. Automated download of ACS notices is an option but not required. The SingleSource ACS fulfillment option, available on *PostalPro,* offers customers an option to download and review a printable report prior to updating.

Comment: The Business Customer Gateway is not intuitive. Publishers do not know they need to perform additional steps to receive the service, so they don't sign up. There is no easy manual for navigating through BCG if all the publisher wants to do is enroll in/use ACS. Also, there may be an added expense of hiring someone to complete set up, thus making the hardcopy notice easy as a traditional tool.

Response: Single Source ACS is an available option which removes the need for handling different file formats and allows customers to download a printable report. Customers can also reach out to the Mailing Shipping & Solution Center for assistance with the Business Customer Gateway by calling 1–877–672–0007 or email *MSSC@usps.gov.*

Comment: This proposal may lead to more undelivered newspapers due to not being able to find the bandwidth to learn ACS, execute regular updates and incorporate changes. Lengthening the lead time for adoption could help to avoid this possibility.

Response: The Postal Service will not implement this change until July 9, 2023 and will work closely with customers to ensure they understand the ACS requirements. Also, there is the Single Source ACS option available.

Comment: The proposal may introduce a new entry barrier for enrollment into Full-Service. Full Service adoption requires software programming time, changes in address label printing and attention to certain compliance issues. The return on this time and resource investment is extraordinarily meager.

Response: Only the full-service automation option mailers will be affected by this change beginning July 9, 2023. Non full-service automation option mailers are encouraged to migrate over to the full-service

automation option so they can take advantage of additional discounts offered.

Comment: Clarity is needed around the statement ''Participating Full-Service and Seamless Acceptance mailers receive ACS notices at no charge. As a result, notices provided to mailers in this format has far exceeded the volume of returned mail and PS Forms 3547 and 3579 requested and generated from undeliverable Full-Service and Seamless Acceptance mail.'' What is the problem that the USPS is trying to solve with the proposed changes?

Response: This initiative reduces the cost of printing, processing, and mailing of a separate hardcopy address notice, PS Form 3547 and 3579.

Comment: Seamless Acceptance must also be Full Service, so the reference to Seamless Acceptance mailers in this context appears unnecessary and confusing.

Response: Full Service and Seamless Acceptance are commonly used synonymously, however, there is a distinction. A mailer can submit a full-service mailing and not be considered a Seamless mailer. Mailers participating in Seamless Acceptance are identified by CRID and assessed differently than a Full-Service mailer.

Comment: Volume analysis needs to be conducted to determine the volume of Full-Service mail that would be impacted by this rule change because the data points provided point to a significant percent of the volume.

Response: The Postal Service performed an analysis which was considered in the decision to move forward with this effort. Of the 33.5M forms produced in FY22, nearly 60% of those were produced by full-service automation option mailers.

Comment: Clarification is needed for ''Return Service Requested'' ASE. Is the USPS proposing to eliminate these notices?

Response: The Postal Service is not proposing to eliminate the ''Return Service Requested'' ancillary service endorsement. Return Service Requested is an on-piece address correction notice and does not produce a separate notice PS Form 3547.

Comment: Compliance can be burdensome and costly for small business customers. MSPs may be responsible for printing the ACS STIDs in IMbs for their customers, we do not provide ACS services to the customer. A small business may only mail a small volume of pieces per day and only have 10 ACS notices per month. For these low volume mailers, the cost of the software, resources and systems need to utilize electronic/automated ACS notices can be significant. Even if these low volume mailers could afford to invest the necessary money and resources, who would provide the education and customer support to move them into the electronic environment?

Response: The SingleSource ACS option is available, which removes the need for handling different file formats and allows customers to download a printable report. There is no cost to sign up for SingleSource ACS.

Comment: While the goal of reducing manual address correction notices is supported, a more collaborative effort is needed to identify reasons that mailers may continue to elect to receive manual correction notices. It is recommended the Postal Service defer implementation of the proposed changes until such time as an MTAC group can be formed and work through potential alternatives to help reduce the volume of manual ACS notices.

Response: The Postal Service has already communicated this effort through multiple MTAC User Groups for input. This is not an immediate action, it is schedule to begin July 9, 2023.

The Postal Service is removing the option to request PS Forms 3547, *Notice to Mailer of Correction in Address,* and PS Form 3579, *Notice of Undeliverable Periodical,* for Full-Service and Seamless Acceptance mailers.

Full Service and Seamless Acceptance mailers and publishers that desire address correction information from undeliverable as addressed (UAA) mail will be required to receive address correction notices electronically via ACS. Those mailers that apply the ancillary service endorsement ''Address Service Requested'' or ''Change Service Requested'' to their mail, and Periodical publishers will receive ACS notices via the Data Distribution Dashboard from the Business Customer Gateway or by enrolling in the Electronic Product Fulfillment (EPF) secure website at *https://epf.usps.gov.* When appropriate, the electronic or automated address correction fees will be charged for each ACS notice provided.

The Postal Service is implementing this change effective July 9, 2023. However, mailers that currently request manual address corrections via PS Form 3547 or PS Form 3579 may begin to request ACS immediately.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

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

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

■ 2. Revise the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

500 Additional Mailing Services

* * * * *

507 Mailer Services

* * * * *

4.0 Address Correction Services

* * * * *

4.2 Address Change Service (ACS)

* * * * *

4.2.6 Additional Standards—When Using Intelligent Mail Barcodes

[Revise the introductory text of 4.2.6 to read as follows:]

Mailers can access OneCode ACS using an Intelligent Mail barcode, which contains a valid Service Type Identifier indicating the ancillary service requested; a numeric Mailer ID; and the Serial Number, a unique numeric mailpiece identifier (Keyline equivalent). This option is available for letters and flat size pieces mailed as First-Class Mail, USPS Marketing Mail, and Periodicals. Address Service, Change Service and Return Service Ancillary Services are available for letters and flat-sized mail pieces mailed as First-Class Mail, USPS Marketing Mail, and Bound Printed Matter (BPM), by choosing the appropriate ACS Service Type Identifier in the Intelligent Mail barcode. USPS Marketing Mail and Bound Printed Matter pieces with ACS using an Intelligent Mail barcode require the use of a printed on-piece endorsement. ACS mailers are encouraged to use the ''Electronic Service Requested'' text endorsement.

Other printed endorsements are not required to request ancillary services in conjunction with an Intelligent Mail barcode used on First-Class Mail or Periodicals mailpieces, and their use may produce unintended results. Full-Service and Seamless Acceptance mailers that desire separate address corrections using Address Service and Change Service ancillary services must request ACS and will receive the ACS notices through Full Service. See 705.23.5.2 for additional standards. For other mailers, in order to receive requested ACS information, mailers must notify the NCSC, ACS Department in Memphis, TN, in writing, seven days prior to mailing to establish a method for ACS notice fulfillment and to arrange for payment of electronic or automated address correction fees. Mailpieces must meet the following specifications:

* * * * *

700 Special Standards

* * * * *

705 Advanced Preparation and Special Postage Payment Systems

* * * * *

23.0 Full-Service Automation Option

* * * * *

23.5 Additional Standards

* * * * *

23.5.2 Address Correction Notices

[Revise the text of 23.5.2 to read as follows:]

Mailers presenting mailpieces (except for those noted below) that qualify for the full-service Intelligent Mail option will receive automated address correction notices electronically when the pieces are encoded with Intelligent Mail barcodes with ''Address Service Requested'' or ''Change Service Requested'' under standards for OneCode ACS and under the following conditions:

a. Mailpieces must include the appropriate ACS service type ID in the Intelligent Mail barcode to match the ancillary service requested. See 507.1.5 for mail disposition and address correction combinations by class of mail.

b. Complimentary ACS ancillary service address correction notices for mailpieces in full-service mailings are available for:

1. First-Class Mail letters and flats, provided at no charge (printed endorsement not required for letters).

2. Periodicals letters and flats, provided at no charge (printed endorsement not required).

3. USPS Marketing Mail letters and flats or BPM flats, provided at no charge. USPS Marketing Mail and BPM pieces must include a printed on-piece endorsement in addition to encoding the ACS ancillary service request into the Intelligent Mail barcode. See 507.4.2 for additional standards.

c. Mailers must use the ACS address correction information provided by USPS to update their address records to receive notices without paying additional fees. Beginning July 9, 2023, address corrections will only be provided electronically in the Business Customer Gateway under Mailing Reports utilizing the Data Distribution and Informed Visibility Dashboard

d. A new Service Type Identifier (STID) Table will be published on PostalPro removing all STID references for manual corrections when mailers present qualifying Full-Service mail.

* * * * *

Tram T. Pham,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2023–02309 Filed 2–6–23; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2021–0584; FRL–9939–02–R9]

Air Quality Implementation Plan; California; Tuolumne County Air Pollution Control District; Stationary Source Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing a revision to the Tuolumne County Air Pollution Control District's (TCAPCD or ''District'') portion of the California State Implementation Plan (SIP). This revision governs the District's issuance of permits for stationary sources, and focuses on the preconstruction review and permitting of major sources and major modifications under part D of title I of the Clean Air Act (CAA or ''the Act'').

DATES: This rule is effective March 9, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket No. EPA–R09–OAR–2021–0584. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Amber Batchelder, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105; by phone: (415) 947–4174, or by email to *batchelder.amber@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, the terms ''we,'' ''us,'' and ''our'' refer to the EPA.

Table of Contents

I. Proposed Action

On July 14, 2022, [1] the EPA proposed to approve the rule listed in Table 1 into the California SIP.

TABLE 1—SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted	Submitted
TCAPCD	429	Federal New Source Review	07/06/21	08/03/21

[1] 87 FR 42132.

For areas designated nonattainment for one or more National Ambient Air Quality Standards (NAAQS), the applicable SIP must include preconstruction review and permitting requirements for new or modified major stationary sources of such nonattainment pollutant(s) under part D of title I of the Act, commonly referred to as Nonattainment New Source Review (NNSR). The rule listed in Table 1 contains the District's NNSR permit program applicable to new and modified major sources located in Tuolumne County. Our proposed action contains more information on the rule and our evaluation.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, no comments were submitted on our proposal.

III. EPA Action

No comments were submitted on our proposal. We continue to find that Rule 429 satisfies the relevant requirements for a CAA NNSR program for ozone, as well as the associated visibility requirements for sources subject to review under such a program in accordance with 40 CFR 51.307. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is approving the submitted rule. This action incorporates the submitted rule into the California SIP. In conjunction with the EPA's SIP approval of the District's visibility program for sources subject to the NNSR program, this action also revises the scope of the visibility Federal Implementation Plan (FIP) at 40 CFR 52.28 in California so that this FIP no longer applies to sources located in Tuolumne County that are subject to the District's visibility program.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is incorporating by reference Tuolumne County Air Pollution Control District Rule 429 as described in Section I of this preamble. The EPA has made, and will continue to make, these materials available through *https://www.regulations.gov* and in hard copy at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

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

The state did not evaluate environmental justice considerations as part of its SIP submittal. There is no information in the record inconsistent with the stated goals of Executive Order 12898 (59 FR 7629, February 16, 1994) of achieving environmental justice for people of color, low-income populations, and indigenous peoples.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 10, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: January 31, 2023.

Martha Guzman Aceves,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(591) to read as follows:

§ 52.220 Identification of plan-in part.

* * * * *

(c) * * *

(591) The following new regulation was submitted on August 3, 2021 by the Governor's designee.

(i) *Incorporation by reference.* (A) Tuolumne County Air Pollution Control District.

(*1*) Rule 429, Federal New Source Review, adopted on July 6, 2021.

(*2*) [Reserved]

(B) [Reserved]

(ii) [Reserved]

■ 3. Section 52.281 is amended by adding paragraph (d)(8) to read as follows:

§ 52.281 Visibility protection.

* * * * *

(d) * * *

(8) Tuolumne County Air Pollution Control District.

* * * * *

[FR Doc. 2023–02410 Filed 2–6–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2022–0609; FRL–10025–03–R9]

Air Plan Approval; Arizona; Maricopa County; Reasonably Available Control Technology—Combustion Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the Maricopa County Air Quality Department's (MCAQD or ''County'') portion of the Arizona State Implementation Plan (SIP). This revision concerns emissions of oxides of nitrogen (NO_X) and particulate matter (PM) from combustion equipment and internal combustion engines. We are approving local rules that regulate these emission sources under the Clean Air Act (CAA or ''Act'') and making the determination that the County's control measures implement Reasonably Available Control Technology (RACT) for major sources of NO_X under the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS).

DATES: These rules are effective on March 9, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2022–0609. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: La Kenya Evans-Hopper, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3245 or by email at *evanshopper.lakenya@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' refer to the EPA.

Table of Contents

I. Proposed Action and Interim Final Determination

On August 4, 2022 (87 FR 47666), the EPA proposed to approve the following two rules submitted by the Arizona Department of Environmental Quality (ADEQ) into the Arizona SIP.

Local agency	Rule No.	Rule title	Revised	Submitted
MCAQD	323	Fuel Burning Equipment from Industrial/Commercial/Institutional (ICI) Sources.	June 23, 2021	June 30, 2021.
MCAQD	324	Stationary Reciprocating Internal Combustion Engines (RICE)	June 23, 2021	June 30, 2021.

We proposed to approve these rules because we determined that they comply with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation. On the same day, we also made an interim final determination (87 FR 47632) that the submittal from the ADEQ corrected SIP deficiencies from a previous submittal, allowing us to defer the imposition of sanctions resulting from our previous disapproval action concerning the County's RACT demonstration for major sources of NO_X.[1]

[1] 86 FR 971 (February 8, 2021).

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received no comments.

III. EPA Action

No comments were submitted during the public comment period. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving these rules into the Arizona SIP. The June 30, 2021 versions of Rule 323 and Rule 324 will replace the November 2, 2016 versions of these rules in the SIP. On December 30, 2022 (87 FR 80462) we finalized approval for MCAQD Rule 322 to replace the SIP-approved version of that rule, which, together with our approval of Rules 323 and 324, would address our previous disapproval of the major sources of NO_X RACT element. Therefore, we find that all three rules regulating major sources of NO_X in Maricopa County meet the applicable CAA requirements and include requirements that are consistent with RACT for NO_X sources. Based on this finding, the EPA concludes that the submitted rules satisfy CAA section 182 RACT requirements for the 2008 8-hour ozone NAAQS for major sources of NO_X.

As a result of this action, the sanctions that were deferred in our interim final determination are now rescinded, and a federal implementation plan to resolve the deficiency is no longer required under section 110(c) of the Act. We will also delete our previous conditional approval codified at 40 CFR 52.119 (Rules and regulations) since subsequent versions of Rules 323 and 324 are being approved.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of Maricopa County Air Quality Department, Rule 323, Fuel Burning Equipment from Industrial/Commercial/Institutional (ICI) Sources, revised on June 23, 2021, which regulates NO_X, CO, and PM from fuel burning combustion units at industrial and/or commercial and/or institutional (ICI) sources, and Rule 324, Stationary Reciprocating Internal Combustion Engines (RICE), revised on June 23, 2021, which regulates carbon monoxide (CO), NO_X, sulfur oxides (SO_X), VOCs, and PM rom stationary reciprocating internal combustion engines. Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[2] The EPA has made, and will continue to make, these documents available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

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

The State did not evaluate environmental justice considerations as part of its SIP submittal. There is no information in the record inconsistent with the stated goals of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and indigenous peoples (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 10, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Oxides of Nitrogen, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: January 31, 2023.

Martha Guzman Aceves,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart D—Arizona

§ 52.119 [Amended]

■ 2. In § 52.119, remove and reserve paragraph (c)(2).

■ 3. In § 52.120, amend Table 4 to paragraph (c) by revising the entries for ''Rule 323'' and ''Rule 324'', to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

[2] 62 FR 27968 (May 22, 1997).

TABLE 4 TO PARAGRAPH (c)—EPA-APPROVED MARICOPA COUNTY AIR POLLUTION CONTROL REGULATIONS

County citation	Title/subject	State effective date	EPA Approval Date	Additional explanation
*	* *	*	* *	*
Rule 323	Fuel Burning Equipment from Industrial/Commercial/Institutional (ICI) Sources.	June 23, 2021	[INSERT **Federal Register** CITATION], February 7, 2023.	Submitted on June 30, 2021, under an attached letter dated June 24, 2021.
Rule 324	Stationary Reciprocating Internal Combustion Engines (RICE).	June 23, 2021	[INSERT **Federal Register** CITATION], February 7, 2023.	Submitted on June 30, 2021, under an attached letter dated June 24, 2021.
*	* *	*	* *	*

* * * * *

■ 4. In § 52.124 revise paragraph (b)(2)(i) to read as follows.

§ 52.124 Part D disapproval.

* * * * *

(b) * * *

(1) * * *

(2) * * *

(i) RACT determinations for CTG source categories for Aerospace Coating and Industrial Adhesives (''National Emission Standards for Hazardous Air Pollutants for Source Categories: Aerospace Manufacturing and Rework'' (59 FR 29216), ''Control of Volatile Organic Compound Emissions from Coating Operations at Aerospace Manufacturing and Rework Operations'' (EPA–453/R–97–004), and ''Control Techniques Guidelines for Miscellaneous Industrial Adhesives'' (EPA–453/R–08–005)), in the submittal titled ''Analysis of Reasonably Available Control Technology for the 2008 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) State Implementation Plan (RACT SIP),'' dated December 5, 2016, as adopted on May 24, 2017 and submitted on June 22, 2017.

* * * * *

[FR Doc. 2023–02477 Filed 2–6–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2021–0802; FRL–9401–02–R6]

Air Plan Approval; Texas; Control of Air Pollution From Visible Emissions and Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving the revisions to the Texas State Implementation Plan (SIP) submitted by the State of Texas to EPA on October 22, 2021. The revisions pertain to particulate matter and outdoor burning regulations. This action allows volunteer firefighters to fulfill supervision requirements for the burning of certain waste types generated from specific residential properties.

DATES: This rule is effective on March 9, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2021–0802. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet. Publicly available docket materials are available electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Randy Pitre, EPA Region 6 Office, Infrastructure and Ozone Section, 214–665–7299, *pitre.randy@epa.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID–19. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means the EPA.

I. Background

The background for this action is discussed in detail in our November 15, 2022, proposal (87 FR 68413). In that document, we proposed to approve revisions to the Texas State Implementation Plan (SIP) submitted by the State of Texas to EPA on October 22, 2021. The revisions allow volunteer firefighters to fulfill supervision requirements for the burning of trees, grass, leaves, branch trimmings, or other plant growth generated from specific residential properties at designated sites for consolidated burning of waste, located outside of a municipality, and within a county with a population of less than 50,000 people. We did not receive any comments regarding our proposal.

II. Final Action

The EPA is approving revisions to the Texas SIP submitted by the State of Texas to EPA on October 22, 2021, that pertain to particulate matter and outdoor burning regulations. This rulemaking action is being taken under Section 110 of the CAA. Specifically, we are approving the revision to 30 TAC 111.209(5).

III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference the revisions to the Texas regulations as described in Section II of this preamble, Final Action. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be

incorporated in the next update to the SIP compilation.

IV. Statutory and Executive Order Reviews

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

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 10, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

Dated: January 30, 2023.

Earthea Nance,

Regional Administrator, Region 6.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart SS—Texas

■ 2. In § 52.2270(c), the table titled ''EPA Approved Regulations in the Texas SIP'' is amended by revising the entry for Section 111.209.

The revision reads as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
*	*	*	*	*
Chapter 111 (Reg 1)—Control of Air Pollution From Visible Emissions and Particulate Matter				
*	*	*	*	*
Subchapter B: Outdoor Burning				
*	*	*	*	*
Section 111.209	Exception for Disposal Fires.	10/22/2021	2/7/2023, [Insert **Federal Register** citation].	
*	*	*	*	*

* * * * *

[FR Doc. 2023–02349 Filed 2–6–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2022–0436; FRL–10401–02–R4]

Air Plan Approval; Georgia; Atlanta Area Limited Maintenance Plan for the 1997 8-Hour Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing approval of a state implementation plan (SIP) revision submitted by the State of Georgia, through the Georgia Environmental Protection Division (EPD), on December 17, 2021. The SIP revision includes the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS) Limited Maintenance Plan (LMP) for the Atlanta, Georgia Area (hereinafter referred to as the Atlanta Area or Area). The Atlanta Area consists of 20 counties in Georgia: Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding and Walton Counties. EPA is approving Georgia's LMP for the Atlanta Area because it provides for maintenance of the 1997 8-hour ozone NAAQS within the Area through the end of the second 10-year portion of the maintenance period. The effect of this action makes certain commitments related to maintenance of the 1997 8-hour ozone NAAQS in the Area federally enforceable as part of the Georgia SIP.

DATES: This rule is effective March 9, 2023.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2022–0436. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sarah LaRocca, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8994. Ms. LaRocca can also be reached via electronic mail at *larocca.sarah@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On April 30, 2004, the Atlanta Area was designated as nonattainment for the 1997 8-hour ozone NAAQS, effective June 15, 2004. *See* 69 FR 23858 (April 30, 2004). In 2013, the Atlanta Area was redesignated to attainment for the 1997 8-hour ozone NAAQS with EPA's approval of the first maintenance plan demonstrating attainment through the initial 10-year maintenance period. *See* 78 FR 72040 (December 2, 2013).

In a notice of proposed rulemaking (NPRM), published on November 28, 2022 (87 FR 72946), EPA proposed to approve the Atlanta Area LMP because the State made a showing, consistent with EPA's prior LMP guidance, that the Area's ozone concentrations are well below the 1997 8-hour ozone NAAQS, have been historically stable, and that it has met all other maintenance plan requirements. The Atlanta Area LMP is designed to maintain the 1997 8-hour ozone NAAQS within the Atlanta Area through the end of the second 10-year portion of the maintenance period beyond redesignation. As a general matter, the Atlanta Area LMP relies on the same control measures and contingency provisions to maintain the 1997 8-hour ozone NAAQS during the second 10-year portion of the maintenance period as the maintenance plan submitted by Georgia EPD for the first 10-year period. The details of Georgia's submission, as well as EPA's rationale for approval, are explained further in the November 28, 2022, NPRM.

EPA is finalizing approval of Georgia's December 17, 2021, LMP because it meets all applicable requirements under CAA sections 110 and 175A. Comments on the November 28, 2022, NPRM were due on or before December 28, 2022. EPA received comments on the November 28, 2022, NPRM, which are discussed below.

II. Response to Comments

EPA received one set of comments in response to the November 28, 2022, NRPM. This set of comments, submitted by a member of the general public, consists of several statements associated with website hyperlinks. It is unclear how these comments are relevant to the proposal, how the hyperlinked materials support the comments, and how, or whether, the commenter would like EPA to change the proposal. Furthermore, as noted in the November 28, 2022, NRPM, EPA generally will not consider comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file-sharing system) such as the hyperlinked materials. For these reasons, the comments require no further response, and we are finalizing the action as proposed.

III. Final Action

In accordance with sections 110(k) and 175A of the CAA, and for the reasons set forth in the November 28, 2022, NPRM, EPA is finalizing the Atlanta Area LMP for the 1997 8-hour ozone NAAQS, as submitted by Georgia EPA on December 17, 2021. EPA is finalizing the approval of the Atlanta Area LMP because it includes an acceptable update of various elements of the 1997 8-hour ozone NAAQS maintenance plan approved by EPA for the first 10-year period (including emissions inventory, assurance of adequate monitoring and verification of continued attainment, and contingency provisions) and retains the relevant provisions of the SIP.

EPA also finds that the Atlanta Area qualifies for the LMP option and that the Atlanta Area LMP is sufficient to provide for maintenance of the 1997 8-hour ozone NAAQS in the Area over the second 10-year maintenance period, ending on January 2, 2034.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely approves state law as meeting Federal

requirements and do not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

This SIP revision is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 10, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

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

Dated: January 31, 2023.

Daniel Blackman,

Regional Administrator, Region 4.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart L—Georgia

■ 2. In § 52.570(e), amend the table ''EPA-Approved Georgia Non-Regulatory Provisions'' by adding an entry for ''1997 8-hour Ozone Maintenance Plan for the Atlanta Area'' at the end of the table to read as follows:

§ 52.570 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED GEORGIA NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Explanation
* *	* *	*	*	*
1997 8-hour Ozone 2nd Maintenance Plan (Limited Maintenance Plan) for the Atlanta Area.	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding, and Walton Counties.	12/17/2021	2/7/2023, [Insert **Federal Register** citation].	

[FR Doc. 2023–02399 Filed 2–6–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2022–0880; FRL–10388–02–R7]

Air Plan Approval; MO; Marginal Nonattainment Plan for the St. Louis Area for the 2015 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a State Implementation Plan (SIP) revision submitted by the Missouri Department of Natural Resources (MoDNR) on September 8, 2021, and supplemented on April 8, 2022, as meeting the Marginal nonattainment area requirements for the 2015 8-hour ozone National Ambient Air Quality Standard (NAAQS or standard) for the Missouri portion of the St. Louis, MO–IL nonattainment area (''St. Louis area'' or ''area''). The EPA is taking this action pursuant to the Clean Air Act (CAA or Act).

DATES: This final rule is effective on March 9, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2022–0880. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *www.regulations.gov* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Ashley Keas, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7629; email address: *keas.ashley@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Table of Contents

I. What is being addressed in this document?

On December 6, 2022, EPA proposed to approve a SIP revision submitted by the MoDNR on September 8, 2021, and supplemented on April 8, 2022, as meeting the Marginal nonattainment area requirements of CAA sections 172(c) and 182(a) for the 2015 8-hour ozone NAAQS for the Missouri portion of the St. Louis, MO–IL nonattainment area (87 FR 74573). The background and supporting information for our proposed approval are stated in the proposed action (87 FR 74573, December 6, 2022) and are not restated here. The public comment period for our proposed approval ended on January 6, 2022. During the public comment period, EPA received no comments.

II. Have the requirements for approval of a SIP revision been met?

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on the September 8, 2021, SIP revision from April 26, 2021, to June 3, 2021, and held a public hearing on May 27, 2021. During the public comment period, the State received three comments from the EPA. The State responds to the comments in its submittal and made changes to the plan as a result of the comments. The State provided public notice on the April 8, 2022, SIP revision from December 27, 2021, to February 3, 2022, and held a public hearing on January 27, 2022. During the public comment period, the State received comments from various entities. The State addressed the comments in its submittal. Comments received on the April 8, 2022, submittal were not related to the updated 2017 nonattainment base year emissions inventory. In addition, as explained in the proposed rule, the revision meets the substantive SIP requirements of the CAA and implementing regulations.

III. What action is the EPA taking?

The EPA is taking final action to approve a SIP revision submitted by the MoDNR on September 8, 2021, and supplemented on April 8, 2022, as meeting the Marginal nonattainment area requirements of CAA section 182(a) for the 2015 8-hour ozone NAAQS for the Missouri portion of the St. Louis area. The EPA published the associated proposed rule on December 6, 2022 and received no comments during the public comment period (87 FR 74573).

IV. Environmental Justice Considerations

While EPA did not perform an area-specific environmental justice analysis for purposes of this action, due to the nature of the action being taken here, *i.e.* to merely approve emissions inventories and certifications regarding Missouri's fully approved permitting program as meeting the relevant plan requirements for Marginal nonattainment areas, as explained in the proposed rule, this action is expected to have no impact on air quality. For these reasons, this action is not expected to have a disproportionately high or adverse human health or environmental effects on a particular group of people.

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and

• This action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The basis for this determination is contained in section VI of this action, ''Environmental Justice Considerations.''

• In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

• This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

• Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 10, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements(see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Volatile organic compounds.

Dated: January 30, 2023.

Meghan A. McCollister,

Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart AA—Missouri

■ 2. In § 52.1320, the table in paragraph (e) is amended by adding the entry ''(85)'' to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED MISSOURI NONREGULATORY SIP PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
*	*	*	*	*
(85) Marginal Plan for the St. Louis 2015 8-Hour Ozone Nonattainment Area.	St. Louis Area: Missouri counties of Jefferson, St. Charles, and St. Louis along with the City of St. Louis and Boles Township in Franklin County.	9/8/2021, 4/8/2022	2/7/2023, [insert **Federal Register** citation].	This action approves the Marginal nonattainment area plan for the St. Louis Area for the 2015 8-hour Ozone NAAQS [EPA–R07–OAR–2022–0880; FRL–10388–02–R7].

[FR Doc. 2023–02310 Filed 2–6–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2022–0201; FRL–10437–02–R4]

Air Plan Approval; Tennessee; Revisions to Control of Sulfur Dioxide Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing the approval of a State Implementation Plan (SIP) revision submitted by the State of Tennessee through the Tennessee Department of Environment and Conservation (TDEC), through a letter date June 1, 2021. The SIP submittal revises SIP requirements regarding the installation, maintenance, and termination of ambient air sulfur dioxide (SO_2) monitors near large industrial SO_2 emitting sources in the State. EPA is approving the adoption of the changes to the Tennessee Air Pollution Control Regulations (TAPCR) related to the control of SO_2 emissions into the SIP. EPA's analysis indicates that this SIP revision would not interfere with attainment or maintenance of any national ambient air quality standards (NAAQS or standards) or any other Clean Air Act (CAA or Act) requirements.

DATES: This rule is effective March 9, 2023.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2022–0201. All documents in the docket are listed on the *regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Josue Ortiz, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth

Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8085. Mr. Ortiz can also be reached via electronic mail at *ortizborrero.josue@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Chapter 1200–3–14 of TAPCR regulates SO_2 emissions within the State of Tennessee. Under the General Provisions of this chapter, found in TAPCR 1200–03–14-.01(6), the State requires every owner or operator of a certain large fuel burning installations and process emission sources to: (1) demonstrate to the satisfaction of the Technical Secretary that their SO_2 emissions will not cause interference with attainment and maintenance of any air quality standard, and (2) install and maintain air quality sensors to monitor attainment and maintenance of ambient air quality standards in the areas influenced by their SO_2 emissions. The rule also allows owners or operators to petition the Technical Secretary to terminate ambient monitoring previously commenced provided certain conditions are met.

The June 1, 2021, SIP revision includes changes to Tennessee's ambient SO_2 monitoring requirements for affected emission sources, including adding a provision to require the use of permitted allowable SO_2 emissions for the demonstration that subject sources are required to make to show that their SO_2 emissions will not cause interference with attainment and maintenance of any air quality standard, the removal of a less than 20,000 tons per year threshold to qualify for the termination of monitors, the addition of a data completeness requirement for the two years of ambient data collected prior to termination of monitoring, and the addition of a monitoring exemption for any fuel burning installation or process emission source located in an area in which the Technical Secretary operates one or more ambient SO_2 air quality monitors in the area under the influence of the source's emissions. Tennessee's SIP submittal also provides a CAA section 110*(l)* non-interference demonstration to show that the changes to paragraph 1200–03–14-.01(6) will not interfere with any applicable requirement concerning attainment of any NAAQS and reasonable further progress, or any other applicable CAA requirement. Lastly, the SIP includes clarifying administrative changes to the regulatory language at paragraph 1200–03–14–.01(6).

Through a notice of proposed rulemaking (NPRM), published on December 5, 2022 (87 FR 74356), EPA proposed to approve the June 1, 2021, changes to Tennessee's Section 1200–03–14-.01. The details of Tennessee's submission, as well as EPA's rationale for approving the changes, are described in more detail in the December 5, 2022, NPRM. Comments on the December 5, 2022, NPRM were due on or before January 4, 2023. No comments were received on the December 5, 2022, NPRM, adverse or otherwise.

II. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, and as discussed in Section I of the preamble, EPA is finalizing the incorporation by reference of TAPCR 1200–03–14-.01, *General Provisions,* state effective on May 31, 2021, into the Tennessee SIP. This regulation includes the changes described in Section I, above. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

III. Final Action

EPA is finalizing the approval of Tennessee's June 1, 2021, SIP submission revising paragraph 1200–03–14-.01(6). Specifically, the SIP revision updates Tennessee's regulations related to SO_2 criteria for applicable sources to install, maintain and terminate SO_2 ambient air monitors near large SO_2 emitting industrial sources. Tennessee's June 1, 2021, submittal changes SO_2 monitoring requirements for process emission sources emitting more than 1,000 tons of SO_2 per year and fuel burning installations having a total rated capacity greater than 1,000 MMBtu/hr, including provisions to allow the owner or operator of these SO_2 sources to petition to terminate ambient air quality monitoring. The SIP submittal also included a CAA section 110(*l*) non-interference demonstration showing that the changes will not interfere with attainment or maintenance of the NAAQS. EPA is approving these changes because they are consistent with the CAA.

IV. Statutory and Executive Order Reviews

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

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

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has

[1] *See* 62 FR 27968 (May 22, 1997).

jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 10, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Sulfur dioxide, Reporting and recordkeeping requirements.

Dated: January 31, 2023.

Daniel Blackman,

Regional Administrator, Region 4.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart RR—Tennessee

■ 2. In § 52.2220(c), amend Table 1 by revising the entry for ''Section 1200–3–14-.01'' to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

TABLE 1—EPA APPROVED TENNESSEE REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
Section 1200–3–14–.01	General Provisions	5/31/2021	2/7/2023, ... [Insert citation of publication].	
*	*	*	*	*

* * * * *

[FR Doc. 2023–02418 Filed 2–6–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2022–0202; FRL–10511–02–R4]

Air Plan Approval; Georgia; Murray County Area Limited Maintenance Plan for the 1997 8-hour Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing approval of a state implementation plan (SIP) revision submitted by the State of Georgia, through the Georgia Environmental Protection Division (EPD), on October 20, 2021. The SIP revision includes the 1997 8-hour ozone national ambient air quality standards (NAAQS) Limited Maintenance Plan (LMP) for the portion of Murray County, Georgia, previously designated nonattainment for the 1997 8-hour ozone NAAQS (hereinafter referred to as the Murray County 1997 8-hour NAAQS Area or Murray County Area or Area). EPA is finalizing approval because the Murray County Area LMP provides for the maintenance of the 1997 8-hour ozone NAAQS within the Murray County Area through the end of the second 10-year portion of the maintenance period. This action makes certain commitments related to maintenance of the 1997 8-hour ozone NAAQS in the Murray County Area federally enforceable as part of the Georgia SIP.

DATES: This rule is effective March 9, 2023.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2022–0202. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that, if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tiereny Bell, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9088. Ms. Bell can also be reached via electronic mail at *bell.tiereny@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Clean Air Act (CAA or Act), EPA is approving the Murray County Area LMP for the 1997 8-hour ozone NAAQS, adopted by Georgia EPD on October 12, 2021, and submitted by Georgia EPD as a revision to the Georgia SIP on October 20, 2021. On 30, 2004, the Murray County Area was designated as nonattainment for the 1997 8-hour ozone NAAQS, effective June 15, 2004.[1] *See* 69 FR 23858 (April 30, 2004). Subsequently, in 2007 the Area was redesignated to attainment for the 1997 8-hour ozone NAAQS with EPA's approval of the first 10-year maintenance plan, which was designed to keep the Area in attainment through 2017. *See* 72 FR 58538 (October 16, 2007). The Murray County LMP is designed to maintain the 1997 8-hour ozone NAAQS within the Murray County Area through the end of the second 10-year portion of the maintenance period beyond redesignation.

EPA is finalizing approval of the plan because it meets all applicable requirements under CAA sections 110 and 175A. As a general matter, the Murray County Area LMP relies on the same control measures and contingency provisions to maintain the 1997 8-hour ozone NAAQS during the second 10-year portion of the maintenance period as the maintenance plan submitted by Georgia EPD for the first 10-year period.

In a notice of proposed rulemaking (NPRM), published on December 23, 2022 (87 FR 78902), EPA proposed to approve the Murray County Area LMP because the State made a showing, consistent with EPA's prior LMP guidance, that the Murray County Area's ozone concentrations are well below the 1997 8-hour ozone NAAQS and have been historically stable and that the Area has met all other maintenance plan requirements. The details of Georgia's submission, as well as EPA's rationale, are explained further in the December 23, 2022, NPRM. Comments on the December 23, 2022, NPRM were due on or before January 23, 2023. No comments were received on the December 23, 2022, NPRM, adverse or otherwise.

[1] The Murray County 1997 8-hour NAAQS Area is located entirely within the Chattahoochee National Forest area of Murray County, Georgia. The Area consists of all mountain peaks within the Chattahoochee National Forest with an elevation greater than or equal to 2,400 feet and that are enclosed by contour lines that close on themselves.

II. Final Action

In accordance with sections 110(k) and 175A of the CAA, and for the reasons set forth in the December 23, 2022, NPRM, EPA is finalizing the Murray County Area LMP for the 1997 8-hour ozone NAAQS, as submitted by Georgia EPA on October 20, 2021. EPA is finalizing approval of the Murray County Area LMP because it includes an acceptable update of various elements of the 1997 8-hour ozone NAAQS Maintenance Plan approved by EPA for the first 10-year period (including emissions inventory, assurance of adequate monitoring and verification of continued attainment, and contingency provisions), and retains the relevant provisions of the SIP. EPA also finds that the Murray County Area qualifies for the LMP option and that the Area's LMP adequately demonstrates maintenance of the 1997 8-hour ozone NAAQS through documentation of monitoring data showing maximum 1997 8-hour ozone levels well below the NAAQS and continuation of existing control measures. EPA believes that the Area's 1997 8-Hour Ozone LMP is sufficient to provide for maintenance of the 1997 8-hour ozone NAAQS in the Murray County Area over the second 10-year maintenance period, through 2027, and thereby satisfies the requirements for such a plan under CAA section 175A(b).

III. Statutory and Executive Order Reviews

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

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

This SIP revision is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing these actions and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 10, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the

purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

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

Dated: January 31, 2023.

Daniel Blackman,

Regional Administrator, Region 4.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart L—Georgia

■ 2. In § 52.570(e), amend the table by adding an entry for ''1997 8-hour Ozone 2nd Maintenance Plan (Limited Maintenance Plan) for the Murray County Area'' at the end of the table to read as follows:

§ 52.570 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED GEORGIA NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or non-attainment area	State submittal date/ effective date	EPA approval date	Explanation
*	*	*	*	*
1997 8-hour Ozone 2nd Maintenance Plan (Limited Maintenance Plan) for the Murray County Area.	Murray County Area	10/20/2021	2/7/2023, [Insert citation of publication].	

[FR Doc. 2023–02416 Filed 2–6–23; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 88, No. 25
Tuesday, February 7, 2023

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.

SECURITIES AND EXCHANGE COMMISSION

5 CFR Part 4401

[Release No. 34–96768; File No. S7–02–23]

RIN 3209–AA15

Supplemental Standards of Ethical Conduct for Members and Employees of the Securities and Exchange Commission

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''SEC'' or ''Commission''), with the concurrence of the Office of Government Ethics (''OGE''), is jointly issuing with OGE this proposed rule for Commission members and employees. This proposed rule would amend the existing Supplemental Standards of Ethical Conduct for Members and Employees of the Securities and Exchange Commission (''Supplemental Standards'') jointly issued by SEC and OGE, would supplement the Standards of Ethical Conduct for Employees of the Executive Branch (OGE Standards) issued by OGE, and is necessary and appropriate to address ethical issues unique to the SEC. The Commission is proposing to revise transaction and reporting requirements for certain assets that pose a low risk of conflicts of interest or appearance concerns, and to prohibit employee ownership of sector funds that have a stated policy of concentrating their investments in entities directly regulated by the Commission. Further, the Commission proposes to authorize collection of covered securities transactions and holdings data from financial institutions through a third-party automated compliance system. The Commission also proposes to correct certain technical matters and adjust its transaction and reporting requirements to provide the flexibility necessary to implement a third-party automated compliance system.

DATES: Comments should be received on or before March 31, 2023.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/submitcomments.htm*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–02–23 on the subject line.

Paper Comments

- Send paper comments to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–02–23. 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 website (*https://www.sec.gov/rules/proposed.shtml*). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Operating conditions may limit access to the Commission's Public Reference Room. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information. You should submit only information that you wish to make available publicly.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission's website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Richard Ufford or Jay Bragga, Office of the Ethics Counsel, (202) 551–5170, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1050.

SUPPLEMENTARY INFORMATION: The Commission is proposing to amend 5 CFR 4401.102 (Rule 102), its Supplemental Standards.

I. Background

On August 7, 1992, OGE published the OGE Standards. *See* 57 FR 35006–35067, as corrected at 57 FR 48557, 57 FR 52483, and 60 FR 51167, with additional grace period extensions for certain existing provisions at 59 FR 4779–4780, 60 FR 6390–6391, and 60 FR 66857–66858. The OGE Standards, codified at 5 CFR part 2635, effective February 3, 1993, established uniform standards of ethical conduct that apply to all executive branch personnel.

Section 2635.105 of the OGE Standards authorizes an agency, with the concurrence and joint issuance of OGE, to adopt agency-specific supplemental regulations that are necessary and appropriate to properly implement its ethics program. The Commission has previously adopted supplemental regulations—found at 5 CFR part 4401—in 2010 with the concurrence and joint issuance of OGE. *See* 75 FR 42273, July 20, 2010, as amended at 76 FR 19902, Apr. 11, 2011. The Commission now seeks to amend those existing supplemental regulations for the reasons set forth below. The Commission, with OGE's concurrence, has determined that the following proposed revisions to the supplemental regulations are appropriate and necessary for successful implementation of the SEC's ethics program in light of its unique programs and operations.

II. Proposed Amendments

The Commission, with the concurrence of OGE, is proposing to amend its Supplemental Standards to (1) prohibit employee ownership of sector funds that have a stated policy of concentrating investments in entities directly regulated by the Commission (referred to herein as ''Financial Industry Sector Funds''), (2) eliminate pre-clearance, reporting, and holding period requirements for certain diversified investments (referred to herein as ''Permissible Diversified Investment Funds''), (3) enhance consistency, timeliness, and accountability in employee reporting of purchases, sales, acquisitions, and dispositions of securities by authorizing the Commission to collect such information automatically from the employee's brokerage or financial institution(s) through a third-party

automated compliance application, (4) clarify that the limitation on purchasing securities that are part of an initial public offering (IPO) until seven days after the IPO also applies to direct listings of securities, and (5) make other structural and technical corrections to the regulations.

The SEC's revised supplemental rule would retain several important compliance controls, which are among the most extensive compliance restrictions in the Federal Government, including pre-clearance, confirmation, and reporting of covered transactions (such as stocks, bonds, and sector mutual funds), required minimum holding periods, and mandatory annual certification of compliance.

A. Prohibited Ownership of Financial Industry Sector Funds

The Commission is responsible for regulating the trading of securities, investigating securities fraud and manipulations, requiring registration of brokers, dealers, and investment advisers, and supervising the activities of entities it regulates for compliance with the securities laws. 17 CFR 200.1. To ensure that the public can have the utmost trust in these activities, the Commission has long prevented employees from purchasing or owning any ''security or other financial interest in an entity directly regulated by the Commission.'' 5 CFR 4401.102(c)(1). The Commission is proposing to amend § 4401.102(c)(1) to explicitly prohibit employee ownership of certain Financial Industry Sector Funds by expanding the scope of ''entities directly regulated by the Commission'' to include registered investment companies, common investment trusts of a bank, companies exempt in part or in total from registration under the Investment Company Act of 1940, or other pooled investment vehicles that have a stated policy of concentrating their investments in entities directly regulated by the Commission. The purpose of this proposed amendment is to avoid conflicts and appearance concerns with employee ownership of sector funds that invest in entities the SEC directly regulates such as registered broker dealers and investment advisers. The existing rule prohibits employees from purchasing or holding securities issued by such entities. Investments in mutual funds (including exchange-traded funds), however, are permissible, provided employees comply with OGE's regulatory exemptions pursuant to 18 U.S.C. 208(b)(2) found in 5 CFR 2640.201(b), which restrict participation in matters affecting one or more holdings of a sector fund. Consistent with the Commission's risk-based approach, the proposed revision recognizes Financial Industry Sector Funds pose a substantial risk of conflicting with SEC work. Thus, to guard against actual and perceived conflicts and appearance concerns, the Commission proposes to expand the existing prohibition to include investments in sector funds that focus on entities directly regulated by the agency. In accordance with 5 CFR 2635.403(d), affected employees will be given a reasonable period of time to divest Financial Industry Sector Funds. Except in cases of unusual hardship, as determined by the agency, a reasonable period shall not exceed 90 days from the date divestiture is first directed. Affected employees may be eligible for a Certificate of Divestiture under section 1043 of the Internal Revenue Code and 5 CFR part 2634, subpart J.

B. Eliminating Preclearance, Reporting, and Holding Requirements for Permissible Diversified Investment Funds

The SEC's existing supplemental regulations require employees to pre-clear all securities transactions and to confirm securities transactions by reporting them to the SEC within five business days after receipt of confirmation of the transaction. This current requirement applies to all securities not explicitly exempted, including diversified mutual funds and other diversified investment products that pose little or no conflicts of interest for members and employees. These diversified investment products, referred to herein as ''Permissible Diversified Investment Funds'' include diversified registered investment companies (including open and closed-end mutual funds and unit investment trusts), money market funds, as defined in 17 CFR 270.2a-7 (Investment Company Act Rule 2a-7), 529 plans, as defined in the Internal Revenue Code, 26 U.S.C. 529, and diversified pooled investment funds held in employee benefit plans or pension plans.

To the extent that such funds qualify as diversified mutual funds or diversified unit investment trusts in accordance with 5 CFR 2640.201(a), OGE has already provided broad exemptions from criminal financial conflict of interest law, 18 U.S.C. 208, that permit employees to participate in particular matters that could affect the underlying holdings of such funds or the funds themselves. *See* 5 CFR 2640.201(a), (d). Other Permissible Diversified Investment Funds may pose little or no conflict of interest concerns, such as pre-paid college tuition plans authorized by States under section 529 of the Internal Revenue Code and collective investment trusts that are commonly held in defined contribution retirement plans. As a result, the SEC's current pre-clearance and reporting requirements, as applied to Permissible Diversified Investment Funds, have proven disproportionately burdensome for both SEC employees and the SEC's Office of the Ethics Counsel (OEC) staff, given the minimal risks such assets pose for most SEC employees. In order to shift agency ethics compliance resources to better focus on relatively higher-risk trading and reporting of equities and the detection of any prohibited holdings, the Commission is proposing to modify its rules to reduce the emphasis on reporting and pre-clearing of Permissible Diversified Investment Funds, assets that pose substantially lower ethics risk. This risk-based approach would appropriately tailor compliance activities to address trading and holdings that pose the most significant potential for conflicts of interest. Based thereon, the SEC is proposing to add a new paragraph (g)(1)(vi) to eliminate the preclearance, reporting, and holding requirements for Permissible Diversified Investment Funds and to modify existing paragraphs (c)(2) and (6), and paragraphs (e)(2) and (3), to reflect the changes regarding such funds. These changes would not apply to any sector funds, including Financial Industry Sector Funds, as described above, or to any other entities directly regulated by the Commission, or to any private equity, venture capital, hedge fund, or similar pooled investment instruments.

C. Automated Reporting of Purchases, Sales, Acquisitions, and Dispositions of Securities

Currently, members and employees are required to report transactions of securities to the OEC within five business days after receipt of confirmation of the transaction so that ethics officials can reconcile precleared trades. This reporting requirement is authorized under 5 CFR 4401.102(f) and constitutes an additional supplemental confidential reporting requirement authorized by OGE pursuant to section 107 of the Ethics in Government Act of 1978, as amended, and 5 CFR 2634.103. Reporting is currently conducted by members and employees through the Commission's Personal Trading Compliance System and relies on employees to manually confirm and also provide evidence of transactions through submission of brokerage or other financial institution account statements. Although this process has

been successful, requiring employees to manually submit transaction and brokerage data is burdensome and presents the opportunity for human error. Moreover, OEC is aware that a number of private corporations have shifted to automated software systems that provide direct notification of securities transactions from an individual's broker or other financial institution.

The Commission therefore proposes to amend paragraph (f) of the regulation to authorize OEC to collect covered securities transactions and holdings data directly from financial institutions through a third-party automated electronic system to satisfy the requirements to report securities holdings and transaction information. This amendment would reduce the burden on employees and compliance staff, and improve data accuracy and completeness, by replacing the requirements for manually submitted account statements and manual transaction confirmations. It would also facilitate compliance by allowing the OEC to independently verify employee holdings and transactions. Further, it would reduce the risk of human error or oversight in reporting and reviewing of securities holdings and transactions.

The Commission has consulted with OGE on the proposal to authorize OEC to require members and employees to comply with the reporting requirements in paragraph (f) through a third-party automated compliance system. OGE has advised that the proposed system is consistent with section 107 of the Ethics in Government Act, which permits OGE (and agencies, subject to OGE approval) to impose additional confidential financial disclosure requirements on officers and employees of the executive branch. Although the automated transmission of brokerage statements and transaction information would be effectuated by a member or employee's broker or other financial institution, the broker is acting as an agent of the member or employee in transmitting the information, and the ultimate responsibility for complying with the reporting requirement is that of the employee. To ensure that all employees are able to comply with the reporting requirement, the Commission is proposing to provide that the Designated Agency Ethics Official (DAEO) may permit a member or employee to provide the required information through another means if they cannot obtain consent from their brokerage or financial institution to use the third-party automated compliance system. In exceptional circumstances, the DAEO may permit any member or employee to report the required holding and transaction information outside of any eventual automated personal trading compliance system such as where OEC has determined under the specific facts that use of the automated system is not possible or would result in significant undue hardship.

The Commission is also proposing to revise transaction reporting deadlines to provide necessary flexibility to adjust for securities transactions and holdings data obtained as proposed from financial institutions though a third-party automated compliance system. The Commission proposes to modify the existing five business day reporting requirement to require all employees to report transactions in the manner and according to the schedule required by the DAEO. It is OEC's hope that any eventual automated third-party compliance system would allow for trade notifications sooner than the current five day requirement, and this amendment would maintain flexibility for the DAEO to require earlier (or permit later) reporting for SEC employees, as appropriate, using an automated third-party compliance system.

D. Prohibit Purchases of Direct Listed Assets

Members and employees of the Commission are currently prohibited from purchasing a security in an initial public offering (''IPO'') for seven calendar days after the IPO is effective, except for IPOs of shares in a registered investment company or other publicly traded or publicly available collective investment fund. This restriction ensures that employees do not use, or appear to use, material, non-public information to their advantage in purchasing such securities.

The Commission believes that securities that are directly listed on an exchange present the same appearance concerns and risks as securities offered in a traditional IPO, given that direct listings are typically accompanied by the filing of a registration statement, as in a traditional IPO. For that reason, the Commission proposes to expand the limitation found at paragraph (c)(2) of the regulation to prohibit a member or employee from purchasing securities that are directly listed to an exchange for seven calendar days after the direct listing effective date.

The Commission also proposes to remove the current exception to the prohibition on purchasing within seven calendar days for IPO shares in a registered investment company or publicly traded or publicly available collective investment fund because the Commission's proposed exception for Permissible Diversified Investment Funds in paragraph (g) would cover IPO shares in a registered investment company or publicly traded or publicly available collective investment fund.

E. Technical Corrections

Finally, the Commission is proposing to make certain definitional and technical changes to its rules, which include updating language to reflect that the Office of the Ethics Counsel is no longer part of the Office of General Counsel.

III. Request for Public Comment

We request and encourage any interested person to submit comments on any aspect of the proposed amendments, other matters that might have an impact on the proposed amendments, and suggestions for additional changes. Comments are of particular assistance if accompanied by analysis of the issues addressed in those comments and any data that may support the analysis. We urge commenters to be as specific as possible.

IV. Administrative Law Matters

The Commission finds, in accordance with section 553(b)(3)(A) of the Administrative Procedure Act (''APA''),[1] that the proposed amendments relate solely to agency organization, procedure, or practice. They are therefore not subject to the provisions of the APA requiring notice, opportunity for public comment, and publication. The Regulatory Flexibility Act of 1980[2] therefore does not apply. Nevertheless, we have determined that it would be useful to publish the proposed amendments for notice and comment before adoption. Because the proposed rule relates to ''agency organization, procedure or practice that does not substantially affect the right or obligations of non-agency parties,'' the proposed rule is not subject to the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(3)(C)). The proposed rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995.[3]

V. Economic Analysis

The Commission is sensitive to the economic effects of its rules, including the costs and benefits that result from its

[1] 5 U.S.C. 553(b)(3)(A).

[2] 5 U.S.C. 601 *et seq.*

[3] 44 U.S.C. 3501 *et seq.*

rules.[4] As discussed further below, we expect the economic effects of the proposed amendments would be limited. The amendments do not substantially alter preexisting requirements and are directed at internal procedures that apply only to Commission members and employees. Thus, we expect these changes would not impose any costs on parties other than the Commission and its members and employees, or if there are any such costs, we expect those costs to be negligible. We further believe that the changes would not have any significant impact on the functioning of securities markets, and so would have minimal, if any, effects on efficiency, competition, and capital formation. Where possible, we have attempted to quantify the costs, benefits, and effects on efficiency, competition, and capital formation expected to result from the proposed amendments.

As explained above, the proposed amendments would allow the DAEO flexibility to adjust transaction and reporting requirements for securities and holdings data obtained as proposed from financial institutions through a third-party automated compliance system and eliminate disproportionately burdensome compliance requirements for assets that pose minimal ethics risk, while expanding the scope of the Supplemental Standards to include certain funds that pose relatively higher ethics risk. We discuss below the potential benefits, costs, and economic effects of three significant categories of proposed amendments to the Supplemental Standards: (1) prohibiting employees from holding Financial Industry Sector Funds; (2) eliminating the preclearance, reporting, and holding period requirements for Permissible Diversified Investment Funds; (3) authorizing OEC to collect covered securities transactions data directly from financial institutions through a third-party automated electronic system and adjusting transaction reporting deadlines to account for implementation of such systems; and (4) prohibiting purchases of direct listed assets for seven calendar days after the direct listing effective date. In addition, the proposed amendments make certain definitional and technical changes that we believe would not have a substantial economic effect.

A. Proposed Amendments Concerning Financial Industry Sector Funds

The Commission is proposing to explicitly prohibit employee ownership of Financial Industry Sector Funds by expanding the scope of ''entities directly regulated by the Commission,'' and excluding Financial Industry Sector Funds from the exception for Permissible Diversified Investment Funds. The existing rules prohibit members and employees from purchasing or holding securities of entities directly regulated by the Commission, but not Financial Industry Sector Funds that focus on investing in entities directly regulated by the Commission. Investments in Financial Industry Sector Funds, however, are subject to preclearance, reporting, and holding period requirements in the Supplemental Standards.

The proposed amendments could enhance the integrity of the capital markets by further guarding against the perception of improper use of nonpublic information by SEC employees. Expanding the prohibition to include investments in Financial Industry Sector Funds would reduce the risk of actual or perceived conflicts of interests and could bolster investor confidence in capital markets.

The cost to implementing this amendment would be borne mostly by the members and employees who currently hold these funds, as the Commission would require members and employees to sell, or otherwise divest, these types of assets. We do not have sufficient information to quantify the total effects associated with such divestment. Finally, we expect that implementing the proposed amendments would not add significant technical and administrative costs to the Commission as compliance would be accomplished via the Commission's existing compliance system with minimal upgrade costs.

B. Proposed Amendments Concerning Permissible Diversified Investment Funds

The Commission is proposing to modify its rules to eliminate the preclearance, reporting, and holding period requirements for Permissible Diversified Investment Funds by making them exempt from such requirements under Rule 102(g)(1). Under the current rule, Commission members and employees are required to preclear all trades in Permissible Diversified Investment Funds and confirm any such executed transactions. Commission members and employees are required to hold Permissible Diversified Investment Funds for at least 30 days before selling.

The proposed amendments would benefit Commission members and employees by removing certain procedural requirements that currently apply to their purchases and sales of Permissible Diversified Investment Funds and consequently reducing delays in executing investment choices. The magnitude of the benefits, however, would depend on how implementing the proposed amendments would affect individual members' and employees' investment decisions and portfolios, which is difficult to predict.

We do not expect that the proposed amendments would impose costs on the Commission, its members and employees, or the public. Because Permissible Diversified Investment Funds are diversified and therefore eligible for most applicable regulatory conflicts exemptions, we expect that the proposed exemption would add no significant risk of real or perceived conflicts of interest, and would allow the Commission to focus on employees' holdings or transactions that present more significant conflicts and appearance concerns.

C. Proposed Amendments Concerning Automated Reporting of Purchases, Sales, Acquisitions, and Dispositions of Securities and Related Adjustment of Transaction Reporting Deadlines

The Commission is proposing to amend Rule 102(f) to authorize OEC to collect covered securities transactions and holdings data directly from financial institutions through a third-party automated electronic system to satisfy the requirements to report securities holdings and transaction information and to modify the existing five-business-days reporting requirement to require all members and employees to report transactions that are not exempt under Rule 102(g)(1) in the manner and according to the schedule required by the DAEO.

We do not expect the proposed amendments to result in significant economic effects to the Commission or members of the public. The proposed amendments would benefit Commission members and employees by reducing their reporting costs because manual submission of transaction data would no

[4] Section 2(b) of the Securities Act, section 3(f) of the Exchange Act, section 2(c) of the Investment Company Act, and section 202(c) of the Advisers Act require us, when engaging in rulemaking, to consider or determine whether an action is necessary or appropriate in (or, with respect to the Investment Company Act, consistent with) the public interest, and to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. 15 U.S.C. 77b(b), 78c(f), 80a-2(c), 80b-2(c). In addition, section 23(a)(2) of the Exchange Act requires the Commission to consider the effects on competition of any rules the Commission adopts under the Exchange Act and prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. 15 U.S.C. 78w(a)(2).

longer be necessary.[5] In addition, the proposed amendments could enhance the integrity of Commission operations by allowing more effective OEC oversight of member and employee activity through improved data accuracy and completeness and independent verification of employee holdings and transactions. The proposed amendments may provide more or less time for Commission members and employees to report the transactions depending on the schedule set by the DAEO.

The costs of implementing an automated electronic reporting system would be borne mostly by the Commission, including both initial costs of setting up the system and ongoing maintenance costs. We do not expect that the proposed amendments will impose costs on the public.

D. Proposed Amendments Concerning Prohibiting Purchases of Direct Listed Assets

The Commission is proposing to expand the limitation in Rule 102(c)(2) to prohibit a member or employee from purchasing securities that are directly listed on an exchange for seven calendar days after the direct listing effective date.

The Commission believes that the proposed limitation could benefit the integrity of the capital markets by further guarding against the perception of improper use of nonpublic information by SEC employees. Expanding the prohibition to include direct listed assets would reduce the risk of actual or perceived conflicts of interests and could bolster investor confidence in capital markets.

The costs from implementing this amendment would be borne mostly by the members and employees who may otherwise have purchased securities that are directly listed on an exchange insofar as the proposed limitation will restrict their investment options. We do not expect that the proposed amendments will impose costs on the Commission or the public.

We request comment on all aspects of our economic analysis, including the potential costs and benefits of proposed amendments. Commenters are requested to provide empirical data, estimation methodologies, and other factual support for their views.

Statutory Basis and Text of Rule

These amendments to the Commission's ethics rules are being proposed pursuant to statutory authority granted to OGE and to the Commission. These include 5 U.S.C. 7301; 5 U.S.C. Ch 131. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159; 3 CFR 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547; 3 CFR, 1990 Comp., p. 306; 5 CFR 2634.103, 5 CFR 2634.201(f); 5 CFR 2635.105, 2635.403, 2635.803; 15 U.S.C. 77s, 78w, 77sss, 80a–37, 80b–11.

List of Subjects in 5 CFR Part 4401

Administrative practice and procedure, Conflict of interests, Ethical conduct, Government employees, Government ethics, Securities.

Authority and Issuance

For the reasons set forth in the preamble, the SEC, with the concurrence of OGE, is proposing to amend title 5 of the Code of Federal Regulations, chapter XXXIV, part 4401, as follows:

PART 4401—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR MEMBERS AND EMPLOYEES OF THE SECURITIES AND EXCHANGE COMMISSION

■ 1. The authority citation for part 4401 is revised to read as follows:

Authority: 5 U.S.C. 7301; 5 U.S.C. Ch 131. 15 U.S.C. 77s, 78w, 77sss, 80a–37, 80b–11; E.O. 12674, 54 FR 15159, 3 CFR 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2634.103, 2634.201(f), 2635.105, 2635.403, and 2635.803.

■ 2. Revise § 4401.102 to read as follows:

§ 4401.102 Prohibited and restricted financial interests and transactions.

(a) *Applicability.* The requirements of this section apply to all securities holdings or transactions effected, directly or indirectly, by or on behalf of a member or employee, the member's or employee's spouse, the member's or employee's unemancipated minor child, or any person for whom the member or employee serves as legal guardian. A member or employee is deemed to have sufficient interest in the securities holdings and transactions of his or her spouse, unemancipated minor child, or person for whom the member or employee serves as legal guardian that such holdings or transactions are subject to all the terms of this part.

(b) *In general.* (1) Members and employees are prohibited from purchasing or selling any security while in possession of material nonpublic information regarding that security. Nonpublic information has the meaning as provided in 5 CFR 2635.703(b).

(2) Members and employees are prohibited from recommending or suggesting to any person the purchase or sale of security:

(i) Based on material nonpublic information regarding that security; or

(ii) That the member or employee could not purchase or sell because of the restrictions contained in this Rule.

(c) *Prohibited and restricted holdings and transactions.* Members and employees are prohibited from:

(1) Knowingly purchasing or holding a security or other financial interest in an entity directly regulated by the Commission, including a registered investment company, common investment trust of a bank, company exempt in part or in total from registration under the Investment Company Act of 1940, or other pooled investment vehicle that has a stated policy of concentrating investments in entities directly regulated by the Commission.

(2) Purchasing a security in an initial public offering (''IPO'') or direct listing prior to seven calendar days after the IPO or direct listing effective date;

(3) Purchasing or otherwise carrying securities on margin;

(4) Selling securities short as defined in 17 CFR 242.200(a);

(5) Accepting a loan from, or entering into any other financial relationship with, an entity, institution or other person directly regulated by the Commission if the loan or financial relationship is governed by terms more favorable than would be available in like circumstances to members of the public, except as otherwise permitted by 5 CFR part 2635, subpart B (Gifts from outside sources);

(6) Engaging in transactions involving financial instruments that are derivatives of securities (that is, the value of the security depends on or is derived from, in whole or in part, the value of another security, or a group, or an index of securities); and

(7) Purchasing or selling any security issued by an entity that is:

(i) Under investigation by the Commission;

(ii) A party to a proceeding before the Commission; or

(iii) A party to a proceeding to which the Commission is a party.

(d) *Prior clearance of transactions in securities or related financial interests.* (1) Except as set forth in paragraph (g) of this section, members and employees must confirm before entering into any security or other related financial transaction that the security or related financial transaction is not prohibited or restricted as to them by clearing the transaction in the manner required by the Designated Agency Ethics Official (''DAEO''). A member or employee will

[5] *See* Section II.0, *supra.*

have five business days after clearance to effect a transaction.

(2) Documentation of the clearance of any transaction pursuant paragraph (d) of this section shall be prima facie evidence that the member or employee has not knowingly purchased, sold, or held such financial interest in violation of the provisions of paragraph (c)(1), (2), (6), or (7) of this section.

(3) The DAEO shall be responsible for administering the Commission's clearance systems. The DAEO shall maintain a record of securities that members and employees may not purchase or sell, or otherwise hold, because such securities are the subject of the various prohibitions and restrictions contained in this section.

(e) *Holding periods for securities and related financial interests*—(1) *General rule.* Except as set forth in paragraphs (e) and (g) of this section members and employees must hold a security purchased after commencement of employment with the Commission for a minimum of six (6) months from the trade date.

(2) *General exceptions.* This holding period does not apply to:

(i) Securities sold for ninety percent (90%) or less of the original purchase price; and

(ii) Securities with an initial term of less than six (6) months that are held to term.

(3) *Exception for shares in sector funds.* Members and employees must hold shares in sector mutual funds and sector unit investment trusts as those terms are defined at 5 CFR 2640.102(q), that are not otherwise prohibited under paragraph (c)(1), for a minimum of thirty (30) days from the purchase date.

(f) *Reporting requirements.* (1) Except as set forth in paragraph (g) of this section, members and employees must report and certify all securities holdings according to the schedule and in the manner required by the DAEO;

(2) Members and employees must report all purchases, sales, acquisitions, or dispositions of securities in the manner and according to the schedule required by the DAEO.

(3) Any person who receives a conditional offer of employment from the Commission must report all securities holdings after acceptance of that offer and before commencement of employment with the Commission on the form prescribed by the Commission.

(4) The DAEO may require members and employees to comply with the reporting requirements in this section by authorizing their brokerage or financial institution(s) to provide automatic transmission of brokerage statements and transaction information through a third-party automated compliance system. The DAEO may permit a member or employee to provide the required information through another means if they cannot obtain consent from their brokerage or financial institution to use the third-party automated compliance system.

(g) *Exceptions.* (1) The following holdings and transactions are exempt from the requirements of paragraphs (c), (d), (e), and (f) of this section:

(i) Securities transactions effected by a member's or employee's spouse on behalf of an entity or person other than the member or employee, the member's or employee's spouse, the member's or employee's unemancipated minor child, or any person for whom the member or employee serves as legal guardian;

(ii) Securities holdings and transactions of a member's or employee's legally separated spouse living apart from the member or employee (including those effected for the benefit of the member's or employee's unemancipated minor child), *provided that* the member or employee has no control, and does not, in fact, control, advise with respect to, or have knowledge of those holdings and transactions;

(iii) Securities issued by the United States Government or one of its agencies;

(iv) Investments in funds administered by the Thrift Savings Plan or by any retirement plan administered by a Federal Government agency;

(v) Certificates of deposit or other comparable instruments issued by depository institutions subject to Federal regulation and Federal deposit insurance; and

(vi)(A)*(1)* Mutual funds and unit investment trusts, as those terms are defined in 5 CFR 2640.102(k) and (u), that are diversified as that term is defined in 5 CFR 2640.102(a);

(2) Money market funds as defined in 17 CFR 270.2a–7 (Investment Company Act Rule under rule 2a–7);

(3) 529 plans as defined in the Internal Revenue Code, 26 U.S.C. 529.

(4) Diversified pooled investment funds held in an employee benefit plan as defined at 5 CFR 2640.102(c) or pension plan as defined in 5 CFR 2640.102(n).

(B) The exemption in this paragraph (g)(1)(vi) does not apply to other investments in pooled investment funds that are exempt from registration under the Investment Company Act of 1940, including hedge funds, private equity funds, venture capital funds, or similar non-registered investment funds.

(2) The following holdings and transactions are exempt from the requirements of paragraphs (c), (d), and (e) of this section, but these interests must be reported in accordance with paragraph (f) of this section:

(i) The holdings of a trust in which the member or employee (or the member's or employee's spouse, the member's or employee's unemancipated minor child, or person for whom the member or employee serves as legal guardian) is:

(A) Solely a vested beneficiary of an irrevocable trust; or

(B) Solely a vested beneficiary of a revocable trust where the trust instrument expressly directs the trustee to make present, mandatory distributions of trust income or principal; provided, the member or employee did not create the trust, has no power to control, and does not, in fact, control or advise with respect to the holdings and transactions of the trust;

(ii) Acceptance or reinvestment of stock dividends on securities already owned;

(iii) Exercise of a right to convert securities; and

(iv) The acquisition of stock or the acquisition or the exercise of employee stock options, or other comparable instruments, received as compensation from an issuer that is:

(A) The member's or employee's former employer; or

(B) The present or former employer of the member's or employee's spouse.

(h) *Waivers.* (1) Members may request from the Commission a waiver of the prohibitions or limitations that would otherwise apply to a securities holding or transaction on the grounds that application of the rule would cause an undue hardship. A member requests a waiver by submitting a confidential written application to the Commission's Office of the Ethics Counsel. The DAEO will review the request and provide to the Commission a recommendation for resolution of the waiver request. In developing a recommendation, the DAEO may consult, on a confidential basis, other Commission personnel as the DAEO in his or her discretion considers necessary.

(2) Employees may request from the DAEO a waiver of the prohibitions or limitations that would otherwise apply to a securities holding or transaction on the grounds that application of the rule would cause an undue hardship. An employee requests a waiver by submitting a confidential written application to the Commission's Office of the Ethics Counsel in the manner prescribed by the DAEO. In considering a waiver request, the DAEO, or his or her designee, may consult with the

employee's supervisors and other Commission personnel as the DAEO in his or her discretion considers necessary.

(3) The Commission or the DAEO, as applicable, will provide written notice of its determination of the waiver request to the requesting member or employee.

(4) The Commission or the DAEO, as applicable, may condition the grant of a waiver under this provision upon the agreement to certain undertakings (such as execution of a written statement of disqualification) to avoid the appearance of misuse of position or loss of impartiality, and to ensure confidence in the impartiality and objectivity of the Commission. The Commission or DAEO, as applicable, shall note the existence of conditions on the waiver and describe them in reasonable detail in the text of the waiver-request determination.

(5) The grant of a waiver requested pursuant to this section must reflect the judgment that the waiver:

(i) Is necessary to avoid an undue hardship; and, under the particular circumstances, application of the prohibition or restriction is not necessary to avoid the appearance of misuse of position or loss of impartiality, or otherwise necessary to ensure confidence in the impartiality and objectivity of the Commission;

(ii) Is consistent with 18 U.S.C. 208 (Acts affecting a personal financial interest), 5 CFR part 2635 (Standards of ethical conduct for employees of the executive branch), and 5 CFR part 2640 (Interpretation, exemptions and waiver guidance concerning 18 U.S.C. 208); and

(iii) Is not otherwise prohibited by law.

(6) The determination of the Commission with respect to a member's request for a waiver is final and binding on the member.

(7) The determination of the DAEO with respect to an employee's request for a waiver may be appealed to the Commission, in accordance with the requirements of 17 CFR 201.430 and 201.431 (Rules 430 and 431 of the Commission's Rule of Practice). The determination of the DAEO or, if appealed, the Commission, is final and binding on the employee.

(8) Notwithstanding the grant of a waiver, a member or employee remains subject to the disqualification requirements of 5 CFR 2635.402 (Disqualifying financial interests) and 5 CFR 2635.502 (Personal and business relationships) with respect to transactions or holdings subject to the waiver.

(i) *Required disposition of securities.* The DAEO is authorized to require disposition of securities acquired as a result of a violation of the provisions of this section, whether unintentional or not. The DAEO shall report repeated violations to the Commission for appropriate action.

By the Securities and Exchange Commission.

Dated: January 30, 2023.

Vanessa A. Countryman,

Secretary.

Emory A. Rounds, III,

Director, Office of Government Ethics.

[FR Doc. 2023–02235 Filed 2–6–23; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0061; Airspace Docket No. 22–ASO–10]

RIN 2120–AA66

Amendment and Revocation of VOR Federal Airways in the Eastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Very High Frequency (VHF) Omnidirectional Range (VOR) Federal Airways V–51, V–115, V–243, V–267, V–311, V–333, and V–415; and to revoke V–463 in support of the FAA's VOR Minimum Operational Network (MON) Program.

DATES: Comments must be received on or before March 9, 2023.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: (800) 647–5527 or (202) 366–9826. You must identify FAA Docket No. FAA–2023–0061; Airspace Docket No. 22–ASO–10 at the beginning of your comments. You may also submit comments through the internet at *www.regulations.gov.*

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 Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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 the 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 modify the VOR Federal airway route structure in the eastern United States to maintain the efficient flow of air traffic.

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 (FAA Docket No. FAA–2023–0061; Airspace Docket No. 22–ASO–10) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2023–0061; Airspace Docket No. 22–ASO–10.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking

action on the proposed rule. The proposal contained in this action may be changed in light of comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

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 **ADDRESSES** section for 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 office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, GA 30337.

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 proposed rule. 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 to amend VOR Federal Airways V–51, V–115, V–243, V–267, V–311, V–333, and V–415; and to revoke V–463 in support of the FAA's VOR Minimum Operational Network (MON) Program. This program aims to improve the efficiency of the National Airspace System by transitioning from ground-based navigation systems to satellite based navigation. The proposed changes are described below.

V–51: V–51 consists of two parts: From Pahokee, FL to Louisville, KY; and from Shelbyville, IN, to Chicago Heights, IL. The FAA proposes to remove Alma, GA; Athens, GA; and Harris, GA, from the route. As a result, V–51 would consists of three parts: From Pahokee, FL, to Craig, FL; and from Hinch Mountain, TN, to Louisville, KY; and from Shelbyville, TN to Chicago Heights, IL.

V–115: V–115 consists of two parts: From Crestview, FL, to Volunteer, TN; and from Charleston, WV, to Parkersburg, WV. The FAA proposes to remove the segment from the BOAZE, AL, Fix to the Choo Choo, TN (GQO), VHF Omnidirectional Range and Tactical Air Navigational System (VORTAC), to the DUBBS, TN, Fix, which is dependent on the Choo Choo, TN, VORTAC. As amended, V–115 would extend, in three parts: From Crestview, FL, to the intersection of the of the Vulcan, AL 048°(T)/046°(M) and the Gadsden, AL 333°(T)/331°(M) radials (the charted BOAZE, AL) Fix; from the Intersection of the Hinch Mountain, TN 160°(T)/162°(M) and the Volunteer, TN 228°(T)/231°(M) radials to Volunteer; and from Charleston, WV, to Parkersburg, WV.

V–243: V–243 extends from Craig, FL, to Choo Choo, TN. This action would remove the segment from the intersection of the LaGrange, GA 342° and the Choo Choo, TN 189° radials (the charted HEFIN, AL, Fix) to Choo Choo due to the planned decommissioning of the Choo Choo, TN (GQO), VORTAC. The HEFIN Fix would be redefined by replacing the Choo Choo radial with the Gadsden, AL, Non-Directional Beacon/Distance Measuring Equipment (NDB/DME) 124°(T)/122°(M) radial. Because this is a new radial, both True and Magnetic values are cited in the NPRM. As amended, V–243 would extend from Craig, FL, to the intersection of the LaGrange, GA 342° and the Gadsden, AL, 124°(T)/122°(M) radials (the HEFIN, AL, Fix).

V–267: V–267 extends from Dolphin, FL, to Volunteer, TN. This action proposes to remove the segments from Dolphin, FL, to Pahokee, FL. In addition, the Harris, GA (HRS), VORTAC and the Volunteer, TN (VXV), VORTAC would be removed from the route. As amended, V–267 would extend from Orlando, FL, to the charted CORCE, GA, Fix. The CORCE Fix is currently defined in the V–267 description as the intersection of the Athens, GA 340° and the Harris, GA 148° radials. Due to the removal of the Harris, GA (HRS), VORTAC, the Harris radial would be replaced in the description by the Rome, GA 077°(T)/076°(M) radial.

V–311: V–311 extends from Hinch Mountain, TN, to Charleston, SC. This action proposes to remove the segments from Electric City, SC, to Charleston, SC. As amended, V–311 would extend from Hinch Mountain, TN, to Electric City, SC.

V–333: V–333 extends from the intersection of the Rome, GA 133° and the Gadsden, AL 091° radials to Lexington, KY. The action would remove the Choo Choo, TN (GQO), VORTAC from the route. As amended, V–333 would consist of two parts: From the intersection of the Rome, GA, and Gadsden, AL, radials identified in the previous sentence to Rome, GA; and from Hinch, Mountain, TN, to Lexington, KY.

V–415: V–415 extends from Montgomery, AL, to the intersection of the Spartanburg, SC, 101° and the Charlotte, NC, 229° radials. This action proposes to remove the segments from the HEFIN, AL, Fix, to the NELLO, GA, Fix. As amended, V–415 would consist of two parts: From Montgomery, AL, to the intersection of the Montgomery 029°(T)/026°(M) and the Gadsden, AL, 124°(T)/122°(M) radials; and from the intersection of the Rome, GA, 060° and the Foothills, SC, 258° radials, to the intersection of the Spartanburg, SC, 101° and the Charlotte, NC, 229° radials.

V–463: V–463 is a 49 nautical mile long route that extends from the intersection of the Harris, GA, 179° and the Foothills, SC 222° radials, to Harris, GA. The FAA proposes to remove the route to support the scheduled decommissioning of the Harris, GA (HRS), VORTAC.

Domestic VOR Federal airways are published in paragraph 6010(a) 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 VOR Federal airways listed in this document would be published and removed subsequently from 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 proposed 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 Department of Transportation (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 proposed rule, when

promulgated, will 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

In consideration of the foregoing, 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 6010(a) Domestic VOR Federal Airways.

* * * * *

V–51 [Amended]

From Pahokee, FL; INT Pahokee 010°and Treasure, FL, 193° radials; Treasure; INT Treasure 330° and Ormond Beach, FL, 183° radials; Ormond Beach; to Craig, FL. From Hinch Mountain, TN; Livingston, TN; to Louisville, KY. From Shelbyville, IN; INT Shelbyville 313° and Boiler, IN, 136° radials; Boiler; to Chicago Heights, IL.

* * * * *

V–115 [Amended]

From Crestview, FL; INT Crestview 001° and Montgomery, AL, 204° radials; Montgomery INT Montgomery 323° and Vulcan, AL, 177° radials; Vulcan; to INT Vulcan 048°(T)/046°(M) and Gadsden, AL 333°(T)/331°(M) radials. From INT Hinch Mountain, TN, 160°(T)/162°(M) and Volunteer, TN, 228°(T)/231°(M) radials; to Volunteer. From Charleston, WV; to Parkersburg, WV.

* * * * *

V–243 [Amended]

From Craig, FL; Waycross, GA; Vienna, GA; LaGrange, GA; to INT LaGrange 342°(T)/341°(M) and Gadsden, AL, 124°(T)/122°(M) radials.

* * * * *

V–267 [Amended]

From Orlando, FL; Craig, FL; Dublin, GA; Athens, GA; to INT Athens 340°(T)/340°(M) and Rome, GA, 077°(T)/076°(M) radials.

* * * * *

V–311 [Amended]

From Hinch Mountain, TN; INT Hinch Mountain 160° and Electric City, SC, 274° radials; to Electric City.

* * * * *

V–333 [Amended]

From INT Rome, GA, 133° and Gadsden, AL, 091° radials to Rome. From Hinch Mountain, TN; to Lexington, KY.

* * * * *

V–415 [Amended]

From Montgomery, AL, to INT Montgomery 029°T/026°M and Gadsden, AL, 124°(T)/122°(M) radials. From INT Rome 060° and Foothills, SC, 258° radials; Foothills; Spartanburg, SC; to INT Spartanburg 101° and Charlotte, NC, 229° radials.

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V–463 [Removed]

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Issued in Washington, DC, on February 1, 2023.

Brian Konie,

Acting Manager, Airspace Rules and Regulations.

[FR Doc. 2023–02445 Filed 2–6–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0235; Airspace Docket No. 22–ANM–52]

RIN 2120–AA66

Revocation of Segments of V–330 and Establishment T–470 Near Boise, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to revoke the portion of the Very High Frequency (VHF) Omnidirectional Range (VOR) Federal airway V–330 between the Boise VHF Omnidirectional Range (VOR) Tactical Air Navigation (VORTAC) and the intersection of Liberator VOR 084° radial and Burley VOR 323° radial. This action also proposes to establish United States Area Navigation (RNAV) route T–470. These actions are due to the planned decommissioning of the Liberator ID, VOR (LIA).

DATES: Comments must be received on or before March 24, 2023.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2023–0235; Airspace Docket No. 22–ANM–52 at the beginning of your comments. You may also submit comments through the internet at *www.regulations.gov.*

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 Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Steven Roff, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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 the 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 modify the airway structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System.

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 (FAA Docket No. FAA–2023–0235; Airspace Docket No. 22–ANM–52 and be submitted to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2023–0235; Airspace Docket No. 22–ANM–52.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

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 **ADDRESSES** section for 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 office of the Western Service Center, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98198.

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.

Background

The FAA is decommissioning underutilized navigational aids (NAVAIDS) throughout the National Airspace System (NAS) through the VOR Minimal Operation Network (MON) program. The goal is to transition the NAS to use of Performance-Based Navigation (PBN) through use of the Global Positioning System (GPS) as the primary means of aircraft navigation, retaining a reduced number of ground-based NAVAIDS to provide backup in the event of a loss of GPS. The decommissioning of Liberator VOR is part of this program.

With the planned decommissioning of Liberator VOR, the remaining ground-based coverage in the area is insufficient to enable the continuity of certain segments of V–330. As such, this proposal would result in these unsupported segments being revoked. The segment between the Boise VORTAC and the intersection of the Boise VORTAC 130° radial and Liberator VOR 084° radial requires no mitigation as it shares routing with V–4 and V–253. The establishment of T–470 is proposed to replace the revoked segment between the intersection of the Boise VORTAC 130° and Liberator VOR 084° radials and the intersection of the Liberator VOR 084° radial and the Burley VOR 323° radial. Additionally, T–470 is proposed to continue eastward beyond the intersection of the Liberator VOR 084° radial and the Burley VOR 323° radial. This continuance of T–470 will increase NAS efficiency and aviation safety by providing routing through the Snake River Valley in Idaho and south of the Wind River Range in Wyoming. This routing will allow for lower Minimum Enroute Altitudes and will avoid areas of downslope winds.

The Proposal

V–330: V–330 is currently made up of two separate portions. The first navigates between the Wildhorse, OR, VOR; and the intersection of the Liberator VOR 084° radial and the Burley VOR 323° radial. The second section navigates between the Idaho Falls, ID, VOR; and the Muddy Mountain, WY, VOR. The FAA proposes changes to the first portion. The FAA does not propose changes to the second portion.

In the first portion, the FAA proposes to revoke two contiguous segments. The first is the segment between the Boise VORTAC and the intersection of the Boise VORTAC 130° radial and Liberator VOR 084° radial. The second is between the intersection of the Boise VORTAC 130° radial and Liberator VOR 084° radial and the intersection of the Liberator VOR 084° radial and the Burley VOR 323° radial.

VOR Federal airways are published in paragraph 6010(a) 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 V–330 airway listed in this document would be modified subsequently in FAA Order JO 7400.11.

The FAA is proposing an amendment to 14 CFR part 71 to establish RNAV T-route T–470 in the vicinity of Boise, ID.

The new route is described as follows:

T–470: RNAV route T–470 extends between ALKAL, ID; KINZE, ID; VIPUC, WY; IDECA, WY; DEDNE, WY; DEKKR, WY; SWEAT, WY; and CHOMP, WY.

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 proposed 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 Department of Transportation (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 proposed rule, when promulgated, will 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

In consideration of the foregoing, 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 6010(a) Domestic VOR Federal Airways.

* * * * *

V–330 [Amended]

From Wildhorse, OR; to Boise, ID. From Idaho Falls, ID; Jackson, WY; Dunoir, WY; Riverton, WY; to Muddy Mountain, WY.

* * * * *

Paragraph 6011 United States Area Navigation Routes.

* * * * *

* * * * *

T–470 ALKAL WP, ID TO CHOMP WP, WY		
ALKAL, ID	Fix	(Lat. 43°00′58.35″ N, long. 115°19′41.26″ W)
KINZE, ID	Fix	(Lat. 43°04′51.80″ N, long. 114°23′19.23″ W)
VIPUC, WY	Fix	(Lat. 43°21′09.64″ N, long. 112°14′44.08″ W)
IDECA, WY	Fix	(Lat. 42°51′31.06″ N, long. 110°16′25.75″ W)
DEDNE, WY	WP	(Lat. 42°30′56.06″ N, long. 109°35′23.93″ W)
DEKKR, WY	WP	(Lat. 42°21′25.98″ N, long. 109°02′18.06″ W)
SWEAT, WY	Fix	(Lat. 42°26′35.02″ N, long. 108°27′10.31″ W)
CHOMP, WY	Fix	(Lat. 42°36′23.25″ N, long. 106°45′30.94″ W)

* * * * *

Issued in Washington, DC, on February 1, 2023.

Brian Konie,

Acting Manager, Airspace Rules and Regulations.

[FR Doc. 2023–02463 Filed 2–6–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0049; Airspace Docket No. 22–ASO–17]

RIN 2120–AA66

Amendment of High Altitude Area Navigation (RNAV) Route Q–101; Eastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend high altitude area navigation (RNAV) route Q–101 in the eastern United States. This action would support the Northeast Corridor Atlantic Coast Route Project to improve the efficiency of the National Airspace System (NAS) and reduce the dependency on ground-based navigational systems.

DATES: Comments must be received on or before March 9, 2023.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2023–0049; Airspace Docket No. 22–ASO–17 at the beginning of your comments. You may also submit comments through the internet at *www.regulations.gov.*

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 Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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 the 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 modify the route structure as necessary to preserve the safe and efficient flow of air traffic within the NAS.

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 (FAA Docket No. FAA–2023–0049; Airspace Docket No. 22–ASO–17) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2023–0049; Airspace Docket No. 22–ASO–17.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing

date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. 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 **ADDRESSES** section for 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 office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, GA 30337.

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 to amend RNAV route Q–101, in the eastern United States. This action would support the Northeast Corridor Atlantic Coast Route Project by linking Q–101 to other east coast Air Traffic Service routes to enhance air traffic flows.

The proposed route amendment is as follows:

Q–101: Q–101 currently extends between the SKARP, NC, waypoint (WP), and the TUGGR, VA, WP. The FAA proposes to extend Q–101 approximately 10 nautical miles to the north of the TUGGR WP, to the KALDA, VA, Fix. This would provide additional routing options for northbound and southbound air traffic.

United States area navigation routes are published in paragraph 2006 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 area navigation route listed in this document would 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 proposed 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 Department of Transportation (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 proposed rule, when promulgated, will 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

In consideration of the foregoing, 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 part 14 CFR 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 2006 United States Area Navigation Routes.

* * * * *

Q–101 SKARP, NC to KALDA, VA [AMENDED]

SKARP, NC	WP	(Lat. 34°29′10.30″ N, long. 077°24′37.54″ W)
PRANK, NC	WP	(Lat. 35°14′27.41″N, long. 076°56′28.54″W)
BGBRD, NC	WP	(Lat. 35°53′45.11″ N, long. 076°32′23.15″ W)
HYPAL,VA	WP	(Lat. 37°03′27.23″ N, long. 075°44′43.09″ W)
TUGGR, VA	WP	(Lat. 37°41′08.72″ N, long. 075°36′36.92″ W)
KALDA, VA	FIX	(Lat. 37°50′31.06″ N, long. 075°37′35.34″ W)

* * * * *

Issued in Washington, DC, on February 2, 2023.

Brian Konie,

Acting Manager, Airspace Rules and Regulations.

[FR Doc. 2023–02575 Filed 2–6–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–112096–22]

RIN 1545–BQ46

Guidance Related to the Foreign Tax Credit; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; notice of hearing.

SUMMARY: This document provides a notice of public hearing on proposed regulations relating to the foreign tax credit, including guidance with respect to the reattribution asset rule for purposes of allocating and apportioning foreign taxes, the cost recovery requirement, and the attribution rule for withholding tax on royalty payments.

DATES: The public hearing is being held on Wednesday, February 15, 2023, at 10 a.m. EDT. The IRS must receive speakers' outlines of the topics to be discussed at the public hearing by Friday, February 10, 2023.

ADDRESSES: The public hearing is being held by teleconference. Individuals that have submitted an outline of testimony and want to testify (by telephone) at the public hearing must send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number [REG–112096–22] and the word TESTIFY. For example, the subject line may say: Request to TESTIFY at Hearing for REG–112096–22. The email must include the name(s) of the speaker(s) and title(s) only. No outlines will be accepted by email. Send outline submissions electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–112096–22). The email must be received by February 10, 2023.

FOR FURTHER INFORMATION CONTACT: Concerning §§ 1.901–2 and 1.903–1, Teisha Ruggiero, (646) 259–8116, § 1.861–20, Suzanne Walsh, (202) 317–4908; concerning submissions of comments, the hearing, and the access code to attend the hearing by teleconferencing, Vivian Hayes at (202) 317–5306 (not toll-free numbers) or *publichearings@irs.gov*. If emailing, please include Attend, Testify, or Agenda Request and [REG–112096–22] in the email subject line.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking REG–112096–22 that was published in the **Federal Register** on Tuesday, November 22, 2022, 87 FR 71271.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments telephonically at the hearing that previously submitted written comments by January 23, 2023, must submit an outline on the topics to be addressed and the amount of time to be devoted to each topic by February 10, 2023. A period of 10 minutes is allotted to each person for presenting oral comments.

After receiving outlines, the IRS will prepare an agenda containing the schedule of speakers. The agenda will be available via Federal eRulemaking Portal (*www.Regulations.gov*) under the title of Supporting & Related Material by February 12, 2023. The public hearing agenda will contain the telephone number and access code.

Individuals who want to attend (by telephone) the public hearing must also send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number [REG–112096–22] and the word ATTEND. For example, the subject line may say: Request to ATTEND Hearing for REG–112096–22. The email requesting to attend the public hearing must be received by 5 p.m. EDT two (2) business days before the date that the hearing is scheduled.

The telephonic hearing will be made accessible to people with disabilities. To request special assistance during the telephonic hearing please contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to *publichearings@irs.gov* (preferred) or by telephone at (202) 317–5306 (not a toll-free number) by Friday, February 10, 2023.

Any questions regarding speaking at or attending a public hearing may also be emailed to *publichearings@irs.gov*.

Oluwafunmilayo A. Taylor,

Branch Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2023–02574 Filed 2–6–23; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2021–0769; FRL–10576–01–R4]

Air Plan Approval; NC; Transportation Conformity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of North Carolina, through the North Carolina Department of Environmental Quality (DEQ), Division of Air Quality (DAQ) on September 24, 2021. The SIP revisions replace previously approved memoranda of agreement (MOAs) with thirteen updated MOAs outlining transportation conformity criteria and procedures related to interagency consultation, conflict resolution, public participation, and enforceability of certain transportation-related control and mitigation measures. EPA is proposing to determine that North Carolina's September 24, 2021, SIP revisions are consistent with the applicable provisions of the Clean Air Act (CAA or Act).

DATES: Written comments must be received on or before March 9, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2021–0769 at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9222. Ms. Sheckler can also be reached via electronic mail at *sheckler.kelly@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. What is transportation conformity?

Transportation conformity is required under section 176(c) of the CAA and is a process that ensures federally-supported transportation activities are consistent with (''conform to'') the purposes of the SIP. Examples of transportation activities include federally-supported highway projects, transit projects, transportation plans, and transportation improvement projects (TIPs). Transportation conformity applies to areas that are designated nonattainment for transportation-related national ambient air quality standards (NAAQS) (*i.e.,* ozone, particulate matter (*e.g.,* $PM_{2.5}$ and PM_{10}), carbon monoxide (CO), and nitrogen dioxide (NO_2)) and to certain areas that have been redesignated to attainment of a transportation-related NAAQS.[1]

Pursuant to CAA section 176(c), conformity means conformity to a SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards, and that no federal or federally-supported activity under section 176(c)(1) will: (1) cause or contribute to any new violation of any NAAQS in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. The requirements of section 176(c) of the CAA apply to all departments, agencies, and instrumentalities of the federal government. Transportation conformity refers only to the conformity of transportation plans, programs, and projects that are funded or approved under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. chapter 53). Pursuant to section 176(c) of the CAA, EPA issues criteria and procedures for determining conformity of transportation plans, programs, and projects to a SIP. One of the requirements is that each state submit a revision to its SIP to include conformity criteria and procedures.

B. Why are states required to submit a transportation conformity SIP?

EPA promulgated the first federal transportation conformity criteria and procedures (''Conformity Rule'') on November 24, 1993 (*see* 58 FR 62188), codified at 40 CFR part 51, subpart T and 40 CFR part 93. Among other things, the rule required states to address all provisions of the conformity rule in their SIPs, frequently referred to as ''conformity SIPs.'' Under 40 CFR 51.390, most sections of the conformity rule were required to be copied verbatim into the SIP. Since then, the rule has been revised on August 7, 1995 (60 FR 40098), November 14, 1995 (60 FR 57179), August 15, 1997 (62 FR 43780), April 10, 2000 (65 FR 18911), August 6, 2002 (67 FR 50808), and January 24, 2008 (73 FR 4438).

On August 10, 2005, the ''Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users'' (SAFETEA–LU) was signed into law. SAFETEA–LU revised section 176(c) of the CAA transportation conformity provisions by streamlining the requirements for conformity SIPs. Under SAFETEA–LU, states are required to address and tailor only three sections of the rule in their conformity SIPs: 40 CFR 93.105, 40 CFR 93.122(a)(4)(ii), and 40 CFR 93.125(c). In general, states are no longer required to submit conformity SIP revisions that address the other sections of the conformity rule. These changes took effect on August 10, 2005, when SAFETEA–LU was signed into law.

A transportation conformity SIP can be adopted as a state rule, a memorandum of understanding (MOU), or a memorandum of agreement (MOA). The MOA/MOU must establish the roles and procedures for transportation conformity and include the detailed consultation procedures developed for that particular area. The MOAs are enforceable through the signature of all the transportation and air quality agencies, including EPA and the U.S. Department of Transportation (USDOT) which consists of the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA). States may use an MOU or MOA as long as it meets the following requirements: ''(1) it is fully enforceable under state law against all parties involved in interagency consultation and in approving, adopting and implementing transportation projects, TIPs, or transportation plans, (2) the state submits it to EPA for inclusion into the SIP, and (3) it has been signed by all agencies covered by the conformity rule . . .'' [2]

C. How does transportation conformity work?

The transportation conformity rule applies to certain NAAQS nonattainment and maintenance areas in the state. The Metropolitan Planning Organization (MPO), the state department of transportation (DOT) (in absence of an MPO), state and local air quality agencies, EPA, and the USDOT are involved in the process of making conformity determinations. Conformity determinations are made on programs and plans such as a TIP, transportation plans, and transportation projects. The projected emissions that will result from implementation of the transportation plans and programs are calculated and compared to the motor vehicle emissions budget (MVEB) established in the SIP. The calculated emissions must be equal to or smaller than the federally approved MVEB for the USDOT to make a positive conformity determination with respect to the SIP.

Pursuant to federal regulations, when an area is designated nonattainment for a transportation-related NAAQS, the state is required to submit a transportation conformity SIP within one year of the effective date of the nonattainment area designations. *See* 40 CFR 51.390(c). Previously, North Carolina established, and EPA subsequently approved, a transportation conformity SIP to address areas that were designated nonattainment or previously designated nonattainment for the CO and 1-hour ozone NAAQS. *See* 67 FR 32549 (December 27, 2002) for EPA's rulemaking approving North Carolina's transportation conformity SIP. North Carolina subsequently submitted a SIP revision on July 12, 2013, to update and replace North Carolina's previously approved transportation conformity SIP. EPA approved this revision on December 26, 2013. *See* 78 FR 78266.

D. The South Coast II Decision

On February 16, 2018, the United States Court of Appeals for the District of Columbia Circuit issued a decision in *South Coast Air Quality Mgmt. Dist.* v. *EPA* (''*South Coast II,*'' 882 F.3d 1138)

[1] In general, transportation conformity does not apply for areas that have completed the entirety of the required maintenance period (*i.e.,* typically 20 years after redesignation).

[2] *See* ''*Guidance for Developing Transportation Conformity State Implementation Plans (SIPs)*'' U.S. Environmental Protection Agency, Office of Transportation and Air Quality, EPA–420–B–09–001 (January 2009). Available at: *https://nepis.epa.gov/Exe/ZyPDF.cgi/P1002W5B.PDF?Dockey=P1002W5B.PDF.*

that affected the process for making transportation conformity decisions in areas that were either nonattainment or maintenance for the 1997 ozone NAAQS. The case revolved around a challenge to EPA's final rule establishing implementation requirements for the 2008 ozone NAAQS and revoking the 1997 8-hour ozone NAAQS, known as the 2008 ozone NAAQS SIP Requirements Rule. *See* 80 FR 12264 (March 6, 2015). As a result of this rule, areas that were nonattainment or maintenance for the 1997 ozone NAAQS were no longer required to implement transportation conformity requirements for the 1997 8-hour ozone NAAQS. In *South Coast II,* multiple environmental interest groups challenged EPA's 2008 ozone NAAQS SIP Requirements Rule. The Court vacated portions of EPA's 2008 ozone NAAQS SIP Requirements Rule, but upheld EPA's revocation of the 1997 ozone NAAQS.

The Court decision referred to the 1997 ozone NAAQS nonattainment or maintenance areas that were designated attainment for the 2008 ozone NAAQS as ''orphan areas.'' The decision stated that transportation conformity still applies for the revoked 1997 ozone NAAQS in these orphan areas. For areas that were nonattainment for the 1997 ozone NAAQS at the time it was revoked, the court stated that transportation conformity applies as an anti-backsliding measure. *See* South Coast II, 882 F.3d at 1149. For areas that were maintenance for the 1997 ozone NAAQS at the time it was revoked, the court stated that transportation conformity applies based on the court's interpretation of CAA section 176(c)(5)(B). *See* id. at 1155.

Based on the Agency's review of the court decision, EPA has concluded that the decision does not affect transportation conformity requirements for areas originally designated nonattainment for the more stringent 2008 ozone NAAQS (*see* 77 FR 30160, May 21, 2012), or areas designated nonattainment for the more stringent 2015 ozone NAAQS (*see* 83 FR 25776, June 4, 2018). However, as a result of this court decision, the previous 1997 8-hour ozone NAAQS nonattainment areas are required to implement transportation conformity. These areas are as follows for North Carolina: (1) the bi-state Charlotte-Gastonia-Rock Hill, NC–SC; (2) Greensboro-Winston Salem-High Point, NC; (3) Great Smoky National Park (North Carolina portion); (4) Hickory-Morganton-Lenoir, NC; (5) Raleigh-Durham-Chapel Hill, NC; and (6) Rocky Mount, NC.

II. EPA Analysis of North Carolina's Submittals

CAA Section 176(c)(4)(E) and 40 CFR 51.390(b) require states to develop conformity SIPs that address three specific provisions of federal regulations. First, EPA's transportation conformity rule requires states to develop their own processes and procedures which meet the criteria in 40 CFR 93.105 for interagency consultation and resolution of conflicts among the federal, state, and local agencies. The SIP revision must include processes and procedures to be followed by the MPO, state DOT, and the USDOT in consultation with the state and local air quality agencies and EPA before making conformity determinations. The conformity SIP revision must also include processes and procedures for the state and local air quality agencies and EPA to coordinate the development of applicable SIPs with MPOs, state DOTs, and the USDOT. Second, 40 CFR 93.122(a)(4)(ii) states that conformity SIPs must require written commitments to control measures to be obtained prior to a conformity determination if those measures are not included in an MPO's transportation plan and TIP. This rule also requires that such commitments are fulfilled. Finally, 40 CFR 93.125(c) states that conformity SIPs must require that written commitments to mitigation measures must be obtained prior to a project-level conformity determination, and that the project sponsors comply with these commitments.

On July 12, 2013, the State of North Carolina, through DAQ, submitted its ''Conformity SIP'' for the applicable transportation-related NAAQS. Specifically, North Carolina requested EPA approval of its Conformity SIP which included MOAs signed by the federal and state transportation and air quality partners, and all of the MPOs in the state subject to transportation conformity requirements. EPA approved these MOAs into the North Carolina SIP on December 26, 2013. *See* 78 FR 78266.

North Carolina's September 24, 2021, conformity SIP revisions add new interagency partners and MPOs, establish new procedures for interagency consultation, dispute resolution, public participation and enforceability of certain transportation-related control measures and mitigation measures, and supersede the MOAs incorporated into the SIP on December 26, 2013. For a list of MPOs for which North Carolina has established MOAs in the September 24, 2021, submission, see Table 1, below. Table 1 also includes a list of the areas and/or counties which are covered under the updated MOAs.

TABLE 1—MOA ADMINISTRATORS AND COVERED AREAS

MOA administrator	Covered areas
Burlington-Graham MPO	Alamance County and portions of Guilford and Orange Counties.
Cabarrus-Rowan MPO	Cabarrus and Rowan Counties.
Charlotte Regional Transportation Planning Organization.	Charlotte Urbanized Area which includes Charlotte and the remainder of Mecklenburg County plus that area beyond the existing urbanized area boundary of Iredell, Mecklenburg, and Union Counties that is expected to become urban within a twenty-year planning period.
Durham-Chapel Hill-Carrboro MPO	Durham County, the portion of Orange County that contains the towns of Chapel Hill, Carrboro, and Hillsborough, and Northeast Chatham County.
Gaston-Cleveland-Lincoln MPO	Gaston, Cleveland, and Lincoln Counties.
Greater Hickory MPO	Alexander, Burke, Caldwell, and Catawba Counties.
Greensboro Urban Area MPO	City of Greensboro, the majority of unincorporated Guilford County, and the towns of Oak Ridge, Pleasant Garden, Sedalia, Stokesdale, and Summerfield.
High Point Urban Area MPO	Archdale, Denton, High Point, Jamestown, Lexington, Thomasville, Trinity, Wallburg, and portions of Davidson County, Forsyth County and Randolph County.
North Carolina Capital Area MPO	Wake County and parts of Franklin, Granville, Harnett, and Johnston Counties.
Rocky Mount Urban Area MPO	City of Rocky Mount, Towns of Nashville and Sharpsburg, and portions of Edgecombe and Nash Counties.
Winston-Salem-Forsyth Union Area MPO	Portions of Forsyth, Davidson, Davie, and Stokes Counties.
Rural (counties not covered by MPO, administered by North Carolina DOT).	Person County.

TABLE 1—MOA ADMINISTRATORS AND COVERED AREAS—Continued

MOA administrator	Covered areas
Great Smoky Mountains National Park (administered by NPS).	Portions of Haywood and Swain Counties.

Table 2, below, identifies the applicable NAAQS for which each planning agency is required to implement transportation conformity, and therefore, establish interagency consultation procedures. As stated above, the MOAs are the documents which establish each area's interagency consultation procedures.

TABLE 2—MOA ADMINISTRATORS AND THE APPLICABLE NAAQS FOR TRANSPORTATION CONFORMITY

MOA administrator	Applicable NAAQS
Burlington-Graham MPO	1997 8-hour ozone and 1997 annual $PM_{2.5}$ NAAQS.
Cabarrus-Rowan MPO	1997 8-hour ozone, 2008 8-hour ozone, and 2015 8-hour ozone NAAQS.
Charlotte Regional Transportation Planning Organization.	1971 CO, 1997 8-hour ozone, and 2008 8-hour ozone NAAQS.
Durham-Chapel Hill-Carrboro MPO	1971 CO and 1997 8-hour ozone NAAQS.
Gaston-Cleveland-Lincoln MPO	1997 8-hour ozone and 2008 8-hour ozone NAAQS.
Greater Hickory MPO	1997 annual $PM_{2.5}$ NAAQS.
Greensboro Urban Area MPO	1997 annual $PM_{2.5}$ NAAQS.
High Point Urban Area MPO	1971 CO and 1997 annual $PM_{2.5}$ NAAQS.
North Carolina Capital Area MPO	1971 CO and 1997 8-hour ozone NAAQS.
Rocky Mount Urban Area MPO	1997 8-hour ozone NAAQS.
Winston-Salem-Forsyth Urban Area MPO	1971 CO and 1997 annual $PM_{2.5}$ NAAQS.
Rural (counties not covered by MPO, administered by North Carolina DOT)[3].	1997 8-hour ozone NAAQS.
Great Smoky Mountains National Park (administered by NPS).	1997-hour ozone NAAQS.

Aside from some minor language edits and clarifications, each updated MOA makes changes to address federal transportation conformity requirements. Details on EPA's analysis of each updated MOA and its reasoning for proposing to approve them is presented in the sections below.

A. Bi-State Charlotte Area

There are three MPOs within the North Carolina portion of the bi-state Charlotte Area. These MPOs are:

- Cabarrus-Rowan Metropolitan Planning Organization (CRMPO);
- Charlotte Regional Transportation Planning Organization (CRTPO); and
- Gaston-Cleveland-Lincoln Metropolitan Planning Organization (GCLMPO).

Several counties (or portions of counties) in the bi-state Charlotte Area comprise the maintenance area for the CO NAAQS, as well as the maintenance areas for the 2008 8-hour ozone NAAQS and the 1997 8-hour ozone NAAQS. Based on the 1997 and 2008 8-hour ozone NAAQS, Cabarrus, Cleveland, Gaston, Iredell, Lincoln, Mecklenburg, Rowan, and Union Counties in North Carolina, and a portion of York County in South Carolina,[4] are required to implement transportation conformity requirements.[5] DAQ worked with CRMPO, CRTPO, GLMPO, NC DOT, and the other applicable transportation and air quality partners for the bi-state Charlotte Area to develop and execute updated MOAs to address the consultation and other applicable transportation conformity requirements for the Area. These MOAs are provided in the docket for this proposed rulemaking.

North Carolina's September 24, 2021, SIP revisions, through the MOAs, update the MOA definitions, party duties section, conformity analysis results and reporting section, and the modifications of agreement section. The MOAs for MPOs in the bi-state Charlotte Area were primarily updated to make minor non-substantive changes such as minor language edits, renumbering changes throughout the MOAs, one change in a timing provision, and the removal of one section. Additionally, the September 24, 2021, SIP revisions include several other changes such as definition changes, and a few new clauses.

The bulk of the changes in the September 24, 2021, SIP revisions concern minor language edits, clarifications, the correction of a typographical error, and the removal of an unnecessary section. For example, one language edit changes the word ''under'' to ''pursuant to.'' An example of clarifying edits made in the MOAs for the bi-state Charlotte Area was to update the names and abbreviations of the involved state and local agencies to their current names throughout the MOAs. Additionally, the MOAs for the bi-state Charlotte Area included updates to the format for statutes and regulations, for example changing ''North Carolina Administrative Code (hereinafter, 'N.C.A.C.'), Subchapter 2D'' to ''North Carolina Administrative Code (hereinafter, 'NCAC'), Subchapter 2D.'' One other edit made in all the MOAs is to clarify the timing provision for the Interagency Consultation Conformity Determination Meeting, to be more explicit that the meeting must take place prior to a conformity determination being made. Previously, the description

[3] Person County is the only county subject to transportation conformity requirements per the 1997 8-hour ozone NAAQS that does not have an MPO responsible for it.

[4] Separate to North Carolina, the state of South Carolina has established conformity procedures for York County, which makes up the South Carolina portion of the Charlotte bi-state Area, in its individual conformity SIP. EPA approved South Carolina's Conformity SIP on July 28, 2009. *See* 74 FR 37168.

[5] On December 16, 2015, EPA sent a letter to CRTPO informing it that its transportation conformity obligations in Mecklenburg County for the CO NAAQS ceased to apply after September 18, 2015, because the 20-year maintenance period had been reached and North Carolina did not extend the maintenance period beyond it. A copy of this letter is provided in the docket for this proposed rulemaking.

of the meeting timing was unclear, so the edits require the meeting to take place at least nine months before a conformity determination is needed. The updates for the MOAs for the bi-state Charlotte Area also fix a typographical error in clause 6.3.1.5 when referencing a specific regulation provision. Lastly, the MOAs for the bi-state Charlotte Area remove the ''Termination of Agreement'' section. Further minor, non-substantive changes include adding the term ''MOA'' to refer to the Memorandum of Agreement throughout the document, basic word preference changes, grammatical changes, and necessary renumbering of sections to incorporate the addition or removal of provisions, which are further discussed below.

The MOAs also include several changes to the definitions sections of the MOAs, including the modification of two definitions and the addition of another. The MOAs all replaced the definition of ''Long Range Transportation Plan (LRTP)'' with ''Metropolitan Transportation Plan (MTP).'' [6] The definition for MTP in the new MOAs is, ''. . . the official multimodal transportation plan addressing no less than a 20-year planning horizon that the MPO develops, adopts, and updates through the metropolitan transportation process.'' The definition for MTP is nearly identical to the definition for LRTP, with the one difference being the description as to how the plan is developed. The LRTP definition stated that it was developed through the ''statewide transportation planning process'' while the MTP definition states that ''the MPO develops, adopts, and updates through the metropolitan transportation planning process.'' The MTP definition comes from 23 CFR part 450, titled ''Planning Assistance and Standards.'' 40 CFR part 93 states that transportation conformity determinations are required for the adoption, acceptance, approval, or support of transportation plans, transportation improvement programs (TIPs), and their amendments, developed pursuant to 23 CFR part 50. *See* 40 CFR 93.102. Since transportation plans are developed pursuant to the requirements outlined in 23 CFR part 450, EPA preliminarily agrees with this change. North Carolina replaces all references to the LRTP with MTP throughout the MOAs for the bi-state Charlotte Area. Additionally, the MOA updates modify the definition of ''Statewide Transportation Improvement Program (STIP).'' [7] [8] The updated definition of STIP is identical to the definition in 23 CFR part 450. Finally, North Carolina also adds a definition for ''Transportation Improvement Program (TIP)'' in the MOAs for the bi-state Charlotte Area. Transportation conformity requires that federally-supported transportation activities, such as TIPs, are consistent with the purpose of the SIP. As transportation conformity includes TIPs, EPA preliminarily finds the addition of this definition to each MOA acceptable.

North Carolina also added several new clauses in each MOA for the bi-state Charlotte Area. First, DAQ adds clause 2.1.6 in the ''MPO Duties'' sub-section, under the ''Duties of the Parties'' section, requiring that the:

> MPO, NCDOT, or its designee, shall conduct project-level conformity analysis for MPO-sponsored projects as part of the NEPA process for FHWA/FTA projects located in the MPO boundary. The MPO does not have to make project-level conformity determinations.

40 CFR part 93.105 and 40 CFR part 93.122(a) require the MPOs conduct an analysis for all FHWA/FTA projects proposed in transportation plans, TIPs, or other regionally significant projects. This clause was added to meet this requirement. DAQ also adds a clause and sub-clauses to the ''Modifications of Agreement'' section. The clause and its corresponding sub-clauses allow NC DEQ to make administrative amendments as necessary to preserve the accuracy and integrity of the MOAs. The sub-clauses define what constitutes an administrative amendment. These modifications make this section more stringent by limiting acceptable amendments to the following: typographical errors, legal citations to accurately account for any reorganization of laws or regulations, and public information changes, such as the renaming of an organization. Further, EPA preliminarily finds these modifications acceptable as any amendments will still have to go through the SIP process to modify the transportation conformity SIP.

DAQ has also modified several clauses in each MOA. A clause DAQ modifies in each MOA is 2.1.13 in the ''MPO Duties'' sub-section under the ''Duties of the Parties'' section. This clause now requires that the applicable MPO or MPO designee submit a request to NC DEQ or its designee for written emissions modeling results required for conformity determinations instead of for emission factors. Further, the change also requires the MPO, or its designee, to provide vehicle speed, vehicle miles travelled, and other input data necessary to generate emissions modeling results. Emissions modeling is a more comprehensive way to characterize emissions resulting from transportation conformity projects than simply using emissions factors because it accounts for more variables, such as meteorology. 40 CFR 93.105(c) requires that the agencies subject to an MOA evaluate and choose a model for regional emissions analyses, and 40 CFR 93.122 outlines how these models should be designed. Other provisions referring to emissions factors previously in the MOAs are revised to refer to emissions modeling results instead. For example, subsection 7.1.2 in each MOA specifies that the conformity analysis reports must include the mobile model inputs and outputs used to develop the emissions modeling results. One last clause that is modified in each MOA is 2.2.11, which is in the ''NCDEQ Duties'' sub-section, also under the ''Duties of the Parties'' section. This clause requires NC DEQ to consult and review project narratives to determine if a conformity project is an air quality concern pursuant to 40 CFR part 93. Previously, it only required a review of project narratives to determine if the conformity project had any particulate matter air quality concerns. The modification to the clause makes it more stringent because it is now not limited to particulate matter air quality concerns.

EPA has reviewed the procedures and updates provided in the MOAs and has preliminarily determined that they are consistent with the CAA and the applicable transportation conformity requirements at 40 CFR 51.390 and 40 CFR part 93. Therefore, EPA is proposing to approve the inclusion of the updated MOAs for the CRMPO, CRTPO, and GLMPO, relating to the bi-state Charlotte Area into the North Carolina SIP.

B. Great Smoky Mountain National Park Area

Portions of Haywood and Swain Counties comprise the Great Smoky National Park maintenance area for the

[6] Long Range Transportation Plan was defined as ''. . . the official intermodal metropolitan transportation plan that is developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23 CFR part 450.''

[7] The previous definition in the MOA defined STIP as, ''. . . a staged, multi-year, statewide, intermodal program of transportation projects, which consistent with the statewide transportation plan and planning processes.''

[8] The MOA has updated the definition of STIP to, ''. . . a statewide, prioritized listing/program of transportation projects that is consistent with the long-range statewide transportation plan, TIPs, and required for projects to be eligible for funding pursuant to Title 23 U.S.C. and Title 49 U.S.C. chapter 53.''

1997 8-hour ozone NAAQS. As indicated above, the Great Smoky Mountain National Park Area is required to implement transportation conformity requirements for the 1997 8-hour ozone NAAQS as a maintenance area. As such, DAQ worked with the National Park Service, NC DOT, and the other applicable transportation and air quality partners for the Great Smoky Mountain National Park Area to develop and execute an updated MOA to address the consultation and other applicable transportation conformity requirements for the area. This MOA is provided in the docket for this proposed rulemaking.

The bulk of the changes in the September 24, 2021, SIP revisions concern minor language edits, clarifications, and a correction of a typographical error. For example, one language edit changes the word ''under'' to ''pursuant to.'' An example of clarifying edits to the Great Smoky Mountains MOA was to update the names and abbreviations of the involved state and local agencies to their current names throughout the MOA. Additionally, the format for statues and regulations in the MOA have been revised, for example changing ''49 U.S.C., 40 CFR 93.101'' to ''49 U.S.C., 40 CFR 93.101'' and changing, ''40 CFR 93.126, .127, and .128'' to ''40 CFR 93.126, 93.127, and 93.128.'' The MOA was also updated to fix a typographical error in clause 3.2.2.5 when referencing a specific regulation provision. Further minor, non-substantive changes throughout the document include basic word preference changes, grammatical changes, and the necessary renumbering of sections to incorporate the addition of a clause.

The updates to the MOA also include several other changes, including the modification of two definitions, the addition of one clause, and the modification of one section. First, the MOA updates modify the definition of ''Statewide Transportation Improvement Program (STIP).'' [9] [10] The updated definition of STIP is identical to the definition in 23 CFR part 450. The definition of ''Transportation Improvement Program (TIP)'' has also been modified in the MOA.[11] [12] This definition is similar to the one for TIP found in 23 CFR part 450. As explained in the previous section, since transportation plans are developed pursuant to the requirements outlined in 23 CFR part 450, EPA finds these changes acceptable. The updates also include adding clause 4.1.2 to the ''Conformity Analysis Results and Reporting'' Section, which states that the conformity analysis should include, ''Mobile model inputs and outputs needed to develop road network emissions modeling results . . .'' As all the parties involved are required to evaluate and choose models and the associated assumptions for these models pursuant to 40 CFR 93.105(c)(1)(i), EPA preliminarily finds the addition of this clause requiring the conformity analysis report to include the mobile model inputs and outputs acceptable and helpful. Finally, the ''Modifications and Renewal of Agreement'' section has been heavily modified in the MOA. The modifications to this section of the Greater Smoky Mountain Area MOA are identical to the changes made in the ''Modifications of Agreement'' section for the bi-state Charlotte MPOs. EPA finds these changes acceptable for the same reasons described in Section II.A.

EPA has reviewed the procedures and updates provided in the MOA and has preliminarily determined that it is consistent with the CAA and the applicable transportation conformity requirements at 40 CFR 51.390 and CFR part 93. Therefore, EPA is proposing to approve the inclusion of the updated MOA for the Great Smoky Mountain Area into the North Carolina SIP.

C. Greensboro-Winston Salem-High Point Area

There are four MPOs within the Greensboro-Winston Salem-High Point Area. These MPOs are:

- Burlington-Graham Metropolitan Planning Organization (BGMPO);
- Greensboro Urban Area Metropolitan Planning Organization (GMPO);
- High Point Urban Area Metropolitan Planning Organization (HPMPO); and
- Winston-Salem-Forsyth Urban Area Metropolitan Planning Organization (WSFUA).

Several counties (or portions of counties) in the Greensboro-Winston Salem-High Point Area comprise the maintenance area for the CO NAAQS, the previous maintenance area for the 1997 $PM_{2.5}$ NAAQS, and the 1997 8-hour ozone NAAQS.[13] The Burlington-Graham MPO is comprised of Alamance County and portions of Guilford and Orange Counties for the 1997 8-hour ozone NAAQS and the 1997 annual $PM_{2.5}$ NAAQS maintenance areas. The Greensboro Urban MPO is comprised of the City of Greensboro, the majority of unincorporated Guilford County, and the towns of Oak Ridge, Pleasant Garden, Sedalia, Stokesdale, and Summerfield for the annual 1997 $PM_{2.5}$ NAAQS maintenance areas. The High Point Urban MPO is comprised of Archdale, Denton, High Point, Jamestown, Lexington, Thomasville, Trinity, and Wallburg Counties, as well as portions of Davidson, Forsyth and Randolph Counties for the CO and 1997 $PM_{2.5}$ NAAQS maintenance areas. Lastly, the Winston-Salem Urban MPO is comprised of portions of Forsyth, Davidson, Davie and Stokes Counties for the CO NAAQS and 1997 $PM_{2.5}$ NAAQS maintenance areas. Although no longer required, DAQ worked with the BGMPO, GMPO, HPMPO, WSFUA, NC DOT, and the other applicable transportation and air quality partners for the Area to develop and execute updated MOAs to address the consultation and other applicable transportation conformity requirements such as 40 CFR 93.122(a)(4)(ii) and 40 CFR 93.125(c) for the Area.[14] These MOAs are provided in the docket for this proposed rulemaking.

North Carolina's September 24, 2021, SIP revisions for the MOAs associated with the Greensboro-Winston Salem-High Point Area, make the same changes to these MOAs as the bi-state Charlotte MOAs. As such, North Carolina's September 24, 2021, SIP revisions update the MOA definitions, party

[9] The previous definition in the MOA defined STIP as, ''. . . a staged, multi-year, statewide, intermodal program of transportation projects, which consistent with the statewide transportation plan and planning processes.''

[10] The MOA has updated the definition of STIP to, ''. . . a statewide, prioritized listing/program of transportation projects that is consistent with the long-range statewide transportation plan, TIPs, and required for projects to be eligible for funding pursuant to Title 23 U.S.C. and Title 49 U.S.C. chapter 53.''

[11] The previous definition in the MOA defined TIP as a ''Transportation Improvement Program developed by FHWA–EFLHD in coordination with NPS.''

[12] The MOA has updated the definition of TIP to, ''. . . a prioritized listing/program of transportation projects that are developed by FHWA–EFLHD in coordination with the NPS and required for projects to be eligible for funding pursuant to Title 23 U.S.C. and 49 U.S.C. chapter 53.''

[13] The Greensboro-Winston Salem-High Point Area was an Early Action Compact (EAC) area for the 1997 8-hour ozone NAAQS. This area was designated nonattainment on June 15, 2004, for the 1997 8-hour ozone NAAQS, with a deferred effective date. The Area met all of the EAC milestones and was ultimately never effectively designated nonattainment for the 1997 8-hour ozone NAAQS. The area was therefore never required to implement transportation conformity requirements for the 1997 8-hour ozone NAAQS, but was required to continue to implement transportation conformity requirements for the 1-hour ozone NAAQS until this requirement was removed as a result of the area successfully meeting the EAC milestones for the 1997 8-hour ozone NAAQS.

[14] Transportation conformity requirements are no longer applicable to the Davidson and Guilford Counties 1997 $PM_{2.5}$ NAAQS maintenance areas.

duties section, conformity analysis results and reporting section, and the ''Modifications of Agreement'' section. Since the updates to the MOAs in the Greensboro-Winston Salem-High Point Area are the same as those to the MOAs for the bi-state Charlotte Area, EPA has preliminarily determined that these modifications are consistent with the CAA and the applicable transportation conformity requirements at 40 CFR 51.390 and 40 CFR part 93 for the reasons described in Section II.A. Therefore, EPA is proposing to approve the inclusion of the updated MOAs for the BGMPO, GMPO, HPMPO, and WSFUA, relating to the Greensboro-Winston Salem-High Point Area, into the North Carolina SIP.

D. Hickory Area

The Hickory Area consists of one MPO, the Greater Hickory MPO, which is comprised of Alexander, Burke, Caldwell, and Catawba Counties. The Hickory Area is a maintenance area for the 1997 $PM_{2.5}$ NAAQS. As indicated above, the Hickory Area was previously required to implement transportation conformity requirements for the 1997 $PM_{2.5}$ NAAQS as a maintenance area. Although no longer required, DAQ worked with the Greater Hickory MPO, and other applicable transportation and air quality partners for the Hickory Area to develop and execute an updated MOA to address the consultation and other applicable transportation conformity requirements such as 40 CFR 93.122(a)(4)(ii) and 40 CFR 93.125(c) for the Area. This MOA is provided in the docket for this proposed rulemaking.

North Carolina's September 24, 2021, SIP revisions make the same changes to the Greater Hickory MOA as those made to the MOAs for the bi-State Charlotte Area. As such, these changes update the MOA definitions, party duties section, conformity analysis results and reporting section, and the Modifications of Agreement section. Since the updates to the Greater Hickory MOA are the same as those made to the MOAs for the bi-State Charlotte Area, EPA has preliminarily determined that it is consistent with the CAA and the applicable transportation conformity requirements at 40 CFR 51.390 and 40 CFR part 93 for the reasons described in Section II.A. Therefore, EPA is proposing to approve the inclusion of the updated MOA for the Greater Hickory MPO, relating to the Hickory Area, into the North Carolina SIP.

E. Raleigh-Durham-Chapel Hill Area

There are two MPOs within the Raleigh, Durham, Chapel Hill Area. These MPOs are:

- Durham-Chapel Hill-Carrboro MPO; and
- North Carolina Capital Area MPO.

Several counties (or portions of counties) in the Raleigh-Durham-Chapel Hill Area comprise a maintenance area for the CO NAAQS and a maintenance area for the 1997 8-hour ozone NAAQS. The Durham-Chapel Hill-Carrboro MPO consists of Durham County; the portion of Orange County that contains the towns of Chapel Hill, Carrboro, and Hillsborough; and Northeast Chatham County. The North Carolina Capital Area MPO consists of Franklin, Granville, Harnett, Johnston, and Wake Counties. Durham, Franklin, Granville, Orange, Johnston, Person,[15] and Wake Counties, in their entireties, and a portion of Chatham County in the Raleigh-Durham-Chapel Hill Area were included in the maintenance area for the 1997 8-hour ozone NAAQS, and thus, are required to implement transportation conformity requirements.[16]

DAQ worked with the Durham-Chapel Hill-Carrboro MPO, the North Carolina Capital Area MPO, NC DOT, and the other applicable transportation and air quality partners for the Area to develop and execute updated MOAs to address the consultation and other applicable transportation conformity SIP requirements such as 40 CFR 93.122(a)(4)(ii) and 40 CFR 93.125(c) for the Area. These MOAs are provided in the docket for this proposed rulemaking.

North Carolina's September 24, 2021, SIP revisions make the same changes to the Raleigh-Durham-Chapel Hill Area MOAs as the bi-State Charlotte MOAs. As such, North Carolina's September 24, 2021, SIP revisions update the MOA definitions, party duties section, conformity analysis results and reporting section, and the Modifications of Agreement section. Since the updates to the MOAs in the Raleigh-Durham-Chapel Hill Area are the same as those to the MOAs in the bi-State Charlotte Area, EPA has preliminarily determined that these are consistent with the CAA and the applicable transportation conformity requirements at 40 CFR 51.390 and 40 CFR part 93 for the reasons described in Section II.A. Therefore, EPA is proposing to approve the inclusion of the updated MOAs for the Durham-Chapel Hill-Cabarrus MPO and North Carolina Capital Area MPO, relating to the Raleigh-Durham-Chapel Hill Area, into the North Carolina SIP.

F. Rocky Mount Area

There is one MPO in the Rocky Mount Area, the Rocky Mount Urban Area MPO, which is comprised of the City of Rocky Mount, the towns of Nashville and Sharpsburg, and portions of Edgecombe and Nash Counties. Edgecombe and Nash Counties are in maintenance for the 1997 8-hour ozone NAAQS. DAQ worked with the Rocky Mount Urban Area MPO and other applicable transportation and air quality partners for the Rocky Mount Area to develop and execute an updated MOA to address the consultation and other applicable transportation conformity SIP requirements for the Area. This MOA is provided in the docket for this proposed rulemaking.

North Carolina's September 24, 2021, SIP revisions make the same changes to the Rocky Mount Area MOA as those made to the MOAs for the bi-state Charlotte Area with the exception of the definition for TIP.[17] As such, these changes update the MOA definitions, party duties section, conformity analysis results and reporting section, and the Modifications of Agreement section. Since the updates to the Rocky Mount MOA are the same as those to the MOAs in the bi-state Charlotte Area,[18] EPA has preliminarily determined that it is consistent with the CAA and the applicable transportation conformity requirements at 40 CFR 51.390 and 40 CFR part 93 for the reasons described in Section II.A. Therefore, EPA is proposing to approve the inclusion of the updated MOA for the Rocky Mount Area into the North Carolina SIP.

G. Rural Area

NC DOT is the responsible party for interagency consultation and compliance with transportation conformity requirements if no MPO exists in an area that is subject to 40 CFR part 93. Currently, Person County is subject to transportation conformity per the 1997 8-hour ozone NAAQS and does not have an MPO responsible for it. Therefore, NC DOT administers

[15] NC DOT administers transportation conformity requirements for Person County in accordance with the MOA for rural areas. *See* Section II.G, below.

[16] The end of the second maintenance plan has been reached for CO for Durham and Wake Counties, so transportation conformity is no longer required in relation to the CO NAAQS for the Raleigh-Durham-Chapel Hill Area.

[17] The Rocky Mount Area MOA uses a slightly different definition for TIP than the bi-state Charlotte Area MOAs. It defines it as, ''. . . a staged, multi-year, intermodal program of transportation projects covering a metropolitan planning area which is consistent with the MTP and was developed pursuant to 23 CFR, Part 450.'' Outside of this difference, the rest of the revisions are the same as the MOAs for the MPOs in the bi-State Charlotte Area. As transportation conformity requires that federally-supported transportation activities, such as TIPs, are consistent with the purposes of the SIP pursuant to 23 CFR, Part 450, this definition is acceptable.

[18] See id.

transportation conformity requirements for this area in accordance with the MOA for rural areas. DAQ worked with NC DOT and other applicable transportation and air quality partners for the area to develop and execute an updated MOA to address the consultation and other applicable transportation conformity SIP requirements such as 40 CFR 93.122(a)(4)(ii) and 40 CFR 93.125(c). This MOA is provided in the docket for this proposed rulemaking.

North Carolina's September 24, 2021, SIP revisions for the Rural Area MOA make many of the same changes as the bi-State Charlotte MOAs and the Great Smoky Mountain Area MOA. With respect to ''Duties of the Parties'' section, the Interagency Consultation Conformity Determination Meeting timing clarification, a typographical error in clause 6.3.1.5, the removal of the ''Termination of Agreement'' section, and the Modifications of Agreement section, the Rural Area MOA makes the same changes as those made in the bi-state Charlotte MOAs. With respect to the definitions for ''Transportation Improvement Program (TIP)'' and ''Statewide Transportation Improvement Program (STIP)'', the Rural Area MOA makes the same changes as the Great Smoky Mountain National Park Area MOA. EPA finds these changes acceptable of the same reasons outlined in Sections II.A and II.B. Further minor, non-substantive changes throughout the document include basic word preference changes, grammatical changes, and the necessary renumbering of sections to incorporate the addition of a clause.

EPA has reviewed the procedures and updates provided in the MOA and has preliminarily determined that it is consistent with the CAA and the applicable transportation conformity requirements at 40 CFR 51.390 and 40 CFR part 93. Therefore, EPA is proposing to approve the inclusion of the updated MOA for the Rural Area into the North Carolina SIP.

III. Proposed Actions

For the reasons discussed above, EPA is proposing to approve North Carolina's September 24, 2021, SIP revisions. Specifically, EPA is proposing to approve the replacement of Transportation Conformity MOAs for the Burlington-Graham MPO, Cabarrus-Rowan MPO, Charlotte Regional Transportation Planning Organization, Durham-Chapel Hill-Carrboro MPO, Gaston-Cleveland-Lincoln MPO, Greater Hickory MPO, Greensboro Urban Area MPO, High Point Urban Area MPO, North Carolina Capital Area MPO, Rocky Mount Urban Area MPO, the Great Smoky Mountains National Park (NPS), and Rural Area (NC DOT). EPA is proposing to find that these actions are consistent with section 110 and 176 of the CAA and will not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the CAA.

IV. Statutory and Executive Order Reviews

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

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

The SIP revisions are not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rules do not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will they impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: January 31, 2023.

Daniel Blackman,

Regional Administrator, Region 4.

[FR Doc. 2023–02488 Filed 2–6–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 87, and 88

[WT Docket No. 22–323; FCC 22–101; FR ID 122915]

Spectrum Rules and Policies for the Operation of Unmanned Aircraft Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (''FCC'' or ''Commission'') seeks comment on rules to promote access by unmanned aircraft system (UAS) operators to licensed spectrum to support UAS operations. First, this document seeks comment on service rules for the 5030–5091 MHz band that will provide UAS operators with access to licensed spectrum with the reliability necessary to support safety-critical UAS command-and-control communications links. Second, due to the increasing interest in operating UAS using existing terrestrial flexible-use spectrum networks, this document seeks comment on whether the Commission's current rules are adequate to ensure co-existence of terrestrial mobile operations and UAS use or whether changes to these rules are necessary.

Third, to further promote the safe integration of unmanned aircraft operations in controlled airspace and facilitate flight coordination, this document proposes a process for UAS operators to obtain a license in the aeronautical very high frequency (VHF) band to communicate with air traffic control and other aircraft. Together, these measures will help to promote the growth and safety of UAS operations.

DATES: Comments are due on or before March 9, 2023. Reply comments are due on or before April 10, 2023.

ADDRESSES: You may submit comments, identified by WT Docket No. 22–323, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *https://apps.fcc.gov/ecfs.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020), *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), 202–418–0432 (TTY).

FOR FURTHER INFORMATION CONTACT: Peter Trachtenberg, Mobility Division, Wireless Telecommunications Bureau, (202) 418–7369, or by email to *Peter.Trachtenberg@fcc.gov.* For additional information concerning the proposed Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams, Office of Managing Director, at (202) 418–2918 or *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (*NPRM*) in WT Docket No. 22–323, FCC 22–101, adopted on December 23, 2022, and released on January 4, 2023. The full text of this document, including all Appendices, is available for inspection and viewing via the Commission's website at *https://docs.fcc.gov/public/attachments/FCC-22-101A1.docx* or ECFS by entering the docket number, WT Docket No. 22–323. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *FCC504@fcc.gov* or calling the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

I. Discussion

A. UAS Communications in the 5030–5091 MHz Band

1. We propose to adopt a band plan and service rules in the 5030–5091 MHz band to enable UAS operators to use interference-protected control-and-non-payload-communications (CNPC) links. We seek comment on our proposal and on options to make the band available for this purpose. We further seek comment on the costs and benefits of any such options, including the costs and benefits of the specific band plan and service rules options discussed below. We seek comment on measures that will facilitate UAS use and promote equity for these underserved populations.

2. Through this proceeding, we seek to provide UAS operators with access to an additional spectrum resource that may complement other spectrum resources that are currently available or in development. We tentatively conclude that, while other spectrum bands are available for UAS communications, licensing the 5030–5091 MHz band specifically for UAS CNPC will have important public interest benefits. We seek comment on this tentative conclusion and the extent to which the 5030–5091 MHz band may offer unique advantages over other bands in supporting UAS CNPC.

1. Band Plan

3. For the purpose of this band and its service rules, and consistent with the Federal Aviation Administration (FAA) definitions of the terms, we propose to define UAS as an unmanned aircraft (UA) and its associated elements (including communication links and the components that control the UA) that are required for the safe and efficient operation of the UA in the airspace of the United States, and to define a UA as an aircraft operated without the possibility of direct human intervention from within or on the aircraft. We seek comment on these proposed definitions and on any alternatives. We further identify two broad UAS use cases for purposes of determining the appropriate band plan and service rules—non-networked operations, generally occurring within radio-line-of-sight (hereinafter line-of-sight or LOS) of the UAS operator, and network-supported operations, which rely on network infrastructure to go beyond radio-line-of-sight of the operator. Non-networked operations involve flights within a sufficiently localized area that can rely on direct wireless links between the UAS operator's controller and the UA and therefore do not require any supporting network infrastructure. In contrast, network-supported operations rely on deployed network infrastructure, such as cell towers and sites, to relay information between the operator and the UA and may therefore extend far beyond the range of direct wireless links between operator and UA. We seek comment on whether any other UAS use cases should be considered in determining the appropriate band plan and service rules.

4. Hereinafter, we use the term Non-Networked Access (NNA) to indicate spectrum or licenses (*e.g.,* NNA blocks) that would be governed by service rules appropriate to support non-networked communications. Likewise, we use the term Network-Supported Service (NSS) in connection with spectrum or licenses to indicate that the relevant spectrum or licenses would be governed by service rules appropriate to support the provision of network-based services. Further, we propose to use NNA and NSS in the rules to designate the spectrum allocated for non-networked and network-supported use cases, respectively.

5. The Aerospace Industries Association (AIA) suggests that RTCA's terminology for these two use cases should be used. RTCA uses the term ''point-to-point'' for non-networked communications links and the term ''Command-and-Control Communications Service Providers'' to describe network-supported services. We tentatively find that our proposed terminology is more descriptive of the use cases we seek to support, and that the use of the term point-to-point,

which has been long used in Commission rules and orders to reference systems providing a data communication link between two fixed stations, may itself contribute to confusion in this context. We seek comment on the proposed terminology, and on alternatives.

6. To accommodate both NNA and NSS in the 5030–5091 MHz band, we propose to partition the band, to dedicate different segments of spectrum in the band for each use case, and to license each of these segments in a manner that is appropriate to support the relevant use cases. We seek comment broadly on the placement of NNA and NSS spectrum to ensure efficient, reliable, and safe use of the band. We seek comment on whether to make spectrum available for multi-purpose uses, *e.g.,* expansion bands for temporary NNA or NSS use. We seek comment on our proposals and on alternatives.

7. We specifically propose to dedicate at least 10 megahertz of spectrum for NNA operations, and seek comment on this proposal. AIA argues that 10 megahertz will be sufficient to promote deployment while preserving the opportunity for an incremental approach to licensing the band that will better accommodate developing industry standards. We seek comment on AIA's argument. We seek comment on the placement of the NNA spectrum within the band and whether, consistent with AIA's proposal, we should place 5 megahertz blocks at the bottom (5030–5035 MHz) and top (5086–5091 MHz) of the band for NNA use. Alternatively, should we locate the dedicated NNA blocks somewhere internal in the band rather than at the band edges? If so, should we designate the spectrum at the edges of the band for NSS?

8. An analysis by RTCA based in part on the use of an ''online filter-design tool'' finds that filters that sufficiently protect services in the adjacent bands ''would necessitate guardbands unusable by terrestrial CNPC at both ends of the 5030–5091 MHz bands, reducing the 61 MHz of usable passband width to 42–52 MHz depending on the case.'' It further states, however, that ''[c]ustom filter designs could probably provide larger usable passbands than those obtained using the online tool, possibly at the cost of increased size and weight.'' We seek comment on this analysis, and whether fixed guard bands at one or both ends of the band are warranted to protect services in the spectrum adjacent to the 5030–5091 MHz band, including (1) radionavigation-satellite service (RNSS) downlinks in the 5010–5030 MHz band, (2) aeronautical mobile telemetry (AMT) downlinks to support flight testing in the 5091–5150 MHz band, and (3) the Aeronautical Mobile Airport Communications System (AeroMACS) in the 5000–5030 MHz and 5091–5150 MHz bands. Alternatively, does the need to protect adjacent band services argue for dedicating the edge spectrum to something other than NNA assignments, such as satellite?

9. We further seek comment on whether, instead of designating separate upper and lower NNA blocks, we should place all dedicated NNA spectrum together in one contiguous block. Is placement of the NNA spectrum into two or more separate blocks useful for technical or other reasons? Conversely, would providing the spectrum in a single contiguous block reduce interference challenges (*e.g.,* by potentially reducing the adjacency of NNA and NSS blocks) or better support certain channelizations of the band or important use cases that may require channel bandwidths of more than 5 megahertz? Further, with regard to any technical standards that commenters may recommend applying to services or equipment in the 5030–5091 MHz band, we seek comment on whether these standards require the use of contiguous spectrum.

10. With regard to the remaining spectrum in the band, we seek comment on how to structure it consistent with the goal of dedicating a segment of spectrum for exclusive use NSS licenses. We seek comment on how much of the spectrum to dedicate for NSS operations, and how we should license any remaining spectrum. For the spectrum that we dedicate to NSS operations, we seek comment on the placement of the NSS blocks and on the appropriate block size for NSS licenses to promote investment and competition and support the current and evolving bandwidth needs of NSS services. In the current record, AIA proposes 5 to 10 megahertz blocks, and Wisk supports 10 megahertz blocks. We seek comment on these options and on any other appropriate block sizes. What size spectrum blocks would be necessary to support CNPC services? What block size would be appropriate if we permit NSS licensees to support non-CNPC communications? Would the flexibility of larger block sizes (such as 10 or 20 megahertz) better facilitate mixed CNPC and non-CNPC use?

11. While we anticipate that a significant portion of this remaining spectrum would be designated for NSS, we seek comment on whether we should use a portion of the spectrum for opportunistic use by both NNA or NSS licensees (multi-purpose use). Should we instead use a portion of the spectrum to increase the amount of spectrum dedicated to NNA operations? To the extent we dedicate spectrum for NSS licenses, we also seek comment on making that spectrum available for NNA operations on an interim, opportunistic basis. Under this approach, NNA users, in addition to having access to dedicated NNA spectrum, could use frequencies in a dedicated NSS block in geographic areas where the NSS licensee has not yet deployed an operating network. Once a network is deployed and operational in a particular area, NNA users would no longer have opportunistic access to the spectrum in that area. This approach would enable the NSS spectrum in an area to be used productively prior to the issuance of NSS licenses and deployment of networks, while providing NSS licensees with complete exclusivity once their systems are deployed. We seek comment on the costs and benefits of this approach, including its technical and economic feasibility, and on alternative approaches to NNA opportunistic access or alternative methods of ensuring productive usage of dedicated NSS spectrum prior to network deployment.

12. With these issues and questions in mind, we seek comment broadly on an appropriate band plan for the 5030–5091 MHz band. As one possible option for structuring the band overall, we invite comment on:

- Dedicating 10 megahertz of spectrum for NNA operations, with 5 megahertz blocks at the bottom (5030–5035 MHz) and top (5086–5091 MHz) of the band.
- Dedicating 40 megahertz of spectrum for NSS operations, divided into 4 licensed blocks of 10 megahertz each, with NNA opportunistic access as described above.
- Making the remaining 11 megahertz available for temporary, opportunistic use by either NNA users or NSS licensees (multi-purpose use).

We also seek comment on alternatives to this band plan, including plans that designate the edge spectrum for some purpose other than NNA operations (such as for NSS operations) or that provide different amounts of spectrum for NNA, NSS, and/or multi-purpose use than those presented in the example discussed above.

13. We further invite comment on alternative approaches to allocating the 5030–5091 MHz band for the support of UAS. For example, AIA proposes that we allocate and license the 51 megahertz between 5035 MHz and 5086 MHz on a geographic area basis in a

phased, incremental manner over a period of years—*e.g.,* allocating and licensing only 5 megahertz in the first year, and then licensing additional spectrum over the following years with blocks and geographic areas sized according to user demand and service provider applications. AIA suggests that such an incremental approach would help the Commission to accommodate different UAS markets defined by different UAS missions that are expected to emerge over time. We seek comment on this possible approach, and more generally on whether we should allocate only a portion of the band at this time and defer allocation of the remainder of the band. We further seek comment on whether we should preserve part of the band at this time for experimental use, or for potential future satellite-based CNPC that relies on the aeronautical mobile-satellite route (R) service (AMS(R)S) allocation in the band.

14. As another alternative, Qualcomm recommends that the Commission allocate 20 megahertz for direct UA-to-UA communications, including communications between the aircraft to facilitate detect and avoid (DAA) operations, and communications to broadcast Remote ID information. Qualcomm proposes that the remaining 41 megahertz of spectrum be licensed in two 20.5 megahertz blocks or four 10.25 megahertz blocks to network providers for the provision of NSS CNPC services and for payload transmissions to the extent that capacity is not needed for CNPC. We seek comment on this option and on Qualcomm's assertion that supporting the functionalities of DAA and Remote ID broadcasts will require 20 megahertz of 5030–5091 MHz band spectrum. We also seek comment on the compatibility of UA-to-UA transmissions and UA broadcast with CNPC links between a ground control station and a UA. If they are not compatible, should a portion of the band be designated exclusively for UA-to-UA or UA broadcast transmissions, and if so, how much spectrum should be designated for this purpose?

15. We seek comment on whether we should establish any internal guard bands, such as between the NNA and NSS blocks, or whether we can rely on appropriate technical rules to ensure that UAS operations in one block do not cause harmful interference to UAS operations in adjacent spectrum blocks. We request that parties proposing guard bands provide detailed technical justification and specify the width and placement of the proposed guard bands. We further seek comment on whether fixed guard bands at one or both ends of the band are warranted to protect services in the spectrum adjacent to the 5030–5091 MHz band, including (1) radionavigation-satellite service (RNSS) downlinks in the 5010–5030 MHz band, (2) aeronautical mobile telemetry (AMT) downlinks to support flight testing in the 5091–5150 MHz band, and (3) the Aeronautical Mobile Airport Communications System (AeroMACS) in the 5000–5030 MHz and 5091–5150 MHz bands.

2. Dynamic Frequency Management System

16. To address the complexities involved in coordinating shared interference-protected access to the 5030–5091 MHz band, we propose that access to the band be managed by one or more dynamic frequency management systems (DFMS). We use the term DFMS to describe a frequency coordination system that, in response to requests from UAS operators for frequency assignments in NNA spectrum, would determine and assign to the requesting operator, through an automated (non-manual) process, temporary use of certain frequencies for a particular geographic area and time period tailored to the operator's submitted flight plan. For the duration of the assignment, the operator would have exclusive and protected use of the assigned frequencies within the assigned area and timeframe, after which the frequencies would be available in that area for assignment to another operator. We contemplate that each DFMS would be administered by a private third party, which we refer to as a DFMS administrator. We further contemplate that each system would be capable of coordination-related activities across the entire 5030–5091 MHz band. While we contemplate that NSS licensees would be responsible for the use and coordination of frequencies within the scope of their licenses, requiring a DFMS to be capable of coordination across the entire band would enable a DFMS to provide dynamic access to any portions of the 5030–5091 MHz band that are, in the initial order or subsequently, assigned for NNA use, as well as to implement opportunistic access to portions of the band that are assigned for NSS use as appropriate. We tentatively conclude that these systems could (1) facilitate the efficient and intensive use of a limited spectrum resource for interference-protected CNPC; (2) give UAS operators access to reliable CNPC for operations where those communications links are safety-critical; (3) enable UAS operators to gain spectrum access in a timely, efficient, and cost-effective manner; (4) enforce compliance with frequency assignments through access controls, checking existing frequency assignments, providing updates in authorized databases, and other mechanisms; (5) protect critical communications inside the band and in adjacent spectrum; (6) support opportunistic use in unused portions of spectrum sub-bands designated for exclusive use licenses; and (7) promote rapid evolution of the use of the band in response to technological, market, or regulatory changes, such as if the Commission deploys spectrum in the band incrementally or, in the future, finds that modifying the access rules in a particular sub-band is in the public interest to better meet market demand. We seek comment on our proposal and its costs and benefits.

17. The support in the current record for the use of a DFMS, along with the success of the 3.5 GHz band Spectrum Access System (SAS) and the potential to build on the SAS experience and technology, lead us to tentatively conclude that a DFMS solution can feasibly be implemented to enable near-term use of the band with the benefits discussed above. We seek comment on our tentative conclusion, and the extent of interest in providing such DFMS services in the 5030–5091 MHz band. In addition to the specific questions below, what other aspects of the 3.5 GHz band SAS approach would be appropriate here, and what aspects should be changed? How should the Commission supervise the operations of the DFMS?

18. We propose to permit more than one DFMS to operate in the band, each providing access to frequencies nationwide, and to require coordination and communication between them to ensure that the assignments of one DFMS are consistent with the assignments of the others. We seek comment on this proposal.

19. *DFMS requirements and responsibilities.* We seek comment on the appropriate regulatory framework to establish for a DFMS, including its requirements and responsibilities and the requirements and responsibilities of a DFMS administrator. We seek comment on whether and to what extent we can draw on the requirements and responsibilities governing the SAS and SAS administrators in the 3.5 GHz band. For example, we seek comment on whether to follow our policy for the 3.5 GHz SASs and establish only the minimum high-level requirements necessary to ensure the effective development and operation of fully functional DFMSs, leaving other requirements to be addressed by the

DFMS administrators and multi-stakeholder groups. If we follow this policy, what high-level requirements should we establish?

20. One of the most important responsibilities of the DFMS would be to ensure that UAS operators receiving 5030–5091 MHz assignments and operating consistent with their assignments are protected from harmful interference and that they do not cause harmful interference to other protected operations in the band and adjacent bands, including protected Federal operations. We seek comment on whether the Commission should simply establish an appropriate high-level requirement on the DFMS, such as a requirement to provide protected access to spectrum appropriate to cover a submitted and valid request, to the extent such spectrum is available, and defer to the DFMS administrators, or potentially a multi-stakeholder group, to determine the appropriate means of doing so. To the extent the Commission should codify more detailed requirements, we seek comment on all measures the Commission should adopt to facilitate the ability of the DFMS to provide reliable, interference-protected assignments, including any necessary specifications, requirements, responsibilities, authority, processes, or remedies. We further seek comment on the interference mitigation techniques that can be employed by UAs, such as geo-fencing.

21. At a minimum, we propose to require that a DFMS administrator adopt procedures to immediately respond to requests from Commission staff for information they store or maintain and to comply with any Commission enforcement instructions they receive, as well as to securely transfer all the information in the DFMS to another approved entity in the event it does not continue as the DFMS Administrator at the end of its term. We seek comment on these proposals. In addition, what requirements should we impose on the DFMS or DFMS administrator with regard to retention of records and information, including registration and assignment records? Should we require retention of all such information for at least five years? What requirements should we adopt to ensure data security in DFMS operations, including the security of end-to-end communications between operators and a DFMS and the security of information stored by a DFMS?

22. What requirements, if any, should be imposed on NNA operators in the band to help ensure the DFMS's ability to provide interference-protected access or to promote more robust or efficient use of the spectrum? Should these requirements be high-level, with additional development through a DFMS administrator or multi-stakeholder group, or should they be more detailed? What information should we require operators to provide to the DFMS regarding ground stations and unmanned aircraft stations? Should that information be provided prior to any requests, with an assignment request, or on an ongoing or periodic basis during an operation? For example, should we require operators to provide ground station geographic location, effective isotropically radiated power (EIRP), and/or antenna patterns? Assuming a DFMS has the necessary information about the ground station, is information about the location or transmitter characteristics of the UA unnecessary to prevent harmful interference? Should we require an active UAS relying on an NNA assignment in the band to provide a DFMS with the UA information that must be broadcast under the Remote ID rule or some subset or variation of that information? Should an operator be required to provide the DFMS specific information about the UA, including its manufacturer, model, or other technical or identifying information? Should an operator be required to affirmatively communicate to the DFMS, in real time or within a certain period of time of the relevant event, the initiation and termination of the flight or, alternatively, the initiation and termination of the operator's use of the assigned frequencies? Are there other circumstances or information (aside from the request) that the operator should be required by rule to communicate to the DFMS? Should any requirements be imposed on UAS operators relying on NSS networks to facilitate the DFMS's ability to provide interference-protected NNA assignments?

23. We further seek comment on whether to mandate that a UAS operator register with a DFMS as a precondition to requesting NNA frequency assignments, and if so, what requirements we should impose with respect to such registration. Should the Commission simply require registration and leave the details to be developed by, for example, the DFMS administrators or a multi-stakeholder group? To the extent the Commission should codify further details, what information should be included with registration? Should UAS operators be required to register ground and UA stations? Should we impose requirements with regard to if and when registration should be updated and, if so, what is the appropriate duration of the initial registration term and the renewal term? Under what circumstances should the Commission or the relevant DFMS administrator revoke a UA operator's registration? While we envision that any registration requirements would apply only to operators seeking NNA assignments, we seek comment on whether to require operators relying on a network service in NSS spectrum to register with a DFMS.

24. We also seek comment on what requirements, if any, we should impose with respect to the submission of UAS operator requests for NNA assignments, and conversely what, if any, details of the request process should be left to be developed by a multi-stakeholder group. For example, should we impose specifications of what information should be included in a request, and if so, what data should we require? Should requests include the relevant ground and unmanned aircraft stations that will be used in the operation, and if so, how should these be identified? To the extent we permit mobile ground stations, should requests provide a specification of the route of the mobile ground station over time and the times at which the station will reach specific locations in order to enable frequency assignment to consider the range coverage of the station as a function of time? Should we require submission of a flight plan, and if so, what information should the flight plan include, and in what format? For example, should it specify time of use, and flight positions and flight altitude over the course of the flight plan, as suggested by AIA? Should an operator be required to submit requests no more than a certain specified time period in advance of a flight?

25. As a general matter, should a DFMS grant a frequency assignment for the duration and other parameters requested, provided the unassigned spectrum is available to meet the request? Alternatively, should limits or restrictions be placed on what can be granted?

26. As several parties have noted, operators may need to revise their assignments after a flight has commenced (*e.g.,* where the flight needs to deviate from its anticipated flight path and UAS CNPC transmissions for the revised flight would not be covered by the original assignment, or where a flight takes longer than provided under the assignment). We seek comment on any rules we should adopt to enable or facilitate the filing and timely processing of such requests for revised assignments or to otherwise address an operator's mid-flight need for revised

assignment. Do we need to adopt any rule to address cases where the revised request cannot be granted consistent with other previously granted assignments?

27. In the 3.5 GHz band, SASs may require fixed stations to implement reassignment to new frequencies, reduction of the permitted transmitting power level, or cessation of operations, as necessary to avoid or eliminate harmful interference and implement spectrum access priorities. Is an active management approach feasible and appropriate, and if so, what regulatory requirements should be adopted to enable or implement such an approach? If not feasible, what approaches or mechanisms will be available to the DFMS to ensure the reliability of communications? In particular, given that the proposed assignments would be limited in both frequency, time, and geography, what requirements, procedures, penalties, or other measures should be in place to prevent or address (1) flights that use unauthorized frequencies; (2) flights that occur outside an authorized time period, such as a flight that exceeds its authorized duration; or (3) flights that occur outside an authorized area. If a DFMS's role is merely to reserve appropriate spectrum for UAS flights, and a DFMS takes no other active measures to ensure or enforce compliance with the assignments or the protection of operations, will spectrum access be sufficiently reliable for mission critical purposes?

28. *Fees.* Under the 3.5 GHz rules, an SAS administrator is authorized to charge users ''a reasonable fee'' for the provision of its services, and the Commission ''can require changes to those fees if they are found to be unreasonable.'' We propose to adopt a similar provision authorizing the administrator of a DFMS to charge reasonable fees for its provision of services, including registration and channel assignment services, and to permit parties to petition the Commission to review fees and require changes if they are found to be excessive. To encourage efficient use of the limited spectrum resource and discourage any attempt at warehousing, we seek comment on specifically authorizing reasonable usage-based fees, and on standards and approaches for establishing the amounts of such fees.

29. *Selection process.* We seek comment on the process for selecting the DFMS administrators, and whether the 3.5 GHz SAS approval process could serve as a model. Under the approach for SAS approval, the Commission delegated authority to the Wireless Telecommunications Bureau (WTB) and the Office of Engineering and Technology (OET) to administer the process and provided that (1) the Bureaus would issue a Public Notice requesting proposals from entities desiring to administer a SAS; (2) applicants would be required, at a minimum, to demonstrate how they plan to meet the Commission's rules governing SAS operations, demonstrate their technical qualifications to operate a SAS, and provide any additional information requested by WTB and OET; (3) based on these applications, WTB and OET would determine whether to conditionally approve any of the applicants; and (4) any applicants that received conditional approval would be required to demonstrate that their SASs meet all the requirements in the rules and any other conditions the Bureaus deemed necessary, and at a minimum, to allow their systems to be tested and analyzed by Commission staff. We seek comment on adopting this approach. In particular, we seek comment on facilitating the potential selection of multiple DFMSs through an application and certification process by which any entity found to meet the requirements can be the administrator of such a system, and we seek comment on what eligibility requirements should be set and whether (or to what extent) they should be codified or established through a separate process. We also seek comment on whether we should provide a testing or trial phase for DFMS technology prior to the submission of applications, to facilitate or inform the requirements of the application process. Following the SAS model, we propose to delegate jointly to WTB and OET the authority to administer the selection process and make the selection. We seek comment on what role the FAA and National Telecommunications and Information Administration (NTIA) should have in setting up the process, reviewing applications, and making the selection.

30. *Coordination with flight authorization.* In addition to spectrum access, *i.e.,* authorization to transmit, UAS operators also need approved or otherwise authorized access from the FAA to conduct flights in the airspace of the United States. We seek comment on whether and how frequency assignments should be coordinated with airspace authorization for low altitude, high altitude, and terminal (departure/arrival) operations. For example, should a DFMS be required to determine that a requesting party has any necessary flight authority as a condition of granting a spectrum assignment request? If so, we seek comment as to whether and how a DFMS would interact with air traffic control or the relevant UAS Traffic Management (UTM) systems (such as the Low Altitude Authorization and Notification Capability (LAANC) system), or otherwise obtain information regarding airspace approvals, authorizations, or availability.

31. *Alternative approaches to dynamic spectrum access.* We seek comment on other options to enable dynamic spectrum access to the 5030–5091 MHz band. Some parties suggest that we adopt some form of cognitive radio solution, in which UAS radios would directly detect and identify available spectrum channels. They argue that a centralized system like the DFMS will be complex and labor intensive to use, will be inefficient in spectrum assignments and vulnerable to spectrum warehousing, and will have difficulty ensuring link protection and responding quickly to developments such as changes in flight plans while a UA is already in flight. We seek comment on these concerns and whether they can be addressed by a DFMS, and we seek comment on the feasibility, costs, and benefits of alternative options as compared to the DFMS discussed above, and whether such alternatives would be sufficiently reliable to support even the most safety-critical uses such as flights in controlled airspace. We further seek comment on whether there are existing technologies that could be applied or adapted to implement these alternative approaches, and on any standards work or other studies regarding the safety and reliability of links under such systems.

32. We seek comment on whether a similar system to the 6 GHz database or the white space database established in the TV bands could be adopted for NNA operations in the 5030–5091 MHz band, under which 5030–5091 MHz radios would be required to directly and periodically query a central database for available channels. Given that the 6 GHz and white space systems are implemented to enable unlicensed devices to access spectrum without interference protection, we seek comment on whether this type of system could be suitable to implement interference protection for UAS NNA operations. If the Commission adopts rules providing for the establishment of such a system, should we require that the system database be updated in real time with relevant parameters of the NNA systems currently in operation? We further seek comment on whether any such system and any tool used to perform the interference analysis should be certified and approved for use by the

Commission and/or other appropriate authorities prior to operation.

33. In the event that we adopt rules providing for the establishment and operation of a DFMS or some other coordination system or process, there may be a significant period of time before such coordination system is operational in the band and some operators may want protected access to the band during this interim period. Accordingly, we seek comment on whether to establish some method by which operators can get temporary protected access to frequencies in the 5030–5091 MHz band, or a portion of the band, during this interim period.

3. Multi-Stakeholder Group

34. We seek comment on a possible role for a multi-stakeholder group to help develop the requirements and processes applicable to the DFMSs, as well as to study standards and interference issues associated with UAS operations in the band. We seek comment on whether, consistent with the successful approach in the 3.5 GHz band, we should encourage a multi-stakeholder group to address implementation issues in the 5030–5091 MHz band, but without the Commission formally designating such a group or imposing a formal process for how the group reaches its determinations or recommendations. If such a multi-stakeholder group were to be formed by third parties, what selection procedures might be desirable to ensure that the group appropriately reflects the diversity of UAS stakeholders? What role might Federal agency stakeholders have in this process? We seek comment on these and any additional procedures or approaches that a multi-stakeholder group might implement, particularly in light of the positive experience with the 3.5 GHz band stakeholder group.

35. Assuming there is a role for a multi-stakeholder group, we seek comment on the appropriate extent of that role and the responsibilities it might most usefully undertake. We seek comment on the matters a multi-stakeholder group should address with consensus standards or other determinations, or with the development of recommendations to one or more of the stakeholder agencies. We further seek comment on the matters that the Commission should address independently of any multi-stakeholder group and the rules it should adopt to establish a basic regulatory framework to govern the 5030–5091 MHz band and the DFMSs.

4. Scope of Permissible Services

36. As discussed above, the Commission added an AM(R)S allocation in the 5030–5091 MHz band to support UAS communications. AM(R)S is reserved exclusively for communications relating to the safety and regularity of flight, primarily along national or international civil air routes. Consistent with the scope of the allocation and the expressed purpose for its incorporation, we propose to permit only CNPC and to define CNPC as any UAS transmission that is sent to or from the UA component of the UAS and that supports the safety or regularity of the UA's flight. We seek comment on these proposals and on alternatives that would be consistent with the allocation and its purpose. Should we alternatively define CNPC to cover any communications to or from a UA other than payload communications, and to define payload as information sent to achieve mission objectives? RTCA DO–362A, which provides Minimum Operational Performance Standards (MOPS) for UAS CNPC in the 5030–5091 MHz band, states that ''payload communications,'' for purposes of the standard, ''specifically include communications associated with the UA mission payloads, which do not contain safety-of-flight information,'' and clarifies that ''[s]afety-of-flight information is any information/data sent to or received from the UA that is necessary to ensure the UAS is operated/operating in a manner that protects people and/or property from harm due to unintentional events.'' We seek comment on whether to adopt these or similar terms to define the scope of permissible CNPC. NTIA proposes that we limit the band to a subset of CNPC, specifically communications for the control of the UA and other ''safety-critical functions,'' in order to limit UAS use to ''essential services.'' RTCA DO–362A similarly provides that CNPC includes ''[d]ata and information sent to/from the Pilot Station and the UA for the control of the UA and other safety-critical functions.'' We seek comment on this option, on the costs and benefits of limiting the band to only the ''safety-critical'' communications, on what types of communications would be considered ''safety-critical,'' and what, if any, types of non-payload but safety-related communications would not be considered ''safety-critical.'' More generally, should we restrict communications to a subset of CNPC? We seek comment on whether dual-purpose communications should be permissible if one of the purposes falls within the permissible scope.

37. We seek comment on whether, instead of a general definition of scope or, potentially, as a clarifying and non-exclusive supplement to a general definition, we should specify certain categories of communications that are covered, such as (1) telecommands to the UA; (2) telemetry from the UA that is relied upon for flight guidance or other flight safety-related purposes, such as geo-fencing to protect sensitive areas, *i.e.,* Microwave Landing System sites, radio astronomy sites, adjacent licensees, etc.; (3) DAA-related transmissions; (4) video transmissions from the UA relied upon for flight guidance or other flight safety-related purposes; (5) Air Traffic Control communications relayed via the UA; and (6) remote identification transmissions. We seek comment on whether permissible communications should be restricted to communications between the control station and the UA station, *i.e.,* excluding broadcast from the UA or UA-to-UA communications. We further seek comment on whether we should establish priorities among different categories of CNPC, or leave the rules flexible on this matter, with such prioritization potentially to be considered and developed through appropriate standards development by multi-stakeholder groups.

38. We note that the regulatory definition of AM(R)S limits the allocation to communications ''relating to safety and regularity of flight, *primarily along national or international civil air routes.*'' As the allocation does not require that communications be exclusively for flights along such air routes, we propose not to restrict the scope of permissible CNPC services to such communications. We seek comment on this proposal and the extent to which operations outside civil air routes will need access to the 5030–5091 MHz band for CNPC (as opposed to being able to rely on other spectrum solutions that may or may not provide the same level of reliability or air safety assurance). Assuming some measure is necessary or appropriate to reflect the focus on flights primarily along national or international civil air routes, we seek comment on whether it would be sufficient to ensure that the applicable rules and technical standards provide the necessary reliability and safety to support the use of the band for such flights.

39. We also seek comment on whether we should restrict NNA to CNPC but permit NSS licensees a broader scope such as a scope permitting UAS payload communications or permitting both

UAS and non-UAS communications, provided that licensees ensure the safety and reliability of CNPC and ensure that communications associated with the safety of flight always have both priority and preemption over other communications. We seek comment on whether such an expansion of scope would be permissible under section 303(y) of the Communications Act, which places certain limits on the Commission's authority to ''allocate electromagnetic spectrum so as to provide flexibility of use.''

40. If we conclude that NSS licensees should be permitted a broader scope of permissible communications on an ancillary basis, we seek comment on adding an appropriate allocation if necessary, on what type of allocation should be adopted to support the broader scope, on whether to subject the allocation to secondary status under the AM(R)S allocation and to the limitations applicable to the AM(R)S allocation, and on any measures we should adopt to ensure that the primary use of the spectrum is for CNPC. Should we rely on appropriate multi-stakeholder groups to develop the details of requirements to implement prioritization and preemption? Should any mechanisms for implementing preemption and prioritization be subject to specific review and approval by the Commission, the FAA, and/or an appropriate third-party group?

5. Eligibility Restrictions

41. We propose that any entity be eligible to obtain a 5030–5091 MHz NSS license other than those precluded by section 310 of the Communications Act and those that are barred under 47 U.S.C. 1404 from participating in auctions. We seek comment on this proposal and whether eligibility should be more restricted. We further seek comment on how, in this context, we should interpret section 310(b), which imposes restrictions on who can hold or be granted a ''broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license.'' Under the various authorization proposals discussed herein, would a licensee be considered as holding a ''common carrier[,] aeronautical en route or aeronautical fixed radio station license''? If so, how should we evaluate any foreign-ownership holdings?

42. We also seek comment on whether to provide that any entity is eligible to operate NNA stations using assignments from a DFMS other than those precluded by section 310 from holding station licenses. Given our proposal elsewhere to license NNA stations by rule, we seek comment on whether section 310 ownership restrictions, which apply to ''station licenses,'' apply to operators of stations licensed by rule. We further seek comment, if section 310 does not apply to operators of licensed-by-rule stations, on whether NNA station operators, or the parties receiving assignments from a DFMS for such operation, should be subject to eligibility restrictions comparable to those imposed by section 310 on station licensees.

43. NTIA recommends that, to be eligible for a license for 5030–5091 MHz UAS operations, an applicant be required to certify that it has the requisite FAA remote pilot certification or, in the case of an organization, to certify that it will only utilize individuals with this qualification for its UAS operations in the band. Compliance by 5030–5091 MHz operators with applicable FAA remote pilot regulations will be critical to the safe operation of UAS in the 5030–5091 MHz band, and we seek comment on the best approach to achieve this goal, and on NTIA's proposal as one option. To the extent that we adopt a licensed-by-rule model for NNA as proposed, however, UAS operators will not be required to submit individual license applications, and accordingly, there will be no individual license applications in which UAS operators could make the proposed certifications. Further, provision of network-based NSS would likely involve a network provider's provision of CNPC services to other entities, and thus, it is likely the relevant UAS operator will be neither a licensee nor an employee of a licensee. Accordingly, we seek comment on whether requiring license applicants to certify that they have the requisite FAA remote pilot certification or will utilize operators with such qualifications is a practical option in either the NNA or NSS context.

44. We further seek comment on the costs and benefits of conditioning either NNA or NSS eligibility on a certification that the party has the necessary FAA remote pilot certification or compliance with other FAA requirements. We seek comment on whether it provides a significant regulatory benefit to specifically limit eligibility in this manner, given that UAS operators using 5030–5091 MHz spectrum will in any case be subject directly to FAA rules and enforcement and would not be able to lawfully operate unless they comply with all applicable FAA requirements. We also seek comment on any administrative concerns from having the Commission potentially be required to interpret and enforce the regulatory regime of another agency.

45. To the extent that there should be some mechanism in addition to the FAA's enforcement authority to adequately ensure that use of the 5030–5091 MHz band will be consistent with FAA requirements, we seek comment on whether we can instead rely on the DFMS and NSS licensees to ensure that UAS operators have the necessary FAA approvals. For example, to address NNA users, users registering with a DFMS could be required to make the requisite certification as a condition of registration. Alternatively, we might impose a more general requirement on a DFMS to adopt measures that reasonably ensure that operators have the requisite FAA remote pilot authority, and defer to the DFMS administrator (or a multi-stakeholder group) on specific mechanisms to implement this requirement. We seek comment on these and other alternatives.

6. Non-Networked Access (NNA) Service Rules

46. *Licensing rules.* We seek comment on the licensing regime or mechanism we should adopt to enable authorization of NNA operations in the 5030–5091 MHz band and the costs and benefits of any proposed approach. We propose to reduce the administrative burdens on operators and the Commission by adopting a licensing approach that would not require individual licensing of these numerous operators and/or stations. Specifically, we propose to implement a licensed-by-rule authorization for aircraft and ground stations in the band, as recommended by AIA and others. Under this framework, operators would not be required to apply for individual spectrum licenses for themselves or their mobile or ground stations in order to conduct NNA operations in the band. Instead, parties using rule-compliant stations and operating in compliance with the rules would only need to obtain the requisite temporary frequency assignment from the DFMS in order to transmit in the band in the requested location, frequency, and timeframe. We further propose to permit the stations used by the operator on the ground to send and receive signals to the UA to be either fixed stations or mobile stations (such as hand-held controllers). As used in this document, the term ''mobile station'' refers to a station ''intended to be used while in motion or during halts at unspecified points.'' We seek comment, however, on whether to require all NNA ground stations in the band to be fixed stations, and on the costs and benefits of permitting the use of mobile ground

stations. To what extent would prohibiting such stations facilitate coordination in the NNA portion of the band, or reduce the likelihood of harmful interference, failures to comply with assignments, or challenges with administering or policing the system? If we do not permit mobile ground stations, should we differentiate ''portable'' stations, *i.e.,* stations that can be moved but are not intended to be used while in motion?

47. Section 307(e) of the Act authorizes the Commission to adopt a licensed-by-rule approach for certain specific categories of services, including the ''citizens band radio service,'' and also expressly delegates to the Commission the discretion to define the scope of the term ''citizens band radio service.'' In the Commission's rules, the citizens band radio service is defined as ''any radio service or other specific classification of radio stations used primarily for wireless telecommunications for which the FCC has determined that it serves the public interest, convenience and necessity to authorize by rule the operation of radio stations in that service or class, without individual licenses, pursuant to 47 U.S.C. 307(e)(1).'' We tentatively find that licensing by rule of NNA stations would serve the public interest, convenience, and necessity, and accordingly, we propose to implement licensing by rule by including NNA within the scope of the citizens band radio service. We seek comment on our tentative conclusion and proposal, on the scope of our authority under section 307(e) to adopt a licensed-by-rule approach to UAS operations, and on alternative licensing approaches we might adopt that would not require individual licensing of operators or stations in the band.

48. Section 307(e)(1) also expressly authorizes licensing by rule in ''the aviation radio service *for aircraft stations*'' but does not provide an equivalent grant of authority to adopt licensing by rule for aviation service ground stations. We seek comment on whether we nevertheless have authority in this case to adopt licensing by rule for both aircraft and ground stations in the aviation service.

49. *Technical requirements.* We seek comment on appropriate technical requirements to govern 5030–5091 MHz NNA equipment and operations. In the current record, NTIA, AIA, and many other parties support adoption of the technical requirements in the RTCA DO–362A standard for this purpose. RTCA DO–362A contains MOPS for terrestrial-based (*i.e.,* non-satellite) CNPC point-to-point or point-to-multipoint links in the 5030–5091 MHz band, including power limits, emission limits, and frequency accuracy requirements. We propose to adopt the RTCA DO–362A standard or technical requirements based on that standard to govern NNA equipment and operations and seek comment on this proposal. We seek comment on the adequacy of the RTCA DO–362A specified equipment and operational performance requirements, including both transmitter power and receiver input power, and required minimum coupling loss (separation distance) between ground and airborne CNPC radios and emissions from other licensed radio services.

50. We seek comment on an appropriate measure of CNPC link reliability to assess RTCA DO–362A and other standards, on the specific anticipated level of CNPC link reliability through radios compliant with the RTCA DO–362A standard, and on any available data that confirms that reliability. We seek comment on any current or past operation of equipment compliant with RTCA DO–362 or RTCA DO–362A, on the results of any such operations, and on the extent to which they support or raise issues or concerns about incorporation of the standard as the governing technical framework for the 5030–5091 MHz band. We also seek comment on whether parties have deployed experimental UAS equipment in the 5030–5091 MHz band in reliance on any other technical standard. Is there any benefit to requiring formal experimental trials or testing for 5030–5091 MHz band equipment?

51. We also seek comment on any costs or disadvantages in imposing the RTCA DO–362A standard. For example, we seek comment on whether and to what extent imposition of this standard may limit the scope of UAS operations that can make use of links in the band. We also seek comment on whether any such limitations are a result of hard constraints codified in the standard on the scope of UAS operations that may occur consistent with the standard specifications, or instead are a consequence of practical constraints, such as if the standard requires the development and installation of radio equipment that may be too heavy for some UA to carry.

52. Canada states that some technical incompatibilities have been identified between RTCA DO–362A and a proposed standard by the European Organization for Civil Aviation Equipment (EUROCAE) for satellite-based CNPC in the same band, designated draft ED–265, and asserts that adoption of the RTCA DO–362A standard without addressing the incompatibilities may create difficulties in managing the operation of CNPC links in support of international UAS operations. We seek comment on these concerns, the nature of the incompatibilities, and what, if any, measures, requirements, or restrictions are necessary to address them. We note that RTCA has been considering the ''ED–265/DO–362 interference issue.'' We seek comment on any determinations that have been made regarding these incompatibilities and whether the issue is adequately addressed in the current RTCA DO–362A version of the standard or will be addressed in a future version. If revisions to RTCA DO–362A are necessary or appropriate to address these issues, we seek comment on whether the next version of the standard is anticipated to be backwardly compatible with RTCA DO–362A, and if not, whether adoption of final rules should be deferred until these issues are resolved in a new version of the standard. We seek comment on whether any coordination or other requirements are necessary to ensure adequate protection of foreign satellite-based CNPC services in the band, particularly insofar as they may operate near United States jurisdictional boundaries. We also note that footnote 5.443C of the Table of Frequency Allocations limits the use of the 5030–5091 MHz band to ''internationally standardized aeronautical systems.'' We seek comment on whether this provision requires the Commission to adopt a standard that is compatible with the EUROCAE standard, and whether RTCA DO–362A would meet our obligations under footnote 5.443C.

53. If we incorporate the RTCA DO–362A standard into our rules, we seek comment on whether to do so through adoption of a general requirement that, to be certified for use under or operated under the NNA rules, all radio equipment must comply with the requirements of RTCA DO–362A, rather than to separately incorporate the various technical requirements of RTCA DO–362A (*e.g.,* power, frequency stability, and emission limitations) into the service rules. If we adopt a general requirement to comply with RTCA DO–362A, we propose to also separately codify requirements for power and emission bandwidth based on the RTCA DO–362A standard, to provide clarity and ease of reference in the rules. If, alternatively, we do not have a requirement of general compliance with RTCA DO–362A, but require compliance with only selected

provisions of the standard, which provisions or requirements from RTCA DO–362A should we impose? Which specific provisions of RTCA DO–362A are necessary for compatible use of the 5030–5091 MHz band? Should the Commission's technical framework require compliance more broadly with section 2, the Equipment Performance Requirements and Test Procedures applicable to the link system radios, or both sections 2 and 3, the latter of which includes performance standards for the link system when installed in a UA and ground location? Alternatively, is it sufficient, for purposes of establishing the baseline technical framework, to require compliance with the specific frequency capture range (which includes a frequency accuracy standard), power limits, and emission limits stipulated by the standard?

54. RTCA states that emission limit requirements should also require equipment compliance with the 50 ms Time Division Duplex (TDD) requirements specified under section 2.2.1.3 of the standard. It asserts that use of non-TDD systems or TDD systems with different time length frames operating in the 5030–5091 MHz band within the same radio horizon as RTCA DO–362A compliant equipment will cause unacceptable levels of interference. We seek comment on RTCA's assertion and recommendation, and whether adoption of the standard for NNA will necessarily require all equipment in the band, including equipment in neighboring NSS blocks, to use RTCA DO–362A compliant TDD equipment to avoid harmful interference to NNA operations.

55. We seek comment on whether any of the general technical requirements in subpart D of part 87 should apply to NNA equipment. NTIA proposes, for example, that in addition to meeting the out-of-band emissions limits in RTCA DO–362A, we should also require equipment to meet the out-of-band emissions limit specified in § 87.139(c). RTCA argues, however, that the current requirements of § 87.139(c) are less stringent than those in RTCA DO–362A, and that the Commission should just require compliance with the latter. L3Harris Technologies (L3Harris) asserts that it is not clear whether § 87.139 is applicable, as it applies only to communications using certain specific Emissions Designators and the RTCA DO–362A mandatory modulation makes no reference to these designators. We seek comment on NTIA's proposal, on whether § 87.139(c) may, under its existing terms, apply to UAS communications anticipated in the 5030–5091 MHz band, and whether such application is in the public interest. We further seek comment on whether we need to specify authorized emission classes and designators for this service, such as has been done with aviation services. If so, we seek comment on what classes and designators are appropriate, and whether we should use one of the types of assignable emissions already defined in, for example, § 87.137 of the rules. We propose emission designators of G8D for data and G8F for video and seek comment on their appropriateness for operations subject to RTCA DO–362A.

56. We seek comment on any other requirements we should impose on NNA equipment. For example, what requirements should we adopt to facilitate a DFMS's ability to communicate with or otherwise control such equipment in the execution of the DFMS's responsibilities? Should equipment be required to enable the DFMS to make direct (machine-to-machine) frequency assignments to the UAS equipment, in order to ensure that assignments are accurately programmed? Should this capability be available at all times, or only pre-flight? To the extent DFMS communications or control signals are intended to affect operating parameters of the UA, should such communications or control signals be required to occur exclusively through communications between the DFMS and the relevant ground control station or stations, rather than through direct communications with a UA station? In the 3.5 GHz band, fixed stations must respond automatically to SAS directions to modify certain operational parameters such as frequency or power limit. Should requirements be adopted for NNA equipment to provide the DFMS with similar control? We further seek comment on whether to impose requirements to ensure interoperability between NNA and NSS network services. Potentially, UA flights that initially rely on a network service may extend into areas where no network has been deployed. What requirements, if any, should we adopt to facilitate operations that can seamlessly switch between network service for CNPC and NNA assignments for that purpose?

57. We note that RTCA has also adopted another standard applicable to CNPC in the 5030–5091 MHz band, designated RTCA DO–377A, Minimum Aviation System Performance Standards for C2 Link Systems Supporting Operations of Unmanned Aircraft Systems in U.S. Airspace (RTCA DO–377A). Whereas RTCA DO–362A describes minimum performance standards for the ground and airborne radios used for a direct link, focusing on certain design characteristics of these radios such as power and emissions limits, RTCA DO–377A describes the minimum performance of an overall ''C2 Link System,'' defined as a system used to send information exchanges between a control station and an unmanned aircraft and to manage the connection between them, and which can be comprised of one or many Air/Ground links and Ground/Ground links. To the extent that RTCA DO–377A applies to NNA operations, we seek comment on whether we should adopt rules requiring compliance with the standard. Alternatively, should we limit our requirements, as AIA recommends, to technical requirements based on RTCA DO–362A and leave system performance, safety, and security requirements, such as those in RTCA DO–377A, to be considered by a multi-stakeholder group or addressed by the FAA?

Incorporation by reference. As discussed above, we propose to adopt the technical standard RTCA DO–362A in whole or in part; RTCA DO–362A provides technical requirements for NNA operations in the 5030–5091 MHz band. To accomplish this, we propose to incorporate the standard by reference into our rules under 1 CFR part 51. The material is available from RTCA, 1150 18th Street NW, Suite 910, Washington, DC 20036, via email: *info@rtca.org* or *http://RTCA.org.*

58. *Application of Part 87 Aviation Service Rules and Part 1 Wireless Radio Service Rules.* We seek comment on where to locate the new NNA services rules within the organization of the Commission's rules. Some parties argue that the new service should be located in part 87, which ''states the conditions under which radio stations may be licensed and used in the aviation services.'' We seek comment on this option. We seek comment on whether, alternatively, we should locate the new UAS rules in a new rule part rather than in part 87, as reflected in the amendments at the end of this document. We further seek comment on alternative options for the appropriate home for the new rules.

59. Whether we locate the rules for the 5030–5091 MHz band in part 87, a new rule part, or elsewhere, we seek comment on whether and to what extent the generally applicable rules in subparts B through F of part 87 should apply to or be incorporated into the new NNA service, either in their current form or with modifications.

60. As an example, § 87.89 requires that, with certain exceptions, operators of licensed aviation service stations ''must hold a commercial radio operator

license or permit.'' The operator license requirement is distinct from and wholly independent of the requirement that each station be licensed and requires individuals seeking an operator license to demonstrate, by passing a formal examination, sufficient knowledge of the relevant radio technologies. The operator license requirement stems from section 318 of the Act, which requires operators of transmitting equipment of licensed stations to hold an operator's license, except where the Commission finds that the public interest, convenience, or necessity will be served by waiving such requirement. We seek comment on whether, in addition to the station license (which, as discussed, we propose to provide through licensing by rule), we should require UAS operators using a NNA assignment in the 5030–5091 MHz band to have an individual operator license. Conversely, would it be in the public interest to forgo any such operator licensing or permitting requirements as unnecessary or inappropriate in light of FAA regulation of and authority over UAS remote pilot qualifications, or for other reasons?

61. We also seek comment on whether the new service should be subject to rules under part 1, subpart F, governing ''Wireless Radio Service'' applications and proceedings. We seek comment on whether NNA services, even if licensed by rule, should be included in and subject to the subpart F rules for Wireless Radio Services to the same extent as other licensed-by-rule services.

62. *Streamlined procedures to update incorporated standards.* We anticipate that any technical standard developed by a standards organization that we incorporate by reference into our rules will be subject to ongoing revisions as parties gain more experience and the UAS industry continues to rapidly evolve. To help ensure that the rules for 5030–5091 MHz UAS operations continue to reflect the most current version of any incorporated standard for 5030–5091 MHz UAS operations, we invite comment on whether we should adopt a comparable delegation of rulemaking authority in this case. Specifically, we seek comment on whether to delegate joint rulemaking authority to WTB and OET to incorporate into the Commission's rules, after consultation with the FAA and NTIA, and notice and an opportunity for public comment, any updated version of a previously incorporated technical standard applicable to UAS operations in the 5030–5091 MHz band. Similar to limitations the Commission has placed in some earlier delegations of rulemaking authority to update standards, should we limit this delegated authority to the incorporation of standard updates that do not raise major compliance issues?

7. Network Supported Service (NSS) Service Rules

63. We seek comment on the license terms and service rules we should adopt for NSS licenses. We seek comment in particular on issuing exclusive use, geographic area defined licenses for a specific term of years, with rights of renewal, subject to specific performance (network coverage) obligations. We seek comment on appropriate technical and operational requirements and on the assignment process rules.

64. *Geographic area licenses.* Consistent with our approach in several other bands that has promoted the deployment of wide area networks for a variety of fixed and mobile services, we propose to license NSS spectrum blocks in the 5030–5091 MHz band for exclusive use on a geographic area basis. We seek comment on this approach, on its costs and benefits, and on alternative licensing approaches. If a party opposes using geographic licensing, it should explain its position, describe the licensing scheme it supports, and identify the costs and benefits associated with its alternative licensing proposal.

65. We further seek comment on the appropriate geographic license area or areas for NSS licenses to support NSS UAS operations and facilitate investment, including investment by small entities, and robust spectrum use. We seek comment on whether we should adopt larger license areas such as Regional Economic Area Groupings (REAG) or nationwide markets to facilitate NSS uses that may often involve flight over long distances, adopt a more granular scheme such as Partial Economic Areas (PEA), which would provide more flexibility to serve a smaller area but still permit parties to achieve a larger area through aggregation, or adopt a mix of large and small license areas for different spectrum blocks. While NTIA supports licensing by REAG, AIA argues in its comments to the *Refresh Public Notice (PN),* 86 FR 50715 (Sept. 10, 2021), that license areas corresponding to the Air Route Traffic Control Center (ARTCC) areas or other areas ''that make sense in an aviation system context'' would be appropriate, and Wisk similarly recommends use of the ARTCC areas to provide ''alignment with a general air traffic density basis.'' We seek comment on whether to adopt license areas based on a geographic area division of the country that has been developed specifically for aviation purposes, such as the ARTCC areas.

66. *License term.* We propose to issue NSS licenses for an initial 15-year term. AIA and Wisk both support a license term ''longer than 10 years,'' and we believe that circumstances in the band, including the need to set up a DFMS in the band and integrate its functions with operations in NSS spectrum, as well as the nascent stage of standards development and other technical work regarding NSS networks generally, favor the use of a longer initial license term. We propose to limit subsequent terms to 10 years. We seek comment on these proposals.

67. *Performance (network build-out or coverage) requirements.* We seek comment on performance requirements (*i.e.,* build-out or coverage requirements) that are appropriate for NSS licensees and UAS operation. We seek comment in particular on whether to adopt a population-based performance metric, such as a requirement to cover at least 80 percent of the population in the license area within 12 years of the grant of the license, as the Commission recently adopted for geographic licenses in other bands. We also seek comment on whether to adopt an appropriate interim performance requirement, such as a requirement to cover at least 45 percent of the population in the license area within six years of license grant.

68. AIA argues that aircraft uses require reliable control links for all geographic areas of flight regardless of proximity to population centers, and suggests that a build-out requirement based on ''user demand, special diversity and signal strength'' would better meet the needs of beyond-radio-line-of-sight UAS operations. We seek comment on AIA's arguments, and on whether we should either require licensees to meet some criteria other than population, such as geographic area coverage of 25% of the license area at year six and 50% of the license area at year 12. Alternatively, should we provide licensees with the option of meeting either a population-based requirement or some alternative? To the extent commenters recommend alternative build-out requirements, we ask them to propose either specific numerical benchmarks or other specific and objectively verifiable buildout criteria.

69. We seek comment on appropriate rules for compliance demonstration and enforcement. As for compliance demonstration, we propose to adopt a process similar to compliance rules applicable to part 27 licensees, requiring a demonstration of compliance with the

performance requirements by filing a construction notification with the Commission within 15 days of the expiration of the applicable benchmark, including electronic coverage maps accurately depicting the boundaries of the licensed area and the boundaries of the actual areas to which the licensee provides service. If a coverage map is used to demonstrate compliance, we seek comment on the appropriate standardized parameters for the propagation model. For example, should there be standardized values for inputs such as cell edge probability, cell loading, and clutter? As for enforcement, we propose that if a licensee fails to meet the final performance requirement, the license authorization will terminate automatically without specific Commission action. If we adopt an interim requirement, we propose that failure to meet the requirement would result in the reduction by two years of both the due date for the final performance requirement and the license term (resulting in a final performance requirement at year 10 and a license term of 13 years).

70. *License Renewal.* We seek comment on the appropriate standard for license renewal. In the *WRS Second R&O,* 82 FR 41530 (Sept. 1, 2017), the Commission adopted a unified regulatory framework for the Wireless Radio Services (WRS) that replaced the existing patchwork of service-specific rules regarding renewal with a single unified standard, and safe harbors for meeting that standard for different service categories, including a safe harbor for geographic licensees providing commercial service. We seek comment on whether the regulatory renewal framework for WRS commercial geographic licensees is appropriate for NSS licensees. If we apply this framework, are there any special factors we need to account for or incorporate in the context of networks for support of UAS operations?

71. *Competitive bidding or other assignment procedures.* In the event that mutually exclusive license applications are received, we propose to assign these exclusive-use licenses through a system of competitive bidding. Consistent with the competitive bidding procedures the Commission has used in previous auctions, we propose to conduct any auction for geographic area licenses for spectrum in the band in conformity with the part 1, subpart Q, general competitive bidding rules, subject to any modification of the part 1 rules that the Commission may adopt in the future. We seek comment on whether any of these rules would be inappropriate or should be modified for an auction of licenses in this band. Consistent with the statutory requirement and our longstanding approach, we propose to use a public notice process to solicit public input on certain details of auction design and the auction procedures. Our proposal to assign these licenses through competitive bidding assumes that Congress amends section 309(j)(1) of the Communications Act to extend the Commission's authority to award licenses by competitive bidding. We seek comment on alternate assignment procedures in the event that the Commission's statutory authority to auction licenses is not extended.

72. If we provide for the assignment of these licenses through a system of competitive bidding, we also propose to make bidding credits for designated entities available for this band and seek comment on this proposal. If we decide to offer small business bidding credits, we seek comment on how to define a small business. In recent years, for other flexible-use licenses, we have adopted bidding credits for the two larger designated entity business sizes provided in the Commission's part 1 standardized schedule of bidding credits. We propose to use the same definitions here.

73. The standardized schedule of bidding credits provided in § 1.2110(f)(2)(i) of the rules defines small businesses based on average gross revenues for the preceding three years. In December 2018, Congress revised the standard set out in the Small Business Act for categorizing a business concern as a ''small business concern,'' by changing the annual average gross receipts benchmark from a three-year period to a five-year period. Thus, as a general matter, a Federal agency cannot propose to categorize a business concern as a ''small business concern'' for Small Business Act purposes unless the size of the concern is based on its annual average gross receipts ''over a period of not less than 5 years.'' For consistency with the statutory requirements, we therefore propose to adopt the Small Business Act's revised five-year average gross receipts benchmark for purposes of determining which entities qualify for small business bidding credits.

74. Accordingly, we propose to define a small business as an entity with average gross revenues for the preceding five years not exceeding $55 million, and a very small business as an entity with average gross revenues for the preceding five years not exceeding $20 million. A qualifying ''small business'' would be eligible for a bidding credit of 15 percent and a qualifying ''very small business'' would be eligible for a bidding credit of 25 percent. We also seek comment on whether the aviation-safety purpose of the band, the characteristics of these frequencies, or any other factor suggest that we should not make available one or either of these designated entity bidding credits, or that we should adopt different small business size standards and associated bidding credits than we have in the past. Finally, we seek comment on whether we should offer rural service providers a designated entity bidding credit for licenses in this band. Commenters addressing these proposals or advocating for any alternatives should consider what specific details of the licenses or operations in the band may affect whether designated entities will apply for them and whether designated entities should be supported by bidding credits.

75. AIA proposes that the Commission directly select NSS licensees from the submitted license applications based on criteria to be established by the FAA or by a multi-stakeholder group to ensure that applicants meet aviation performance levels and minimum performance standards established in RTCA DO–377A. We seek comment on AIA's proposal or alternative approaches for selecting the NSS licensees and whether such approaches would be consistent with our statutory obligation under section 309(j) of the Act to use competitive bidding to resolve mutually exclusive applications, and with our general responsibility for licensing of spectrum uses under Title III of the Communications Act.

76. Regardless of the assignment mechanism, we seek comment on whether NSS licensees should be subject to a particular limit on the amount of NSS spectrum they can aggregate in the 5030–5091 MHz band, such as a limit of 20 megahertz. To the extent that NSS spectrum is assigned on geographic market basis, are limits on 5030–5091 MHz spectrum aggregation necessary to ensure competition for network-based CNPC services?

77. *Technical requirements.* We seek comment on appropriate technical requirements and parameters for NSS licenses. As an initial matter, the appropriate technical requirements may depend in part on the types of operations likely to be carried out in the band and the network architectures necessary to support such operations. Accordingly, we seek comment on what operations commenters anticipate the NSS licensees will be used to support. Will they include Advanced Air Mobility, package delivery services, or

infrastructure inspection? Are they likely to be predominantly operations above, or below, a certain altitude, or to involve predominantly large or predominantly small UA? Will they involve autonomous operations, and if so, to what extent and for what purposes will such autonomous operations likely require network-based CNPC? For those anticipated operations, we seek comment on what type of network architectures will likely be needed in the band to support such uses. Will they necessarily be like the terrestrial cellular networks, or will there be other architectures, and if so, of what nature? To the extent that parties have already developed or plan to deploy network infrastructure to support UAS NSS operations, we seek comment on what type of network architectures they have developed or plan to deploy for this purpose.

78. We seek to adopt technical rules that will promote efficient use of spectrum and provide licensees as much flexibility as possible in terms of the services they wish to provide, while also providing adequate protection of licensees in the band or adjacent bands. We seek comment on requirements that will achieve these goals in the context of spectrum intended to support network-based UAS CNPC with the level of reliability needed for safety-critical aviation purposes. In particular, we seek comment on whether the RTCA DO–362A standard or equivalent technical parameters, which we propose above for NNA operations, should also apply to NSS licenses. Would adopting similar requirements for NSS help to ensure compatibility between NNA and NSS operations? We ask that commenters discuss the adequacy of the RTCA DO–362A specified equipment and operational performance requirements for NSS operations, including both transmitter power and receiver input power, and required minimum coupling loss (separation distance) between ground and airborne CNPC radios and emissions from other licensed radio services. We also seek comment on whether to require NSS licensees to comply with RTCA DO–377A, which addresses the minimum performance, safety, and security standards for a CNPC link system overall, whether that system relies on a network or a direct link. As noted above, AIA recommends that we require UAS equipment to comply with RTCA DO–362A, but leave the requirements in RTCA DO–377A to be considered by the FAA or an appropriate group of stakeholders. We seek comment on whether to take this approach for NSS licensees. To the extent that NSS licensees are permitted to support communications other than CNPC, we seek comment on whether those services should be subject to the same technical requirements as apply to CNPC.

79. Because the RTCA DO–362A standard is focused on point-to-point or point-to-multipoint (*i.e.,* non-networked) link performance rather than network services, and RTCA DO–377A on establishing the minimum performance, security, and safety standards of a system rather than mitigating interference impacts on other systems, we seek comment on whether application of either of these standards sufficiently address the impact of wide area network operations, including cellular networks, on other services in-band or in adjacent bands. We further seek comment on whether applying these standards, or specific parameters drawn from these standards, to network-based services in the band may unnecessarily restrict the range of services or operations in the band. We seek comment on whether there are any additional or alternative technical requirements that we should consider for NSS licenses and on the extent to which communications under these technical requirements would have sufficient reliability for safety-critical aviation purposes. To the extent that parties argue for alternative technical requirements, we ask that they be specific as to what requirements they propose be adopted in the rules.

80. We note that work is ongoing to develop technical standards for reliable UAS communications over mobile networks. We seek comment on these efforts, on the scope, status, and anticipated completion date of any other current or planned studies or standards development work regarding the reliability of UAS communications over Long-Term Evolution (LTE) or other mobile network technologies, and on whether these studies or standards will address or apply to UAS network-based communications in the 5030–5091 MHz band. If not, we seek comment on whether the development of these studies or standards may nevertheless be helpful in determining the appropriate requirements for networks in the 5030–5091 MHz band. We further seek comment on the extent to which any of these studies or standards are being or will be coordinated with the aviation community or the FAA to ensure that they provide sufficient reliability for all UAS use cases, including aviation flights where communications is safety-critical. We also seek comment on the extent to which mobile networks using LTE or other mobile network technologies can be implemented in the 5030–5091 MHz band consistent with the RTCA DO–362A standard.

81. As an alternative to requiring NSS compliance with the RTCA DO–362A standard generally, are there certain specific requirements of RTCA DO–362A that we should minimally impose, to ensure compatibility with NNA operations or for other purposes? For example, as we noted earlier, RTCA asserts that all equipment in the band must comply with the 50 ms Time Division Duplex (TDD) requirements specified under section 2.2.1.3 of the RTCA DO–362A standard to ensure that UAS operations in the band are compatible with each other. We seek comment on whether, even if we do not require general compliance with RTCA DO–362A, we should mandate compliance with the TDD requirements under section 2.2.1.3. Further, we seek comment on whether we should, at a minimum, require NSS equipment to comply with the power limits and out-of-band emission limits established in the standard to ensure that such equipment is compatible with AeroMACS.

82. We seek comment on any other technical issues that need to be addressed to enable the deployment of NSS networks. For example, in order to prevent harmful interference between geographic area licensees, such licensees are typically subject to market boundary power strength limitations. Because the networks deployed by geographic area licensees are terrestrial in nature, these limitations were developed using certain technical assumptions—*i.e.,* that natural and manmade terrestrial obstacles attenuate signals, reducing the potential of harmful interference between users in adjacent license service areas. Obstacles such as hills, trees, buildings, and other natural and manmade structures attenuate emissions, lessening the interference impact between licensees. UAS operations typically fly above many of these obstacles and, depending on the UA altitude and its distance to the service area boundary border, a UA may be in direct line-of-sight with adjacent license areas and users, greatly increasing the potential for harmful interference. As we anticipate adopting geographic area-based licenses for NSS spectrum, we request comment on an appropriate field strength limit to protect NSS licensees given this increased potential for harmful interference. We seek comment on other necessary technical specifications, such as out-of-band emission limits, and ask

that any proposals include technical justifications and analysis, such as UA altitude assumptions, power levels, antenna assumptions, the increasing interference effects resulting from the increasing number of transmitting UA (aggregate effects), and the victim receiver characteristics such as receiver sensitivity, and adjacent and non-adjacent channel rejection.

83. *Application of requirements from aviation service and wireless radio service rules.* As with NNA service rules above, we seek comment on whether and to what extent the NSS service rules should incorporate or be subject to the rules generally applicable to aviation services under subparts B through F of part 87 of the Commission's rules, either in their current form or with modifications. We also seek comment on whether the NSS service should be subject to rules under part 1, subpart F, governing Wireless Radio Service applications and proceedings. In particular, we seek comment on whether to allow partitioning and disaggregation of NSS licenses in secondary market transactions as well as spectrum leasing, including whether we should consider any competitive impacts associated with such transactions.

84. We anticipate that NSS licenses will be used to provide mobile network services to UAS operators on a commercial basis. Accordingly, we also seek comment on whether and to what extent we should incorporate regulations that regulate commercial mobile networks in other bands, such as the requirements generally applicable to part 27 flexible-use licensees. For example, should we incorporate or apply the requirements of § 27.52 (RF safety), § 27.56 (antenna structure height for the protection of air safety), or § 27.64 (protection from interference)?

85. *Other requirements.* We seek comment on any other service rules we should adopt for NSS licensees. For example, to ensure that UA flights are supported in the event they need to cross license area boundaries, should we adopt a roaming requirement? If anything more than market forces is necessary to address this issue, should the current roaming requirements under § 20.12(e) of the Commission's rules, requiring commercial mobile data service providers to offer roaming arrangements to other such providers on commercially reasonable terms and conditions, be extended to NSS licensees for this purpose? If these requirements are sufficient, how and where should we integrate them in the context of NSS service rules? If they are insufficient, what additional rules are needed to ensure that UAS operate continually and safely across licensing areas? We also seek comment on whether to adopt an interoperability requirement, for example, requiring NSS equipment to be capable of operating over any part of the 5030–5091 MHz band dedicated to NSS operations, or requiring support for the entire band. We further seek comment on whether to impose requirements to enable seamless switching between NNA and NSS services to support flights that may need to rely on both modes of spectrum access. Should we require NSS licensees to provide any other information, including the manufacturer, model, or other details regarding the UAs that will be flown? We seek comment on any requirements or other measures that would promote intensive use of the band. For example, we seek comment on how we might facilitate use of NSS for both low and high altitude uses, and whether we should require NSS licensees to support both low and high altitude uses or should take other steps to ensure that both low and high uses are supported.

86. *Satellite-based networks.* We seek comment on whether to authorize NSS licensees, at their discretion, to provide network-supported service for UAS CNPC through either a satellite or terrestrial network, or alternatively, whether the Commission should provide that certain NSS licenses are dedicated exclusively to satellite-based service. We seek comment on whether and to what extent there is interest in the United States in providing a satellite service for CNPC in the 5030–5091 MHz band, on the costs and benefits of permitting NSS licensees to deploy satellite services for network-supported CNPC, and on the advantages and disadvantages of a satellite option over terrestrial networks in this context.

87. Assuming we permit NSS licensees to deploy satellite-based service, we seek comment on how to permit and integrate the provision of such services and on the appropriate service rules. We seek comment on the application of the Commission's part 25 rules, which govern satellite communications, to such services, and the extent to which the rules applicable to terrestrial NSS networks should also apply to satellite-based NSS networks. We further seek comment on how the DFMS and other proposals discussed above would work for satellite communications. For example, how would a DFMS implement opportunistic access to spectrum in which satellite operations might be deployed? We also seek comment on how to ensure that any such satellite services are compatible with both terrestrial NSS and NNA operations in the band and other in-band and adjacent-band services, and on the circumstances, requirements, coordination processes, and/or restrictions necessary to ensure compatibility and to provide the reliability intended for CNPC in this band. For example, should we permit an NSS licensee to deploy a satellite service only if the NSS license is nationwide or the licensee in question has aggregated all geographic area licenses in a particular block throughout the nation? Are guard bands necessary between blocks with satellite deployments and blocks used for terrestrial networks or operations? Footnote 5.443D of the Table of Frequency Allocations provides that services under the satellite allocation in the 5030–5091 MHz band are subject to coordination under ITU Radio Regulations (R.R.) No. 9.11A, and that the use of this frequency band by the AMS(R)S is limited to internationally standardized aeronautical systems. We seek comment on what rules, if any, we should adopt to implement the requirements under footnote 5.443D.

88. *High-Altitude Platform Stations.* We seek comment on whether to permit NSS licensees to deploy High-altitude Platform Stations (HAPS). The Commission's rules define a ''High Altitude Platform Station'' as ''[a] station located on an object at an altitude of 20 to 50 km and at a specified, nominal, fixed point relative to the Earth.'' Potentially, these stations could be used by NSS licensees as a long-range relay of CNPC between two or more stations, and RTCA DO–362A includes extensive analysis of such an option, which it refers to as a ''High-altitude Relay System.'' We seek comment on whether and to what extent there is current interest in deploying HAPS as all or part of a network solution for CNPC, on the technical feasibility and commercial viability of the use of HAPS to provide all or part of a network service in the 5030–5091 MHz band, and on the costs and benefits of permitting HAPS for this purpose. To the extent it is feasible and economic, are there limitations on the circumstances or uses to which it can be applied? For example, would it be available only to provide relay between two or more UA, or could it also provide relay between UA and stations on the ground? We also seek comment on what technical or other requirements or restrictions are needed either to ensure that NSS use of HAPS to provide network service would be compatible with other operations and services or for

other reasons. For example, we seek comment on whether, consistent with the definition of HAPS in the Commission's rules, we should specify an altitude floor and/or ceiling on the use of such stations. Given the potential footprint of a HAPS-based service, should we permit an NSS licensee to deploy HAPS only if the NSS licensee holds a nationwide market or holds all geographic area licenses on a particular block nationwide? We further seek comment on whether permitting such systems warrants any revisions to the proposals or options for the NSS rules. In addition, because the HAPS acting as network relays for UA communications would also themselves be UA, we seek comment on whether an NSS licensee's operation of such stations may require CNPC (during ascent, descent, or otherwise), whether and to what extent such stations should be permitted to use NNA assignments for CNPC, and if so, what changes to our NNA proposals or other rules are needed. We note that No. 4.23 of the ITU Radio Regulations provides that ''[t]ransmissions to or from high altitude platform stations shall be limited to bands specifically identified in Article 5 (WRC–12).'' At present, Article 5 does not specifically identify the 5030–5091 MHz band for this purpose. We seek comment on whether, if we restricted such stations to deployments below the 20 km floor for HAPS as defined in the ITU Radio Regulations, permitting HAPS in the band could nonetheless be consistent with No. 4.23 or if, to permit such use, we would need to seek a revision to the bands in which HAPS is permitted under ITU R.R., Article V. We seek comment on whether there is any other legal constraint or consideration to address in permitting such use.

8. Equipment Authorization

89. To ensure that equipment in the new band has the level of reliability and safety required of aviation equipment, we propose to impose equipment authorization requirements similar to those under §§ 87.145 and 87.147 of the Commission's rules to all equipment intended for use in the 5030–5091 MHz band. Section 87.145 requires that each transmitter must be certificated for use in the relevant service, and § 87.147 establishes a specific equipment authorization process for part 87 equipment, which, for the frequencies in the 5030–5091 MHz band among others, requires coordination with the FAA. We seek comment on our proposals.

9. Protection of Other Services

a. Microwave Landing Systems

90. We seek comment on what measures we should adopt to protect Federal Microwave Landing System (MLS) services from harmful interference by UAS communications in the 5030–5091 MHz band. Should we establish exclusion zones around the Air Force bases with MLS deployments, with a process to add or eliminate exclusion zones to the extent Federal MLS stations are deployed or deactivated? AIA proposes that the Commission codify the locations at which MLS operations are conducted and establish a coordination mechanism to enable UAS CNPC operations near those MLS stations. We seek comment on this option, the specifics of any such coordination mechanism, and how this or any option would address the deployment of new Federal MLS stations, particularly in the case of NSS licensees that may have already deployed networks in the area of the new deployment.

91. Because we find no current licensed non-Federal MLS systems in operation, and given that the FAA does not anticipate the future use of these systems at airports, we seek comment on whether any measures are necessary to protect non-Federal MLS. We also seek comment on whether to provide that no future non-Federal MLS licenses (including MLS radionavigation land test licenses at 5031 MHz) will be granted in the 5030–5091 MHz band by amending §§ 87.173(b) and 87.475 of our part 87 rules to remove the 5030–5091 MHz band as a band that can be used for non-Federal MLS. We seek comment on the costs and benefits of this option. Would eliminating the potential for future non-Federal MLS in the 5030–5091 MHz band help to ensure a stable spectral environment that may facilitate the use of the band for UAS CNPC? Would it facilitate the use of the band for other communications, to the extent such communications may be permitted? Given the development and widespread adoption of alternative solutions for instrument-based landing and the apparent abandonment of MLS, is there any need to preserve the option in our rules for licensing of non-Federal MLS in this band?

b. Out-of-Band Services

92. *Radioastronomy.* To address the potential impact on radio astronomy observations from UAS transmissions in the 5030–5091 MHz band, NTIA requests that Footnote US211 continue to apply to any services authorized in the 5030–5091 MHz band. NTIA also recommends that the Commission require coordination of UAS operations within the National Radio Quiet Zone (NRQZ). NTIA further recommends that ''additional criteria'' be developed to minimize UAS impact to particular radio astronomy sites, particularly from low-altitude operations, but does not elaborate or propose particular criteria. As a further measure, NTIA recommends that the requirements for licensees in the band include passing a test or similar effort to promote awareness of radio astronomy sites.

93. We seek comment on whether additional measures are necessary to protect radio astronomy and on NTIA's recommendations in this regard. We propose, consistent with NTIA's recommendations, to continue to apply the requirements of Footnote US211 in the 5030–5091 MHz band, to prohibit UAS operations within the NRQZ without prior coordination with the NRQZ administrator and, in the case of NNA operations relying on DFMS assignments, to require the submission of a concurrence from the NRQZ administrator with any request to a DFMS for frequency assignment within the NRQZ. We seek comment on these proposals. We note that § 1.924(a) of the Commission's rules establishes required procedures for licensees and applicants that seek to construct or operate new or modified fixed stations to coordinate their deployments in the NRQZ. Should we apply these licensee/applicant procedures for the NRQZ to all UAS operations relying on the 5030–5091 MHz band in the NRQZ? To the extent we require NRQZ administrator concurrence for licensed-by-rule operations, we seek comment on the appropriate procedures to apply. To the extent measures beyond coordination and concurrence requirements for UAS operations are warranted, we seek comment on what other measures are practicable.

94. *AeroMACS.* AeroMACS is a broadband aeronautical mobile (route) service system that will enable communications for surface operations at airports between aircraft and other vehicles and between other critical fixed assets. The Commission has allocated both the 5000–5030 MHz and 5091–5150 MHz bands for such use but has not yet established service rules in either band.

95. We seek comment on whether any special measures are necessary to ensure compatibility between UAS operations in the 5030–5091 MHz band and AeroMACS. AIA indicates that RTCA is currently working on a revision to the AeroMACS technical standard, RTCA DO–346, that will ensure that future

AeroMACS deployments will be compatible with CNPC links that are in compliance with RTCA DO–362A, and that no other special limitations on 5030–5091 MHz operations beyond compliance with RTCA DO–362A are necessary. More recently, RTCA's Program Management Committee (PMC) held its June 2022 meeting approving RTCA DO–346A with these revisions. We seek comment on whether the revised AeroMACS standard and compliance with the power and out-of-band emission limits of RTCA DO–362A are adequate measures to protect AeroMACS operations from harmful interference from 5030–5091 MHz UAS operations, and whether the revisions to the AeroMACS standard require specific service rules for the 5030–5091 MHz band. Should we adopt exclusion zones around airports with AeroMACS deployments, or prohibit use of a certain amount of spectrum at the edge of the 5030–5091 MHz band in the vicinity of such airports?

96. *Radionavigation-satellite service.* The 5010–5030 MHz band also includes an allocation for the radionavigation-satellite service (RNSS) (space-to-Earth) for potential future use. Footnote 5.443C of the Table of Frequency Allocations addresses requirements in the 5030–5091 MHz band for the protection of RNSS downlinks. Specifically, it provides that ''[u]nwanted emissions from the aeronautical mobile (R) service in the frequency band 5030–5091 MHz shall be limited to protect RNSS system downlinks in the adjacent 5010–5030 MHz band'' and that ''[u]ntil such time that an appropriate value is established in a relevant ITU–R Recommendation, the e.i.r.p. density limit of –75 dBW/MHz in the frequency band 5010–5030 MHz for any AM(R)S station unwanted emission should be used.'' As CNPC services would be part of the AM(R)S allocation, this requirement applies to such services in the 5030–5091 MHz band. We propose to require 5030–5091 MHz operations to comply with the specific EIRP spectral density limit specified in Footnote 5.443C and seek comment on that proposal. Footnote 5.443C further limits AM(R)S use of the 5030–5091 MHz band to ''internationally standardized aeronautical systems.'' We seek comment on codifying this requirement as a service rule and on whether any other measure is necessary to implement the restriction. We further seek comment on whether any other special measures applicable to the 5030–5091 MHz band, such as a guard band at the bottom edge of the 5030–5091 MHz band, should be adopted to protect RNSS system downlinks.

97. *Flight testing.* The 5091–5150 MHz band is also allocated for aeronautical mobile telemetry communications from aircraft stations, subject to the technical parameters in ITU Resolution 418 (WRC–12) intended to ensure compatibility with other services. According to NTIA, Federal agencies currently use this allocation in the 5091–5150 MHz band to support flight testing. We seek comment on whether measures beyond generally applicable out-of-band emissions limits are necessary to ensure that 5030–5091 MHz operations are compatible with such services.

c. Canadian and Mexican Coordination

98. In the event of any adjustments made to the agreements with Mexico or Canada regarding use of the 5030–5091 MHz band, we note that our proposed rules, and any rules that may ultimately become effective pursuant to this proceeding, may need to be modified to comply with those agreements. We seek comment on whether we should adopt an interim measure to address UAS communications in the 5030–5091 MHz band that may cause harmful interference to operations in Mexico or Canada during the period prior to any adjustments made to the agreements between the United States, Mexico, and/or Canada regarding use of the band. If so, what should this interim measure provide?

B. Airborne Use of Flexible-Use Spectrum

99. While the Commission remains committed to allowing flexibility in the use of existing spectrum and networks, we are uncertain about the potential interference impacts of UAS use. Therefore, we seek comment on the adequacy of current rules to ensure co-existence of existing terrestrial wireless networks and UAS and on the regulatory solutions that may be necessary to facilitate and encourage such use.

1. Applicable Spectrum Bands

100. The flexible-use spectrum landscape for potential UAS use is varied, consisting of bands that prohibit airborne use (in the Table of Frequency Allocations or by rule) and bands that are silent on airborne operation. For example, parts 22 and 96 explicitly prohibit the airborne use of Cellular Radiotelephone Service and Citizens Broadband Radio Service (CBRS) spectrum. Likewise, the Table of Frequency Allocations precludes aeronautical mobile use for several other spectrum bands, including all or portions of the 1670–1675 MHz, 1.4 GHz, 2.3 GHz (Wireless Communications Service), and 3.7 GHz bands. Other flexible-use bands, however, are silent regarding airborne operations. We seek comment on the spectrum bands that might be utilized for UAS, as well as the spectrum bands that would not be suitable for such operation (*e.g.,* frequency bands with co-channel or adjacent channel services that require protection).

101. To inform our review, commenters should indicate the flexible-use bands in which they are currently operating or testing UAS. In addition, we ask commenters to detail the flexible-use band(s) that they may be interested in using for UAS in the future, including bands with and without explicit rules or allocations prohibiting airborne use. We also ask commenters to identify the type of communication contemplated, *e.g.,* command and control, telemetry, or payload (video, etc.) for the desired band, as well as the type of technology or infrastructure needed to support such use.

2. Sufficiency of Existing Rules

102. Certain entities maintain that our existing service and technical rules for the various flexible-use bands are sufficient to address the potential for harmful interference from UAS operations. While our existing rules promote optimal flexibility for licensees, these rules are largely focused on terrestrial operations and were not designed with airborne operations in mind. Although studies are underway to develop techniques to manage and mitigate the increased risk of harmful interference posed by UAS, at this time it is unclear whether these mitigation techniques and standards enhancements would be sufficient to protect existing wireless users and adjacent service area/band licensees from harmful interference caused by UAS use. Further, the functionality exhibited by UAs may necessitate revising our rules to enable UAS operation on existing flexible-use networks. In light of these interference concerns, we seek comment on whether modifications to our rules to protect existing terrestrial and other airborne operations are warranted.

103. *Interference mitigation.* Use of flexible-use spectrum by UAS can raise interference problems for co-channel and potentially adjacent-channel operations—particularly the high-density use that is expected to occur in the future. The impact of UAs on mobile networks is different than conventional mobile devices due to the high altitude

and high mobility of UAs. The higher altitude of UAs means that they (1) can see and be seen by more base stations than a conventional mobile device; and (2) have more favorable propagation conditions than propagation experienced by terrestrial operations. In addition, this high mobility, coupled with moving velocities up to 100 miles per hour under current FAA restrictions, can result in base station handoff issues and other network issues as described in detail below. These factors underlie two scenarios in which harmful interference can occur in the presence of UAS operating on flexible-use spectrum—downlink interference and uplink interference.

104. In the downlink—communications from the base station to UAs—the UAs may operate at an altitude that is within line of sight of multiple base stations and, as a result, the UAs can receive downlink interference from those base stations. Accordingly, UAs may experience more downlink interference than terrestrial user equipment because the enhanced propagation conditions and greater line-of-sight cause downlink interference resulting from the multiple base stations visible to, and attempting to connect to, the UA. The increased downlink interference leads to increased resource utilization levels in the network and eventually degrades the downlink performance of both airborne and terrestrial equipment.

105. At the same time, in the uplink—communications from the UA to the base station—the same UA can also cause interference to these multiple line-of-sight base stations. Uplink interference could increase as more UAs are introduced into the network. This interference may also increase depending on the UA's intended uses. For example, UAs may generate more uplink traffic than is typical of conventional mobile devices due to the use of data rate-intensive applications, such as video streaming and data streaming; such applications increase spectrum demand and present an increased risk of uplink interference. The increased uplink interference from UAs affects the throughput performance of terrestrial user equipment: as the number of UAs operating in a network increases, uplink resource utilization in the network also increases and at a greater rate than terrestrial-only operation. Eventually, the uplink performance of both UA and terrestrial equipment in the network is degraded.

106. To support use of UAS in terrestrial mobile networks, in 2017, 3rd Generation Partnership Project (3GPP) published a technical report (TR36.777) investigating the ability for UAs to be served using terrestrial LTE networks. The report's findings—which were based on the analysis of field trials performed by various companies analyzing LTE commercial network performance with the introduction of UAs—validated that downlink and uplink interference may result from UAS operation. The report proposed various network and UA enhancements to minimize LTE throughput degradation and interference to the network and to UAs and terrestrial devices.

107. TR36.777 confirmed the effect that UAS operations may have on downlink operations. The report observed that UAs uniformly distributed between 1.5 meters and 300 meters above ground level experienced downlink interference as a direct result of the UAs operating in the direct line-of-sight of more cells than terrestrial user equipment. This causes the UAs to receive downlink intercell interference from multiple cells. The resulting increase in resource utilization to provide for the introduction of UAs further decreases the spectral efficiency in the network and degrades downlink throughput performance of both UAs and terrestrial user equipment.

108. The report similarly validated impacts on uplink interference. To this end, it also was observed that since the UAs experience line-of-sight propagation conditions to more cells than terrestrial devices, the UAs would cause interference to more cells in the uplink than a typical terrestrial device. The uplink interference caused by UAs degrades the throughput performance of terrestrial devices. The increase in resource utilization level further increases interference in the network, which in turn degrades the uplink throughput performance of both UAs and terrestrial user equipment.

109. The report suggested several potential solutions to mitigate both uplink and downlink interference. Many of the solutions can be implemented by network providers independently and do not require an update to the 3GPP standard. To mitigate downlink interference, the report proposed the following solutions:

- *Full-Dimensional MIMO (FD–MIMO)*—This solution would use multiple antennas at the eNodeB (base station) transmitter to mitigate the interference in the downlink to UAs. FD–MIMO can also limit the mean terrestrial user equipment (UE) packet throughput loss.
- *Directional Antenna at UAs*—Interference in the downlink can be mitigated by equipping UAs with a directional antenna instead of an omnidirectional antenna. A directional antenna can be used to mitigate the interference in the downlink to UAs by decreasing the interference power coming from a broad range of angles.
- *Receive Beamforming at UAs*—The UAs are assumed to be equipped with more than two receive antennas to mitigate the interference in the downlink to UAs. Downlink interference mitigation can be achieved in this case by using receive beamforming at UAs. In this solution, multiple cells belonging to the same site are coordinated and data is jointly transmitted to the UAs.
- *Intra-Site Joint Transmission Coordinated Multi-Point Operation (JT CoMP)*—In this solution, multiple cells are coordinated and data is jointly transmitted to the UAs.
- *Coverage Extension*—In this solution, coverage extension techniques via downlink shared channels, physical broadcast channels, and physical downlink shared channels are used to enhance synchronization and initial access for UAs. Because the UA is synchronized with the network, downlink interference is mitigated.
- *Coordinated Data and Control Transmission*—In this solution, multiple cells belonging to the same or different sites are coordinated. Data, common signal/channels (*e.g.,* synchronization signal and Physical Broadcast Channel (PBCH)), and control channels can be jointly transmitted to the UAs. The coordinated cells could construct a larger cell for UAs, and terrestrial user equipment is served by physical cells without coordination, simultaneously. A dedicated downlink resource within the Physical Downlink Shared Channel (PDSCH) region of the coordinated cells can be reserved for these coordinated transmissions.

110. The report proposed the following techniques to mitigate uplink interference:

- *User Equipment Specific Fractional Pathloss Compensation Factor*—In this solution, an enhancement to the existing open loop power control mechanism is considered where a device-specific fractional pathloss compensation factor is introduced.
- *User Equipment Specific Power Output Parameter*—Configuring a lower power output for UAs compared to terrestrial devices improves terrestrial uplink user equipment throughput performance. Such a configuration, however, reduces UA uplink throughput.
- *Closed Loop Power Control*—In this solution, the target received powers for the UAs are adjusted. By applying

closed loop power control, mean terrestrial user equipment uplink throughput improvement can be improved.

• *Full-Dimensional MIMO (FD–MIMO)*—By using FD–MIMO with multiple antennas at the eNB receiver interference in the uplink can be mitigated. In addition, FD–MIMO can limit the mean terrestrial user equipment packet throughput loss.

111. In addition to TR 36.777, 3GPP made changes to Technical Standard TS36.331 to help address UA interference to the base station. In LTE networks, measurement reports are messages sent from a UA to a base station that help the base station make network decisions. The changes to TS36.331 included measurement report triggers for two reporting events: H1 (above) and H2 (below) UA height thresholds sent from the UA to the base station to help the base station see the UA and to deal with potential interference. 3GPP is also making additional enhancements to integrate UAS into LTE networks that do not relate to interference.

112. While the 3GPP TR 36.777 report concluded that it is feasible to use existing LTE networks to provide UA connectivity, the report and its findings have their limitations. The 3GPP quantitative analyses for Release 15 evaluated only the self-network performance impact of various potential solutions to interference detection and mitigation. Moreover, the technical solutions identified do not eliminate the interference from UAs, they merely reduce the levels of interference. The report also noted that interference challenges become more visible when the density of UAs increases. Beyond these limitations, the report did not evaluate the interference potential and impact on neighboring wireless networks or other radio services in the vicinity of UAS operation, nor did it evaluate the costs associated with the proposed technical solutions. As a result, there are open questions about the level of interference that licensees may experience and deem acceptable from neighboring licensees deploying UAS, the mitigation measures that may be necessary, and the costs licensees are willing to absorb to protect themselves from interference. Thus, the current 3GPP studies, while a valuable start, point to the need to address additional UAS interference issues.

113. Given that it appears that UAS operations within a single terrestrial mobile network will likely result in an increased level of intra-network interference and decreased network efficiency, it is also likely that adjacent markets and networks will be affected by UAS operations. While we seek to provide licensees with as much flexibility as possible to deploy a wide range of services and applications, including UAS, the increased risk of harmful interference from such operations is a concern. Neighboring licensees, whether they deploy or decide not to deploy UAS/airborne technologies, will be impacted and may be required to implement protections for their own networks. A difficult situation may arise for all parties when adjacent licensees—both of which are operating within the Commission's rules—reach an impasse regarding interference, and the failure to reach a resolution may detrimentally affect operations for one or both licensees.

114. We seek comment on how licensees deploying UAS technologies could protect licensees in neighboring markets and neighboring spectrum bands from interference. Some flexible-use licensees planning to deploy airborne technology (*e.g.,* UAS) may believe that such use is not problematic from an interference standpoint because they may assume that (1) all licensees will deploy the same technology, (2) all terrestrial networks are equally prepared to protect themselves, and (3) other potentially incompatible airborne technologies will not also be deployed. While this best-case scenario may turn out to be true as the market for airborne services develops, our rules must be expansive enough to account for the increased potential for harmful interference. Our rules should, at a minimum, set out a framework for UAS operations that is broad enough to account for varying interference scenarios. For these reasons, we seek comment on whether our rules can accommodate UAS operations while also protecting co-channel and adjacent band operations, including satellite operations, where permitted. In addition, we seek comment on changes to our rules that may be necessary to accommodate these scenarios.

115. For example, the power limitations for mobile devices vary depending on the service. For the personal communications services (PCS) band, the limit is 2 Watts EIRP. Hand-held stations operating in the 698–757 MHz, 776–788 MHz, 805–806 MHz, and 600 MHz uplink band are limited to 3 Watts Effective Radiated Power (ERP). Are these and other power limitations for mobile devices in the flexible-use bands appropriate for UAS operation? Considering the increased interference potential of UAS, should the power limitations for UAs be lower than for terrestrial devices?

116. Additionally, for many services, a licensee's predicted or measured median field strength limit must be calculated and may not be exceeded at any given point along its service area boundary. These limits were developed considering only terrestrial devices. With the introduction of UAS, how will licensees ensure these boundary limits are not exceeded? Are the current limits sufficient to protect the boundary of a neighboring licensee on the same or adjacent channel block? Can a UAS report and store power control and location metrics to ensure boundary limits are not exceeded?

117. As noted, the higher the altitude at which UAs are operating, the greater the number of line of sight paths between a UA and surrounding base stations, and thus the greater the potential impact on adjacent networks. We seek comment on the altitudes that are being considered for UA operations involving flexible-use spectrum. Will operations on these bands likely be limited to low altitudes such as 400 feet above ground level (AGL), or is it anticipated that UAS use on flexible-use bands will include operations at higher altitudes such as 10,000 feet AGL or greater? Given the increased potential for interference at high altitudes, should the Commission impose altitude restrictions on UAS operations using flexible-use spectrum?

118. Further, it is not clear whether existing out-of-band emissions rules adequately account for the favorable line-of-sight propagation conditions associated with UAS. Should such rules be modified to account for UAS operations in flexible-use spectrum, and if so, how? We seek comment on these and other technical rules that should be evaluated and perhaps revised to facilitate the use of flexible-use bands for UAS.

119. To inform our analysis regarding whether rule revisions may be necessary, we seek technical studies and analyses regarding the potential for UAS operations to cause interference to adjacent channel, adjacent band, or adjacent market operations. Among other issues, these studies and analyses should address how licensees deploying UAS technologies plan to protect terrestrial or satellite licensees in neighboring markets or spectrum bands from harmful interference. We request comment on the challenges and issues that carriers have experienced when testing or deploying UAS operations relative to the carrier's own terrestrial wireless network. What solutions have carriers developed or are carriers developing to address those challenges, specifically, the hardware, software,

processes required, as well as the costs entailed in deploying such solutions? What UAS altitude and UA density assumptions have been used to analyze deployment challenges and protection of neighbors? Are these solutions to be implemented applicable to the UA, or are they network-based? For licensees employing LTE, can the solutions identified in the 3GPP TR36.777 Report be applied to resolve interference issues within the network and to adjacent networks? Given that flexible-use spectrum licensees may deploy networks other than LTE, what additional interference issues may be encountered and what are the technical solutions that could be applied, given that there may be varying levels of compatibility with airborne technologies? We note that some areas, such as Quiet Zones require the application of more stringent measures to reduce the potential for interference; how will licensees continue to protect such areas when operating at higher altitudes? Are there network-based solutions being developed that could prevent individual UAs from approaching or entering such noise-sensitive locations or other restricted areas that would mitigate the potential for UAs to cause interference or endanger safety of life and property in such areas? We also seek comment on any other regulatory matters that may be affected by UAS operations. For example, will UAS/airborne technologies affect other regulatory requirements like 911 location accuracy?

120. *Different Use Cases.* Our regulatory approach with respect to flexible-use bands is to provide licensees with sufficient flexibility to choose the services that they wish to provide. Licensees could offer a wide range of services and applications, ranging from ''conventional'' command and control (C2) and payload offerings to UTM management services. This ability of licensees to engage in a wide range of use cases creates additional technical uncertainty when deploying UAS operations. We seek comment on the airborne use cases that commenters are considering for flexible-use spectrum. Is there a need for specific rules to permit different applications? Further, should licensees that incorporate UAS operations be required to meet different limitations than what currently exist?

121. One application being explored is the use of UAs as airborne base stations. HAPS systems can potentially be used to provide both fixed broadband connectivity for end users and transmission links between the mobile and core networks for backhauling traffic. As noted, the Commission's rules—as well as ITU Radio Regulations—define HAPS as radio stations located on an object at an altitude of 12–31 miles (20–50 kilometers) and at a specified, nominal, fixed point relative to the Earth.

122. We note that the Commission is currently considering whether HAPS or other stratospheric-based services could be used in any portion of the 71–76 GHz, 81–86 GHz, 92–94 GHz, and 94.1–95 GHz (70/80/90 GHz) bands to provide or support broadband internet access. Are there flexible-use bands that could potentially accommodate such use? Would such use be compatible with ''conventional'' UAS and terrestrial, flexible-use operations given the potential impact that such high altitude use could have on other operations in the band? If so, what rule changes or regulatory considerations would be necessary to permit such uses?

123. Other examples of airborne base station platforms include the use of tethered UAS, which typically are UAs physically connected to the ground via cables that provide power and data links to the UAs. We are aware that there has been research and development in the use of tethered UAS as temporary base stations, particularly as part of disaster recovery efforts. What issues are raised by the use of tethered UAS temporary base stations? If the station is essentially functioning as a conventional base station, should the existing rules applicable to the particular band be applied? Or is it necessary to apply other service and technical parameters, *e.g.,* antenna height and power output? What additional concerns are raised where tethered UAS base stations as well as HAPS are deployed? Further, what would be the impact of a mobile airborne base station on airborne user equipment (*i.e.,* UAS)? What changes or additions to our rules are necessary to address such concerns?

124. *Elimination of Rules Which Impede UAS.* In its Final Report, the Beyond Visual Line of Sight Aviation Rulemaking Committee (BVLOS ARC) recommended that the Commission reconsider the restrictions on airborne use that apply to certain spectrum bands. The *BVLOS ARC Final Report* noted that beyond-visual-line-of-sight operations require that spectrum bands with appropriate characteristics are sufficiently available to meet the needs of numerous users operating in a variety of operating environments. Similarly, the Technological Advisory Council (TAC) has noted that the Commission should reassess the technical basis for prohibiting use of certain terrestrial mobile bands above ground level. To the extent that measures can be identified that resolve or mitigate the impact of UAS use on adjacent operations, we seek comment on whether current prohibitions on airborne operations should be removed. For example, the Cellular Radiotelephone Service airborne use prohibition in § 22.925 was put in place specifically because of the heightened risk of interference by airborne mobiles to cellular networks. Can such operations be protected in the presence of UAS use? If solutions are developed that effectively mitigate the increased potential for harmful interference posed by UAS use, should UAS operations be permitted in Cellular Radiotelephone Service or other bands? Are there certain noise-restricted bands that must retain the prohibition regardless of any UAS interference mitigation measures? If a commenter seeks to eliminate or modify an existing prohibition, the commenter should specifically explain why the airborne use would not cause harmful interference to a co-channel or adjacent channel licensee's operations.

125. *Canadian and Mexican Coordination.* The use of UAS will likely have an impact in areas beyond United States borders. There are several agreements that address use of the flexible-use bands in the border regions between the United States, Canada, and Mexico. These agreements do not contemplate UAS use. Because UAS operation in these bands would increase the interference potential in the border regions, commenters should be aware that UAS use may not be permitted in border areas until such time as the agreements are updated to accommodate such use, or agreements on such use are reached with both countries. We seek comment on how to address issues arising from UAS use in the border regions pending any changes to existing agreements.

3. UAS Impact on Spectrum Rights

126. The Commission's rules largely presume that wireless networks are terrestrial in nature, which raises questions regarding the extent of spectrum rights granted as part of existing commercial authorizations. Pursuant to the Communications Act and the Commission's rules, the Commission grants licensees the right to operate radio systems on a particular radio frequency. In some services, such as those with allocations prohibiting aeronautical mobile use, it can be presumed that a licensee only has rights with respect to ground-based operations. Likewise, other services have technical rules which suggest that

only terrestrial networks were contemplated for those services. By contrast, rules for geographic market-based licenses define market areas according to geographic boundaries, but they are silent as to the vertical scope of such markets. The Commission has never explicitly stated what it believes to be the vertical limit of a licensee's spectrum rights, leaving a question as to the ''ceiling'' of license areas and the attendant protections associated with these geographic markets. As the interference discussion above highlights, however, market boundaries become crucial at higher altitudes.

127. The ability of a licensee to exercise or protect its spectrum rights with respect to adjacent licensees becomes relevant in the context of UAS use, given that the operation of UAs well within the boundaries of one license area can affect and be affected by base stations located inside the boundaries of another license area—more so than for conventional mobile operation. UAs will have line-of-sight connectivity to base stations both within the geographic market area where the UA is flying, as well as base stations in other adjacent geographic areas. The potential for a UA to establish a network connection with a base station in an adjacent market causes a tension between Commission policies: (1) a licensee's authorization generally provides the licensee exclusive use of the spectrum within its licensed market area; and (2) historically, our rules consider mobile devices to be operating under the authority of the licensee whose transmitter is providing service. UA operation creates a tension between these two policies because a UA can be served by a transmitter that is well outside of the licensee's market boundary. The greater line-of-sight of UAs could extend the reach of a transmitter further into an adjacent market, thus muddling the concept of license exclusivity.

128. This aspect of UAS use raises questions regarding how and under what circumstances a licensee is able to enforce rights under its license. For example, it may be difficult to determine UAS operation as a cause of interference to a network because such operation is intermittent and because the effect may vary depending on the position and movement of the UA. Moreover, even if UAS operation is determined to be a cause of interference, the offending licensee is likely to be operating within the Commission's rules regarding conventional mobile operations. This poses questions regarding the circumstances under which the ''victim'' licensee, *i.e.,* the licensee experiencing harmful interference, may seek relief from the Commission where both entities are compliant with service rules.

129. Accordingly, we seek comment on whether the Commission should identify a vertical limit at which flexible-use licenses may be used to support UAS on an exclusive or primary basis. Use beyond this limit would be on a non-primary basis. ''Non-primary'' in this context would mean that a licensee would be required to cure harmful interference to an adjacent licensee caused by its UAS operation even if it is operating within the rules. First, is it appropriate to establish a vertical limit for primary UAS operations in our rules? If we adopt a limit, what should that limit be? What factors should the Commission consider regarding a vertical limit for licensed UAS operations?

130. Second, we seek comment on how to determine whether a licensee should be required to cure harmful interference caused by its non-primary operations to adjacent licensees even if it is operating within the service rules for the license. How should we determine whether an entity should be obligated to take corrective measures, as there may be scenarios in which it could be difficult to determine fault? We request comment on how licensees should be able to enforce their license rights. What interference resolution mechanism would be appropriate?

B. Licensing UAS Operators for VHF Communications

131. The aeronautical VHF band (117.975 MHz–137 MHz) is used by aviation for air traffic control and advisory communications among other aviation-safety purposes. In some instances, to ensure the safety of the National Airspace System, the FAA requires operators of UAS to communicate with air traffic control (ATC) facilities when operating on or in the vicinity of an airport or operating in controlled airspace over the VHF traffic control and advisory frequencies. To meet this requirement, operators may use a VHF station integrated into the UA itself whereby the UAS operator's control station connects with the UA using a non-VHF channel and the UA completes the connection to ATC over the normal VHF channels. This approach is commonly referred to as ATC relay. Implementation of ATC relay in UA technology is still nascent and UAS operators have, therefore, continued to rely on ground-based VHF stations. The part 87 aviation service rules governing the use of the aeronautical VHF band do not, however, provide a licensing mechanism for the operator of a UAS to obtain a ground-based station license. Accordingly, UAS operator requests for such authorization are currently handled by special temporary authority on a case-by-case basis. We propose to establish a mechanism by which UAS operators may apply for a regular license for this purpose, with appropriate requirements, restrictions, and conditions to maintain the integrity of the band and service legitimate needs for flight coordination.

132. Although aeronautical VHF stations are generally licensed by rule under part 87 if the aircraft does not make international flights or communications, we do not propose to authorize ground-based VHF stations under a licensed-by-rule approach. Rather, under our proposal, we would require operators to file a license application with the Commission for an individual license covering their VHF station. Given the potential number of UAS operators, we have concerns that a licensed-by-rule approach applied to these operators' stations in the VHF band could endanger this critical and limited amount of aeronautical spectrum and the safety of the National Airspace System.

133. In addition, given the wide availability of inexpensive, off-the-shelf VHF hand-held radios that can be easily operated without training, we are concerned about the greater potential for parties to obtain and use ground stations on a licensed-by-rule basis to contact ATC, because they may not have adequate training for such communications. We are further concerned that licensed-by-rule operators would be difficult to identify during communications with ATC or afterwards in the event of problems. We tentatively conclude that ground stations for VHF communications should not be licensed by rule, and seek comment on our analysis and tentative conclusion.

134. While we typically do not individually license aircraft stations operating on VHF for domestic flights and communications, we seek comment on licensing ATC relay operations. ATC relay implementation is currently in its nascent stage, however we expect relay operations to increase with a corresponding increase in UA operations near airports and in controlled airspace. Given that ATC relay and ground-based VHF stations will both be used to communicate with ATC, are there inherent differences between ground radio operators and relay operators for the purpose of the communications? Is there a reason to expect operators using ATC relay

stations are better trained for such communications? Are there other licensing related issues that we should consider that make relay systems unique?

135. We seek to adopt a licensing mechanism that addresses these concerns and maintains the integrity of the band while also meeting the legitimate needs of certain UAS operators for communications in the VHF band. To achieve these goals, we propose several measures below. We seek comment on these measures, and on any alternative approaches that would provide a regular licensing mechanism that meets the Commission's goals.

136. First, we propose to individually license ground stations for UAS operator communication with control towers and other aircraft pilots under a new category of licensed station, an *Unmanned Aircraft Operator VHF Ground Station,* and to define the new station as ''a station on the ground providing unmanned aircraft pilot radio communication relating to safety and regularity of flight on air traffic control, flight service station, unicom, or multicom frequencies.'' Individual licensing will enable the Commission to identify authorized operators, identify unauthorized users, and aid in resolving instances of harmful interference. Accordingly, under this proposal, parties will be required to submit individual license applications. We propose that parties use the FCC Form 605, which is used generally for, *inter alia,* authorizations for stations in the ''aircraft service,'' and we seek comment on whether any modifications to the form are necessary or helpful to facilitate its use for this purpose.

137. Second, we propose to provide that these stations may operate over all air traffic control, flight service station, aeronautical advisory station (unicom), and aeronautical multicom station (multicom) channels authorized for use by aircraft. We seek comment on which specific channels to cover for this purpose.

138. Third, we propose to permit mobile stations (stations intended to be used while in motion or during halts at unspecified points), and we further seek comment on whether to permit non-mobile stations as well. To the extent parties support the inclusion of non-mobile stations, we seek comment on whether coverage of such stations for communications between two non-mobile sites (*i.e.,* the operator's fixed VHF station and air traffic control) is consistent with the aeronautical mobile and aeronautical mobile (route) allocations applicable to the air traffic control frequencies.

139. Fourth, we propose to require that license applications include an endorsement from the FAA. An endorsement must be included in a written document issued by the FAA, such as a Certificate of Approval (COA). We propose to provide that a license will not be issued without an FAA endorsement. We further propose that the approved license will be subject to any restrictions or conditions specified on the FAA endorsement. While licenses under part 87 are normally issued for 10 years, we seek comment on whether to provide that license terms for these stations will be the lesser of 10 years or the duration of the FAA endorsement, if any is specified. We further seek comment on whether a party seeking license renewal should be required to submit a new FAA written endorsement.

140. Finally, we propose to adopt a clarification of § 87.18 that will make clear that licensing by rule continues to apply to UAS aircraft stations, such as the VHF stations used for ATC relay. As discussed above, while we seek comment on whether the concerns that underlie our proposal that a UAS operator's ground-based VHF stations should be individually licensed warrant the same approach for UAS aircraft stations, we are not proposing at this time to require individual licensing for those UAS aircraft stations used for VHF communications. To avoid any confusion as to the continued application of licensing by rule to such stations that might result from our proposal to license a UAS operator's ground-based VHF station individually, we propose to clarify in § 87.18(b) that licensing by rule applies to aircraft stations, whether ''manned or unmanned.''

141. We believe these steps will help to promote the safe integration of UAS into the National Airspace System, while maintaining the integrity of the aeronautical VHF band. We request comment on these proposals and alternatives. We seek comment on whether a provision enabling UAS operators to license ground-based stations to communicate over the aeronautical VHF band is necessary or if instead we should continue to address requests for authorization for ground-based stations on a case-by-case basis. If providing a mechanism for licensing of ground-based VHF stations is warranted, we seek comment on whether the proposed rules adequately address this need or unduly restrict the ability of UAS operators to communicate with ATC or with manned aircraft. Conversely, we seek comment on whether the proposal is too broad, and whether we should further restrict the circumstances under which UAS operators may obtain licensed ground stations to use the aeronautical VHF band. We also request comment on whether the FAA's planned integration of the Next Gen Data Communications system into the 136–137 MHz band or other innovations have any current or future effect on this need, including whether they may alter the frequencies that a future UAS operator needs to use to communicate with ATC or otherwise warrant modifications to our proposal.

142. We further seek comment on the appropriate technical and operational requirements for the new category of station, and whether we should generally require such stations to comply with the technical and operational requirements applicable to aircraft stations licensed in the same frequency, or if any additional or alternate requirements should be adopted. In particular, we note that, under § 87.89 of the Commission's rules, operators of aviation service stations are generally required to hold a commercial radio operator license or permit, and that the operator license or permit requires passing a requisite knowledge test. The rule also specifies, however, that no operator license is required to ''[o]perate a VHF telephony transmitter providing domestic service or used on domestic flights.'' We seek comment on whether a UAS operator's VHF communications with ATC would constitute the operation of a VHF telephony transmitter providing domestic service or used on domestic flights, and if so, whether we should create an exception to this provision and provide that UAS operators that operate a licensed Unmanned Aircraft Operator Ground VHF Station must have a commercial radio operator license. Should we specify an alternative permit or training requirement for such operators?

143. *Digital Equity and Inclusion.* Finally, the Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals in this document may promote or inhibit advances in diversity, equity, inclusion, and

accessibility, as well the scope of the Commission's relevant legal authority.

II. Procedural Matters

144. *Ex parte presentations.* This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule § 1.1206(b). In proceedings governed by rule § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

145. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' Accordingly, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible impact the rule and policy changes addressed in this document.

146. *Paperwork Reduction Act Analysis.* This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

III. Initial Regulatory Flexibility Act Analysis

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

A. Need for, and Objectives of, the Proposed Rules

148. The *NPRM* proposes and seeks comment on several rule amendments to address the growing need of the operators of UAS for access to licensed spectrum. Together, the proposals and the measures upon which the *NPRM* seeks comment will help further the development and promote the growth and safety of UAS operations.

149. First, the *NPRM* seeks comment on service rules for the 5030–5091 MHz band that will provide UAS operators with access to licensed spectrum with the reliability necessary to support safety-critical UAS communications links. The Commission's objective in this proceeding is to provide UAS operators with access to an additional spectrum resource that may complement other spectrum resources that are currently available or in development.

150. Second, due to the increasing interest in operating UAS using existing terrestrial flexible-use spectrum networks, the *NPRM* seeks comment on whether the Commission's rules are adequate to ensure co-existence of terrestrial mobile operations and UAS use or whether changes to our rules are necessary. To this end, it seeks comment on the sufficiency of the current flexible-use rules to prevent interference to and from UAS operations, and on whether the Commission can eliminate the current prohibitions on airborne operations applicable to certain of these flexible-use bands.

151. Third, to further promote the safe integration of unmanned aircraft operations in controlled airspace and facilitate flight coordination, the *NPRM* proposes a process for UAS operators to obtain a VHF license to communicate with air traffic control and other aircraft.

B. Legal Basis

152. The proposed action is authorized pursuant to sections 1, 4, 301, 303, 307–310, 316, 318, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 301, 303, 307–310, 316, 318, and 332.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

153. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A ''small-business concern'' is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Below is a list of such entities.

- *Wireless Telecommunications Carriers.*
- *Satellite Telecommunications Providers.*
- *Other Telecommunications Providers.*
- *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturers.*
- *Unmanned Aircraft Radio Equipment Manufacturers.*
- *Unmanned Aircraft System Operators.*

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

154. The *NPRM* proposes to adopt a band plan and service rules for the 5030–5091 MHz band to enable small and other UAS operators, to access interference-protected spectrum for control-and-non-payload communications (CNPC) links, and seeks comment on various options. We expect the proposals and service rules upon which we seek comment in the *NPRM* will impose new or additional reporting or recordkeeping and/or other compliance obligations on small and other UA operators for access and use of the 5030–5091 MHz band spectrum. At this time however, the Commission cannot quantify the cost of compliance and cannot determine whether small entities will have to hire professionals to comply with the rule changes that may be adopted in this proceeding. Below we discuss proposals in the *NPRM* and their potential compliance requirements for small and other entities to operate in the 5030–5091 MHz band.

155. *The Band Plan.* The *NPRM* proposes to partition the 5030–5091 MHz band to accommodate both non-networked radio-line-of-sight—or Non-Networked Access (NNA)—use cases, which can rely on direct communication links between an operator's controller and the unmanned aircraft (UA), and beyond-radio-line-of-sight—or Network-Supported Service (NSS)—use cases, which typically depend on network infrastructure to support communications between the operator and the UA. The *NPRM* proposes to dedicate a minimum of 10 megahertz of spectrum for NNA operations, and seeks comment on various options for the remaining 51 megahertz of spectrum, including dedicating 40 megahertz of spectrum for network-based NSS operations by dividing the spectrum into 4 licensed blocks of 10 megahertz each, and providing 11 megahertz for temporary additional spectrum available to either NNA-based operators or NSS licensees. The *NPRM* further proposes to permit only CNPC in the band, to define CNPC as any UAS transmission that is sent to or from the UA component of the UAS and that supports the safety or regularity of the UA's flight. It further proposes to provide that any entity, other than those precluded by section 310 of the Communications Act, will be eligible to obtain a 5030–5091 MHz NNA station or obtain a 5030–5091 MHz NSS license, and seeks comment on similarly restricting the eligibility of entities to operate NNA stations using assignments from a DFMS.

156. *Dynamic Frequency Management System.* The *NPRM* proposes that access to the band be managed by one or more dynamic frequency management systems (DFMSs). A DFMS would be a frequency coordination system that, in response to requests from registered NNA users, would determine and assign to the requesting user, through an automated (non-manual) process, temporary use of certain frequencies for a particular geographic area and time period tailored to the user's submitted flight plan. The *NPRM* seeks comment on the appropriate regulatory framework to establish for a DFMS, including what requirements should be imposed on UAS operators in the band to help ensure a DFMS's ability to provide interference-free access. Among other possible requirements, the *NPRM* seeks comment on what information the operator should be required to provide regarding ground stations and unmanned aircraft stations, including whether an active UAS in the band should be required to submit information required by FAA's Remote ID rule, or some subset or variation of the information, and whether a UAS should be required to communicate to the DFMS, in real time or within a certain period of time of the relevant event, the initiation and termination of the flight or, alternatively, the initiation and termination of the operator's use of the assigned frequencies. Both of these potential rules would likely have reporting implications for small and other UAS operators, if adopted. The *NPRM* also seeks comment on whether to require UAS operators to register with a DFMS as a pre-condition of receiving NNA assignments and to provide certain information with such registration, which could also impact recordkeeping and reporting obligations. The *NPRM* proposes to authorize the administrator of a DFMS to charge UAS operators reasonable fees for its provision of services, including registration and channel assignment services, and to permit parties to petition the Commission to review fees and require changes if they are found to be excessive.

157. *NNA Service Rules.* The *NPRM* proposes to adopt service rules for NNA operations, including rules for licensing and technical requirements, and seeks comment broadly on the licensing regime or mechanism to enable authorization of NNA operations in the 5030–5091 MHz band and the costs and benefits of any proposed approach. For the licensing of stations in NNA spectrum, the *NPRM* proposes to adopt a licensed-by-rule authorization for aircraft and ground stations in the band. For technical requirements, the *NPRM* proposes to adopt the technical standard RTCA DO–362A or technical requirements based on this standard, which contains Minimum Operational Performance Standards for terrestrial-based (*i.e.,* non-satellite) CNPC point-to-point or point-to-multipoint links in the 5030–5091 MHz band, including power limits, emission limits, and frequency accuracy requirements. In both the licensing eligibility and technical standards requirement discussions, we inquire whether to impose certification requirements that would likely be filed with the Commission, thereby impacting reporting requirements for users of the 5030–5091 MHz band.

158. The *NPRM* also seeks comment on whether any of the general technical requirements in subpart D of part 87 of the Commission's rules should apply to NNA equipment, and whether to adopt any other requirements on NNA equipment to facilitate a DFMS's ability to communicate with or otherwise control such equipment in the execution of the DFMS's responsibilities. In addition, the *NPRM* seeks comment on the potential application of the generally applicable rules in subparts B through F of part 87, including whether to require each UAS operator using an NNA assignment in the 5030–5091 MHz band to have an operator license or permit. It further seeks comment on whether the new service should be subject to rules under part 1, subpart F, governing ''Wireless Radio Service'' applications and proceedings. The application and/or incorporation of existing rules under part 87 or any other part of the Commission's rules would subject NNA users of the 5030–5091 MHz band to any applicable reporting and recordkeeping requirements under those rules unless explicitly excluded in the final rules.

159. *NSS Service Rules.* The *NPRM* also seeks comment on service rules for NSS licenses, including rules addressing, in particular, whether to issue geographic area defined licenses for a specific term of years, with rights of renewal. More specifically, the *NPRM* seeks comment on rules addressing (1) the geographic area scheme for licenses, (2) the appropriate initial and subsequent license terms, (3) performance requirements, (4) license renewal framework, and (5) technical and operational requirements.

160. For the geographic area of licenses, the *NPRM* seeks comment on whether to adopt larger licenses areas such as Regional Economic Area Groupings, a more granular scheme

such as Partial Economic Areas, or a geographic division of the country developed specifically for aviation purposes. The *NPRM* proposes to issue NSS licenses for an initial 15-year term, and to limit subsequent terms to 10 years. The *NPRM* seeks comment on the appropriate standard for license renewal, and on whether the regulatory renewal framework for commercial geographic licensees of wireless radio services under part 1 of the Commission's rules is appropriate for NSS licensees. The *NPRM* also seeks comment on performance requirements, such as a requirement to cover 80 percent of the population within 12 years of license grant, and 45 percent coverage of the population within six years of license grant. For compliance demonstration, the *NPRM* proposes to adopt a process similar to compliance rules applicable to part 27 licensees, requiring licensees to file a construction notification with the Commission within 15 days of the expiration of the applicable benchmark, including submission of electronic coverage maps accurately depicting the boundaries of the licensed area and the boundaries of the actual areas to which the licensee provides service. For enforcement, the *NPRM* proposes that if a licensee fails to meet the final performance requirement, the license authorization will terminate automatically without specific Commission action, and that failure to meet the interim requirement would result in the reduction by two years of both the due date for the final performance requirement and the license term.

161. In the event that the Commission receives mutually exclusive license applications for NSS licenses, the *NPRM* proposes to assign these exclusive use licenses through a system of competitive bidding. Consistent with the competitive bidding procedures the Commission has used in previous auctions, the *NPRM* proposes to conduct any auction for geographic area licenses for spectrum in the band in conformity with the part 1, subpart Q general competitive bidding rules, subject to any modification of the part 1 rules that the Commission may adopt in the future. For small entities, the *NPRM* seeks comment on whether to make bidding credits available for eligible small businesses and rural service providers.

162. The *NPRM* also seeks comment on appropriate technical requirements for NSS licenses, and whether the technical standard RTCA DO–362A or equivalent technical parameters should also apply to NSS licenses. As an alternative to requiring NSS licensee compliance with the RTCA DO–362A standard generally, the *NPRM* also seeks comment on whether there are certain specific requirements of RTCA DO–362A that the Commission should minimally impose on NSS licensees to ensure compatibility with NNA operations, or for other purposes, such as the Time Division Duplex requirements of the RTCA DO–362A standard. In addition, the *NPRM* seeks comment on adoption of a field strength limit to prevent interference between adjacent geographic area licensees.

163. As with NNA service rules, the *NPRM* seeks comment on whether and to what extent the NSS service rules should incorporate or be subject to the requirements generally applicable to aviation services under subparts B through F of part 87 of the Commission's rules, either in their current form or with modifications, and whether the NSS service should be subject to rules under part 1, subpart F, governing wireless radio service applications and proceedings. In particular, the *NPRM* seeks comment on whether to allow partitioning and disaggregation of NSS licenses as well as spectrum leasing. Likewise as mentioned earlier in the NNA service rules discussion, NSS users would be subject to any applicable reporting and recordkeeping requirements under existing Commission's rules incorporated into the requirements for the 5030–5091 MHz band. The *NPRM* also seeks comment on whether to authorize NSS licensees, at their discretion, to provide network-supported service for UAS CNPC through either a satellite or terrestrial network, or alternatively, whether the Commission should provide that certain NSS licenses are dedicated exclusively to satellite-based service. It further seeks comment on whether to permit NSS licensees to deploy High-altitude Platform Stations (HAPS).

164. *Equipment Authorization.* To ensure that equipment in the new band has the level of reliability and safety required of aviation equipment, the *NPRM* proposes to impose equipment authorization requirements similar to those under §§ 87.145 and 87.147 of the Commission's rules to all equipment intended for use in the 5030–5091 MHz band. Section 87.145 requires that each transmitter must be certificated for use in the relevant service, and § 87.147 establishes a specific equipment authorization process. Section 87.147 specifically requires an applicant for certification of equipment to notify the FAA of the filing of the application, and provides that the Commission will not act on the application until it receives the FAA's determination regarding whether it objects to the application for equipment authorization.

165. *Protection of Other Services.* The *NPRM* seeks comment on any measures the Commission should adopt to protect Federal Microwave Landing System (MLS) deployments in the 5030–5091 MHz band, and on whether to provide that no future non-Federal MLS licenses (including MLS radionavigation land test licenses at 5031 MHz) will be granted in the 5030–5091 MHz band. To protect radio astronomy operations, the *NPRM* proposes, consistent with NTIA's recommendations, to continue to apply to the 5030–5091 MHz band the requirements of Footnote US211 of the Table of Frequency Allocations, and to prohibit UAS operations within the National Radio Quiet Zone (NRQZ) without prior coordination with the NRQZ administrator and submission of a concurrence from the NRQZ administrator with any request to a DFMS for frequency assignment within the NRQZ. The *NPRM* also seeks comment on applying to all UAS operations relying on the 5030–5091 MHz band in the NRQZ the licensee/applicant procedures for the NRQZ under § 1.924(a) of the Commission's rules, which include written notification filing requirements. The *NPRM* further seeks comment on any special measures necessary to ensure compatibility between UAS operations in the 5030–5091 MHz band and AeroMACS and flight testing in adjacent bands. To protect radionavigation-satellite service in the 5010–5030 MHz band, the *NPRM* proposes to require 5030–5091 MHz operations to comply with the specific effective isotropically radiated power (EIRP) spectral density limit specified in Footnote 5.443C of the Table of Frequency Allocations. With regard to Canadian and Mexican coordination, the *NPRM* proposes to provide that all operations in the band are subject to international agreements with Mexico and Canada.

166. *Airborne Use of Flexible-Use Spectrum.* Regarding UAS operations in flexible-use spectrum, the Commission did not make specific proposals and seeks comment on the adequacy of its current rules to ensure co-existence of existing terrestrial wireless networks and UAS, and on the regulatory solutions that may be necessary to facilitate and encourage such use. Thus, at this time the Commission is not in a position to determine what rule changes could result from the questions raised in the *NPRM,* and which of those changes, if any, will result in reporting and/or recordkeeping obligations for small entities.

167. *VHF Licenses for UAS Pilots.* The *NPRM* proposes that the Commission individually license stations for UA pilot communication with control towers and other aircraft pilots under a new category of licensed station, an Unmanned Aircraft Operator Ground VHF Station, and to define the new station as ''a station on the ground providing unmanned aircraft pilot radio communication relating to safety and regularity of flight on air traffic control, flight service station, unicom, or multicom frequencies.'' The *NPRM* further proposes to provide that these stations may operate over all air traffic control, flight service station, aeronautical advisory station (unicom) and aeronautical multicom channels authorized for use by aircraft. In addition, the *NPRM* proposes to permit mobile stations (stations intended to be used while in motion or during halts at unspecified points), and seeks comment on whether to permit non-mobile stations as well. Under this proposal, UAS operators would be required to file a license application with the Commission for an individual license covering their VHF station.

E. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

168. Proposed UAS service rules for the 5030–5091 MHz band would, in part, overlap with and, depending on the UAS equipment requirements established in this proceeding, may be inconsistent with the FAA's Technical Standard Order (TSO) C213a, which establishes minimum performance standards for UAS radios in the 5030–5091 MHz MHz band.

IV. Ordering Clauses

169. Accordingly, *it is ordered*, pursuant to Sections 1, 4, 301, 303, 307–310, 316, 318, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 301, 303, 307–310, 316, 318, and 332, that the Notice of Proposed Rulemaking *is hereby adopted.*

170. *It is further ordered* that the Petition for Rulemaking filed by the Aerospace Industries Association in the Commission's rulemaking proceeding RM–11798 *is granted* to the extent specified herein, that RM–11798 is incorporated into this proceeding, WT Docket No. 22–323, and that RM–11798 is *terminated.*

171. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Communications, Communications common carriers, Communications equipment, Radio, Reporting and recordkeeping requirements, Telecommunications.

47 CFR Part 87

Radio.

47 CFR Part 88

Communications, Communications equipment, Incorporation by reference, Reporting and recordkeeping requirements, Unmanned aircraft control services.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR chapter I as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note, unless otherwise noted.

■ 2. Section 1.901 is revised to read as follows:

§ 1.901 Basis and purpose.

The rules in this subpart are issued pursuant to the Communications Act of 1934, as amended, 47 U.S.C. 151 *et seq.* The purpose of the rules in this subpart is to establish the requirements and conditions under which entities may be licensed in the Wireless Radio Services as described in this part and in parts 13, 20, 22, 24, 27, 30, 74, 80, 87, 88, 90, 95, 96, 97, and 101 of this chapter.

■ 3. Section 1.907 is amended by revising the definitions of ''Private Wireless Services'' and ''Wireless Radio Services'' to read as follows:

§ 1.907 Definitions.

* * * * *

Private Wireless Services. Wireless Radio Services authorized by parts 80, 87, 88, 90, 95, 96, 97, and 101 of this chapter that are not Wireless Telecommunications Services, as defined in this part.

* * * * *

Wireless Radio Services. All radio services authorized in parts 13, 20, 22, 24, 26, 27, 30, 74, 80, 87, 88, 90, 95, 96, 97 and 101 of this chapter, whether commercial or private in nature.

* * * * *

PART 87—AVIATION SERVICES

■ 4. The authority citation for part 87 continues to read as follows:

Authority: 47 U.S.C. 154, 303 and 307(e), unless otherwise noted.

■ 5. Section 87.3 is amended by adding paragraph (g) to read as follows:

§ 87.3 Other applicable rule parts.

* * * * *

(g) Part 88 contains rules governing the use of the 5030–5091 MHz band by unmanned aircraft systems.

■ 6. Section 87.5 is amended by adding in alphabetical order a definition of ''Unmanned Aircraft Operator VHF Ground Station'' to read as follows:

§ 87.5 Definitions.

* * * * *

Unmanned Aircraft Operator VHF Ground Station. A station on the ground providing unmanned aircraft pilot radio communication relating to safety and regularity of flight on air traffic control, flight service station, unicom, or multicom frequencies.

* * * * *

■ 7. Section 87.18 is amended as follows:

■ a. By adding the words ''(manned or unmanned)'' after ''An aircraft station'' in the first sentence of paragraph (b); and

■ b. By adding paragraph (c).

The addition reads as follows:

§ 87.18 Station license required.

* * * * *

(c) Notwithstanding paragraph (a) of this section, Unmanned Aircraft Operator VHF Ground Stations are not licensed by rule and must be licensed by the FCC either individually or by fleet for communications on air traffic control, flight service station, unicom, or multicom frequencies in accordance with § 87.49.

■ 8. Section 87.49 is added to read as follows:

§ 87.49 Application for an Unmanned Aircraft Operator VHF Ground Station license.

A person may apply for an Unmanned Aircraft Operator VHF Ground Station license to communicate on air traffic control, flight service station, unicom, or multicom frequencies if written approval is first obtained from the Federal Aviation Administration (FAA). The applicant must provide, with the license application, a copy of the

written approval from the FAA, such as a Certificate of Waiver or Authorization (COA), approving the applicant's use of the specific frequencies requested in connection with unmanned aircraft activity. License grant will be subject to any conditions, coordination, or restrictions imposed by the FAA in its written approval.

■ 9. Part 88 is added to read as follows:

PART 88—UNMANNED AIRCRAFT CONTROL SERVICES

Subpart A—General Rules

Subpart B—Non-Networked Access

Subpart C—[Reserved]

Subpart D—Technical Requirements

Subpart E—Dynamic Frequency Management Systems

Authority: 47 U.S.C. 154(i), 303, 307.

Subpart A—General Rules

§ 88.1 Scope.

This part sets forth the regulations governing the use of the 5030–5091 MHz band by unmanned aircraft systems. The regulations in this part do not govern unmanned aircraft systems communications services in any bands other than the 5030–5091 MHz band.

§ 88.3 Application of other rule parts.

(a) Except as expressly provided under this part, part 87 of this chapter shall not apply to unmanned aircraft systems communications in the 5030–5091 MHz band.

(b) Non-Networked Access (NNA) devices, as defined in this part, are considered part of the Citizens Band Radio Service, as defined in § 95.303 of this chapter. Except for § 95.303, the rules of part 95 of this chapter shall not apply to such devices.

§ 88.5 Definitions.

The following terms and definitions apply only to the rules in this part.

Control and Non-payload Communications (CNPC). Any unmanned aircraft system (UAS) transmission that is sent to or from the unmanned aircraft (UA) component of the UAS and that supports the safety or regularity of the UA's flight.

DFMS Administrator. An entity authorized by the Federal Communications Commission (Commission or FCC) to operate a DFMS in accordance with the rules and procedures set forth in subpart E of this part.

Dynamic Frequency Management System (DFMS). An automated frequency coordination system operating in the 5030–5091 MHz band that, in response to frequency assignment requests from UAS operators, assigns to the requesting operator, through an automated (non-manual) process, temporary use of certain frequencies for a particular geographic area and time period tailored to the operator's submitted flight plan.

Ground station. A land or mobile station not on board a UA that is part of a UAS and for communication with an unmanned aircraft station.

NNA device. A ground station or unmanned aircraft station authorized under this part and designed to communicate using NNA assignments consistent with subparts B and D of this part.

NNA user. An authorized user of spectrum in the 5030–5091 MHz band operating on an NNA basis, as set forth in subpart B of this part.

Non-Networked Access (NNA). Temporary, interference-protected access to the 5030–5091 MHz band pursuant to a frequency assignment from a DFMS and consistent with subpart B of this part.

Unmanned aircraft (UA). An aircraft operated without the possibility of direct human intervention from within or on the aircraft.

Unmanned aircraft station. A mobile station authorized under this part and located on board a UA.

Unmanned aircraft system (UAS). A UA and its associated elements (including an unmanned aircraft station, communication links, and the components not on board the UA that control the UA) that are required for the safe and efficient operation of the UA in the airspace of the United States.

Subpart B—Non-Networked Access

§ 88.25 Scope.

Transmissions over an NNA assignment may include any form of CNPC.

§ 88.27 Authorization.

(a) Any entity, other than those precluded by section 310 of the Communications Act of 1934, as amended, 47 U.S.C. 310, and otherwise meets the technical, financial, character, and citizenship qualifications that the Commission may require in accordance with such Act is eligible to be an NNA user and operate NNA devices under this part.

(b) NNA devices, including ground stations and unmanned aircraft stations, are licensed by the rules in this part and do not need an individual license issued by the Commission. Even though an individual license is not required, an NNA device licensed by the rules in this part must comply with all applicable operating requirements, procedures, and technical requirements found in this part.

(c) NNA users must register with a DFMS and comply with its instructions and the rules in this part.

(d) NNA users may transmit in the 5030–5091 MHz band only using NNA devices compliant with the rules of this part, and only pursuant to and consistent with the terms of a frequency assignment from a Commission-approved DFMS.

§ 88.29 Frequencies.

The 5030–5035 MHz and 5086–5091 MHz bands are allocated for CNPC use to NNA users.

§ 88.31 Non-Networked Access use.

(a) NNA users registered with a DFMS may submit a request for temporary assignment of frequencies for CNPC limited to the duration and geographic coverage necessary to support a single submitted UAS flight plan. Requests may also be made either prior to or during the relevant operation to modify an assignment. Such requests must be made to the same DFMS responsible for the original assignment.

(b) If frequencies meeting the request are available, the DFMS shall assign them on an exclusive but temporary basis. The scope of the assignment shall be tailored in both duration and geographic coverage to ensure interference-free communications for the entire submitted UAS flight plan.

(c) When registering with or using the services of a DFMS, an NNA user shall comply with all instructions of the DFMS Administrator, including those

regarding registration, requests and other submissions to the DFMS, and operational use of NNA assignments.

(d) An NNA user operating under a DFMS assignment must provide indication to the DFMS, within 5 minutes of the event, when a flight has commenced and when it has terminated.

(e) NNA users are prohibited from engaging in UAS operations using NNA assignments within the National Radio Quiet Zone (NRQZ) without prior coordination with the NRQZ administrator. Any request to a DFMS for frequency assignment within the NRQZ must include submission of a Letter of Concurrence from the NRQZ administrator, and NNA users submitting such a request shall comply with all conditions enumerated in the Letter of Concurrence. NNA users are urged to take all practicable steps to protect radio astronomy observations in the 5000–5250 MHz band.

Subpart C—[Reserved]

Subpart D—Technical Requirements

§ 88.101 Transmitter power.

The power of the transmitter is defined as the average envelope measured during the duration of the burst transmission bounded by the first preamble symbol to the last midamble symbol, measured at the transmitter's radio frequency (RF) output port with a 50 ohm load attached. The power must be determined by direct measurement at the transmitter output terminals. The maximum power of a transmitter must not exceed the values listed in paragraphs (a) and (b) of this section.

(a) For an Airborne Radio Transmitter:

(1) High Power Mode: 10 watts.

(2) Low Power Mode: 100 mW.

(b) For a Ground Radio Transmitter: 10 watts.

§ 88.103 Bandwidth of emission.

The authorized bandwidth is the maximum occupied bandwidth authorized to be used by a station. Equipment must be tunable in 2.5 kHz steps within the range 5030–5091 excluding center frequencies 5030 MHz and 5091 MHz. The authorized bandwidth is limited to multiples of 5 kHz according to the following:

(a) One In-flight Emergency Video Channel having a width of 500 kHz.

(b) Two takeoff and Landing Video Channels of 250 kHz width per channel.

(c) Non-Video Channels may operate on up to 250 kHz-wide channels in multiples of 5 kHz.

§ 88.105 Types of emission.

The assignable emission designators in multiples of 5 kHz up to 500 kHz are as follows:

(a) G8D—for data.

(b) G8F—for video.

§ 88.107 Acceptability of transmitters for licensing.

Each transmitter utilized for operation under this part and each transmitter marketed as set forth in § 2.803 of this chapter must be certificated by the Commission following the procedures set forth in part 2, subpart J, of this chapter.

§ 88.109 Authorization of equipment.

An applicant for certification of equipment must notify the Federal Aviation Administration (FAA) of the filing of a certification application. The letter of notification must be mailed to: FAA, Office of Spectrum Policy and Management, ASR–1, 800 Independence Ave. SW, Washington, DC 20591 prior to the filing of the application with the Commission.

(a) The notification letter must describe the equipment, and give the manufacturer's identification, antenna characteristics, rated output power, emission type and characteristics, the frequency or frequencies of operation, and essential receiver characteristics if protection is required.

(b) The certification application must include a copy of the notification letter to the FAA. The Commission will not act until it receives the FAA's determination regarding whether it objects to the application for equipment authorization. The FAA should mail its determination to: Office of Engineering and Technology Laboratory, Authorization and Evaluation Division, 7435 Oakland Mills Rd., Columbia, MD 21046. The Commission will consider the FAA determination before taking final action on the application.

§ 88.111 Performance standards.

Transmitters operating in the 5030–5091 MHz band must comply with and operate in accordance with technical standard *RTCA–DO–362A* (incorporated by reference, see § 88.115).

§ 88.113 RF safety.

Licensees and manufacturers are subject to the radio frequency radiation exposure requirements specified in §§ 1.1307(b), 1.1310, 2.1091, and 2.1093 of this chapter, as appropriate. Applications for equipment authorization of mobile devices operating under this section must contain a statement confirming compliance with these requirements for both fundamental emissions and unwanted emissions and technical information showing the basis for this statement must be submitted to the Commission upon request.

§ 88.115 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the Federal Communications Commission (FCC) and at the National Archives and Records Administration (NARA). Contact FCC at: 45 L Street NE, Reference Information Center, Room 1.150, Washington, DC 20554, (202) 418–0270, For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fedreg.legal@nara.gov.* The material may be obtained from the following source:

(a) RTCA, 1150 18th Street NW, Suite 910, Washington, DC 20036, email: *info@rtca.org* or *http://RTCA.org.*

(1) RTCA–DO–362A, Command and Control (C2) Data Link Minimum Operational Performance Standards (MOPS) (Terrestrial), dated December 17, 2020 (*RTCA–DO–362A*), IBR approved for § 88.111.

(2) [Reserved]

(b) [Reserved]

Subpart E—Dynamic Frequency Management Systems

§ 88.135 DFMS requirements.

(a) DFMS must provide a process for NNA users to register with the system for the purpose of submitting frequency assignment requests and obtaining frequency assignments.

(b) A DFMS must be capable of processing frequency assignment requests nationwide and across the entire 5030–5091 MHz band. However, a DFMS may only grant assignments for spectrum within those frequencies specified under § 88.29.

(c) In response to frequency assignment requests from a registered NNA user, a DFMS shall determine and provide, through an automated (non-manual) process, an assignment of frequencies for a particular geographic area and time period tailored to the NNA user's submitted flight plan, to the extent that frequencies are available to meet the request and grant of the assignment is otherwise consistent with this part. Assignments must provide protected access to frequencies over a duration and geographic area sufficient to cover the entire submitted flight plan.

(d) Assignments for operations in the National Radio Quiet Zone (NRQZ) must be accompanied by a Letter of Concurrence from the NRQZ Administrator and may only be granted within the terms and conditions, if any, specified in the Letter of Concurrence.

(e) Assignments must account for the need to protect other authorized operations.

§ 88.137 DFMS Administrators.

The Commission will approve one or more DFMS Administrators to manage access to the 5030–5091 MHz band on a nationwide basis as specified under § 88.135. Each DFMS Administrator is responsible for the functioning of a DFMS and providing services to operators in the Unmanned Aircraft Control Service. Each DFMS Administrator approved by the Commission must:

(a) Operate a DFMS consistent with the rules of this part.

(b) Establish and follow protocols and procedures to ensure compliance with the rules set forth in this part.

(c) Provide service for a ten-year term. This term may be renewed at the Commission's discretion.

(d) Securely transfer all the information in the DFMS to another approved entity in the event it does not continue as the DFMS Administrator at the end of its term. It may charge a reasonable price for such conveyance.

(e) Cooperate to develop a standardized process for coordinating operations with other approved DFMSs, avoiding any conflicting assignments, and maximizing shared use of available frequencies.

(f) Coordinate with other DFMS Administrators including, to the extent possible, sharing assignment and other information, facilitating non-interference to and from operations relying on assignments from other DFMSs, and other functions necessary to ensure that use of available spectrum is safe and efficient and consistent with this part.

(g) Ensure that the DFMS shall be available at all times to immediately respond to requests from authorized Commission personnel for any and all information stored or retained by the DFMS.

(h) Establish and follow protocols to comply with enforcement instructions from the Commission.

§ 88.139 DFMS Administrator fees.

(a) A DFMS Administrator may charge users a reasonable fee for provision of its services, including usage-based fees for frequency assignments.

(b) The Commission, upon request, will review the fees and can require changes in those fees if they are found to be excessive.

[FR Doc. 2023–00961 Filed 2–6–23; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 88, No. 25
Tuesday, February 7, 2023

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 COMMERCE

Foreign-Trade Zones Board

[B–11–2023]

Foreign-Trade Zone (FTZ) 121—Albany, New York; Notification of Proposed Production Activity; Curia Global, Inc. (Pharmaceutical Chemicals Production); Rensselaer, New York

The Capital District Regional Planning Commission, grantee of FTZ 121, submitted a notification of proposed production activity to the FTZ Board (the Board) on behalf of Curia Global, Inc., located in Rensselaer, New York within Subzone 121A. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on February 1, 2023.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/component(s) and specific finished product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via *www.trade.gov/ftz.* The proposed finished product(s) and material(s)/component(s) would be added to the production authority that the Board previously approved for the operation, as reflected on the Board's website.

The proposed finished product is 4-(3-(4-Cyano-3-(trifluoromethyl)phenyl)-5,5-dimethyl-4-oxo-2-thioxoimidizolidin-1-yl)-2-fluoro-N-methylbenzamide (duty rate 6%).

The proposed foreign-status materials and components are 2-(3-fluoro-4-(methylcarbamoyl)phenylamino)-2-methylpropanoic acid and 4-Isothiocyanato-2-(trifluoromethyl)benzonitrile (duty rate ranges from 3.7% to 6.5%). The request indicates that the materials/components are subject to duties under section 301 of the Trade Act of 1974 (section 301), depending on the country of origin. The applicable section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is March 20, 2023.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact Christopher Wedderburn at *Chris.Wedderburn@trade.gov.*

Dated: February 1, 2023.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2023–02539 Filed 2–6–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–113]

Certain Collated Steel Staples From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2019–2020

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that countervailable subsidies were provided to producers and exporters of certain collated steel staples (collated staples) from the People's Republic of China (China) during the period of review (POR) from November 12, 2019, through December 31, 2020.

DATES: Applicable February 7, 2023.

FOR FURTHER INFORMATION CONTACT: Jinny Ahn or Shane Subler, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0339 or (202) 482–6241, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 5, 2022, Commerce published the *Preliminary Results.*[1] On November 22, 2022, we released the final verification report and invited parties to comment on the *Preliminary Results.*[2] For a detailed description of the events that occurred subsequent to the *Preliminary Results, see* the Issues and Decision Memorandum.[3] On November 21, 2022,[4] in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), Commerce extended the deadline for issuing the final results until February 1, 2023.

Scope of the Order [5]

The merchandise subject to the *Order* is collated staples from China. A full description of the scope of the *Order* is contained in the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised by interested parties in briefs are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is provided 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 directly

[1] *See Certain Collated Staples from the People's Republic of China: Preliminary Results and Partial Rescission of the Countervailing Duty Administrative Review; 2019–2020,* 87 FR 47980 (August 5, 2022) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum.

[2] *See* Memoranda, ''Verification of the Questionnaire Responses of Tianjin Hweschun Fasteners Manufacturing Co., Ltd.,'' dated November 22, 2022 (Verification Report); and ''Case Brief Schedule,'' dated November 22, 2022.

[3] *See* Memorandum, ''Certain Collated Steel Staples from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the 2019–2020 Countervailing Duty Administrative Review,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[4] *See* Memorandum, ''Extension of Deadline for the Final Results of Countervailing Duty Administrative Review; 2020,'' dated November 21, 2022.

[5] *See Certain Collated Steel Staples from the People's Republic of China: Countervailing Duty Order,* 85 FR 43813 (July 20, 2020) (*Order*).

at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the *Preliminary Results*

Based on our review of the record and comments received from interested parties regarding our *Preliminary Results,* we made certain revisions to the countervailable subsidy rate calculations for Tianjin Hweschun Fasteners Mfg. Co. Ltd. (Tianjin Hweschun).[6] As a result of the changes to Tianjin Hweschun's program rates, the final rate for the five non-selected companies under review also changed.[7] Further, as a result of the changes to Tianjin Hweschun's program rates and other changes made to the derivation of the total adverse facts available (AFA) rate, the final total AFA rate for the non-cooperative mandatory respondents (*i.e.,* China Staple Enterprise (Tianjin) (China Staple) and Shanghai Yueda Nails Co., Ltd. (Shanghai Yueda)) also changed.[8] These changes are explained in the Issues and Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(A) of the Act. For each of the subsidy programs found countervailable, we find that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[9] The Issues and Decision Memorandum contains a full description of the methodology underlying Commerce's conclusions, including any determination that relied upon the use of adverse facts available pursuant to sections 776(a) and (b) of the Act.

Verification

Pursuant to section 782(i) of the Act, and 19 CFR 351.307(b)(iv), we conducted verification of the questionnaire responses of Tianjin Hweschun.[10]

Companies Not Selected for Individual Review

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 705(c)(5) of the Act, which provides instructions for determining the all-others rate in an investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 705(c)(5)(A) of the Act, the all-others rate is normally an amount equal to the weighted average of the countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero or *de minimis* countervailable subsidy rates, and any rates determined entirely on the basis of facts available.

As stated above, there are five companies for which a review was requested and not rescinded, and which were not selected as mandatory respondents or found to be cross owned with a mandatory respondent. For these non-selected companies, because the rate calculated for the only participating mandatory respondent in this review, Tianjin Hweschun, was *above de minimis* and not based entirely on facts available, we are applying to the five non-selected companies Tianjin Hweschun's subsidy rate. This methodology used to establish the rate for the non-selected companies is consistent with our practice regarding the calculation of the all-others rate, pursuant to section 705(c)(5)(A)(i) of the Act.

Final Results of Review

We find the countervailable subsidy rates for the mandatory and non-selected respondents under review for the period of November 12, 2019, through December 31, 2020, to be as follows:

Producer/exporter	Subsidy rate (percent *ad valorem*)
Tianjin Hweschun Fasteners Mfg. Co. Ltd	62.18
China Staple Enterprise (Tianjin)	319.30
Shanghai Yueda Nails Co., Ltd	319.30
Review-Specific Rate Applicable to Non-Selected Companies	
A-Jax International Co., Ltd	62.18
China Dinghao Co., Ltd	62.18
Rise Time Industrial Ltd	62.18
Shaoxing Bohui Import Export Co., Ltd	62.18
Zhejiang Best Nail Industrial Co., Ltd	62.18

Disclosure

We intend to disclose the calculations performed in connection with the final results of review to parties in this proceeding within five days of the date of publication of this notice 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), Commerce has determined, and U.S Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries of subject merchandise in accordance with the final results of this review, for the above-listed companies at the applicable *ad valorem* assessment rates listed. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

In accordance with section 751(a)(1) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for each of the respective companies listed above on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. For all non-reviewed firms subject to the *Order,* we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, effective upon publication of the final results of review, shall remain in effect until further notice.

[6] *See* Memorandum, ''Final Results Calculations for Tianjin Hweschun Fasteners Manufacturing Co., Ltd.,'' dated concurrently with this notice.

[7] The five non-selected companies under review are: A-Jax International Co., Ltd., China Dinghao Co., Ltd., Rise Time Industrial Ltd., Shaoxing Bohui Import Export Co., Ltd., and Zhejiang Best Nail Industrial Co., Ltd.

[8] For information detailing the derivation of the AFA rate applied, *see* Memorandum, ''AFA Calculation Memorandum for the Final Results in the Administrative Review of Certain Collated Steel Staples from the People's Republic of China,'' dated concurrently with this memorandum (AFA Calculation Memorandum).

[9] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[10] *See* Verification Report.

Administrative Protective Order (APO)

This notice also serves as a reminder to parties subject to an APO of their responsibility concerning the return or destruction 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 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 which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results of administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(5).

Dated: February 1, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2023–02591 Filed 2–6–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic from the People's Republic of China: Final Results of Expedited Fifth Sunset Review of the Antidumping Duty Order

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

SUMMARY: As a result of this expedited review, the U.S. Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) order on fresh garlic (garlic) from the People's Republic of China (China) would likely to lead to continuation or recurrence of dumping at the levels indicated in the ''Final Results of Review'' section of this notice.

DATES: Applicable February 7, 2023.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5255.

SUPPLEMENTARY INFORMATION:

Background

On October 3, 2022, Commerce published the notice of initiation of the sunset review of the AD order on garlic from China, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[1] On October 12, 2022, Commerce received a notice of intent to participate from the domestic interested parties [2] with respect to the *Order,* within the 15-day deadline specified in 19 CFR 351.218(d)(1)(i).[3] The domestic interested parties claimed interested party status under section 771(9)(C) of the Act as manufacturers of the domestic like product in the United States.[4] On June 1, 2022, the domestic interested parties submitted a timely substantive response for this sunset review within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[5] Commerce did not receive a substantive response from any other interested parties with respect to the *Order* covered by this sunset review.

On November 30, 2022, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested parties in this sunset review.[6] As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce is conducting an expedited (120-day) sunset review of this *Order.*

Scope of the Order

The products covered by the *Order* are all grades of garlic, whole or separated into constituent cloves. For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum.[7]

Analysis of Comments Received

All issues raised in this sunset review are addressed in the Issues and Decision Memorandum. A list of topics discussed in the Issues and Decision Memorandum is included as an 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 directly at *https://access.trade.gov/public/FRNotices/ListLayout.aspx.*

Final Results of Sunset Review

Pursuant to sections 751(c) and 752(c) of the Act, Commerce determines that revocation of the *Order* would be likely

[1] *See Initiation of Five-Year Sunset Reviews,* 87 FR 59779 (October 3, 2022); *see also Antidumping Duty Order: Fresh Garlic from the People's Republic of China,* 59 FR 59209 (November 16, 1994) (*Order*).

[2] The domestic interested parties in this sunset review are the petitioners, who consist of the Fresh Garlic Producers Association and its individual members: Christopher Ranch L.L.C., The Garlic Company, and Valley Garlic, Inc.

[3] *See* Petitioners' Letter, ''Five-Year (''Sunset'') Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China—Petitioners' Notice of Intent to Participate,'' dated October 12, 2022.

[4] *Id.*

[5] *See* Petitioners' Letter, ''Five-Year (''Sunset'') Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China—Petitioners' Substantive Response to the Department's Notice of Initiation,'' dated November 2, 2022.

[6] *See* Commerce's Letter, ''Sunset Reviews for October 2022,'' dated November 30, 2022.

[7] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Expedited Fifth Sunset Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

to lead to continuation or recurrence of dumping, and that the magnitude of the dumping margins likely to prevail would be weighted-average dumping margins of up to 376.67 percent.

Administrative Protective Order

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely notification of the destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act, and 19 CFR 351.218(e)(1)(ii)(C)(2) and 19 CFR 351.221(c)(5)(ii).

Dated: January 31, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2023–02537 Filed 2–6–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–829]

Steel Concrete Reinforcing Bar From the Republic of 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 U.S. Department of Commerce (Commerce) determines that producers or exporters of steel concrete reinforcing bar (rebar) from the Republic of Turkey (Turkey) subject to this review made sales of subject merchandise at less than normal value (NV) during the period of review (POR) July 1, 2020, through June 30, 2021. Additionally, we find that one company made no shipments of subject merchandise to the United States during the POR.

DATES: Applicable February 7, 2023.

FOR FURTHER INFORMATION CONTACT: Robert Copyak, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3642.

SUPPLEMENTARY INFORMATION:

Background

On August 5, 2022, Commerce published the *Preliminary Results* and invited interested parties to comment.[1] These final results cover six companies for which an administrative review was initiated.[2] We selected two companies for individual examination: (1) Colakoglu Metalurji A.S. (Colakoglu Metal)/Colakoglu Dis Ticaret A.S. (COTAS) (collectively, Colakoglu); [3] and (2) Kaptan Demir Celik Endustrisi ve Ticaret A.S. (Kaptan Demir)/Kaptan Metal Dis Ticaret Ve Nakliyat A.S. (Kaptan Metal) (collectively, Kaptan).[4] For a complete description of the events that followed the *Preliminary Results, see* the Issues and Decision Memorandum.[5] Commerce conducted this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [6]

The product covered by the *Order* is steel concrete reinforcing bar from Turkey. For a full description of the scope, *see* the Issues and Decision Memorandum.[7]

Analysis of Comments Received

We addressed all issues raised in the case and rebuttal briefs in the Issues and Decision Memorandum. A list of these issues is attached in an appendix to this notice. The Issues and Decision Memorandum is a public document and is available electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Services 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 our analysis of the comments received from interested parties, a review of the record, and for the reasons explained in the Issues and Decision Memorandum, we made certain changes to the preliminary weighted-average dumping margin calculations for Colakoglu and Kaptan, as detailed in the Issues and Decision Memorandum.[8]

Final Determination of No Shipments

For the *Preliminary Results,* we found that Habas Sinai ve Tibbi Gazlar Istihsal Endüstrisi A.S (Habas) did not have any shipments of subject merchandise during the POR. No party commented on this preliminary determination. For the final results of the review, we continue to find that Habas made no shipments of subject merchandise during the POR. As noted in the ''Assessment Rates'' section below, Commerce intends to issue appropriate instructions to U.S. Customs and Border Protection (CBP) for Habas based on the final results of the review.

[1] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No-Shipments; 2020–2021,* 87 FR 47975, (August 5, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 50034 (September 7, 2021).

[3] We collapsed Colakoglu and COTAS in the 2019–2020 administrative review. *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments*; 2019–2020, 87 FR 7118, 7119 (February 8, 2022) (*Rebar from Turkey 2019–2020*). Because there is no information on the record of this administrative review that would lead us to revisit this determination, we are continuing to treat these companies as a single entity for the purposes of this administrative review.

[4] We collapsed Kaptan Demir and Kaptan Metal in the 2019–2020 administrative review. *See Rebar from Turkey 2019–2020,* 87 FR at 7119. Because there is no information on the record of this administrative review that would lead us to revisit this determination, we are continuing to treat these companies as a single entity for the purposes of this administrative review.

[5] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Steel Concrete Reinforcing Bar from Turkey, 2020–2021,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[6] *See Steel Concrete Reinforcing Bar from the Republic of Turkey and Japan: Amended Final Affirmative Antidumping Duty Determination for the Republic of Turkey and Antidumping Duty Orders,* 82 FR 32532 (July 14, 2017), as amended by *Steel Concrete Reinforcing Bar from the Republic of Turkey: Notice of Court Decision Not in Harmony With the Amended Final Determination in the Less-Than-Fair-Value Investigation; Notice of Amended Final Determination,* 87 FR 934 (January 22, 2022) (*Order*).

[7] *See* Issues and Decision Memorandum.

[8] *Id.* at 4.

Rate for Non-Selected Respondents

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 for calculating the rate for companies which were not selected for individual examination in an administrative review. 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 review, we calculated a weighted-average dumping margin of 1.13 percent for Colakolgu and a weighted-average dumping margin of 5.51 percent for Kaptan. With two respondents under individual examination, Commerce normally calculates: (A) a weighted-average of the estimated dumping rates calculated for the examined respondents; (B) a simple average of the estimated dumping rates calculated for the examined respondents; and (C) a weighted-average of the estimated dumping rates calculated for the examined respondents using each company's publicly-ranged U.S. sale values for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters.[9]

Consistent with our practice, we have determined that 3.76 percent, which is the weighted-average of Colakoglu and Kaptan's margins based on publicly ranged data, will be assigned to the non-examined companies under section 735(c)(5)(A) of the Act.[10] These companies are Diler Dis Ticaret A.S., Icdas Celik Enerji Tersane ve Ulasim, and Sami Soybas Demir Sanayi ve Tiscaret A.S.

Final Results of Review

We determine that following weighted-average dumping margins exist for the period July 1, 2020, through June 30, 2021:

Producers/exporters	Weighted-average dumping margin (percent)
Colakoglu Metalurji A. S./Colakoglu Dis Ticaret A.S. (COTAS)	1.13
Kaptan Demir Celik Endustrisi ve Ticaret A.S./Kaptan Metal Dis Ticaret Ve Nakliyat A.S	5.51
Review-Specific Average Rate Applicable to the Following Companies[11]	
Diler Dis Ticaret A.S	3.76
Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S	3.76
Sami Soybas Demir Sanayi ve Tiscaret A.S	3.76

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 CBP shall assess antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. For Colakoglu and Kaptan, 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 Colakoglu or Kaptan for which the producer 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.[12] 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.

As indicated above, for Habas, which we determined had ''no shipments'' of the subject merchandise during the POR, we will instruct CBP to liquidate all POR entries associated with this company at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction, consistent with Commerce's reseller policy.[13]

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 deposit requirements for estimated antidumping duties will be effective upon publication of this notice 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 the companies under review will be the rate established in the final results of this 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 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 3.90 percent, the all-others rate established in the investigation.[14]

These cash deposit instructions, 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

[9] *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010).

[10] For a complete analysis of the data, *see* Memorandum, ''Calculation of the Cash Deposit Rate for Non-Selected Companies,'' dated concurrently with this notice (Non-Selected Companies Memorandum).

[11] This rate is based on the rates for the respondents that were selected for individual review, excluding rates that are zero, *de minimis,* or based entirely on facts available. *See* section 735(c)(5)(A) of the Act; *see also* Non-Selected Companies Memorandum.

[12] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment of Antidumping Duties*).

[13] For a full discussion of this practice, *see Assessment of Antidumping Duties.*

[14] *See Order,* 87 FR at 935.

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 doubled antidumping duties.

Notification to Interested Parties Regarding Administrative Protective Orders

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: February 1, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2023–02592 Filed 2–6–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–894]

Forged Steel Fluid End Blocks from India: Preliminary Results of Countervailing Duty Administrative Review; 2020–2021

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that certain producers/exporters of forged steel fluid end blocks (fluid end blocks) from India received countervailable subsidies during the period of review (POR) May 26, 2020, through December 31, 2021. Interested parties are invited to comment on these preliminary results.

DATES: Applicable February 7, 2023.

FOR FURTHER INFORMATION CONTACT: Konrad Ptaszynski, 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) 482–6187.

Background

On January 29, 2021, Commerce published the countervailing duty order on fluid end blocks from India.[1] On March 9, 2022, Commerce published in the **Federal Register** a notice of initiation of an administrative review for the countervailing duty order on fluid end blocks from India.[2] On September 15, 2022, Commerce extended the deadline for the preliminary results of this administrative review by 120 days, until January 31, 2023.[3]

For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[4] A list of topics discussed in the Preliminary Decision Memorandum is included as the appendix to this notice. The Preliminary 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 Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Order

The merchandise covered by this *Order* is fluid end blocks from India. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this countervailing duty administrative review in accordance with section 751(a)(l)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found to be countervailable, we preliminarily determine that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[5] For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Preliminary Results of Review

As a result of this review, we preliminarily determine that, for 2020 and 2021, the following estimated countervailable subsidy rates exist:

[1] *See Forged Steel Fluid End Blocks from the People's Republic of China, the Federal Republic of Germany, India, and Italy: Countervailing Duty Orders, and Amended Final Affirmative Countervailing Duty Determination for the People's Republic of China,* 86 FR 7535 (January 29, 2021) (*Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 13252 (March 9, 2022).

[3] *See* Memorandum, ''Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review; 2020–2021,'' dated September 15, 2022.

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of Countervailing Duty Administrative Review: Forged Steel Fluid End Blocks from India; 2020–2021,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

Company	Subsidy rate 2020 (percent *ad valorem*)	Subsidy rate 2021 (percent *ad valorem*)
Bharat Forge Limited	22.17	10.81

Assessment Rates

Consistent with section 751(a)(2)(C) of the Act, upon issuance of the final results, Commerce shall determine, and Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. If the rate calculated for any respondent, in the final results is zero or *de minimis,* we will instruct CBP to liquidate all appropriate entries of subject merchandise without regard to countervailing duties. 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

Pursuant to section 751(a)(1) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts calculated for the year 2021 for Bharat Forge Limited, except, where the rate calculated in the final results is zero or *de minimis,* no cash deposit will be required on shipments of the subject merchandise entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, CBP will continue to collect cash deposits of estimated countervailing duties at the all-others rate or the most recent company-specific rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Verification

As provided in section 782(i)(3) of the Act, Commerce intends to verify the information relied upon here for its final results.

Disclosure

Commerce intends to disclose its calculations and analysis performed in reaching the preliminary results within five days of publication of these preliminary results, in accordance with 19 CFR 351.224(b).[6]

Public Comment

Case briefs or other written documents may be submitted to the Assistant Secretary for Enforcement and Compliance.[7] A timeline for the submission of case and rebuttal briefs and written comments will be provided to interested parties at a later date.

Pursuant to 19 CFR 351.309(c) and (d)(2), parties who wish to submit case or rebuttal briefs in this review are requested to submit for each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. All briefs must be filed electronically using ACCESS. Note that Commerce has temporarily modified certain of its requirements for service documents containing business proprietary information, until further notice.[8]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must do so within 30 days after the date of publication of this notice by submitting a written request to the Assistant Secretary for Enforcement and Compliance via ACCESS. Hearing requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Issues addressed at the hearing will be limited to those raised in the briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined. Parties should confirm the date and time of the hearing two days before the scheduled date. Parties are reminded that all briefs and hearing requests must be filed electronically using ACCESS and received successfully in their entirety by 5:00 p.m. Eastern Time on the due date.

Unless the deadline is extended, Commerce intends to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, no later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Notification to Interested Parties

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213 and 351.221(b)(4).

[6] *See* 19 CFR 351.224(b).

[7] *See* 19 CFR 351.309(c) and (d).

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

Dated: January 31, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2023–02534 Filed 2–6–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–841]

Forged Steel Fluid End Blocks From Italy: Preliminary Results of Countervailing Duty Administrative Review, and Intent To Rescind Administrative Review in Part; 2020–2021

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that certain producers/exporters of forged steel fluid end blocks (fluid end blocks) from Italy received countervailable subsidies during the period of review (POR) May 26, 2020, through December 31, 2021. Interested parties are invited to comment on these preliminary results.

DATES: Applicable February 7, 2023.

FOR FURTHER INFORMATION CONTACT: Brontee George or Richard Roberts, 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) 482–4656 or (202) 482–3464, respectively.

Background

On January 29, 2021, Commerce published the countervailing duty order on fluid end blocks from Italy.[1] On March 9, 2022, Commerce initiated an

[1] *See Forged Steel Fluid End Blocks from the People's Republic of China, the Federal Republic of Germany, India, and Italy: Countervailing Duty Orders, and Amended Final Affirmative Countervailing Duty Determination for the People's Republic of China,* 86 FR 7535 (January 29, 2021) (*Order*).

administrative review of the *Order*.[2] On September 15, 2022, Commerce extended the deadline for the preliminary results of this administrative review by 120 days, until January 31, 2023.[3]

For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[4] A list of topics discussed in the Preliminary Decision Memorandum is included as the appendix to this notice. The Preliminary 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 Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx*.

Scope of the Order

The merchandise covered by this *Order* is fluid end blocks from Italy. For a complete description of the scope of the *Order*, see the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(l)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found to be countervailable, we preliminarily determine that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[5] For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Preliminary Results of Review

As a result of this review, we preliminarily determine that, for 2020 and 2021, the following estimated countervailable subsidy rates exist:

Company	Subsidy rate 2020 (percent *ad valorem*)	Subsidy rate 2021 (percent *ad valorem*)
Lucchini Mame Forge S.p.A	6.74	6.89

Assessment Rates

Consistent with section 751(a)(2)(C) of the Act, upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. If the rate calculated for any respondent, in the final results is zero or *de minimis*, we will instruct CBP to liquidate all appropriate entries of subject merchandise without regard to countervailing duties. 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

Pursuant to section 751(a)(1) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts calculated for the year 2021 for Lucchini Mame Forge S.p.A, except, where the rate calculated in the final results is zero or *de minimis*, no cash deposit will be required on shipments of the subject merchandise entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, CBP will continue to collect cash deposits of estimated countervailing duties at the all-others rate or the most recent company-specific rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Verification

As provided in section 782(i)(3) of the Act, Commerce intends to verify the information relied upon here for its final results.

Disclosure

Commerce intends to disclose its calculations and analysis performed in reaching the preliminary results within five days of publication of these preliminary results, in accordance with 19 CFR 351.224(b).[6]

Public Comment

Case briefs or other written documents may be submitted to the Assistant Secretary for Enforcement and Compliance.[7] A timeline for the submission of case and rebuttal briefs and written comments will be provided to interested parties at a later date.

Pursuant to 19 CFR 351.309(c) and (d)(2), parties who wish to submit case or rebuttal briefs in this review are requested to submit for each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. All briefs must be filed electronically using ACCESS. Note that Commerce has temporarily modified certain of its requirements for service documents containing business proprietary information, until further notice.[8]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must do so within 30 days after the date of publication of this notice by submitting a written request to the Assistant Secretary for Enforcement and Compliance, using Enforcement and Compliance's ACCESS system. Hearing requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Issues addressed at the hearing will be limited to those raised in the briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined. Parties should confirm the date and time of the hearing two days before the scheduled date. Parties are reminded that all briefs and hearing requests must be filed electronically using ACCESS and received successfully in their entirety by 5:00 p.m. Eastern Time on the due date.

Unless the deadline is extended, Commerce intends to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, no later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Notification to Interested Parties

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 87 FR 13252 (March 9, 2022).

[3] *See* Memorandum, ''Extension of Deadline for Preliminary Results of 2020–2021 Countervailing Duty Administrative Review,'' dated September 15, 2022.

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of Countervailing Duty Administrative Review: Forged Steel Fluid End Blocks from Italy; 2020–2021,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[6] *See* 19 CFR 351.224(b).

[7] *See* 19 CFR 351.309(c) and (d).

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

the Act, and 19 CFR 351.213 and 351.221(b)(4).

Dated: January 31, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2023–02535 Filed 2–6–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–879]

Certain Corrosion-Resistant Steel Products From the Republic of Korea: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2020

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of certain corrosion-resistant steel products from the Republic of Korea. The period of review (POR) is January 1, 2020, through December 31, 2020.

DATES: Applicable February 7, 2023.

FOR FURTHER INFORMATION CONTACT: Zachariah Hall or Dennis McClure, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6261 or (202) 482–5973, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* of this administrative review on August 5, 2022.[1] For a description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[2]

Scope of the Order [3]

The products covered by this *Order* are certain corrosion-resistant steel products. For a complete description of the scope of this *Order, see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in interested parties' case briefs are addressed in the Issues and Decision Memorandum accompanying this notice. A list of the issues raised by parties, and to which Commerce responded in the Issues and Decision Memorandum, is provided 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 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,* and for the reasons explained in the Issues and Decision Memorandum, we made certain revisions to the subsidy calculations for KG Dongbu Steel Co., Ltd. (KG Dongbu).[4] As a result of the changes to KG Dongbu's program rates, the final rate for the six non-selected companies under review also changed.[5]

Methodology

Commerce conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we find that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[6] For a description of the methodology underlying all of Commerce's conclusions, *see* the Issues and Decision Memorandum.

Companies Not Selected for Individual Review

There are six companies for which a review was requested, but which were not selected as mandatory respondents or found to be cross-owned with a mandatory respondent. These companies are: POSCO; POSCO Coated & Color Steel Co., Ltd.; Samsung Electronics Co., Ltd.; SeAH Coated Metal; SeAH Steel Corporation; and SY Co., Ltd. For these six companies, we applied the final subsidy rate calculated for KG Dongbu, as this rate is the only rate calculated for a mandatory respondent that was above *de minimis* and not based entirely on facts available. This methodology for establishing the subsidy rate for the non-selected companies is consistent with our practice and with section 705(c)(5)(A) of the Act.

Final Results of Review

We determine that, for the period January 1, 2020, through December 31, 2020, the following total net countervailable subsidy rates exist:

Producer/exporter	Subsidy rate (percent *ad valorem*)
KG Steel Corporation/KG Dongbu Steel Co., Ltd [7]	9.47
Hyundai Steel Company	*0.27
Review-Specific Rate Applicable to Non-Selected Companies	
POSCO	9.47
POSCO Coated & Color Steel Co., Ltd	9.47
Samsung Electronics Co., Ltd	9.47
SeAH Coated Metal	9.47
SeAH Steel Corporation	9.47

[1] *See Certain Corrosion-Resistant Steel Products from the Republic of Korea: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review; 2020,* 87 FR 47973 (August 5, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results and Partial Rescission of the 2020 Administrative Review of the Countervailing Duty Order on Certain Corrosion-Resistant Steel Products from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders,* 81 FR 48390 (July 25, 2016) (*Order*).

[4] On October 21, 2022, we determined that KG Steel Corporation (dba KG Dongbu Steel Co., Ltd.) is the successor-in-interest to KG Dongbu Steel Co., Ltd. *See Certain Cold-Rolled Steel Flat Products and Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Antidumping and Countervailing Duty Changed Circumstances Reviews,* 87 FR 64013 (October 21, 2022). Additionally, we note that KG Dongbu Steel Co., Ltd. was the successor-in-interest to Dongbu Steel Co., Ltd. *See Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2019,* 87 FR 2759 (January 19, 2022).

[5] For details on the changes made since the *Preliminary Results, see* the Issues and Decision Memorandum.

[6] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

Producer/exporter	Subsidy rate (percent *ad valorem*)
SY Co., Ltd	9.47

* (*de minimis*).

Disclosure

Commerce intends to disclose the calculations performed for these final results of review within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rate

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(2), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries of subject merchandise in accordance with the final results of this review, for the above-listed companies at the applicable *ad valorem* assessment rates listed. 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 Rates

In accordance with section 751(a)(1) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for each of the respective companies listed above on shipments of the subject merchandise entered, or withdrawn from warehouse for consumption on or after the date of publication of the final results of this administrative review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposits, effective upon the publication of the final results of this review, shall remain in effect until further notice.

Administrative Protective Order

This notice also serves as a final 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(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

These final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: February 1, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2023–02593 Filed 2–6–23; 8:45 am]

BILLING CODE 3510–DS–P

[7] Based on the October 21, 2022, successor-in-interest finding noted in footnote 4, *supra,* KG Steel Corporation (dba KG Dongbu Steel Co., Ltd.) is subject to the cash deposit rate determined in this review. Additionally, we note that Dongbu Incheon Steel Co., Ltd. (Dongbu Incheon) merged with Dongbu Steel Co., Ltd., on March 1, 2020. Therefore, Dongbu Incheon is no longer eligible for its own cash deposit rate. *See* KG Dongbu's Letter, ''Dongbu's Initial Questionnaire Response'' dated November 29, 2021, at 1. However, we intend to liquidate any entries of subject merchandise during the POR associated with Dongbu Incheon at the *ad valorem* rate listed above for KG Steel Corporation/KG Dongbu Steel Co., Ltd.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC725]

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 74 Assessment Webinar V for Gulf of Mexico red snapper.

SUMMARY: The SEDAR 74 assessment of Gulf of Mexico red snapper will consist of a Data workshop, a series of assessment webinars, and a Review workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 74 Assessment Webinar V will be held Friday, February 24, 2023, from 1 p.m. until 4 p.m., Eastern.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report that compiles and evaluates potential datasets and recommends which datasets are

appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in webinar are as follows:

Participants will discuss modeling approaches for use in the assessment of Gulf of Mexico red snapper.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: February 1, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–02504 Filed 2–6–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC745]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Ad Hoc Marine Planning Committee (MPC) will hold an online public meeting.

DATES: The online meeting will be held Thursday, February 23, 2023, from 10 a.m. to 4 p.m. Pacific Time or until business for the day has been completed.

ADDRESSES: This meeting will be held online. Specific meeting information, including a proposed agenda and directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Kerry Griffin, Staff Officer, Pacific Council; *telephone*: (503) 820–2409.

SUPPLEMENTARY INFORMATION: The purpose of this online meeting is for the MPC to consider current offshore wind (OSW) energy and aquaculture issues and to provide information and advice to the Pacific Council for consideration at its April 2023 meeting. Topics will include updates on spatial suitability modeling to support identification of Wind Energy Areas off the Oregon Coast, and other OSW energy planning and development on the West Coast. Other relevant topics may be addressed as appropriate.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: February 2, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–02584 Filed 2–6–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Designation of Fishery Management Council Members and Application for Reinstatement of State Authority

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. 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. Public comments were previously requested via the **Federal Register** on November 7, 2022, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic & Atmospheric Administration (NOAA), Commerce.

Title: Designation of Fishery Management Council Members and Application for Reinstatement of State Authority.

OMB Control Number: 0648–0314.

Form Number(s): None.

Type of Request: Regular (extension of a current information collection).

Number of Respondents: 275.

Average Hours per Response: 80 hours for a nomination for Council appointment; 16 hours for background

documentation for nominees; 1 hour to designate a principal state fishery official(s) or for a request to reinstate authority.

Total Annual Burden Hours: 4,607.

Needs and Uses: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes the establishment of eight Regional Fishery Management Councils to manage fisheries within regional jurisdictions. This collection pertains to several sections of the Magnuson-Stevens Act related to the Councils. Section 302(b) provides for appointment of Council members nominated by State Governors, Territorial Governors, or Tribal Governments and for designation of a principal state fishery official for the purposes of the Magnuson-Stevens Act. Section 306(b)(2) provides for a request by a state for reinstatement of state authority over a managed fishery. Nominees for Council membership must provide their State Governor, Territorial Governor, or Tribal Government leadership with background documentation, which is then submitted to NOAA, on behalf of the Secretary of Commerce to review qualifications for Council membership. The information collected with these actions is used to ensure that the requirements of the Magnuson-Stevens Act are being met in regard to Council membership and state authority.

Affected Public: State, local, or Tribal government.

Frequency: Annual.

Respondent's Obligation: Mandatory.

Legal Authority: Magnuson-Stevens Act section 302(b), section 306(b)(2), and *50 CFR 600.215.*

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0314.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2023–02568 Filed 2–6–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Highly Migratory Species Vessel Logbooks and Cost-Earnings Data Reports

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. 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. Public comments were previously requested via the **Federal Register** on October 19, 2022, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration (NOAA), Commerce.

Title: Highly Migratory Species (HMS) Vessel Logbooks and Cost-Earnings Data Reports.

OMB Control Number: 0648–0371.

Form Number(s): 88–191.

Type of Request: Regular.

Number of Respondents: 5,642.

Average Hours per Response: 30 minutes for cost/earnings summaries attached to logbook reports, 30 minutes for annual expenditure forms, 12 minutes for logbook catch trip and set reports, 2 minutes for negative logbook catch reports.

Burden Hours: 21,710.

Needs and Uses: NMFS collects information via vessel logbooks to monitor the U.S. catch of Atlantic swordfish, sharks, billfish, and tunas in relation to the quotas, thereby ensuring that the United States complies with its domestic and international obligations. The HMS logbook program, OMB Control No. 0648–0371, was specifically designed to collect the vessel level information needed for the management of Atlantic HMS, and includes set forms, trip forms, negative reports, and cost-earning requirements for both commercial and recreational vessels. The information supplied through the HMS logbook program provides the catch and effort data on a per-set or per-trip level of resolution for both directed and incidental species. In addition to HMS fisheries, the HMS logbook program is also used to report catches of dolphin and wahoo by commercial and charter/headboat fisheries by vessels that do not possess other federal permits. Additionally, the HMS logbook collects data on incidental species, including sea turtles, which is necessary to evaluate the fisheries in terms of bycatch and encounters with protected species. While most HMS fishermen use the HMS logbook program, HMS can also be reported as part of several other logbook collections including the Northeast Region Fishing Vessel Trip Reports (0648–0212) and Southeast Region Coastal Logbook (0648–0016).

These data are necessary to assess the status of HMS, dolphin, and wahoo in each fishery. International stock assessments for tunas, swordfish, billfish, and some species of sharks are conducted through ICCAT's Standing Committee on Research and Statistics periodically and provide, in part, the basis for ICCAT management recommendations which become binding on member nations. Domestic stock assessments for most species of sharks and for dolphin and wahoo are used as the basis of managing these species.

Supplementary information on fishing costs and earnings has been collected via the HMS logbook program. This economic information enables NMFS to assess the economic impacts of regulatory programs on small businesses and fishing communities, consistent with the National Environmental Policy Act (NEPA), Executive Order 12866, the Regulatory Flexibility Act, and other domestic laws.

Atlantic HMS fisheries are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the Atlantic Tunas Conservation Act (ATCA). Under the MSA, management measures must be consistent with ten National Standards, and fisheries must be managed to maintain optimum yield, rebuild overfished fisheries, and prevent overfishing. Under ATCA, the Secretary of Commerce shall promulgate regulations, as necessary and appropriate, to implement measures adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT).

Affected Public: Businesses or other for-profit organizations (vessel owners).

Frequency: Trip summary reports are submitted within 7 days following the completion of each fishing trip, trip cost-earnings reports are due within 30 days of trip completion, no catch/

fishing reports are due at the end of each month in which no fishing occurs, and annual expenditure reports are submitted annually.

Respondent's Obligation: Mandatory.

Legal Authority: Under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), the National Marine Fisheries Service (NMFS) is responsible for management of the Nation's marine fisheries. NMFS must also promulgate regulations, as necessary and appropriate, to carry out obligations the United States (U.S.) undertakes internationally regarding tuna management through the Atlantic Tunas Convention Act (ATCA, 16 U.S.C. 971 *et seq.*).

This information collection request may be viewed at *reginfo.gov*. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0371.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2023–02563 Filed 2–6–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; NMFS Implementation of International Trade Data System

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. 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. Public comments were previously requested via the **Federal Register** on September 23, 2022 (87 FR 58065) during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic & Atmospheric Administration (NOAA), Commerce.

Title: NMFS Implementation of International Trade Data System.

OMB Control Number: 0648–0732.

Form Number(s): None.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 2,380 per year.

Average Hours per Response: International Trade Fisheries Permits, 20 minutes; Dataset submission in ITDS/ACE, 18 minutes; Audit Response, 30 minutes; Supply Chain Recordkeeping, 16 minutes.

Total Annual Burden Hours: 86,793 hours.

Needs and Uses: The National Marine Fisheries Service (NMFS) Office of International Affairs, Trade, and Commerce requests a regular submission of the extension of a current information collection. The Security and Accountability for Every Port Act of 2006 (SAFE Port Act, Pub. L. 109–347) requires all Federal agencies with a role in import admissibility decisions to collect information electronically through the International Trade Data System (ITDS). The Department of the Treasury has the U.S. Government lead on ITDS development and Federal agency integration. U.S. Customs and Border Protection (CBP) developed the Automated Commercial Environment (ACE) as an internet-based system for the collection and dissemination of information for ITDS. The Office of Management and Budget (OMB), through its e-government initiative, oversees Federal agency participation in ITDS, with a focus on reducing duplicate reporting across agencies and migrating paper-based reporting systems to electronic information collection. Numerous Federal agencies are involved in the regulation of international trade and many of these agencies participate in the decision-making process related to import, export, and transportation. Agencies also use trade data to monitor and report trade activity. NMFS is a partner government agency in the ITDS project as it monitors the trade of certain fishery products. Electronic collection of seafood trade data through a single portal has resulted in an overall reduction of the public reporting burden and the agency's data collection costs, has improved the timeliness and accuracy of admissibility decisions, and has increased the effectiveness of applicable trade restrictive measures.

NMFS is responsible for implementation of trade measures and monitoring programs for fishery products subject to the documentation requirements of Regional Fishery Management Organizations (RFMOs) and/or domestic laws. RFMOs are international fisheries organizations, established by treaties, to promote international cooperation to achieve effective and responsible marine stewardship and ensure sustainable fisheries management. The United States is a signatory to many RFMO treaties, and Congress has passed legislation to carry out U.S. obligations under those treaties, including trade measures to support conservation. Trade measures and monitoring programs enable the United States to exclude products that do not meet the RFMO criteria for admissibility to U.S. markets.

Pursuant to domestic statutory authorities and/or multilateral agreements, NMFS has implemented a number of monitoring programs to collect information from the seafood industry regarding the origin of certain fishery products. The purpose of these programs is to determine the admissibility of the products in accordance with the specific criteria of the trade measure or documentation requirements in effect. The three NMFS trade monitoring programs originally included in the OMB information collection approved under Control Number 0648–0732 are the Highly Migratory Species International Trade Program (HMS ITP) which regulates trade in specified commodities of tuna, swordfish, billfish, and shark fins; the Antarctic Marine Living Resources (AMLR) trade program which regulates trade in Antarctic and Patagonian toothfish and other fishery products caught in the area where the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR) applies; and the Tuna Tracking and Verification Program (TTVP), which regulates trade in frozen and/or processed tuna products (refer to 50 CFR 216.24(f)(2)(iii) for a complete list).

Separately, NMFS initially received approval from OMB for the Seafood Import Monitoring Program (SIMP) under Control Number 0648–0739. NMFS implemented SIMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Section 307(1)(Q) of the MSA prohibits the importation of fish or fish products that have been harvested

in violation of a foreign law or regulation, or in contravention of a binding conservation measure of an RFMO to which the United States is a contracting party. Under SIMP, information on the harvest event must be submitted in ACE as part of the entry filing for designated fish products to allow NMFS to determine that the fish or fish products were lawfully acquired and are therefore admissible into U.S. commerce. In 2019, NMFS included shrimp and abalone entries in SIMP, and received initial OMB approval for the additional reporting burden for shrimp and abalone entries under a separate Control Number (0648–0776).

In the 2020 collection renewal of 0648–0732, OMB granted the NMFS request to merge all the trade monitoring programs under one collection, which incorporated the reporting burdens associated with collections 0648–0739 and 0648–0776 within the scope of 0648–0732. Generally, these trade monitoring programs are similar and require anyone who intends to import, export, and/or re-export regulated species to obtain an International Fisheries Trade Permit (IFTP) from NMFS; obtain documentation on the flag-nation authorization for the harvest from the foreign exporter; and submit this information to NMFS. Depending on the commodity, specific information may also be required, such as the flag-state of the harvesting vessel, the ocean area of catch, the fishing gear used, the harvesting vessel name, and details and authorizations related to harvest, landing, transshipment, and export.

Affected Public: Business or other for-profit organizations; Federal government.

Frequency: Annual trade permits; electronic reports upon import/export; provision of supply chain documents when selected for audit.

Respondent's Obligation: Required to Obtain or Retain Benefits.

Legal Authority: 16 U.S.C. 1385, 16 U.S.C. 1826(a), 16 U.S.C. 971(a), 19 U.S.C. 1411.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648-0732.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2023–02547 Filed 2–6–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC728]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Ecosystem and Ocean Planning (EOP) Committee and Advisory Panel (AP) of the Mid-Atlantic Fishery Management Council (Council) will hold a joint meeting. See **SUPPLEMENTARY INFORMATION** for agenda details.

DATES: The meeting will be held on Thursday, February 23, 2023, from 1 p.m. through 3 p.m.

ADDRESSES: The meeting will take place over webinar with a telephone-only connection option. Details on how to connect to the webinar by computer and by telephone will be available at: *www.mafmc.org.*

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; website: *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is for the EOP Committee and AP to provide feedback on the results and future application of a research project the Council is collaborating on with a research team from Rutgers University. The project developed forecast models to predict short-term (1–10 years) climate-induced distribution changes for four economically important Mid and South Atlantic managed species (Summer Flounder, Spiny Dogfish, *Illex* Squid, and Gray Triggerfish). The forecast model was initially developed, fully tested, and evaluated for summer flounder and has been fitted and applied to the other three focal species. The EOP Committee and AP will provide feedback on the model results, potential model utility, and possible future science and management applications. EOP Committee and AP feedback, as well as input from the Council's Scientific and Statistical Committee (SSC), will be presented to the Council for their consideration.

A detailed agenda and background documents will be made available on the Council's website (*www.mafmc.org*) prior to the meeting.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Spedden, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: February 1, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–02505 Filed 2–6–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC701]

Notice of Availability of a Record of Decision for the Deepwater Horizon Oil Spill Louisiana Trustee Implementation Group Final Phase II Restoration Plan: #3.2 Mid-Barataria Sediment Diversion

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

ACTION: Notice of availability (NOA); record of decision (ROD).

SUMMARY: In accordance with the Oil Pollution Act of 1990 (OPA) and the National Environmental Policy Act of 1969 (NEPA), the *Deepwater Horizon* Oil Spill Final Programmatic Damage Assessment Restoration Plan and Final Programmatic Environmental Impact Statement (Final PDARP/PEIS), Record of Decision and Consent Decree, notice is hereby given that the Federal and State natural resource trustee agencies for the Louisiana Trustee Implementation Group (Louisiana TIG) have issued a Record of Decision (ROD) for the Louisiana Trustee Implementation Group Final Phase II Restoration Plan #3.2: Mid-Barataria Sediment Diversion Project (Final Phase

II RP #3.2) and accompanying NEPA analysis, as adopted, in the Final Environmental Impact Statement for the Proposed Mid Barataria Sediment Diversion Project, Plaquemines Parish (MBSD FEIS). The ROD sets forth the basis for the Louisiana TIG's OPA Natural Resources Damage Assessment (NRDA) decision to fund and implement the 75,000 cubic feet per second (cfs) capacity Mid-Barataria Sediment Diversion Project. This restoration will continue the process of restoring natural resources and services injured or lost resulting from the *Deepwater Horizon* (DWH) oil spill of 2010. The purpose of this notice is to inform the public of the availability of the Louisiana TIG's ROD for its combined OPA NRDA and NEPA decision.

ADDRESSES: *Obtaining documents:* You may download the ROD at *http://www.gulfspillrestoration.noaa.gov.* Alternatively, you may request a copy of the combined OPA NRDA and NEPA ROD.

FOR FURTHER INFORMATION CONTACT: National Oceanic and Atmospheric Administration—Mel Landry, NOAA Restoration Center, (301) 427–8711, *gulfspill.restoration@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The DWH Trustees are:

- U.S. Department of the Interior (DOI), as represented by the National Park Service, U.S. Fish and Wildlife Service, and Bureau of Land Management;
- National Oceanic and Atmospheric Administration (NOAA), on behalf of the U.S. Department of Commerce;
- U.S. Department of Agriculture (USDA);
- U.S. Environmental Protection Agency (EPA);
- State of Louisiana Coastal Protection and Restoration Authority (CPRA), Oil Spill Coordinator's Office (LOSCO), Department of Environmental Quality (LDEQ), Department of Wildlife and Fisheries (LDWF), and Department of Natural Resources (LDNR).

Building on the PDARP/PEIS, the Louisiana TIG began evaluating restoration strategies that could restore for injuries to natural resources in the Barataria Basin, which resulted in the Strategic Restoration Plan and Environmental Assessment #3: Restoration of Wetlands, Coastal, and Nearshore Habitats in the Barataria Basin, Louisiana (SRP/EA #3). In the SRP/EA #3, the Louisiana TIG ultimately determined that a combination of ''marsh creation and ridge restoration plus a large-scale sediment diversion would provide the greatest level of benefits to injured Wetlands, Coastal, and Nearshore Habitats and to the large suite of injured resources that depend in their life cycle on productive and sustainable wetland habitats'' (LA TIG, 2018, page 3–32) in the basin and in the broader northern Gulf of Mexico. In the SRP/EA #3, the Louisiana TIG also selected a Mid-Barataria sediment diversion (MBSD) as the specific sediment diversion project to move forward for further analysis.

Since finalizing the SRP/EA #3, the Louisiana TIG evaluated a variety of potential alternatives for a large-scale sediment diversion in the Barataria Basin. The Final Phase II RP #3.2, along with the MBSD FEIS released simultaneously by the U.S. Army Corps of Engineers, New Orleans District (USACE CEMVN) and adopted by the Federal agencies of the Louisiana TIG, set forth the results of that evaluation.

Overview of the Selected Alternative 1, Mid-Barataria Sediment Diversion Project

In the Final Phase II RP #3.2, the Louisiana TIG selected its preferred alternative (Alternative 1, MBSD Project) under the DWH Louisiana Restoration Area Wetlands, Coastal and Nearshore Habitats restoration type. The selected alternative consists of a controlled sediment and freshwater intake diversion structure in Plaquemines Parish on the right descending bank of the Mississippi River at River Mile (RM) 60.7 just north of the Town of Ironton. The outfall area for sediment, freshwater, and nutrients conveyed from the river is located within the Mid-Barataria Basin. The area of the MBSD Project includes the hydrologic boundaries of the Barataria Basin and the lower Mississippi River Delta Basin, also known as the birdfoot delta. The Mississippi River itself, beginning near RM 60.7 and extending to the mouth of the river, is also included in the MBSD Project area. The diversion will have a maximum diversion flow of 75,000 cfs, which would occur when the Mississippi River gauge at Belle Chase reaches 1,000,000 cfs or higher. The diversion will operate at up to 5,000 cfs (base flow) when the river is below 450,000 cfs at Belle Chase; at river flows above 450,000 cfs, the diversion will be opened fully. At the downstream end of the diversion channel, an engineered ''outfall transition feature'' will be constructed to guide and disperse the channel flow into the Barataria Basin. The diversion is projected to increase land area, including emergent wetlands and mudflats, in the Barataria Basin across the 50-year analysis period relative to natural recovery, with a maximum increase of 17,300 acres (approximately 7000 hectares) in 2050, at the approximate mid-point of the 50-year analysis period.

The cost of the selected Alternative 1, MBSD Project at the time of the Draft Phase II RP #3.2 was anticipated to be approximately $2 billion. Since the publication of the Draft Phase II RP #3.2, substantial increases in the general inflation rate as well as corresponding increases to most cost components of the MBSD Project, including but not limited to construction materials, construction activities, and wages, have occurred. CPRA has experienced an average 25 percent increase in costs on its recent restoration projects. CPRA will not know the amount of the cost increase for the MBSD Project until it completes negotiations for a Guaranteed Maximum Price for project construction with the Construction Management at Risk contractor. In light of this uncertainty as to total project costs, the Louisiana TIG intends to limit its contribution to the overall project costs to $2,260,000,000. This will help ensure that DWH settlement funding would be available to construct all projects currently under consideration as well as for future large-scale wetlands, coastal, and nearshore habitat restoration projects not yet proposed. The cap will also ensure that planned DWH payments to the Louisiana TIG will be sufficient to cover project costs as it continues to be designed and implemented. To ensure the Monitoring and Adaptive Management (MAM) and Mitigation and Stewardship Plans are fully funded, the Louisiana TIG's contribution will cover the majority of MAM associated costs (a NRDA investment of up to $124,000,000, including contingency funding) and the Mitigation and Stewardship costs (currently estimated at $378,000,000, including contingency funding). A portion of the engineering and design costs has been paid by the National Fish and Wildlife Federation's Gulf Environmental Benefit Fund. The remaining Louisiana TIG contribution will be applied toward other project cost categories. CPRA has committed to providing funding for all costs that exceed the Louisiana TIG's funding cap of $2,260,000,000.

The Louisiana TIG fully evaluated a smaller-capacity diversion with a maximum capacity of 50,000 cfs (Alternative 2). The Trustees found that such a diversion would provide substantially less benefit in marsh preservation and restoration, with only

a small reduction in adverse impacts and a slight cost reduction.

The Louisiana TIG also fully evaluated a larger-capacity diversion with a maximum capacity of 150,000 cfs (Alternative 3). While the marsh creation benefits of such a large diversion would be significantly greater, the collateral injuries would also increase to levels unacceptable to the Trustees.

Three other alternatives (Alternatives 4–6) would divert the same flow (cfs) capacities as described above for Alternatives 1–3 and would include marsh terrace outfall features. While providing some benefits, the outfall feature alternatives do not substantially change the extent to which the corresponding alternatives with similar capacities and without terraces meet the Louisiana TIG's goals and objectives for the project.

The Louisiana TIG is committed to continuing efforts to restore the resources that would be adversely affected by the selected MBSD Project, many of which were also injured by the DWH oil spill. The selected MBSD Project includes a MAM Plan and a Mitigation and Stewardship Plan. The Project also includes a Dolphin Intervention Plan, which was developed in response to anticipated impacts and public comments. These plans serve as an integral part of the proposed restoration action. The MAM Plan includes (1) methods for specific types of monitoring, (2) key performance measures/indicators for assessing the success of the Proposed MBSD Project in meeting its objectives, and (3) decision criteria and processes for modifying (''adapting'') current or future management actions. The Mitigation and Stewardship Plan includes actions to help to address collateral impacts of construction and operation of the Proposed MBSD Project. The Dolphin Intervention Plan outlines a spectrum of potential response actions for dolphins affected by the operation of the Proposed MBSD Project, ranging from recovery/relocation to no intervention to euthanasia. As part of the Project, CPRA would have responsibility for ensuring implementation of the measures outlined in each of these Plans.

While the Louisiana TIG rejected the No-Action-Alternative for this Final Phase II RP #3.2, the OPA analysis integrated information about the MBSD FEIS No-Action Alternative (40 CFR 1502.14(c)) because it provided a baseline against which the benefits and collateral injuries of the selected MBSD Project and its alternatives were compared.

The Louisiana TIG solicited public comment on the Draft RP for a total of 90 days between March 5, 2021 and June 3, 2021 (86 FR 12915, March 5, 2021). The Louisiana TIG held three public meetings to facilitate public understanding of the document and provide opportunity for public comment. The Louisiana TIG actively solicited public input through a variety of mechanisms, including convening virtual public meetings, distributing electronic communications, and using the Trustee-wide public website and database to share information and receive public input. The Louisiana TIG considered the public comments received, which informed the Louisiana TIG's analysis of alternatives in the Final RP. The Final Phase II RP #3.2 includes a summary of the comments received and responses to those comments. A Notice of Availability of the Final Phase II RP #3.2 was published in the **Federal Register** on September 23, 2022 (87 FR 58067).

Trustees typically choose to combine a restoration plan and the required NEPA analysis into a single document (33 CFR 990.23(a), (c)(1)). In this case, the Final Phase II RP #3.2 does not include integrated NEPA analysis. This is because prior to evaluation of the Proposed MBSD Project by the Louisiana TIG as a restoration project under OPA, the USACE CEMVN initiated scoping for the MBSD Project EIS based on a permit application for the Project by CPRA. To increase efficiency, reduce redundancy, and be consistent with Federal policy and 40 CFR 1506.3, the four Federal Trustees in the Louisiana TIG decided to participate as cooperating agencies in the development of a single MBSD FEIS. As the lead agency, the USACE CEMVN has primary responsibility for preparing the MBSD FEIS (40 CFR 1501.5(a)). The Louisiana TIG has relied on the MBSD FEIS to evaluate potential environmental effects of the MBSD Project and its alternatives evaluated in the Final Phase II RP #3.2.

Based on review of the analysis and in accordance with 40 CFR 1506.3 (1978), each of the Federal trustees of the Louisiana TIG adopted the MBSD FEIS to satisfy its independent NEPA requirements related to its decision to fund and implement the selected MBSD Project pursuant to OPA 15 CFR 990 *et seq.* Furthermore, based on our determination of the sufficiency of the USACE's Final MBSD EIS, the Federal agencies of the Louisiana TIG determined that it was appropriate to adopt the Final MBSD EIS without the need for recirculation in accordance with 40 CFR 1506.3 (1978).

Administrative Record

The documents included in the Administrative Record can be viewed electronically at the following location: *http://www.doi.gov/deepwaterhorizon/adminrecord.*

The DWH Trustees opened a publicly available Administrative Record for the NRDA for the *Deepwater Horizon* oil spill, including restoration planning activities, concurrently with publication of the 2011 Notice of Intent to Begin Restoration Scoping and Prepare a Gulf Spill Restoration Planning PEIS (pursuant to 15 CFR 990.45). The Administrative Record includes the relevant administrative records since its date of inception. This Administrative Record is actively maintained and available for public review and includes the administrative record for the RP #3.2.

Authority

The authority of this action is the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*), the implementing NRDA regulations found at 15 CFR part 990, and NEPA (42 U.S.C. 4321 *et seq.*).

Dated: February 1, 2023.

Carrie Diane Robinson,

Director, Office of Habitat Conservation, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC558]

Guidelines for Preparing Stock Assessment Reports Pursuant to the Marine Mammal Protection Act; Final Revisions to Procedural Directive

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

ACTION: Notice of availability; response to comments.

SUMMARY: The National Marine Fisheries Service (NMFS) has incorporated public comments on the draft revisions to the Guidelines for Preparing Stock Assessment Reports Pursuant to the Marine Mammal Protection Act (NMFS Procedural Directive) and is now finalizing the revisions and making them available to the public.

DATES: This final Procedural Directive will be effective as of February 7, 2023.

ADDRESSES: Electronic copies of the Guidelines for Preparing Stock Assessment Reports Pursuant to the Marine Mammal Protection Act (NMFS PD 02–204–01) are available at: *https://www.regulations.gov/docket/NOAA-NMFS-2022-0081* or *https://www.fisheries.noaa.gov/national/laws-and-policies/protected-resources-policy-directives.*

FOR FURTHER INFORMATION CONTACT: Eric Patterson, NMFS Office of Protected Resources, (301) 427–8415, *Eric.Patterson@noaa.gov;* or Zachary Schakner, NMFS Office of Science and Technology, 301–427–8106, *Zachary.Schakner@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 117 of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) requires NMFS and the U.S. Fish and Wildlife Service (FWS) to prepare stock assessments for each stock of marine mammals occurring in waters under the jurisdiction of the United States. These reports must contain information regarding the distribution and abundance of the stock, population growth rates and trends, estimates of annual human-caused mortality and serious injury from all sources, descriptions of the fisheries with which the stock interacts, and the status of the stock. Initial stock assessment reports (SARs) were completed in 1995.

Since 1995, NMFS has convened a series of workshops and developed associated reports (Barlow *et al.,* 1995, Wade and Angliss, 1997, Moore and Merrick, 2011) to develop Guidelines for Assessing Marine Mammal Stocks, which, in 2016, were formally established as a NMFS Procedural Directive (NMFS PD 02–204–01). In 2020, NMFS reviewed the guidelines and determined revisions were warranted. On August 25, 2022, NMFS published draft revisions to the guidelines for public review and comment (87 FR 52368). Major revision topics included: (1) incorporating the NMFS Procedural Directive: Reviewing and Designating Stocks and Issuing Stock Assessment Reports under the Marine Mammal Protection Act (NMFS PDS 02–204–03); (2) calculating the minimum population abundance (N_{min}) in post-survey years; (3) addressing sources of bias in the calculation of N_{min}; (4) designating stocks as strategic; (5) improving language related to quantifying and including unobserved mortality and serious injury; (6) including information on ''other factors,'' such as climate change, biologically important areas, and habitat issues; (7) clarifying expectations regarding peer-review, quality assurance, and quality control; and (8) identifying data sources and criteria used for documenting human-caused mortality and serious injury. Other minor revisions were made to improve readability, formatting, and clarity, and ensure consistency with recent revisions to NMFS' Serious Injury Procedural Directive (NMFS–PD 02–038–01). NMFS is now finalizing the revisions to the guidelines with minor changes in response to public comments. The complete summary of public comments and responses is included in the next section, and the full final revised Procedural Directive is available at: *https://www.regulations.gov/docket/NOAA-NMFS-2022-0081* or *https://www.fisheries.noaa.gov/national/laws-and-policies/protected-resources-policy-directives.*

Comments and Responses

NMFS received comments from the Marine Mammal Commission (Commission), the Atlantic Scientific Review Group (SRG), two non-governmental environmental organizations (Center for Biological Diversity (CBD) and the Natural Resources Defense Council (NRDC)), representatives from the fishing industry (Washington Dungeness Crab Fishermen's Association (WDCFA) and the Hawaii Longline Association (HLA)), and the North Slope Borough, Department of Wildlife Management (NSB). Similar comments from different groups were combined, summarized, and responded to in aggregate below.

Comment 1: A representative from NSB Department of Wildlife Management, who is also an Alaska SRG member, and the Commission both commented on the draft revisions related to co-management between NMFS and Alaska Native Organizations (ANOs). Specifically, NSB encouraged NMFS to take co-management consultation with ANOs as seriously as it takes reviews by the SRGs. To this end, NSB suggested several specific revisions to emphasize how and when in the SAR process NMFS should engage with co-management partners. Similarly, the Commission notes that the guidelines could benefit from providing more specific and clearer guidance on the role of ANOs during the SAR development process and suggest several ways NMFS could provide additional clarity.

Response: NMFS thanks the NSB and Commission for their thoughtful comments and suggestions to further clarify the role of co-management partners, specifically ANOs, in the SAR development and review process. NMFS has incorporated nearly all of the specific edits suggested by NSB in some fashion, which we believe are in line with the more general suggestions made by the Commission.

Comment 2: The CBD, WDCFA, and the Atlantic SRG all provided comments on the draft revisions regarding the topic ''Undetected Mortality and Serious Injury.'' Both CBD and the Atlantic SRG are supportive of the additional guidance provided on this topic. WDCFA acknowledges that undetected mortality and serious injury does indeed occur, specifically as it relates to entanglements in Dungeness crab gear but is concerned that incorporating estimates of unobserved mortality and serious injury based on limited data may cause a bias leading to reductions in the Potential Biological Removal (PBR) estimate for a stock, specifically Pacific Coast Humpback Stocks. They note that when no data to quantitatively assess undetected mortality and serious injury are available, the guidance provided in the draft revisions is justifiable and prudent.

Response: NMFS thanks CBD and the Atlantic SRG for their positive feedback on the draft revisions regarding undetected mortality and serious injury. NMFS agrees with WDCFA that in cases where data are too limited to quantitatively estimate undetected mortality and serious injury, the revisions provide guidance to SAR authors to appropriately characterize the uncertainty and biases associated with the human-caused mortality and serious injury estimates. However, to clarify, in cases where data are available to quantitatively estimate and incorporate unobserved mortality and serious injury for a stock, there is no effect on PBR. Rather, it may be possible to incorporate unobserved human-caused mortality and serious injury into the total human-caused mortality and serious injury, which is then compared to PBR. NMFS also emphasizes that if data are available to quantitatively estimate and, thus, correct for undetected mortality and serious injury and to apportion this to cause, such methods are still subject to the peer-review requirements laid out within the final revisions and would likely be considered for at least Level 2 review, if not Level 3, as detailed in the new section entitled ''3.6 Ensuring Appropriate Peer Review of New Information.'' In addition, the incorporation of such estimates in the SARs would be subject to public notice and comment.

Comment 3: The HLA, NSB, and Atlantic SRG all commented on the

draft revisions that incorporate and reference NMFS Procedural Directive: Reviewing and Designating Stocks and Issuing Stock Assessment Reports under the Marine Mammal Protection Act (NMFS PDS 02–204–03). HLA notes that the guidelines should clarify that NMFS will only designate a demographically independent population (DIP) as a stock if it determines that the DIP meets the definition of a stock under the MMPA. NSB believes the guidelines could be further improved with several specific revisions to address how DIPs are determined in practice. Finally, the Atlantic SRG notes that the draft revisions with respect to this topic are sensible and applauds NMFS for their work on this issue.

Response: We thank the Atlantic SRG for the positive feedback on the revisions related to this topic. In response to HLA's comment, we agree that NMFS should only designate a DIP as a stock if it also meets the definition of a stock under the MMPA. The original draft revisions were indeed meant to imply this, but we have since further revised this section to clarify. Finally, we appreciate NSB's desire to provide further information in the guidelines regarding how DIPs are determined in practice. However, Martien *et al.* (2019) is the best resource for delineating DIPs, and we believe it is more appropriate to direct the reader to this resource rather than to provide further information in these guidelines. In the final guidelines, we note that additional detail on how DIPs are defined in practice can be found in Martien *et al.* (2019).

Comment 4: CBD, NSB, NRDC, the Commission, and the Atlantic SRG all commented on sublethal impacts, including the proposed new ''Habitat Issues'' section. CBD notes that the new guidelines do not sufficiently direct the SAR authors to quantify the impact of humans on marine mammal prey and recommend having a standalone section on prey. The Commission notes that harmful algal blooms are not specifically listed as a possible concern in the ''Habitat Issues'' section and given their prevalence and known impacts on marine mammals, they suggest it be added. Somewhat in contrast, NSB encourages NMFS to modify the guidelines to stress that the ''Habitat Issues'' section should only be a very brief summary. While not a habitat issue per se, both the Atlantic SRG and NRDC commented on the need for the SARs to include further information on non-lethal entanglements, particularly for large whales like the North Atlantic right whale. In particular, the Atlantic SRG questions whether NMFS will incorporate any revisions it makes to its related but separate procedure on serious injury determinations for marine mammals related to better addressing sublethal chronic injuries and/or reproductive impairment that may occur to large whales as a result of entanglement.

Response: NMFS appreciates the constructive feedback on these issues and has made revisions to better address the various points made by the commenters. In the final revised guidelines, we have renamed the ''Habitat Issues'' section to ''Other Factors That May Be Causing a Decline or Impeding Recovery'' or ''Other Factors'' for short and expanded its scope beyond habitat to include all other identified factors, excluding human-caused mortality and serious injury that may be affecting a marine mammal stock. The guidelines specify that this section should be included in SARs for strategic stocks, as required by Section 117 of the MMPA, but can be included in SARs for non-strategic stocks if data indicate other factors are likely causing a decline in or adversely affecting the status of the stock. SAR authors are directed to include information on non-human causes of mortality and serious injury, as well as human- and non-human-caused sublethal impacts (including non-serious injuries) that may be causing a decline or impeding recovery. Examples of these include (but are not limited to): predation; inter- or intra-specific aggression; effects to prey and habitat; infectious disease; toxins including from harmful algal blooms; contaminants; non-serious injuries from entanglements, vessel strikes, or other human activities; masking and hearing impairment due to noise; and climate change, variability, and environmental factors (*e.g.,* sea surface temperature) that affect marine mammal health, survival, or reproduction.

By expanding the scope of this section, the SARs will more closely align with the specific direction provided by section 117(a)(3) of the MMPA and will provide SAR authors flexibility to address all of the issues brought up by the commenters. However, as recommended by NSB, the guidelines emphasize that the ''Other Factors'' section should only be a brief summary and rely on and reference supporting publications and existing datasets.

Comment 5: Both the Atlantic SRG and NSB commented on revisions to the ''Transboundary Stocks'' section. NSB commented on informed interpolation, defined in the guidelines as the use of a model-based method for interpolating density between transect lines, which may be used to fill gaps in survey coverage and estimate abundance and PBR. NSB asked how widely accepted informed interpolation based upon habitat associations is and urged caution with using modeled habitat associations when predicting abundance. The Atlantic SRG noted that the guidance on transboundary stocks is not clear. In a follow up exchange, the Atlantic SRG further clarified that in their view, the guidance as written is really only applicable to N_{min} and not the other aspects of PBR or human-caused mortality and serious injury. Furthermore, it may not sufficiently direct authors to describe the uncertainty that may exist in transboundary situations.

Response: In the draft revisions, guidance on informed interpolation was located both in the ''Transboundary Stocks'' section, as well as in the ''Minimum Population Estimate'' section, and similar text was already included in the 2016 version of the guidelines in the ''Definition of Stock'' section. The issue of extrapolation and interpolation was the subject of a working paper presented at the Guidelines for Assessing Marine Mammal Stocks (GAMMS) GAMMS III workshop (WP–4B); and, as such, we will not go into depth here. A copy of this working paper is available upon request and a summary of the paper and workshop participants' views on this subject can be found in the GAMMS III workshop report (Moore and Merick, 2011). In general, NMFS agrees that informed interpolation should be used with caution and notes that the sentence preceding the one in question reiterates that ''In general, abundance or density estimates from one area should not be extrapolated to unsurveyed areas to estimate range-wide abundance.'' However, to further clarify, we have revised the text to emphasize that informed interpolation may only be appropriate in some cases. We have also now removed where this text was duplicated, preferring to only keep it in the ''Minimum Population Estimate'' section as this issue is not specific to transboundary stocks. Finally, we note that habitat-based density modeling has been successfully used to estimate abundance of marine mammals in a variety of areas. Such modeling is common for estimating abundance and filling relatively small gaps in survey coverage within a larger overall survey area (*e.g.,* Roberts *et al.,* 2016., Becker *et al.,* 2020 and 2021), and in some cases, with caution, has been used to predict

marine mammal density even outside of surveyed areas, as long as modeling is restricted to within the range of an established habitat covariate-density relationship (Mannocci *et al.,* 2017).

In response to the Atlantic SRG's comment and follow up clarifications, we have revised the ''Transboundary Stocks'' section to provide additional clarity on approaches for adjusting N_{min} as well as other aspects of PBR and further clarified options for adjusting human-caused mortality and serious injury. In addition, the final guidelines direct SAR authors to summarize any additional uncertainties that may be introduced by adjusting PBR and or human-caused mortality and serious injury estimates.

Comment 6: CBD, HLA, NSB, WDCFA, and the Atlantic SRG all provided comments on the draft revisions related to calculating the minimum population abundance, or $N_{min.}$ CBD and NSB support the draft revisions that remove the 8-year ''expiration'' of abundance data for use in calculating N_{min}, while WDCFA and the Atlantic SRG do not believe it is appropriate to use data that are 8 years old or older for calculating N_{min}. The Atlantic SRG also notes that NMFS does not use data this old when assessing fish stocks. Both HLA and NSB commented on the proposed guidelines for adjusting older abundance estimates, with NSB cautioning NMFS against simply lowering N_{min} to account for increasing uncertainty with time and HLA request that the draft revisions clarify that adjustments to N_{min} can occur in both directions (increase or decrease).

Response: We thank CBD and NSB for their support on the new revisions. We agree with the WDCFA and the Atlantic SRG that ideally NMFS would have the resources to conduct surveys of marine mammal stocks more frequently than every 8 years. However, having abundance data ''expire'' after 8 years has created significant challenges for management of marine mammal stocks, which was recognized but not addressed during the last revisions of the guidelines in 2011. Under the new guidelines, it is still possible for abundance estimates to be determined to be unreliable once they are 8 years old or older, but there is flexibility for making such determinations based on the specific situations. Thus, we believe the new guidelines are not inherently in conflict with the previous 8-year expiration guidance, rather they simply provide more flexibility to SAR authors to determine what is appropriate for any given stock, based on the best scientific information available at the time.

On the ASRG's comment that NMFS does not use data 8 years or older to assess fish stocks, first, we note that this statement is not accurate (see Newman *et al.,* 2015). Councils do have policies (with variation between regions on the details) about using assessments to inform management once they are older than a certain number of years (generally 5–10 years), and if data are out of date they may not be deemed acceptable for use in an assessment, but there is no blanket policy on this issue—it is up to the discretion of the assessment scientists and then the peer review panel. We believe this is consistent with what was proposed and is now being finalized here for marine mammal stock assessments. Second, there are drastic differences between fishes and marine mammals in their life histories, as well as their population dynamics given that fishes are generally R-selected while marine mammals are K-selected. Thus, there is a biological basis for different taxonomic groups necessitating differing survey frequencies to achieve similar levels of confidence.

NMFS appreciates NSB's and HLA's comments regarding the assumption that a stock's abundance declines after survey data are 8 years or older. To clarify, the new guidelines do not make such an assumption. For example, if available, a trend analysis can be used to infer population increases or decreases. In the final guidelines, we have provided clarification that adjustments to N_{min} can result in N_{min} increasing, decreasing, or staying the same (within some estimate of error). However, it is true that the uncertainty around abundance estimates increases with time. Consequently, even without assuming a particular trend (increasing, decreasing, stable), when N_{min} is calculated as some percentile of the distribution of possible Ns at some point in the future, it will necessarily decline over time, as this reflects the expanding envelope of uncertainty.

Comment 7: NSB commented on the guidelines related to a stock status with respect to Optimum Sustainable Population (OSP). Specifically, NSB recommended the guidelines provide a definition of OSP and further information on how OSP is used in practice.

Response: In the final guidelines, we now provide the statutory and regulatory definitions of OSP. In addition, we have provided additional information on how OSP is used in practice by referring the reader to Section 115 of the MMPA. However, the final guidelines do not provide additional guidance as to how to officially determine status relative to OSP, as such a determination requires rulemaking, including public comment and consultation with the Commission, under Section 115 of the MMPA.

Comment 8: The Atlantic SRG and NRDC both request NMFS revise the guidelines with respect to rounding very small PBRs, specifically to round PBR values below 0.2 to two decimal places, noting that this may be more transparent and appropriate for highly endangered stocks with very small PBRs, such as Rice's whale.

Response: We have revised the guidelines to direct SAR authors to round PBR to two decimal places when it is below one.

Comment 9: HLA, the Atlantic SRG, and the Commission commented on the draft revisions related to ensuring appropriate peer review and quality assurance and quality control (QA/QC). The Commission and the Atlantic SRG both support the draft revisions related to this issue, while HLA requests additional clarification. Specifically, HLA requests NMFS clarify that QA/QC review should be performed by the relevant regional science center. HLA notes that if NMFS is going to use the SRGs to meet peer review requirements, then it must ensure that any such review strictly complies with the OMB Peer Review Bulletin.

Response: NMFS thanks the Commission and the Atlantic SRG for their support on the new revisions. NMFS agrees with HLA's assessment that QA/QC review should be performed by the relevant regional science center and has further clarified this in the final revisions. With respect to complying with the OMB Peer Review Bulletin, NMFS notes that SRG review specifically meets all the necessary requirements. See the SRGs' written charge (Terms of Reference), annual recommendations to NMFS, and NMFS' annual responses, all found on our website (*https://www.fisheries.noaa.gov/national/marine-mammal-protection/scientific-review-groups*).

Comment 10: CBD and NSB both provided comments on the draft revisions related to determining strategic status for stocks. CBD disagrees with NMFS' approach in the draft guidelines for determining strategic status based on MMPA 3(19)(B), preferring that NMFS conduct an independent evaluation or rely on a positive 90-day finding on a petition to list a species under the Endangered Species Act (ESA) to determine strategic status under MMPA 3(19)(B) rather than what is included in the draft revisions, which rely on a proposed ESA-listed

status. NSB supports the draft revisions as it relates to determining strategic status under MMPA 3(19)(A), specifically the guidelines that provide for the flexibility to calculate a ''critical N_{min}'' to inform strategic status.

Response: NMFS thanks NSB for their support and agree that the new guidance on calculating a ''critical N_{min}'' will be helpful to NMFS in determining strategic status related to MMPA 3(19)(A). As stated in the draft revisions, we disagree with CBD that an independent evaluation under the MMPA should be conducted to determine whether a stock is likely to be listed as threatened within the foreseeable future under the ESA and, thus, qualifies for strategic status under MMPA 3(19)(B). As noted in the draft guidelines, such an evaluation should be conducted under section 4 of the ESA (16 U.S.C. 1533). Furthermore, NMFS disagrees that a positive 90-day finding demonstrates that a stock should be considered ''strategic'' under section 3(19)(B) of the MMPA. A positive 90-day finding under the ESA simply means that NMFS has determined that the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted and that NMFS will conduct a review of the status of the species to determine whether listing under the ESA is warranted. It in no way indicates that a species is ''likely'' to be listed.

Comment 11: WDCFA expressed concern with how long it takes to incorporate new information, specifically abundance data, into SARs, particularly for stocks along the U.S. West Coast.

Response: NMFS acknowledges the concern and agrees that ideally the SARs would contain more recent information. However, existing resources and the necessary data processing, analysis, and peer review do not allow for more expedited updates at this time.

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Dated: February 2, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC559]

Process for Distinguishing Serious From Non-Serious Injury of Marine Mammals; Revisions to Procedural Directive

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

ACTION: Notice of availability; response to comments.

SUMMARY: The National Marine Fisheries Service (NMFS) announces final revisions to the Process for Distinguishing Serious from Non-Serious Injury of Marine Mammals. NMFS has incorporated public comments into the final Procedural Directive and provides responses to public comments.

DATES: This final Procedural Directive will be effective as of February 7, 2023.

ADDRESSES: Electronic copies of the Process for Distinguishing Serious from Non-Serious Injury of Marine Mammals (NMFS PD 02–03801) are available at: *https://www.regulations.gov/docket/NOAA-NMFS-2022-0043* or *https://www.fisheries.noaa.gov/national/laws-and-policies/protected-resources-policy-directives.*

FOR FURTHER INFORMATION CONTACT: Jaclyn Taylor, NMFS Office of Protected Resources, (301) 427–8402, *Jaclyn.Taylor@noaa.gov;* or Phinn Onens, NMFS Office of Protected Resources, (301) 427–8402, *Phinn.Onens@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) requires NMFS to estimate the annual levels of human-caused mortality and serious injury (M/SI) of marine mammal stocks (Section 117) and to classify

commercial fisheries based on their level of incidental M/SI of marine mammals (Section 118). In 2012, NMFS finalized national guidance and criteria, comprising a Policy Directive (02–038) and associated Procedural Directive (02–038–01; 77 FR 3233, January 23, 2012), for distinguishing serious from non-serious injuries of marine mammals. Both directives are available at: *https://www.fisheries.noaa.gov/national/laws-and-policies/protected-resources-policy-directives.* The Policy Directive provides further guidance on NMFS' regulatory definition of ''serious injury'' (*i.e.,* ''any injury that will likely result in mortality''; 50 CFR 229.2), and the Procedural Directive describes the annual process for making and documenting injury determinations. The annual process includes guidance for which NMFS personnel make the annual injury determinations; what information should be used in making injury determinations; information exchange between NMFS Science Centers; NMFS Regional Office and Scientific Review Group review of the injury determinations; injury determination report preparation and clearance; and inclusion of injury determinations in the marine mammal stock assessment reports and marine mammal conservation management regimes (*e.g.,* MMPA List of Fisheries, Take Reduction Teams, Take Reduction Plans, and vessel speed regulations).

In addition, the NMFS Policy Directive specifies that NMFS should review both the Policy and Procedural Directives at least once every 5 years or when new information becomes available to determine whether any revisions to the Directives are warranted. The review must be based on the best scientific information available, input from the MMPA Scientific Review Groups, as appropriate, and experience gained in implementing the process and criteria. If significant revisions are indicated during the review, NMFS will consider making these available for public review and comment prior to acceptance.

In 2017, NMFS initiated a review of the Policy and Procedural Directives and invited subject matter experts from within NMFS to identify any necessary revisions based upon the best scientific information available. The review suggested that, in general, the Procedural Directive is meeting its objectives of providing a consistent, transparent, and systematic process for assessing serious from non-serious injuries of marine mammals. However, there was enough substantive feedback to warrant revising the Procedural Directive.

On July 20, 2022, NMFS published proposed revisions to the Procedural Directive for a 30-day public comment period (87 FR 43247). Proposed revisions included clarifying the serious injury determination process and reporting procedures; improving the overall readability of the Procedural Directive; refining pinniped and small cetacean injury categories and criteria; and providing guidance on capture myopathy in cetaceans, which is included as an appendix to the Procedural Directive. For large whales, NMFS is currently developing a statistical approach for injury determinations using a more recent and larger dataset that builds on NMFS' implementation of the Procedural Directive since its inception. Once the new methodology is finalized, NMFS will review the Procedural Directive to determine whether revisions are warranted.

Comments and Responses

NMFS received comments from the Marine Mammal Commission (the Commission), the Atlantic Scientific Review Group (Atlantic SRG), International Fund for Animal Welfare (IFAW), a joint letter from non-governmental environmental organizations (The Center for Biological Diversity, Conservation Law Foundation and Defenders of Wildlife (CBD *et al.*)), Western Pacific Regional Fishery Management Council (WPRFMC), representatives from the fishing industry (Blue Water Fishermen's Association (BWFA) and Hawaii Longline Association (HLA)), and a joint letter from members of the public. Comments received covered several topics, including: the national review process, accounting for sublethal injuries and cases where the severity of an injury ''Cannot Be Determined,'' national data and expertise, taxa-specific injury criteria, and proposed revisions to the small cetacean injury criteria. NMFS also received some minor editorial comments, which were incorporated throughout the Procedural Directive. All comments received are available on *regulations.gov* at: *https://www.regulations.gov/docket/NOAA-NMFS-2022-0043/comments.* All substantive comments are addressed below. Comments outside the scope of the revisions to the Procedural Directive are not responded to in this notice.

General Comments

Comment 1: HLA is discouraged that NMFS only proposed minor edits to the ''Process for Injury Determination Distinguishing Serious from Non-Serious Injury of Marine Mammals.'' They assert NMFS did not conduct a publicly informed, substantive review and revision of the Procedural Directive. HLA encourages NMFS to conduct a formal review process and include direct engagement with the False Killer Whale Take Reduction Team (FKWTRT), WPRFMC, and Pacific Scientific Review Group.

Response: NMFS disagrees. The ''Process for Injury Determination Distinguishing Serious from Non-Serious Injury of Marine Mammals'' states that at least once every 5 years or when new information becomes available, NMFS will review the Procedural Directive to determine whether revisions are warranted based upon the best scientific information available, input from the MMPA Scientific Review Groups, as appropriate, and experience gained in implementing the process and criteria. It further states that, if significant revisions are indicated during the review, NMFS will consider making these available for public review and comment prior to acceptance. In 2017, NMFS initiated a review of the Procedural Directive and invited subject matter experts from within NMFS to identify necessary revisions based upon the best scientific information available, Scientific Review Group input, and experience implementing the Procedural Directive. Through the review process, several topics were identified by an internal NMFS Working Group. To inform these proposed revisions, NMFS conducted literature reviews, sought input from several researchers with long-term longitudinal data sets, and solicited individual expert opinion from experts familiar with small cetacean injuries (including anatomists and veterinarians). Based on this review, NMFS determined revisions to the Procedural Directive were warranted. NMFS conducted several informational webinars for Scientific Review Groups, Marine Mammal Commission, U.S. Fish and Wildlife Service (USFWS), Take Reduction Teams (including the FKWTRT and Pelagic Longline TRT), and the Hawaii Longline Association, and presented an update on revisions to the WPRFMC at their June 2022 meeting. While this Procedural Directive is not subject to the formal rulemaking process, in the interest of transparency and inclusion, NMFS solicited public comments for a period of 30 days (87 FR 43247, July 20, 2022).

Comment 2: WPRFMC is disappointed NMFS did not convene a workshop to review and revise the ''Process for Injury Determination Distinguishing Serious from Non-

Serious Injury of Marine Mammals.'' They request NMFS hold a virtual workshop with FKWTRT, Fishery Management Councils, and subject matter experts to review the best scientific information available and discuss revisions to the Procedural Directive.

Additionally, WPRFMC requested that NMFS convene an expert working group to develop Serious Injury Determination guidance specific for false killer whales in the Hawaii deep-set longline fishery. This false killer whale specific guidance should consider gear characteristics, handling methods, and information on interaction outcomes, and should review the best available scientific information on odontocete fishery interactions and gear ingestion.

Response: NMFS initiated a review of the ''Process for Injury Determination Distinguishing Serious from Non-Serious Injury of Marine Mammals'' in 2017. NMFS conducted a formal, exhaustive review of the best scientific information available, including false killer whale interactions, input from the MMPA Scientific Review Groups, as appropriate, and experience gained in implementing the process and criteria. Despite the time since the 2007 Serious Injury Technical Workshop, no new significant data were identified for false killer whale interactions. As a result, a formal workshop was unnecessary and further not required as part of the Procedural Directive.

This Procedural Directive is not subject to the formal rulemaking process; however, in the interest of transparency and inclusion, NMFS made the proposed revisions available to the public and solicited comments (87 FR 43247, July 20, 2022) prior to finalizing the revisions.

Comment 3: The Commission notes that the ''Process for Injury Determination Distinguishing Serious from Non-Serious Injury of Marine Mammals'' should be reviewed every 5 years or when new information becomes available that warrants more frequent review. The Commission states NMFS initiated review of the Procedural Directive in 2017, which resulted in the current proposed revisions. The Commission recommends that NMFS conduct more timely reviews of both the Policy and the Procedural directives.

Response: NMFS acknowledges this comment and notes that the ''Process for Injury Determination Distinguishing Serious from Non-Serious Injury of Marine Mammals'' should be reviewed (not necessarily revised) at least once every 5 years or when new information becomes available.

Comment 4: The Atlantic SRG and CBD *et al.* encourage NMFS to work with USFWS to develop serious injury guidelines for species under USFWS jurisdiction.

Response: NMFS thanks the Atlantic SRG and CBD *et al.* for their comments. The ''Process for Injury Determination Distinguishing Serious from Non-Serious Injury of Marine Mammals'' only applies to marine mammal species under NMFS' jurisdiction. At this time, NMFS is not assisting USFWS in developing serious injury guidelines for species under USFWS' jurisdiction, though the two agencies discuss and coordinate on marine mammal stock assessment issues.

Comment 5: NMFS received several comments on the definition of ''serious injury'' and counting sublethal injuries against Potential Biological Removal (PBR). IFAW and members of the public recommend NMFS revise the definition of ''serious injury.'' They note that the current definition of ''serious injury'' (an injury ''more likely than not'' to result in mortality, or any injury that presents a greater than 50 percent chance of death) is too restrictive. They assert that NMFS is missing a large number of injuries by not including injuries that are sublethal to the animal in the definition of ''serious injury.'' These sublethal injuries can have effects on energetics, reproductive rates, and overall population health. It was recommended that the term ''serious injury'' be revised to ''lethal injury.''

The Atlantic SRG, CBD *et al.*, and members of the public also commented that NMFS should count sublethal injuries against PBR. The commenters note that sublethal entanglement and vessel strike injuries can have long term energetic and population impacts. They state that the practice of not counting sublethal injuries against PBR results in under-representation of population effects, which in turn affect conservation management and population recovery. They recommend that NMFS prorate sublethal injuries against PBR based on documented survived injuries.

Response: NMFS appreciates the comments and recommendations to further consider sublethal injuries and the impacts to marine mammals in stock assessment reports (SARs). The PBR management scheme is based on basic population dynamics. Per the MMPA, PBR is defined as: ''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.'' Importantly, in this definition, PBR only includes removals from the population (not including natural mortalities), which is critical to the assumptions of the underlying PBR framework. Furthermore, in comparing human impacts to PBR, the MMPA directs NMFS to specifically consider mortalities and serious injuries.

While the MMPA uses the term ''serious injury,'' it does not provide guidance qualifying the level of severity for injuries that are considered serious. Therefore, to implement the MMPA, NMFS defined serious injury in its regulations (50 CFR 229.2) as ''any injury that will likely result in mortality.'' This definition is consistent with the PBR framework's focus on removals (*i.e.,* mortality) from the population. To further clarify NMFS' interpretation of this regulatory definition, NMFS developed the policy ''Process for Distinguishing Serious from Non-Serious Injury of Marine Mammals'' (NMFS–PD 02–238). In this policy, which is the broader policy under which the procedure under revision here (NMFS–PD 02–238–01) exists, NMFS further clarifies its interpretation of the regulatory definition of serious injury as any injury that is ''more likely than not'' to result in mortality, or any injury that presents a greater than 50 percent chance of death to a marine mammal. Again, this is consistent with the PBR management scheme's focus on removals (*i.e.,* mortality or death) from the population.

Given the statutory text of the MMPA and NMFS' regulations and policy consistent with the statutory text, it is not appropriate to count sublethal injuries that are not likely to result in an animal being removed (*i.e.,* die) from the population when making comparisons to PBR. Doing so would violate the underlying assumptions of the PBR framework and the MMPA. However, such sublethal impacts can be considered and incorporated into marine mammal SARs as appropriate. More specifically, Section 117 of the MMPA requires that, for strategic stocks, SARs include information on ''other factors that may be causing a decline or impeding recovery of the stock, including effects on marine mammal habitat and prey.'' Currently, NMFS includes information on such ''other factors'' as appropriate in the SARs, often in a ''Habitat Issues'' or ''Habitat Concerns'' section. In addition, NMFS considers and tracks sublethal injuries for the purposes of informing the MMPA List of Fisheries, stocks to consider in Take Reduction Plans, and Unusual Mortality Events. NMFS will continue to consider sublethal injuries in these ways and considered the

comments and recommendations provided here in finalizing revisions to its related procedure ''Guidelines for Preparing Stock Assessment Reports Pursuant to the Marine Mammal Protection Act'' (NMFS PD 02–204–01), where these comments are perhaps more applicable.

Comment 6: The Atlantic SRG comments that observed M/SI are underestimated for large whales. They ask if NMFS plans to develop protocols for estimating total mortality for large whale stocks.

Response: NMFS appreciates the Atlantic SRG's concern that M/SI is often underestimated, particularly for large whales. Recognizing this issue, when data are available, NMFS has attempted to estimate such unobserved or cryptic M/SI and include these along with documented mortality, to provide more accurate estimates of total mortality (*e.g.,* North Atlantic right whale SAR, among others). To more broadly address this issue, which is not just applicable to large whales, NMFS proposed revisions to its related procedure ''Guidelines for Preparing Stock Assessment Reports Pursuant to the Marine Mammal Protection Act'' (NMFS PD 02–204–01) (87 FR 52368, August 25, 2022), which are now being finalized. Specifically, a new section was proposed to be added to that procedure that (1) summarizes the concept of undetected mortality and the state of the science as it relates to estimating undetected mortality in marine mammals and its inclusion in SARs; (2) provides specific guidance directing SAR authors to correct human-caused M/SI estimates for undetected mortality using the best scientific information available, when possible, and includes several examples of how this may be accomplished; and (3) provides guidance on using data from other stocks and how to appropriately deal with apportioning undetected mortality by cause, various biases that may exist, and multiple estimates of human-caused M/SI. We are hopeful that these revisions address the Atlantic SRG's comment with respect to how NMFS plans to address this issue more broadly, specifically in SARs, which are ultimately used to inform management.

Comment 7: NMFS received several comments on the overall process for documenting M/SI in marine mammals. Members of the public commented that NMFS is treating large whale, small cetacean, and pinniped injuries differently and thus, not using a consistent process for determining serious injury. They note that live entangled cetaceans are documented and reported differently compared to pinnipeds. They specifically note that pinniped entanglements are not incorporated into the SARs.

The Commission comments that they remain concerned about the under-reporting of human-caused injuries to pinnipeds in the northeast, particularly the western North Atlantic stock of gray seals. They state that documented gray seal injuries are not summarized in the SAR, injury determinations are not being made, and serious injuries from entanglements are not included in the estimates of total human-caused M/SI in the SAR. In contrast, the Commission notes that pinnipeds with constricting entanglements are accounted for in Alaska and Pacific injury determination reports and included in the total human-caused M/SI estimates in the SARs. The Commission recommends that NMFS Northeast Fisheries Science Center and Greater Atlantic Regional Fisheries Office collaborate with their other NMFS science centers and regional offices to ensure that pinniped entanglements are being documented, assessed, and reported consistently nationwide, in accordance with the ''Process for Injury Determination Distinguishing Serious from Non-Serious Injury of Marine Mammals.''

Response: NMFS agrees that serious injury determinations need to be consistent among taxa. Nevertheless, there are differences in the different taxa's interactions with humans, how such data are collected, and how such interactions may impact the taxa in question. Given these differences, NMFS has developed criteria that will, to the extent possible, result in consistent determinations across taxa, while recognizing the different types of interactions, data available to assess injury severity, and ultimate effects to the specific marine mammal injured.

The Commission suggests there is an inconsistency in how NMFS is making serious injury determinations within a single taxa, specifically pinnipeds. NMFS recognizes the concern and is working on efforts to improve consistency across pinniped stocks in making serious injury determinations. As the Commission's comments pertain to the consistent implementation of the policy, not the draft revisions per se, we will consider how best to improve consistency going forward and welcome further discussion with the Commission on the specific issue of serious injuries of the western North Atlantic stock of gray seals.

Comment 8: IFAW recommends NMFS include in the ''Process for Injury Determination Distinguishing Serious from Non-Serious Injury of Marine Mammals'' an annual request to all stranding network partners to report all strandings to NMFS that meet the serious injury criteria. They note strandings that are not assigned a stranding case number (*e.g.,* reported and photographed but not found when responder arrives) are not accounted for in the injury determination process.

Response: All National Marine Mammal Stranding Network members are required to submit basic Level A data on all strandings to NMFS including: date and location, species, condition of animal, sex of animal, length, disposition of the animal and tissues or specimens, and any personal observations. Network members complete the Marine Mammal Stranding Report—Level A Form (NOAA Form 89–864, OMB No. 0648–0178) as part of their response and forward the form to NMFS in a timely manner, as specified in the terms of the Stranding Agreement. In addition, as of April 1, 2020, Network members must complete the Human Interaction Form (NOAA Form 89–864, OMB No. 0648–0178) for all confirmed live, fresh dead, and moderately decomposed strandings. However, NMFS encourages the use of the Human Interaction Form for all cases. ''Confirmed by public'' is also now an option on the Level A form. Any animals photographed by the public and reported to the stranding network should get a Level A form and would be included in the data analyzed if the injury is part of the report from the public such as injuries visible in photographs.

Comment 9: Members of the public commented that stranding data are being underutilized in reviewing and revising the ''Process for Injury Determination Distinguishing Serious from Non-Serious Injury of Marine Mammals.'' They state that reviewing stranding data for types and severities of injuries, body condition, and factors contributing to strandings can provide meaningful insights into long-term outcomes of injuries, especially when there is a lack of long-term longitudinal data sets.

Response: NMFS reviews and analyzes stranding data during the serious injury determination process. As noted in response to comment #8, the National stranding network submits level A and human interaction data to NMFS. Implementation of Human Interaction Form (NOAA Form 89–864, OMB No. 0648–0178) provides additional data to be used in the serious injury determination process. These forms are reviewed and reissued every 3 years. Information beyond what is captured on the forms that are part of the Level A Data Collection are not

submitted to NMFS in a standardized manner and are generally not available to be analyzed. In addition, stranding data that was used during the serious injury determination process was also considered when reviewing and revising this Procedural Directive.

Comment 10: Members of the public commented that the ''Process for Injury Determination Distinguishing Serious from Non-Serious Injury of Marine Mammals'' often refers to a lack of resight data for small cetaceans and pinnipeds. They note that sightings of free-swimming entangled pinnipeds are not entered into the National Stranding Database because they are not considered strandings. However, the sighting information is often maintained with local stranding networks. For example, the 2019 bycatch estimates for gray seals in the Northeast sink gillnet fishery alone is 2,019 gray seals (Precoda *et al.* 2022). This estimate is based solely on observer reports. However, using the estimated entanglement prevalence calculated through unmanned aerial vehicle surveys and the minimum population estimate for gray seals in the U.S., Martins *et al.* (2019) reported an additional 192–857 gray seals living with entanglements. They assert that a lack of curation and data analysis is not the same as lack of data. Members of the public recommend NMFS develop a standardized process for curating data from free-swimming entangled small cetaceans and pinnipeds.

Response: NMFS recognizes that these data may be collected by various groups, but as pointed out by the commenters, they are currently maintained by local organizations and are not submitted to NMFS. NMFS remains concerned that there is often limited ability to determine the identity of an individually entangled animal, particularly for pinniped species with few external unique features (*e.g.,* sea lions and elephant seals). This limits our ability to use this type of information to quantify the impacts of entanglements or follow individual animals over time. NMFS is open to continue to explore this issue with external partners, including stranding network organizations.

Comment 11: The Commission recommends that NMFS integrate all marine mammal mortality and injury data into one centralized database. They acknowledge the amount of work NMFS does to compile and analyze mortality and injury data for injury determinations, SARs, and the List of Fisheries and note that a centralized database will help NMFS understand both short-term and long-term impacts of human-caused M/SI.

Response: NMFS thanks the Commission for their recommendation. NMFS agrees that there is value in centralizing these data. We are working to develop the capabilities to centralize marine mammal SAR, M/SI, and List of Fisheries data into a single database.

Comment 12: NMFS received several comments from IFAW and members of the public on the level of expertise needed to make injury determinations. They raise concerns about the effectiveness of the serious injury determination process if NMFS staff do not have adequate training in marine mammal anatomy, biology, physiology, health, and stranding response. They also note the importance of having the appropriate expertise to be able to appropriately apply the serious injury criteria and identify the cause of injury. They recommend that NMFS consult with outside subject matter experts including veterinarians and marine mammal health experts when making serious injury determinations. They also recommend clarifying sections throughout the Procedural Directive regarding when outside experts may be consulted.

Response: NMFS appreciates the concerns about serious injury determinations not having adequate review, particularly by those with expertise in marine mammal anatomy, biology, physiology, health, and stranding response. However, there is nothing in the procedure (as it was originally or in the draft revisions) that precludes NMFS from consulting with additional experts (external and internal) as needed when making serious injury determinations. In fact, this occurs fairly often in practice. For example, if there is uncertainty about a stranding event, NMFS staff will often reach out to the external partner that was actually at the stranding to get more information. Further, when the initial procedure and injury criteria were developed, NMFS consulted experts in these aforementioned fields. Therefore, expertise is built into the criteria themselves. In addition, additional expert review is required as part of NMFS existing process of cross Science Center review. All injury determinations, by way of the annual SAR process, are also subject to review by the Scientific Review Groups, many members of whom are explicitly appointed due to their expertise in marine mammal anatomy, biology, physiology, health, and stranding response. Finally, SARs are subject to further review by the public, which can include, and often does, review of the injury determinations and resulting estimates included in the SARs. To help clarify current processes, NMFS has revised the procedure to include a sentence providing guidance to NMFS staff to consult with external experts, as appropriate.

Comment 13: IFAW and members of the public express concern that fishery observers do not have the expertise and training to accurately identify a serious injury. They recommend NMFS provide adequate training for observers to identify serious injuries and note that this training should be overseen by veterinarians. They also recommend that observers cross-train with stranding network members. They note stranding network personnel are trained to understand serious injuries and cross-training could provide more accurate injury data collection. Further, they note that data from stranding programs should contribute equally, if not more than, observer programs for these determinations.

Response: Fishery observers do not identify or determine serious injuries. Fishery observers collect data on the bycatch event, such as the location and configuration of hookings/entanglements, the amount and type of trailing gear, and behavior of the animal among other details. Using these data, NMFS experts determine whether an injury is serious or non-serious. NMFS disagrees that observers should make these injury determinations.

Comment 14: IFAW comments that the injury determination process described in Section V (Accounting for Cases where the Severity of an Injury Cannot Be Determined) can lead to inaccurate injury determinations if staff do not have sufficient background in anatomy and physiology. Members of the public further recommended that NMFS use a scaled approach similar to epidemiology case definitions for ''Cannot Be Determined'' cases.

Response: NMFS appreciates the concerns and chance to clarify when and how ''Cannot Be Determined'' cases are made. We agree that it is important for NMFS Science Center staff responsible for making injury determinations to have either sufficient background in anatomy and physiology or the ability to consult with external experts who have such expertise, as needed. To that end, we have modified the final Procedural Directive to clarify when such additional expertise should be sought. However, this principle applies to all injury determination cases and is not specific to those cases where the injury severity remains ''Cannot Be Determined.'' To clarify, ''Cannot Be Determined'' cases are injuries for

which NMFS is not able to determine the injury severity based on the available information and following consultation with additional experts. NMFS appreciates the recommendation to use a scaled approach similar to epidemiology for ''Cannot Be Determined'' cases, and will consider such an approach in future revisions.

Large Whale Injury Criteria

Comment 15: The Atlantic SRG recommends that NMFS provide time at the 2023 Scientific Review Group meeting to discuss the implementation of the random forest model-based proration of M/SI.

Response: As noted above, NMFS is developing a statistical approach (random forest model) for large whale injury determinations; and, once the new methodology is finalized, NMFS will review the Procedural Directive to determine whether revisions are warranted. A paper describing the model was published in 2022 and relied upon right and humpback whale data (Carretta and Henry 2022). Since that time, the algorithms used in that paper were updated with additional data (blue, fin, and gray whale injury cases) and published as an R-package *SeriousInjury,* available at Github (*https://github.com/JimCarretta/SeriousInjury*). We encourage managers and researchers to download and test the package using the data bundled with *SeriousInjury* or with their own datasets. NMFS will provide a tutorial to the SRGs during future meetings as requested.

Comment 16: IFAW and the Commission support and encourage NMFS to revise the large whale injury determination section in the ''Process for Injury Determination Distinguishing Serious from Non-Serious Injury of Marine Mammals'' in the future to incorporate the recent publication by Carretta and Henry (2022). The Commission agrees that NMFS should delete the current large whale injury section of the Procedural Directive and recommends NMFS recalculate the prorated values for the large whale injury categories based on the new statistical method to assess large whale injury events (Carretta and Henry 2022).

Response: NMFS appreciates the comment. Once the new methodology is finalized, NMFS will review the Procedural Directive to determine whether revisions are warranted.

Comment 17: NMFS received comments from the Commission, CBD *et al.,* IFAW, and members of the public recommending NMFS update the vessel size for the large whale vessel strike injury categories (L6a, L6b, L7a, and L7b) from 65 feet to 35 feet (19.8 meters to 10.7 meters) in length. They note this change in vessel size is consistent with NMFS' proposed rule to amend the North Atlantic right whale vessel strike reduction rule (87 FR 46921, August 1, 2022).

Response: NMFS issued a proposed rule to amend the North Atlantic right whale vessel speed regulations to further reduce the likelihood of lethal vessel collisions on August 1, 2022 (87 FR 46921). The changes would broaden the spatial boundaries and timing of seasonal speed restriction areas along the U.S. East Coast and expand mandatory speed restrictions of 10 knots or less to include most vessels 35 to 65 feet (10.7 to 19.8 meters) in length. Once a final rule is published, NMFS will review the Procedural Directive to determine whether revisions are warranted.

Comment 18: Members of the public comment that a proration of 0.14 for the large whale injury category L7b (Vessel smaller in size than whale or vessel <65 feet (<19.8 meters) and speed unknown) is not sufficient. They note that vessels in the 35–65 feet (10.7–19.8 meters) length range have propellers between 16–28 inches (40.6–71.1 centimeters) in diameter and propeller radii of 8–14 inches (20.3–35.6 centimeters), which can cause wounds of the same depth. They state that head injuries of that depth can be fatal and the only locations on the body where such propeller injuries might be considered benign are along the extremities or over the thickest part of the epaxial muscle.

Response: As noted in response to comment #17, NMFS will review the Procedural Directive to determine whether revisions are warranted once a final rule amending the North Atlantic right whale vessel speed regulations is published.

Comment 19: NMFS received several comments from IFAW and members of the public regarding the existing large whale criteria and categories. They suggest that injuries consistent with injury criterion L11 should be defined as a serious injury, rather than be prorated, as NMFS states there is a greater than 50 percent chance of mortality. Further, they express concern that large whale experts participating in the 2007 Serious Injury Technical Workshop indicated that an external fishing hook of any size on any part of a large cetacean is likely a non-serious injury. Other comments pertaining to the large whale injury categories include a suggestion to add an additional injury category ''partially severed flukes transecting midline'' to more closely reflect the small cetacean injury categories. They also recommend additional clarification to some injury categories.

Response: For large whales, NMFS recently developed a statistical approach using a more recent and larger dataset that builds on NMFS' implementation of the ''Process for Injury Determination Distinguishing Serious from Non-Serious Injury of Marine Mammals'' (Carretta and Henry 2022). NMFS will review the Procedural Directive to determine whether revisions are warranted once the new methodology is finalized. For this current review and revision process, NMFS only made minor clarifying changes to the large whale injury criteria section and will consider these recommendations in a future review of the Procedural Directive.

Comment 20: Members of the public request clarification regarding if killer whales are included in the large whale injury categories as they feel the species is better aligned with the large whale injury categories instead of the small cetacean injury categories.

Response: The serious injury determination process for large whales is intended for evaluating injury events involving mysticetes and sperm whales. The serious injury determination process for small cetaceans evaluates injuries for all odontocetes except sperm whales—including killer whales.

Comment 21: The Atlantic SRG and CBD *et al.* stress that the Procedural Directive should not revise (downgrade) a serious injury to a non-serious injury if a subsequent sighting of the animal shows it is gear-free and in good body condition. They state that: (1) entanglements are under-reported and underestimated; (2) entanglements make marine mammals—including pinnipeds—more vulnerable to other sources of mortality, including disease; and (3) injuries to energetic and stress hormones cannot be observed yet can have individual- and population-level impacts. The Atlantic SRG inquired if a new injury category could be added to Table 1 in the Procedural Directive (and also included in Table 1 of the U.S. Atlantic and Gulf of Mexico SAR) for when an injury is downgraded from a serious injury to non-serious but could still have unknown sublethal effects.

Response: Animals determined to be seriously injured (or dead) are counted against PBR as they are, more likely than not, removed from the population. Those determined to be non-seriously injured are still considered to be contributing to the population. Subsequent sightings of animals can provide information regarding ''known'' outcomes for documented injuries.

These known outcomes feed the probability calculations of the likelihood of serious injury. The details for all injury events, both serious and non-serious, are captured in annual Mortality and Serious Injury reports. Events where the outcome has differed from the procedural guidance are noted in these reports. Please also see response to comment #5, which addresses the issue of sublethal injuries more broadly.

Small Cetacean Injury Criteria

Comment 22: HLA comments that in NMFS' 1995 MMPA regulations (60 FR 45086, August 30, 1995), NMFS stated that serious injury guidelines would be developed on a ''fishery-by-fishery, case-by-case basis'' to ensure determinations are accurate and tailored to specific fisheries that interact with specific marine mammals. HLA states that the ''Process for Injury Determination Distinguishing Serious from Non-Serious Injury of Marine Mammals'' does not apply on a fishery-by fishery, case-by-case basis. False killer whale injuries in longline gear are determined by the small cetacean criteria, which are primarily based on a series of bottlenose dolphin studies in the Atlantic. HLA argues that, as a result, the Procedural Directive does not allow for accurate determinations of whether certain types of injuries will cause false killer whales in Hawaii to be more likely than not to die.

Response: NMFS clarifies that when the Agency promulgated regulations in 1995 for MMPA section 117, the Agency explained that when developing guidelines for what constitutes a serious injury, ''NMFS expects that this will be done on a fishery-by-fishery, case-by-case basis'' (60 FR at 45093, August 30, 1995). In general, there are very limited data on small cetacean injury outcomes. At the time the Procedural Directive was developed, using data from bottlenose dolphins as proxies represented the best scientific information available for known outcomes of hookings and hook ingestion. Without species-specific information, experts and NMFS considered it appropriate to apply conclusions about bottlenose dolphins to all small cetacean species. During the review of the Procedural Directive, NMFS staff considered whether there was sufficient information to propose changes to small cetacean injury criteria, including the possibility of developing species-specific (or false killer whale-specific) criteria but determined there was not.

When considering fishing-related (and other) injuries to small cetaceans, many of the injury categories identified in this Procedural Directive are case specific. For injuries incidental to fishing, the factors surrounding the injury event will be considered, including, but not limited to, the species and the fishery (*e.g.,* type of gear, fishing techniques). For fishing-related injury categories assigned as serious injuries, the injury is considered to be serious regardless of the species or fishery. Lastly, the list of factors for consideration in small cetacean case-specific injury categories is not meant to be exhaustive and, as stated in Section II of the Procedural Directive, NMFS' determination staff can use additional available information for data-rich situations in lieu of the criteria laid out in section VIII.

Comment 23: HLA asserts that this Procedural Directive as applied to false killer whales is inconsistent with NMFS' regulations and its intent in implementing them. They note that NMFS promulgated regulatory definitions for the terms ''injury'' and ''serious injury'' and state that the regulatory definition of ''injury'' shows NMFS recognized that an entanglement in fishing gear is not an ''injury'' at all (much less a ''serious injury'') unless it is accompanied by other signs of injury. They also note the management implications of NMFS' interpretation of serious injury, citing the Southern Exclusion Zone closure provisions in the False Killer Whale Take Reduction Plan (FKWTRP).

Response: The regulatory definition of an injury is ''a wound or other physical harm.'' The definition also includes various signs of injury such as: visible blood flow, noticeable swelling or hemorrhage, laceration, and inability to swim or dive upon release from fishing gear, or signs of equilibrium imbalance. The definition further states ''any animal that ingests fishing gear, or any animal that is released with fishing gear entangling, trailing or perforating any part of the body will be considered injured regardless of the absence of any wound or other evidence of an injury'' (50 CFR 229.2). The Procedural Directive is consistent with the regulatory definition of injury because we consider an animal with gear entanglements that is released with trailing gear to have an injury. The Procedural Directive is also consistent with the regulatory definition of serious injury (*i.e.,* ''an injury that will likely result in mortality'') because it considers an injury ''serious'' to be an injury that presents a greater than 50 percent chance of death to a marine mammal. Thus, the definition does not require that all such injured animals actually die, but rather requires only that the animal is more likely than not to die.

NMFS' Procedural Directive includes small cetacean injury criteria that could result in a non-serious injury even with gear remaining on an animal. For example, if a hook was attached somewhere other than the head with trailing gear that did not pose a specific risk (injury criterion S5d), then that injury may be considered non-serious if other case-specific considerations were not applicable (*e.g.,* capture myopathy). Management implications of a particular injury determination are outside the scope of this Procedural Directive, which provides a standardized framework for differentiating serious from non-serious injuries.

Comment 24: Both HLA and WPRFMC comment on the need to develop guidance, provisions, and criteria specific to false killer whale interactions in the Hawaii deep-set longline fishery. HLA recommends criteria be developed that specify a false killer whale released with a hook in the head or mouth and 2 feet (0.6 meter) or less of trailing gear attached has a non-serious injury. Secondly, WPRFMC appreciates the consideration of hook type in the proposed revisions for injury criterion S5b, but questions how the other factors would be interpreted and applied when making S5b injury determinations. Further, WPRFMC recommended in 2018 and 2019 that NMFS support additional research to obtain scientific information on species-specific post-hooking mortality to inform revision of the Procedural Directive. They also recommended NMFS consider a prorated approach for SI determinations for false killer whales. WPRFMC requests NMFS review all available literature on odontocete fishery interaction and gear ingestion, as well as relevant stranding data and necropsy data from Hawaii and worldwide to evaluate the risk of gear ingestion in false killer whales.

Response: As stated in response to comment #22, there are insufficient data to inform criteria specific for false killer whales, including for head/mouth hookings with 2 feet (0.6 meter) or less of trailing gear. The best scientific information available indicates that a small cetacean hooked in the head is more likely than not to die. Two feet of trailing line is enough to be ingested and wrap around the animal's goosebeak, which data indicate generally leads to death in bottlenose dolphins (Wells *et al.* 2008). A number of factors, including hook type, will be considered collectively in the lip-hooking (S5b) confirmation process. More factors than hook type are

necessary to consider because a visible hook of the same type (and size) could represent a jaw or lip hooking depending on the size of the animal or where along the mouthline the hooking occurs. These factors are and will continue to be carefully considered, in consultation with expert anatomists as needed, in the injury determination process. There are also insufficient data to inform injury proration. We note that proration was only previously established for large whales when data were insufficient to make a probabilistic assignment of serious or not based on known outcomes. Proration is not intended to be a stand-alone approach because, by definition, an injury only needs to be more likely than not to lead to death to be considered a serious injury. While comprehensive literature reviews were conducted as part of the current guidelines review, NMFS appreciates the recommendations for research studies related to post-hooking mortality and gear ingestion in stranded false killer whales. The feasibility of such studies will continue to be discussed, including with external partners and in relevant management contexts, such as the FKWTRT.

Comment 25: HLA states that NMFS should conduct a thorough review of all existing information as it considers revising the Procedural Directive. This includes all false killer whale interactions, photographic/video data, observer data, logbook data, fishermen interviews, and any other information that provides information on effects of longline fishing gear and false killer whales.

Response: The ''Process for Injury Determination Distinguishing Serious from Non-Serious Injury of Marine Mammals'' review that was initiated in 2017 included review of the best scientific information available, input from the MMPA Scientific Review Groups, as appropriate, and experience gained in implementing the process and criteria. Subject matter experts from within NMFS with years of experience working with observer and other types of data relevant to injury determination for false killer whales (and other species) were included in the review process.

Comment 26: HLA requests NMFS address questions and requests identified in the 2008 Technical Memorandum ''Differentiating Serious and Non-Serious Injury of Marine Mammals: Report of the Serious Injury Technical Workshop'' (Andersen *et al.* 2008) that have not yet been addressed in the Procedural Directive. These questions and requests include: (1) What is the fate of small cetaceans released with a hook in their mouth or with an ingested hook; (2) Is there any evidence false killer whales shed the hook on their own; (3) Would a hook in the mouth significantly impair feeding, causing infection, or lead to death; (4) Collect additional data on post-release survival; and (5) Data-mining of existing observer data, especially for fisheries that lack key drivers for data gathering (such as Take Reduction Teams (TRTs) or interactions with strategic stocks).

Response: NMFS acknowledges that the questions identified by HLA from the 2008 Technical Memorandum remain important. These were guiding questions during the 2007 Serious Injury Technical Workshop, and they were addressed via expert and veterinary opinion when data were lacking. Since the 2007 Serious Injury Technical Workshop, NMFS has not addressed these questions further because the required data are not available and/or difficult to obtain. These questions, as well as others, still drive NMFS' work with the Procedural Directive as it relates to false killer whales (and other species), and we continue to use the best scientific information available and expert guidance when reviewing and revising the Procedural Directive.

Comment 27: HLA and WPRFMC express concern NMFS has not prioritized conducting additional research on false killer whale interactions in the Hawaii longline fisheries. They raise the question of false killer whale research, specifically in regard to post-interaction survival. They stress that HLA representatives and industry have consistently expressed a desire for a tagging study to improve the understanding of species-specific survival rates of false killer whales following interactions with the Hawaii longline fishery. They further note that the FKWTRT identified this need when it updated the FKWTRP Research Priorities (2014). The FKWTRT recommended that NMFS devote substantial effort and resources to conduct and support research dedicated to quantifying and assessing post-release false killer whale mortality. This research should build on current research on the main Hawaiian Islands insular false killer whale population, including but not limited to, obtaining information on false killer whale interactions with near-shore fisheries and using mark-recapture data to chart health outcomes from those interactions. This research should also examine hook degradation rates to determine survival duration after hook interactions in dead and stranded odontocetes, survival duration after hook interactions in dead and stranded odontocetes, and injury healing rates in captive animals. HLA and WPRFMC urge NMFS to pursue this additional false killer whale research.

Response: NMFS has indeed prioritized conducting additional research to address these questions. There are a number of projects in various stages of development that relate to furthering our understanding of false killer whale ecology, health, and survival in relation to fisheries interactions and other impacts. As the results are available, NMFS will continue sharing these with the FKWTRT.

Furthermore, tagging pelagic false killer whales following fisheries interactions would require that fisheries observers or crewmembers perform the tagging operations, which is not feasible. Tagging small cetaceans is a highly specialized skill possessed by very few individuals and can pose a substantial risk to the animals, particularly in challenging conditions (*e.g.,* sea state, limited visibility at night, *etc.*). These tags are generally attached using a specialized tagging gun/rifle/crossbow, and hitting a false killer whale with a dart tag anywhere other than its fins or base of the dorsal fin carries as much, or more, risk of killing the animal than the initial fishery injury. Even if a skilled tagger was available, it is unlikely that a robust sample size would be obtained, and the tag life of current tags would confound analyses of survival. Long-term photo-identification studies that include resighting data of individuals following a fisheries interaction are likely to provide the best information on post-interaction survival. However, we simply do not have sufficient known outcome data for most small cetaceans, including false killer whales. Obtaining such data for pelagic false killer whales will be particularly difficult, given that photo-identification encounters and repeat encounters with the same animal are uncommon.

Comment 28: WPRFMC requests that NMFS consider hook type as part of the criteria for determining serious injury for mouth- or lip-hooked false killer whales. Available observer data, research from other species, and expert opinion should be used to evaluate the relative risk of internal hooking by hook type.

Response: A hook in the head/mouth is a serious injury according to category S5a regardless of hook type because, in general, the risks posed by hooks (*i.e.,* ''the potential for ingesting attached gear, impairing feeding, breathing, or sight, or acting as a conduit for

infection'') are not necessarily specific to hook type. After consulting with outside experts, it remains apparent that there are insufficient data to evaluate injury outcomes following mouth hooking by hook type.

Comment 29: HLA and WPRFMC provided comments on small cetacean injury criteria S2. HLA states that the minor revisions proposed to small cetacean injury criteria S2 and S5 are somewhat helpful, but insufficient. HLA recommends clarifying injury criterion S2 that if the hook and a sufficient amount of line is visible, NMFS will not presume the gear/hook(s) is ingested. For injury criterion S5b, HLA states that the new language does not provide sufficient guidance for assessing lip-only hookings.

WPRFMC also requests NMFS revise the proposed text added to small cetacean injury criterion S2 to clarify that the ingestion of gear or hook will not be presumed and that S2 will not be used for injuries where the hook and sufficient amount of leader is visible and no other gear is coming from the mouth. They state that in 2021, 40 percent of the observed false killer whale interactions in the Hawaii deep-set longline fishery were recorded as seeing the hook in the animal's mouth.

Response: S2 was clarified to account for what is most often seen in presumed ingestion cases, which is line coming from the mouth. If a hook and attached line was visible, the hook/gear would not be considered ingested, according to the guidelines. In many cases involving observer data, it is not possible to determine if a hook is ingested or in the mouth. In such cases, ''S2 or S5a'' can be applied that allows for the possibility of either, as each category denotes a serious injury. Only in cases where a lip-hooking can be confirmed can S5b be used. Confirming a lip-hooking is challenging given the number of potentially confounding factors combined with what can typically be observed or recorded by fisheries observers, given challenging sea or lighting conditions and the behavior or distance of the animal. These confounding factors (*e.g.,* hook type and size, species, size of animal, location along the mouthline) preclude the formulation of prescriptive guidelines for confirming a lip-only hooking. However, these factors should and will be carefully considered, in consultation with expert anatomists as needed, in the injury determination process.

Comment 30: BWFA expresses concern regarding small cetacean injury categories S5a and S6. They question whether leaving a hook in an animal's mouth constitutes a serious injury. BFWA states that there is no scientific evidence that a hook in the mouth leads to more than a 50 percent chance of death. They also note that the Pelagic Longline Take Reduction Team (PLTRT) have these concerns for many years. BWFA recommends NMFS revise S5a and S6 from serious injuries to case-specific.

Response: As stated in response to comments #22 and #24, there are very limited data on small cetacean injury outcomes. At the time the Procedural Directive was developed, bottlenose dolphins as proxies represented the best scientific information available for known outcomes of hookings. During the review of the Procedural Directive, NMFS staff considered whether there was sufficient information to propose changes to small cetacean injury criteria, but determined there was not. A hook in the head/mouth (S5a) and gear attached to free-swimming animal (S6) are a serious injuries due to the risks posed by hooks and the attached gear (*i.e.,* the potential for ingesting attached gear, impairing feeding, breathing, or sight, or acting as a conduit for infection, entanglement and constriction).

Comment 31: BWFA requests NMFS clarify why the proposed revisions were added to small cetacean injury criterion S6, noting that it is not possible to comment on the proposed revision to S6 without understanding the implications for the Atlantic pelagic longline fishery. They question whether the addition of a definition of the term ''potential'' changes the way the term ''potential'' has been previously applied and interpreted. BWFA also states that there is no mention in the Procedural Directive about using the expertise of those serving on TRTs to develop the injury criteria.

Response: The revisions to S6 were made to provide more specific guidance about what is meant by ''potential'' for the injury criterion. TRTs are convened to recommend measures to reduce M/SI incidental to specific fisheries and not to provide input on which injuries are serious. The Procedural Directive establishes a protocol for seeking review of draft injury determinations before they are finalized, and while the TRT is not a part of that process, we welcome TRT engagement and expertise in considering revisions to the Procedural Directive, particularly if they have relevant data or other information.

Comment 32: BWFA requests that prior to finalizing the revisions to the ''Process for Injury Determination Distinguishing Serious from Non-Serious Injury of Marine Mammals'' NMFS present the proposed revisions to the PLTRT, and that the proposed revisions should be fully reviewed and considered by the PLTRT.

Response: NMFS thanks BWFA for their comment. NMFS conducted several informational webinars for Scientific Review Groups, Marine Mammal Commission, USFWS, TRTs (including the Pelagic Longline Take Reduction Team), and the Hawaii Longline Association, and presented an update on revisions to the WPRFMC at their June 2022 meeting. Prior to finalizing the revisions, NMFS solicited public comments for a period of 30 days (87 FR 43247, July 20, 2022).

Comment 33: IFAW recommends NMFS add a statement to small cetacean injury criterion S5b that if the exact location of the hook in the mouth cannot be determined, that the injury is assigned to criterion S5a.

Response: NMFS agrees and revised S5b to state that if the location of the hook in the mouth cannot be determined, the injury is assigned to criterion S5a.

Comment 34: IFAW requests NMFS consider revising the small cetacean injury category S16 to be similar to the large whale injury categories for vessel strikes, specifically pertaining to the inclusion of various vessel sizes and speeds.

Response: NMFS appreciates the suggestion to make the vessel strike categories for large and small cetaceans more consistent. However, the amount of information available on the factors that influence strike severity between these two taxa differs greatly, as does their ability to potentially avoid being struck by a vessel due to differences in size and agility. Given this, NMFS does not believe there are sufficient data to provide the same level of specificity for small cetaceans when it comes to vessel strike injuries as is provided for large cetaceans. As additional data become available, NMFS will consider revising S16 as appropriate.

Pinniped Injury Criteria

Comment 35: IFAW recommends NMFS create an additional pinniped injury category for deep laceration injuries. The stranding network receives several reports of pinnipeds with multiple deep lacerations from propeller strikes. When there are multiple injuries that expose muscle, there is a high likelihood that these animals die. These types of injuries, that are fairly commonly seen, warrant a separate injury category.

Response: NMFS appreciates the information about known outcomes for these types of injuries. Lacerations from vessel strikes are generally evaluated

using category P9 (''body trauma not covered by any other criteria''). Injuries in this category have case-specific determinations that require consideration of various factors such as the location of the wound(s) on the body, the depth (*e.g.,* deep vs. superficial laceration), and the cleanliness of the wound. In addition, category P1 could also be applied to cases in which the animal observed at a date later than its human interaction exhibits signs of declining health believed to be resulting from the initial injury. NMFS considers these categories to be sufficient to capture vessel strike injuries to pinnipeds.

Comment 36: Members of the public state that pinnipeds that are provisioned over time should be considered a serious injury under injury category P16 (''Injuries resulting from observed or reported harassment, disturbance, feeding, or removal—case specific''). They note that there is tag data, stable isotope data, and photo identification/video documentation indicating a change in health and serious injury for provisioned pinnipeds.

Response: The new category P16 is intended to cover harassment-related injuries and mortalities from a broad range of human activities, as described in the category narrative. Given this broad range, NMFS considered it appropriate to allow for case-specific outcomes and listed various factors that should be considered when determining the injury severity, such as the duration of the harassment. Pinnipeds that are provisioned over time may be considered seriously injured. It is likely that this could only be applied to individually-identifiable animals that are known to have been provisioned over time. Additionally, for cases of ongoing harassment such as this, NMFS will need to determine at what point the animal should receive this determination to avoid counting the animal as injured more than once.

Comment 37: IFAW recommends NMFS clarify in pinniped injury criterion P14 how abandoned, dependent pups that are rehabilitated and released (after weaning) are categorized with regards to serious injury.

Response: Pinniped injury criterion P14 is used for non-weaned pups that are separated from their groups or mothers and therefore ''released'' alone immediately following the human interaction. It is not used for pups that are rehabilitated and then released after weaning. NMFS revised P14 to clarify this injury criterion covers animals ''immediately released.''

Comment 38: IFAW recommends adding a description of gear size and gear location on the animal to two injury categories (S8b and P8b), which both relate to ''gear wrapped and loose on any body part.''

Response: Categories S8b and P8b are both case specific. In Tables 2 and 3 of the ''Process for Injury Determination Distinguishing Serious from Non-Serious Injury of Marine Mammals,'' the fourth column lists several factors for evaluating whether case-specific injuries are serious or non-serious, and refers the reader to additional factors at the end of each table. Gear size and gear location on the animal are already listed, either in the tables or in the lists at the end of the tables, as factors to consider for these injury categories.

Comment 39: Members of the public recommend NMFS add new small cetacean and pinniped injury criteria for non-line related fisheries interactions. These new criteria could cover blunt force trauma from fishery trawl doors, dredges, and haulers and entrapment in the cod-end of gear.

Response: NMFS developed the injury categories to reflect types of injuries; they are generally not specifically linked to the specific source of a human-caused injury. NMFS does not consider it necessary to create new small cetacean and pinniped categories for non-line related fisheries interactions. These types of injuries are currently evaluated under several different categories depending on the circumstances and evidence of injury. For example, animals entrapped in the cod-end of trawl gear are often brought on the vessel deck (P4, case specific; S4, serious injury), or may have been immobilized or entangled before being freed without gear attached (P7b, case specific; S7b, case specific). Animals with evidence of trauma from fishery trawl doors, dredges, haulers, or other sources could be evaluated using categories P9–P13, as applicable.

Comment 40: Members of the public express concern that there is no mention of aspiration or the sequelae of peracute underwater entrapment (PUE) in the pinniped injury determination process description. They state that aspiration and trauma should be a significant concern with any entanglement case in which PUE is a possibility, or when handling an entangled animal by inexperienced people could result in sustained agonal submergence. Members of the public note that observer data include information on unresponsiveness and foam/froth from nostrils may indicate aspiration and other PUE pathologies. These injuries should not be categorized as non-serious just because an animal eventually was observed swimming. They state that any evidence of unconsciousness while submerged or respiratory foam indicative of aspiration should be considered a serious injury.

Response: NMFS agrees and added language to injury criterion P4 about clinical signs from PUE, drowning, and capture myopathy.

Minor Revisions

Comment 41: Members of the public note the addition of the external signs indicative of stress that could lead to capture myopathy to the Procedural Directive are helpful. However, they recommend including a list of clinical indicators that may suggest capture myopathy. For instance, spinal scoliosis due to capture myopathy has been documented in several delphinid species including live stranded pilot whales, and is a grossly visible sign that can develop in hours after the physiological perturbation. Additionally, they suggest changing ''Duration of holding or transport'' under Extrinsic Risk Factors to ''Duration and degree of immobilization,'' which is broader terminology that not only encompasses situations of animals brought on board vessels but also more accurately reflects entanglement type conditions as a whole. Finally, since capture myopathy likely has a significant component of acidosis, the degree/extent of submergence may be important, especially in the context of fisheries entanglements, PUE, and extrinsic risk factors.

Response: NMFS thanks the commenters and revised the Procedural Directive to reflect their recommendations. NMFS added in the following phrases to the Capture Myopathy Appendix II under extrinsic factors: ''Duration of entanglement, including extent of submergence or stranding prior to intervention or stranding prior to intervention'' and ''Duration and degree of immobilization.'' The clinical signs list was not meant to be exhaustive, so we added the phrase ''including and not limited to:'' to make that clear. Additionally, the signs listed were meant to be the most immediate real-time signs in live animals in the water, on the deck, or stranded and were not meant to include signs that may take hours to manifest (*e.g.,* scoliosis).

Comment 42: Members of the public comment that there is no small cetacean injury category for penetrating stab wounds from arrows, screwdrivers, *etc.* They question what criteria penetrating injuries that do not penetrate into a

cavity but are deeply embedded would fall under.

Response: NMFS revised the Procedural Directive based on the comment. NMFS added in the following language to the narratives for S9 and P9 to address this comment: ''and other penetrating injuries (including those made from foreign objects) that do not extend to the body cavity.''

Comment 43: Members of the public request NMFS clarify how dependency is established in small cetacean injury criteria S15a and S15b. They question if dependency is determined through field estimates of total length or external features consistent with perinatal status.

Response: In general, NMFS anticipates dependency will be established based on the general size of an animal compared to other animals if it is in a group, and if alone, field estimates of total length will be informed by what is known about the size and life history of the species and stock. Importantly, a lack of external factors indicating perinatal status should not preclude a determination of dependency as many marine mammals nurse and thus, are at least somewhat nutritionally dependent on their mothers well beyond when they may exhibit perinatal status. Since this will vary among species, stocks, and even within stocks given individual variability in the nursing period, NMFS believes it is not appropriate to provide any specifics within this procedure. However, we revised the procedure to add text explaining that animal size is a potential characteristic to consider.

Comment 44: NMFS received comments from IFAW, members of the public, and the Commission suggesting various minor editorial revisions to the Procedural Directive. These minor editorial edits ranged from removing the term ''fins'' from pinniped injury criteria to including additional descriptive text to criteria and rephrasing sentences for clarity. The commenters also included minor editorial revisions to the large whale injury criteria.

Response: NMFS thanks the commenters for their suggestions and has made minor editorial revisions throughout the Procedural Directive. As noted in responses to comments #16 and 17, NMFS will review the Procedural Directive to determine whether revisions are warranted once the new methodology for large whale injury determinations is finalized.

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Dated: February 2, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–02551 Filed 2–6–23; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Correction to additions to the Procurement List.

SUMMARY: This action corrects two (2) product additions to the Procurement List that are furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date added to and deleted from the Procurement List:* April 28, 2019.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION:

Additions

On 2/8/2019 (84 FR 2823), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of its intent to add the Airborne Tactical Assault Panel (A–TAP) to the Procurement List for 50% of the U.S. Army's A–TAP requirement. In accordance with 41 CFR 51–2.4 and 51–5.3, the Committee subsequently determined 50% of the U.S. Army's A–TAP requirement was suitable for addition and published a notice of product addition on 3/29/2019 (84 FR 11935). However, the 3/29/2019 notice inadvertently omitted that only 50% of the U.S. Army's ATAP requirement was suitable for addition and the Committee's determination is corrected here.

Additionally, on 11/16/2018 (83 FR 57722), the Committee published its notice of intent to add the Airborne Rucksack, Modular Lightweight Load Carrying Equipment (MOLLE), OCP 2015, to the Procurement List for 20,000 annual units to meet a U.S. Army requirement. In accordance with 41 CFR 51–2.4 and 51–5.3, the Committee subsequently determined 20,000 annual units of production was suitable for addition and published a notice of product addition on 3/29/2019 (84 FR 11935). However, the 3/29/2019 notice inadvertently omitted that only 20,000 units annually was suitable for addition and the Committee's determination is corrected here. This notice is published pursuant to 41 U.S.C. 8503(a)(2).

Regulatory Flexibility Act Certification

I certify that the following action did not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action did not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the nonprofit agencies furnishing the products to the Government.

2. The action did result in authorizing nonprofit agencies to furnish the products to the Government.

3. There were no known regulatory alternatives which would have accomplished the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products added to the Procurement List.

End of Certification

Accordingly, the following is an update for the products listed below:

Product(s)

NSN(s)—Product Name(s): 8465–01–F05–2045—Airborne Tactical Assault Panel (A–TAP)
Designated Source of Supply: Southeastern Kentucky Rehabilitation Industries, Inc., Corbin, KY
Contracting Activity: DEPT OF THE ARMY, W6QK ACC–APG NATICK
Mandatory For: 50% of the requirement for the U.S. Army
NSN(s)—Product Name(s): 8465–00–NIB–0263—Airborne Rucksack, Modular Lightweight Load Carrying Equipment (MOLLE), OCP2015
Designated Source of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC; Peckham Vocational Industries, Inc., Lansing, MI
Contracting Activity: DEPT OF THE ARMY, W6QK ACC–APG NATICK
Mandatory for: 20,000 units annually for the requirement for the U.S. Army
Distribution: C-List

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2023–02556 Filed 2–6–23; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Intent To Prepare a Joint Draft Environmental Impact Statement/Environmental Impact Report for the Proposed Searsville Watershed Restoration Project, Santa Clara and San Mateo Counties, CA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (USACE), San Francisco District, as the lead agency under the National Environmental Policy Act (NEPA), and the California Department of Water Resources (DWR), as the lead agency under the California Environmental Quality Act (CEQA), will prepare a joint Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Searsville Watershed Restoration Project, located in San Mateo and Santa Clara Counties, California. Stanford University is the Project Applicant. The EIS/EIR will analyze Stanford's proposed project to modify Searsville Dam and Reservoir and restore reaches of Corte Madera Creek and San Francisquito Creek upstream and downstream of the dam, expand Felt Reservoir, and upgrade the existing San Francisquito Creek pump station. The purpose of the Project is to restore hydrogeomorphic processes, riparian habitat, and fish passage conditions within the upper San Francisquito Creek watershed; to avoid increasing future flood risk associated with Searsville Reservoir filling with sediment, and to replace Searsville Reservoir's historic non-potable water storage and supply while improving seismic safety at Felt Reservoir. The primary Federal involvement associated with the proposed action is the discharge of dredged or fill material into waters of the United States that would require authorization from USACE pursuant to section 404 of the Clean Water Act. Discharge of accumulated sediment from Searsville Reservoir into the lower reaches of San Francisquito Creek would also be subject to section 10 of the Rivers and Harbors Act (RHA) of 1899 in tidal reaches, and section 408 review under section 14 of the RHA in reaches that are currently under study for Federal flood risk management projects.

DATES: Written comments and suggestions must be submitted by March 9, 2023.

ADDRESSES: Written comments and suggestions concerning the scope and content of the EIS/EIR may be submitted to Mr. Greg Brown by email at *Gregory.G.Brown@usace.army.mil;* or by surface mail at U.S. Army Corps of Engineers, San Francisco District, Regulatory Division, 450 Golden Gate Avenue, 4th Floor, San Francisco, CA 94102–3404. Requests to be placed on the email or surface mail notification lists should also be sent to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Brown at *Gregory.G.Brown@usace.army.mil* or 415–503–6791.

SUPPLEMENTARY INFORMATION: 1. *Proposed Action.* Searsville Reservoir is an artificial impoundment created by the construction of Searsville Dam in 1891 on Corte Madera Creek, just upstream of the confluence where it joins with Bear Creek and forms San Francisquito Creek. Stanford owns and operates the Searsville Reservoir and Dam, the San Francisquito Creek Pump Station, and Felt Reservoir and uses these facilities to supply non-potable water for irrigation, stock watering, and fire suppression. Since construction of the dam, Searsville Reservoir has been filling with sediment, and water storage capacity has been reduced from about 1,200 acre-feet to about 100 acre-feet. The reservoir will eventually fill completely with sediment, at which point sediment originating in the upper watershed will pass over the dam and deposit downstream in San Francisquito Creek, increasing the risk of flooding. The EIS/EIR will analyze Stanford's proposed project to modify Searsville Dam and Reservoir (37.4072° N, −122.238° W) and restore reaches of Corte Madera Creek and San Francisquito Creek upstream and downstream of the dam, expand Felt Reservoir (37.3949° N, −122.1856° W), and upgrade the existing San Francisquito Creek pump station (37.4226° N, −122.1883° W).

To address these issues, Stanford has proposed a multi-phase project on Stanford property at Searsville Reservoir and Dam; in Corte Madera and San Francisquito Creeks from Searsville Dam downstream to Interstate 280 in unincorporated San Mateo County; at Felt Reservoir in unincorporated Santa Clara County; and at the San Francisquito Creek Pump Station site which straddles the boundary between San Mateo and Santa Clara counties.

The proposed project includes the following components: (1) constructing a gated tunnel through Searsville Dam to flush a substantial amount of trapped sediment, restore natural sediment transport, reestablish fish passage conditions, and improve ecosystem function; (2) restoring a confluence valley supporting a variety of habitats above Searsville Dam; (3) constructing channel improvements to facilitate fish passage conditions below Searsville Dam, through the proposed tunnel, and in restored creek channels upstream of the dam; (4) constructing sediment trapping, habitat improvement, and bank stabilization features on Corte Madera and San Francisquito Creeks between Searsville Dam and I–280; (5) relocating the existing point of diversion at Searsville Reservoir to the San Francisquito Creek Pump Station site and modifying the Pump Station to accommodate increased diversions to Felt Reservoir; and (6) constructing a new dam at Felt Reservoir and expanding that reservoir's design capacity to a total of 1,800 acre-feet.

2. *Alternatives.* Multiple alternatives, including the no action alternative and the Applicant's preferred alternative (proposed project) will be evaluated in the EIS/EIR in accordance with current NEPA regulations and guidance, including 33 CFR 230 (USACE NEPA Regulations) and 33 CFR 325, appendix B (NEPA Implementation Procedures for USACE Regulatory Projects). Additional alternatives to be analyzed currently include:

- *Dam Removal:* implement sediment flushing and restore fish passage and

sediment transport by removing Searsville Dam completely.

• *Bypass Channel:* restore fish passage and sediment transport by constructing a bypass channel around Searsville Dam; accumulated sediment in the reservoir would be left in place.

3. *Scoping Process.*

a. Affected Federal, State, regional, and local agencies; Native American Tribes; other interested private organizations; and the general public are invited to participate in the scoping process. USACE is requesting identification of potential alternatives, information, and analyses relevant to the proposed action. Questions and written comments can be addressed to the contacts identified above and should be submitted within 30 calendar days of the date of this NOI.

b. The EIS/EIR will analyze the environmental consequences of construction, operation, and maintenance of reasonable alternatives carried forward for detailed analysis. Potentially significant issues to be analyzed include effects on aesthetics and visual resources; air quality and greenhouse gas emissions; biological resources including wetlands and special status species; cultural and tribal cultural resources; energy; environmental justice and socioeconomics; geology, soils and paleontology; hazardous materials and wildfire; flood risk, hydrology, and water quality; land use, agricultural and forestry resources; noise and vibration; population and housing; transportation; and utilities and public services.

c. USACE shall invite the National Marine Fisheries Service to participate as a cooperating agency in the preparation of the EIS/EIR. USACE will also work closely with the DWR, as lead CEQA agency, in the preparation of the joint EIS/EIR.

d. USACE will consult with the State Historic Preservation Officer and with Native American Tribes to comply with the National Historic Preservation Act, and with the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) to comply with the Endangered Species Act. USACE will also coordinate with the USFWS to comply with the Fish and Wildlife Coordination Act and with NMFS to comply with the Magnuson-Stevens Fishery Conservation and Management Act.

e. Two virtual public scoping meetings will be held in late February or early March 2023 to present information to the public and to receive comments from the public on the proposed project, alternatives, and the scope of the environmental analysis. Dates, weblinks, and other details for the scoping meetings will be posted to the USACE San Francisco District website (*https://www.spn.usace.army.mil/Missions/Regulatory/Public-Notices/*).

4. *Availability of the Draft EIS.* The draft EIS is scheduled to be available for public review and comment in October 2023. The decision-making process for the related permitting action will not be completed until all NEPA requirements have been met.

Antoinette R. Gant,

Commanding, U.S. Army.

[FR Doc. 2023–02564 Filed 2–6–23; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Application Deadline for Fiscal Year 2023; Small, Rural School Achievement Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: Under the Small, Rural School Achievement (SRSA) program, Assistance Listing Number 84.358A, the U.S. Department of Education (Department) awards grants on a formula basis to eligible local educational agencies (LEAs) to address the unique needs of rural school districts. In this notice, we establish the deadline and describe the application process for the fiscal year (FY) 2023 SRSA grant. This notice relates to the approved information collection under Office of Management and Budget (OMB) control number 1810–0646. All LEAs eligible for FY 2023 SRSA funds must apply electronically via the process described in this notice by the deadline listed below.

DATES:

Applications Available: February 8, 2023.

Deadline for Transmittal of Applications: April 14, 2023.

Application Technical Assistance: The Department will announce application technical assistance opportunities for applicants when the application becomes available.

FOR FURTHER INFORMATION CONTACT: Leslie Poynter, REAP Group Leader, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202. Telephone: (202) 401–0039. Email: *reap@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

I. Award Information

Type of Award: Formula grant.

Available Funds: $107,500,000.

Estimated Range of Awards: $0–$60,000.

Note: The amount of an LEA's award depends on the number of eligible LEAs in a given year, the number of eligible LEAs that complete the SRSA application, and the amount of funds Congress appropriates for the program. Some eligible LEAs may receive an SRSA allocation of $0 due to the statutory funding formula and, in that case, will not be invited to submit an application.

Estimated Number of Awards: 4,215.

II. Program Authority and Eligibility Information

Under what statutory authority will FY 2023 SRSA grant awards be made?

The FY 2023 SRSA grant awards will be made under title V, part B, subpart 1 of the Elementary and Secondary Education Act of 1965 (ESEA), 20 U.S.C. 7345–7345a.

Which LEAs are eligible for an award under the SRSA program?

For FY 2023, an LEA (including a public charter school that meets the definition of LEA in section 8101(30) of the ESEA) is eligible for an award under the SRSA program if it meets both of the criteria below:

(a) The total number of students in average daily attendance at all of the schools served by the LEA is fewer than 600, or each county in which a school served by the LEA is located has a total population density of fewer than 10 persons per square mile; and

(b) All of the schools served by the LEA are designated with a school locale code of 41, 42, or 43 by the Department's National Center for Education Statistics (NCES), or the Secretary has determined, based on a demonstration by the LEA and concurrence of the State educational agency, that the LEA is located in an area defined as rural by a governmental agency of the State.

The Department provides an eligibility spreadsheet listing each LEA eligible to apply for FY 2023 SRSA grant funds. The spreadsheet is available on the Department's website at *https://oese.ed.gov/offices/office-of-formula-grants/rural-insular-native-achievement-programs/rural-education-achievement-program/small-rural-school-achievement-program/eligibility/*.

If an LEA will close prior to the 2023–2024 school year, that LEA is not

eligible to receive an FY 2023 SRSA award and should not apply.

Note: The ''Choice of Participation'' provision under section 5225 of the ESEA gives an LEA eligible for both SRSA and the Rural and Low-Income School (RLIS) program, which is authorized under title V, part B, subpart 2 of the ESEA, the option to participate in either the SRSA program or the RLIS program. 20 U.S.C. 7351d. An LEA eligible for both SRSA and RLIS is henceforth referred to as a ''dual-eligible LEA.''

Which eligible LEAs must submit an application to receive an FY 2023 SRSA grant award?

Under 34 CFR 75.104(a), the Secretary makes a grant only to an eligible entity that submits an application.

In FY 2023, each LEA eligible to receive an SRSA award is required to submit an SRSA application in order to receive SRSA funds, regardless of whether the LEA received an award or submitted an application in a previous year. This requirement applies to all eligible LEAs, including each dual-eligible LEA that chooses to participate in the SRSA program instead of the RLIS program and each SRSA-eligible LEA that is a member of an educational service agency (ESA) that does not receive SRSA funds on the LEA's behalf. In the case of an SRSA-eligible LEA that is a member of an SRSA-eligible ESA, the LEA and ESA must coordinate directly with each other to determine which entity will submit an SRSA application on the LEA's behalf, as both entities may not apply for or receive SRSA funds for the LEA. As noted above, pursuant to section 5225 of the ESEA, a dual-eligible LEA that applies for SRSA funds may not receive an RLIS award.

A separate application must be submitted for each eligible LEA. For example, if a rural community has two distinct LEAs—one composed of its elementary school(s) and one composed of its high school(s)—each distinct LEA must submit its own SRSA application with the LEA's own Unique Entity Identifier (UEI) in accordance with the guidance provided in 2 CFR part 25 (available at the following web page: *https://www.ecfr.gov/current/title-2/subtitle-A/chapter-I/part-25*).

The UEI is a 12-character alphanumeric code assigned to an entity by the System for Award Management (SAM), the Government's primary registrant database. The UEI is the primary means of entity identification for Federal awards. The process of obtaining and registering a UEI through SAM's online platform, *https://sam.gov/content/home,* is entirely free to LEAs. To further assist you with registering in SAM or updating your existing SAM registration, see the Quick Start Guide for Grant Registrations and the Entity Registration Video at *https://sam.gov/content/entity-registration.* You may also review the resources or utilize the live chat function on the following Federal Service Desk website: *https://www.fsd.gov/gsafsd_sp.* An LEA must update its SAM registration annually, and the Department recommends that an LEA begin the SAM registration or re-activation process early to prevent delays in accessing any awarded SRSA funds. Note, an LEA that receives an SRSA award must have a UEI with an active registration status in SAM to access its SRSA grant funds. An LEA may not receive an SRSA award until it has a UEI with an active registration status in SAM.

III. Application and Submission Information

Note: Since FY 2020, the SRSA grant application is no longer housed on the *Grants.gov* platform. Please see below for the updated application process.

Electronic Submission of Applications Using MAX.gov:

The Department will send an email with a unique application link on February 8, 2023, to each LEA that is eligible and estimated to receive a positive allocation for an FY 2023 SRSA grant award. The email will include detailed instructions for completing the electronic application via the *Office of Management and Budget (OMB) MAX Survey* platform.

An eligible LEA must submit an electronic application via *OMB MAX Survey* by April 14, 2023, to be assured of receiving an FY 2023 SRSA grant award. The Department may consider applications submitted after the deadline to the extent practicable and contingent upon the availability of funding.

Please note the following:

- We estimate that it will take 30 minutes to complete the application. We strongly recommend that you do not wait until the application deadline date to begin the application process, however.
- The FY 2023 SRSA application incorporates minor revisions approved through a revised information collection; applicants are encouraged to read the application instructions thoroughly and participate in technical assistance opportunities offered by the Department that will be announced when the application becomes available. To better ensure applications are processed in a timely, accurate, and efficient manner, eligible LEAs will receive periodic emails reminding them to complete the SRSA application prior to the April 14, 2023, deadline.
- An application received by *OMB MAX Survey* is dated and time-stamped upon submission, and an applicant will receive a confirmation email after the application is submitted.
- If any applicant information changes (*e.g.,* address or contact information for the LEA) after an application has been submitted via *OMB MAX Survey,* the applicant must contact REAP staff directly by emailing *reap@ed.gov* to update such information.

Application Deadline Date Extension in Case of Technical Issues with OMB MAX Survey:

If you are unable to submit an application by April 14, 2023, because of technical issues with *OMB MAX Survey,* contact REAP staff by emailing *reap@ed.gov* within 5 business days and provide an explanation of the technical problem you experienced. The late application will be accepted as having met the deadline if REAP program staff can confirm that a technical issue occurred with the *OMB MAX Survey* system that affected your ability to submit the application by the deadline. As noted above, if you submit the application after the deadline and the late submission is not due to a technical issue about which you have notified REAP program staff, the Department may consider your application to the extent practicable and contingent upon the availability of funding.

IV. Other Procedural Requirements

System for Award Management (SAM):

To do business with the Department, an entity must maintain an active registration in the SAM, the Federal Government's primary registrant database, using the following information:

a. UEI.

b. Legal business name.

c. Physical address associated with the UEI.

d. Taxpayer identification number (TIN).

e. Taxpayer name associated with the TIN.

f. Bank information to set up Electronic Funds Transfer (EFT) (*i.e.,* routing number, account number, and account type (checking/savings)).

V. Acessibility Information and Program Authority

Accessible Format: Upon request to the REAP Group Leader (using the email or phone number provided in the **FOR FURTHER INFORMATION CONTACT** section above), individuals with disabilities can

obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *https://www.govinfo.gov/.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: Sections 5211–5212 of the ESEA, 20 U.S.C. 7345–7345a.

James F. Lane,

Senior Advisor, Office of the Secretary, delegated the authority to perform the functions and duties of the Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 2023–02606 Filed 2–6–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2022–SCC–0148]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Fiscal Operations Report for 2022–2023 and Application To Participate 2024–2025 (FISAP) and Reallocation Form

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before March 9, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, (202) 377–4018.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Fiscal Operations Report for 2022–2023 and Application to Participate 2024–2025 (FISAP) and Reallocation Form.

OMB Control Number: 1845–0030.

Type of Review: Extension without change of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments; Private Sector.

Total Estimated Number of Annual Responses: 3,778.

Total Estimated Number of Annual Burden Hours: 88,626.

Abstract: The Higher Education Act of 1965, as amended, requires participating Title IV institutions to apply for funds and report expenditures for the Federal Perkins Loan (Perkins), the Federal Supplemental Educational Opportunity Grant (FSEOG) and the Federal Work-Study (FWS) Programs on an annual basis. The data submitted electronically in the Fiscal Operations Report and Application to Participate (FISAP) is used by the Department of Education to determine the institution's funding need for the award year and monitor program effectiveness and accountability of fund expenditures. The data is used in conjunction with institutional program reviews to assess the administrative capability and compliance of the applicant. There are no other resources for collecting this data.

Dated: February 2, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–02548 Filed 2–6–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10661–051]

Indiana Michigan Power Company; Notice of Intent to Prepare an Environmental Assessment

On September 30, 2021, Indiana Michigan Power Company filed an application for a subsequent license for the 1.2-megawatt Constantine Hydroelectric Project No. 10661 (Constantine Project). The Constantine Project is located on the St. Joseph River, in the Village of Constantine, in St. Joseph County, Michigan. The project does not occupy federal land.

In accordance with the Commission's regulations, on September 30, 2022, Commission staff issued a notice that the project was ready for environmental analysis (REA Notice). Based on the information in the record, including comments filed on the REA Notice, staff does not anticipate that licensing the project would constitute a major federal action significantly affecting the quality of the human environment. Therefore, staff intends to prepare an Environmental Assessment (EA) on the application to relicense the Constantine Project.

The EA will be issued and circulated for review by all interested parties. All comments filed on the EA will be analyzed by staff and considered in the Commission's final licensing decision.

The application will be processed according to the following schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Commission issues EA	July 2023[1]
Comments on EA	August 2023.

Any questions regarding this notice may be directed to Lee Emery at (202) 502–8379 or *lee.emery@ferc.gov*.

Dated: February 1, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–02559 Filed 2–6–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2318–054,12252–036; Project Nos. 2318–053, 12252–035]

Erie Boulevard Hydro Power, L.P.; Hudson River—Black River Regulating District; Notice of Petitions for Declaratory Order

Take notice that on January 25, 2023, pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, Hudson River—Black River Regulating District (District) filed a petition for declaratory order in Project Nos. 2318–053 and 12252–035 requesting the Commission declare that Erie Boulevard Hydro Power, L.P. (Erie Boulevard), the licensee for the E.J. West Project No. 2318, must continue to maintain a necessary property interest in the head created, owned, and controlled by the District as part of the Great Sacandaga Lake Project No. 12252 (GSL Project), as more fully explained in the petition.

On January 27, 2023, pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedure, Erie Boulevard filed a petition for declaratory order in Project Nos. 2318–054 and 12252–036 requesting the Commission declare that the Federal Power Act preempts the regulatory authority of the District to assess charges under state law to Erie for releases from the District's GSL Project and that the District is precluded from materially changing its operation of the GSL Project by diverting releases around Erie Boulevard's E.J. West Project No. 2318 or significantly modifying the timing of GSL Project releases without prior Commission authorization, as more fully explained in the petition.

Any person desiring to intervene or to protest these filings 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the petitioners.

Any person wishing to comment on the petitions may do so. The Commission encourages electronic submission of 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.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Comment Date: 5 p.m. Eastern time on March 6, 2023.

Dated: February 1, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–02557 Filed 2–6–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10661–051]

Indiana Michigan Power Company; Notice of Waiver Period for Water Quality Certification Application

On November 30, 2022, Indiana Michigan Power Company submitted to the Federal Energy Regulatory Commission (Commission) a copy of its application for a Clean Water Act section 401(a)(1) water quality certification filed with the Michigan Department of Environment, Great Lakes, and Energy (Michigan EGLE), in conjunction with the above captioned project. Pursuant to 40 CFR 121.6 and section 5.23(b) of the Commission's regulations,[1] we hereby notify Michigan EGLE of the following:

Date of Receipt of the Certification Request: November 30, 2022.

Reasonable Period of Time to Act on the Certification Request: One year (November 30, 2023).

If Michigan EGLE fails or refuses to act on the water quality certification request on or before the above date, then the agency certifying authority is deemed waived pursuant to section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

Dated: February 1, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–02558 Filed 2–6–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2022–0084; FRL–10595–01–OMS]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; NESHAP for Hazardous Waste Combustors (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NESHAP for Hazardous Waste Combustors (EPA ICR Number 1773.13, OMB Control Number 2060–0743), to the Office of Management and Budget

[1] The Council on Environmental Quality's (CEQ) regulations under 40 CFR 1501.10(b)(1) require that EAs be completed within 1 year of the federal action agency's decision to prepare an EA. This notice establishes the Commission's intent to prepare an EA for the Constantine Project. Therefore, in accordance with CEQ's regulations, the EA must be issued within 1 year of the issuance date of this notice.

[1] 18 CFR 5.23(b) (2022).

(OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through January 31, 2023. Public comments were previously requested, via the **Federal Register**, on July 22, 2022, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

DATES: Comments may be submitted on or before March 9, 2023.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2022–0084, to EPA online using *https://www.regulations.gov/* (our preferred method), or by email to *docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov*.

SUPPLEMENTARY INFORMATION: This is a proposed extension of the ICR, which is currently approved through January 31, 2023. 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.

Public comments were previously requested via the **Federal Register** on July 22, 2022 during a 60-day comment period (87 FR 43843). This notice allows for an additional 30 days for public comments. Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov*, or in person at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets*.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Hazardous Waste Combustors (40 CFR part 63, subpart EEE) apply to the following types of new and existing combustion units that burn hazardous waste: incinerators, cement kilns, lightweight aggregate kilns, solid fuel boilers, liquid fuel boilers, and hydrochloric acid production facilities. In general, all NESHAP standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NESHAP.

Form Numbers: None.

Respondents/affected entities: Owners and operators of hazardous waste combustors.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart EEE).

Estimated number of respondents: 170 (total).

Frequency of response: Initially, occasionally, semiannually, and quarterly.

Total estimated burden: 59,100 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $9,690,000 (per year), which includes $2,770,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: The decrease in burden from the most-recently approved ICR is due to an adjustment(s). The adjustment decrease is due to an overall decrease in the number of respondents. This ICR updates the number of facilities and HWC units based on correspondence with EPA regions.

There is a decrease in O&M costs from the most-recently approved ICR due to the decreased number of respondents and a correction to the number of respondents incurring costs for COMs/opacity monitoring. The decrease is offset somewhat by a correction to the respondents incurring O&M costs for correlation testing. The number of new sources is expected to remain the same as estimated for the previous ICR; therefore, there are no changes to the capital costs.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2023–01278 Filed 2–6–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX; FR ID 126104]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before April 10, 2023. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should

advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Empowering Broadband Consumers Through Transparency, Report and Order and Further Notice of Proposed Rulemaking, CG Docket No. 22–2, FCC 22–86 (*Broadband Label Order*).

Form Number: N/A.

Type of Review: New information collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 6,010 respondents; 30,050 responses.

Estimated Time per Response: 0.5 (30 minutes) to 9 hours.

Frequency of Response: On-occasion reporting requirement and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for the information collection requirements is contained in sections 4(i), 4(j), 13, 201(b), 254, 257, 301, 303, 316, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 163, 201(b), 254, 257, 301, 303, 316, 332, section 60504 of the Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429 (2021), and section 904 of the Consolidated Appropriations Act, 2021, Public Law 116–260, 134 Stat. 1182 (2020), as amended.

Total Annual Burden: 117,271 hours.

Total Annual Cost: No cost.

Needs and Uses: This notice and request for comments seeks to establish a new information collection as it pertains to Empowering Broadband Consumers Through Transparency, Report and Order and Further Notice of Proposed Rulemaking, published at 87 FR 76959 (Dec. 16, 2022) (*Broadband Label Order*). The information will be used to implement section 60504(a) of the Infrastructure Investment and Jobs Act (Infrastructure Act). The Infrastructure Act, in relevant part, directed the Commission ''[n]ot later than 1 year after the date of enactment of th[e] Act, to promulgate regulations to require the display of broadband consumer labels, as described in the Public Notice of the Commission issued on April 4, 2016 (DA 16–357), to disclose to consumers information regarding broadband internet access service plans.'' Further, the Infrastructure Act required that the label ''include information regarding whether the offered price is an introductory rate and, if so, the price the consumer will be required to pay following the introductory period.''

On January 27, 2022, the Commission released a Notice of Proposed Rulemaking, published at 87 FR 6827 (Feb. 7, 2022), initiating a proceeding to implement section 60504 of the Infrastructure Act. Specifically, the Commission proposed to require that broadband internet access service providers (ISPs or providers) display, at the point of sale, labels that disclose to consumers certain information about prices, introductory rates, data allowances, broadband speeds, and management practices, among other things.

On November 14, 2022, the Commission adopted the *Broadband Label Order* requiring ISPs to display a new broadband label to help consumers comparison shop among broadband services, thereby implementing section 60504 of the Infrastructure Act. Specifically, the Commission required ISPs to display, at the point of sale, a broadband consumer label containing critical information about the provider's service offerings, including information about pricing, introductory rates, data allowances, performance metrics, and whether the provider participates in the Affordable Connectivity Program (ACP). The Commission required that ISPs display the label for each stand-alone broadband internet access service they currently offer for purchase, and that the label link to other important information such as network management practices, privacy policies, and other educational materials. Consistent with the Infrastructure Act, the label adopted for fixed and mobile broadband internet access service is similar to the two voluntary labels the Commission approved in 2016, with certain modifications. The label resembles the well-known nutrition labels that consumers have come to rely on when shopping for food products.

In addition to label content, the Commission adopted requirements for the label's format and display location to ensure consumers can make side-by-side comparisons of various service offerings from an individual provider or from alternative providers—something essential for making informed decisions. Labels must be displayed on providers' websites and at alternate sales channels such as retail locations and over the phone. The label must be accessible for people with disabilities and for non-English speakers. Labels must also be available via a customer's online account portal. ISPs shall maintain an archive of all labels for a period of no less than two years from the time the service plan reflected in the label is no longer available for purchase by a new subscriber and the provider has removed the label from its website or alternate sales channels. In addition, third parties will be able to easily analyze information contained in the labels and help consumers with their purchase decisions, as providers are required to make the label content available in a machine-readable format on their websites. Finally, the Commission adopted a label template that all ISPs are required to display at the point of sale. This label establishes the formatting and content of all requirements adopted in the *Broadband Label Order.*

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–02486 Filed 2–6–23; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers CMS–R–262, CMS–R–282, CMS–10227, CMS–10609 and CMS–10731]

Agency Information Collection Activities: Submission for OMB Review; 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 (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 a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate 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 on the collection(s) of information must be received by the OMB desk officer by March 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 30-day Review—Open for Public Comments'' or by using the search function.

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 Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (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 (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-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 that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* CMS Plan Benefit Package (PBP) and Formulary CY 2024; *Use:* Under the Medicare Modernization Act (MMA), Medicare Advantage (MA) and Prescription Drug Plan (PDP) organizations are required to submit plan benefit packages for all Medicare beneficiaries residing in their service area. The plan benefit package submission consists of the Plan Benefit Package (PBP) software, formulary file, and supporting documentation, as necessary. MA and PDP organizations use the PBP software to describe their organization's plan benefit packages, including information on premiums, cost sharing, authorization rules, and supplemental benefits. They also generate a formulary to describe their list of drugs, including information on prior authorization, step therapy, tiering, and quantity limits.

CMS requires that MA and PDP organizations submit a completed PBP and formulary as part of the annual bidding process. During this process, organizations prepare their proposed plan benefit packages for the upcoming contract year and submit them to CMS for review and approval. CMS uses this data to review and approve the benefit packages that the plans will offer to Medicare beneficiaries. This allows CMS to review the benefit packages in a consistent way across all submitted bids during with incredibly tight timeframes. This data is also used to populate data on Medicare Plan Finder, which allows beneficiaries to access and compare Medicare Advantage and Prescription Drug plans. *Form Number:* CMS–R–262 (OMB control number: 0938–0763); *Frequency:* Yearly; *Affected Public:* Private Sector, Business or other for-profits, Not-for-profits institutions; *Number of Respondents:* 839; *Total Annual Responses:* 8,932; *Total Annual Hours:* 57,126. (For policy questions regarding this collection contact Kristy Holtje, at 410–786–2209.)

2. *Type of Information Collection Request:* Extension with no change of a currently approved collection; *Title of Information Collection:* Medicare Advantage Appeals and Grievance Data Form; *Use:* Part 422 of Title 42 of the Code of Federal Regulations (CFR) distinguishes between certain information a Medicare Advantage (MA) organization must provide to each enrollee (on an annual basis) and information that the MA organization must disclose to any MA eligible individual (upon request). This requirement can be found in § 1852(c)(2)(C) of the Social Security Act and in 42 CFR 422.111(c)(3) which states that MA organizations must disclose information pertaining to the number of disputes, and their disposition in the aggregate, with the categories of grievances and appeals, to any individual eligible to elect an MA organization who requests this information.

The appeals and grievance data form is an OMB approved form for use by Medicare Advantage organizations to disclose grievance and appeal data, upon request, to individuals eligible to elect an MA organization. By utilizing the form, MA organizations will meet the disclosure requirements set forth in regulations at 42 CFR 422.111(c)(3). *Form Number:* CMS–R–282 (OMB control number: 0938–0778); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 949; *Total Annual Responses:* 63,740; *Total Annual Hours:* 5,964. (For policy questions regarding this collection contact Sabrina Edmonston at 410–786–3209.)

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* PACE State Plan Amendment Preprint; *Use:* If a state elects to offer PACE as an optional Medicaid benefit, it must complete a state plan amendment preprint packet described as ''Enclosures 3, 4, 5, 6, and 7.'' CMS will review the information provided in order to determine if the state has properly elected to cover PACE services as a state plan option. In the event that the state changes something in the state plan, only the affected page must be updated. *Form Number:* CMS–10227 (OMB control number: 0938–1027); *Frequency:* Once and occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 7; *Total Annual Responses:* 2; *Total Annual Hours:* 140. (For policy questions regarding this collection contact Angela Cimino at 410–786–2638.)

4. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicaid Program Face-to-Face Requirements for Home Health Services and Supporting Regulations; *Use:* Physicians (or for medical equipment, authorized non-physician practitioners (NPPs) including nurse practitioners, clinical nurse specialists and physician assistants) must document that there was a face-to-face encounter with the Medicaid beneficiary prior to the physician making a certification that home health services are required. The burden associated with this requirement is the time and effort to complete this documentation. The burden also includes writing, typing, or dictating the face-to-face documentation and signing/dating the documentation.

Section 3708 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act permits nurse practitioners (NPs), clinical nurse specialists (CNSs), and

physician assistants (PAs) to certify the need for home health services and to order services in the Medicare and Medicaid programs. As such, under CMS–5531–IFC, CMS amended 42 CFR 440.70 to remove the requirement that the NPPs have to communicate the clinical finding of the face-to-face encounter to the ordering physician. With expanding authority to order home health services, the CARES Act also provided that such practitioners are now capable of independently performing the face-to-face encounter for the patient for whom they are the ordering practitioner, in accordance with state law. *Form Number:* CMS–10609 (OMB control number: 0938–1319); *Frequency:* Occasionally; *Affected Public:* Private sector (business or other for-profits); *Number of Respondents:* 381,148; *Total Annual Responses:* 1,143,443; *Total Annual Hours:* 190,955. (For policy questions regarding this collection contact Alexandra Eitel at 410–786–0790.)

5. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* Generic Clearance for CMS and Medicare Administrative Contractor (MAC) Generic Customer Experience; *Use:* The Centers for Medicare & Medicaid Services (CMS) is requesting approval to collect generic feedback from respondents including, but not limited to Medicare providers, Medicare suppliers, provider or supplier staff, billers, credentialing agencies, researchers, clearinghouses, consultants, and attorneys. These surveys will give us insights into customers' perceptions and opinions and will be used to improve customer experiences and communications materials; however, the results will not be generalized to the population of study.

Improving agency programs requires ongoing systemic review of service delivery and program operations compared to defined standards. We'll use multiple methods to collect, analyze, and interpret information from this generic clearance to find the strengths and weaknesses of our current services. We'll use this feedback to inform process improvements or maintain service quality offered to providers and stakeholders. *Form Number:* CMS–10731 (OMB control number: 0938–New); *Frequency:* Occasionally; *Affected Public:* Private sector (business or other for-profits); *Number of Respondents:* 997,100; *Total Annual Responses:* 997,100; *Total Annual Hours:* 50,000. (For policy questions regarding this collection contact Alyssa Schaub-Rimel at 410–786–4660.)

Dated: February 2, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory.

[FR Doc. 2023–02579 Filed 2–6–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers CMS–10704, CMS–10387, CMS–10846, CMS–R–246 and CMS–10316]

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 (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 April 10, 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**).

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:* Health Reimbursement Arrangements and Other Account-Based Group Health Plans; *Use:* On June 20, 2019, the Department of the Treasury, the Department of Labor, and the Department of Health and Human Services (collectively, the Departments) issued final regulations titled ''Health Reimbursement Arrangements and Other Account-Based Group Health Plans'' (84 FR 28888) under section 2711 of the PHS Act and the health nondiscrimination provisions of HIPAA, Public Law 104–191 (HIPAA nondiscrimination provisions). The regulations expanded the use of health reimbursement arrangements and other account-based group health plans (collectively referred to as HRAs) and recognized certain HRAs as limited excepted benefits (the excepted benefit HRA), for plan years beginning on or after January 1, 2020. In general, the regulations expanded the use of HRAs by eliminating the prohibition on integrating HRAs with individual health insurance coverage, thereby permitting employers to offer individual coverage HRAs to employees that can be integrated with individual health insurance coverage or Medicare Parts A and B, or Part C. Under the regulations, employees are permitted to use amounts in an individual coverage HRA to pay expenses for medical care (including premiums for individual health insurance coverage and Medicare), subject to certain requirements. This information collection includes provisions related to substantiation of individual health insurance coverage (45 CFR 146.123(c)(5)), the notice requirement for individual coverage HRAs (45 CFR 146.123(c)(6)), and notification of termination of coverage (45 CFR 146.123(c)(1)(iii)). In the final rule ''Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2021; Notice Requirement for Non-federal Governmental Plans'' (85 FR 29164), under 45 CFR 146.145(b)(3)(viii)(E), excepted benefit HRAs offered by non-Federal governmental plan sponsors are required to provide a notice that describes conditions pertaining to eligibility to receive benefits, annual or lifetime caps or other limits on benefits under the excepted benefit HRA, and a description or summary of the benefits. This notice must be provided no later than 90 days after the employee becomes a participant in the excepted benefit HRA and annually thereafter. *Form Number:* CMS–10704 (OMB control number: 0938–1361); *Frequency:* Annually; *Affected Public:* Private Sector, State Governments; *Number of Respondents:* 11,574; *Total Annual Responses:* 1,037,674; *Total Annual Hours:* 5,889. (For policy questions regarding this collection contact Adam Pellillo at (667) 290–9621.)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Minimum Data Set 3.0 Nursing Home and Swing Bed Prospective Payment System (PPS) For the collection of data related to the Patient Driven Payment Model and the Skilled Nursing Facility Quality Reporting Program (QRP); *Use:* We are requesting to implement to the MDS 3.0 v1.18.11 beginning October 1, 2023 to October 1, 2026 in order to meet the requirements of policies finalized in the Federal Fiscal Year (FY) 2020 Skilled Nursing Facility (SNF) Prospective Payment System (PPS) final rule (84 FR 38728). The compliance date for the finalized policies (10/01/2020) was delayed due to the COVID–19 public health emergency (PHE). While there has been no change in assessment-level burden since the approval of the MDS 3.0 v1.17.2, there has been a change in total burden since 2019 when the package was originally approved due to a decrease in the number of MDS assessments completed and a change in the hourly rate for clinicians completing the assessment.

We use the MDS 3.0 PPS Item Set to collect the data used to reimburse skilled nursing facilities for SNF-level care furnished to Medicare beneficiaries and to collect information for quality measures and standardized patient assessment data under the SNF QRP. There have been some revisions to the assessment tool since the approval of MDS 3.0 v1.17.2. *Form Number:* CMS–10387 (OMB control number: 0938–1140); *Frequency:* Yearly; *Affected Public:* Private Sector: Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 15,472; *Total Annual Responses:* 3,371,993; *Total Annual Hours:* 2,866,194. (For policy questions regarding this collection contact Heidi Magladry at 410–786–6034).

3. *Type of Information Collection Request:* New Collection (Request for a new OMB control number); *Title of Information Collection:* Medicare Part D Manufacturer Discount Program Agreement; *Use:* Congress enacted the Inflation Reduction Act of 2022, Public Law 117–169 (IRA). Section 11201 of the IRA eliminates the coverage gap phase of the Part D benefit. It also sunsets the coverage gap discount program (CGDP) after December 31, 2024, and amends the Social Security Act (the Act) to add section 1860D–14C, requiring the Secretary to establish a new Medicare Part D manufacturer discount program (MDP) beginning January 1, 2025. Under the MDP, participating manufacturers are required to provide discounts on their ''applicable drugs'' (brand drugs, biologics, and biosimilars) both in the initial coverage phase and in the catastrophic coverage phase of the Part D benefit.

Information in this collection is needed to set up agreements between manufacturers and CMS. Under section 1860D–14C(a) of the Act, such agreements are required for manufacturers in order to participate in the MDP and, under section 1860D43(a) of the Act, for their applicable drugs to be covered under Part D beginning in 2025. The information collected from manufacturers in the Health Plan Management System (HPMS) (Appendix A) is needed to create and execute MDP agreements and to determine which manufacturers qualify as a specified manufacturer or specified small manufacturer for phased-in discounts under section 1860D–14C(g)(4) of the Act. Banking information collected by the TPA from manufacturers and plan sponsors (Appendix B) is needed to prepare invoices and process financial transactions (deposits and payments) through the ACH. *Form Number:* CMS–10846 (OMB control number: 0938-New); *Frequency:* Once; *Affected Public:* Private Sector: Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 659; *Total Annual Responses:* 659; *Total Annual Hours:* 4,613. (For policy questions regarding this collection contact Beckie Peyton at 410–786–1572).

4. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Advantage, Medicare Part D, and Medicare Fee-For-Service Consumer Assessment of Healthcare Providers and Systems (CAHPS) Survey; *Use:* CMS is required to collect and report

information on the quality of health care services and prescription drug coverage available to persons enrolled in a Medicare health or prescription drug plan under provisions in the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA). Specifically, the MMA under Sec. 1860D–4 (Information to Facilitate Enrollment) requires CMS to conduct consumer satisfaction surveys regarding Medicare prescription drug plans and Medicare Advantage plans and report this information to Medicare beneficiaries prior to the Medicare annual enrollment period. The Medicare CAHPS survey meets the requirement of collecting and publicly reporting consumer satisfaction information. The Balanced Budget Act of 1997 also requires the collection of information about fee-for-service plans.

The primary purpose of the Medicare CAHPS surveys is to provide information to Medicare beneficiaries to help them make more informed choices among health and prescription drug plans available to them. Survey results are reported by CMS in the Medicare & You Handbook published each fall and on the Medicare Plan Finder website. Beneficiaries can compare CAHPS scores for each health and drug plan as well as compare MA and FFS scores when making enrollment decisions. The Medicare CAHPS also provides data to help CMS and others monitor the quality and performance of Medicare health and prescription drug plans and identify areas to improve the quality of care and services provided to enrollees of these plans. CAHPS data are included in the Medicare Part C & D Star Ratings and used to calculate MA Quality Bonus Payments. *Form Number:* CMS–R–246 (OMB control number: 0938- 0732); *Frequency:* Yearly; *Affected Public:* Individuals and Households; *Number of Respondents:* 794,500; *Total Annual Responses:* 794,500; *Total Annual Hours:* 192,265. (For policy questions regarding this collection contact Lauren Fuentes at 410–786–2290).

5. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Implementation of the Medicare Prescription Drug Plan (PDP) and Medicare Advantage (MA) Plan Disenrollment Reasons Survey; *Use:* The Balanced Budget Act of 1997 required that the CMS publicly report two years of disenrollment rates on all Medicare + Choice (M+C) organizations. Disenrollment rates are a useful measure of beneficiary dissatisfaction with a plan; this information is even more useful when reasons for disenrollment are provided to consumers, insurers, and other stakeholders. Advocacy organizations agree that CMS needs to report disenrollment reasons so that disenrollment rates can be interpreted correctly.

Specifically, the MMA under Sec. 1860D–4 (Information to Facilitate Enrollment) requires CMS to conduct consumer satisfaction surveys regarding the PDP and MA contracts pursuant to section 1860D–4(d). Plan disenrollment is generally believed to be a broad indicator of beneficiary dissatisfaction with some aspect of plan services, such as access to care, customer service, cost of the plan, services, benefits provided, or quality of care.

The information generated from the disenrollment survey supports CMS' ongoing efforts to assess plan performance and provide oversight to the functioning of Medicare Advantage (Part C) and PDP (Part D) plans, which provide health care services to millions of Medicare beneficiaries (*i.e.,* 28 million for Part C coverage and 49 million for Part D coverage).

Beneficiary experiences of care (as measured in the MCAHPS survey) and dissatisfaction (as measured in the disenrollment survey) with plan performance are both important sources of information for plan monitoring and oversight. The disenrollment survey assesses different aspects of dissatisfaction (*i.e.,* reasons why beneficiaries voluntarily left a plan), which can identify problems with plan operations; performance areas evaluated include access to care, customer service, cost, coverage, benefits provided, and quality of care. Understanding how well plans perform on these dimensions of care and service helps CMS understand whether beneficiaries are satisfied with the care they are receiving from contracted plans. When and if plans are found to be performing poorly against an array of performance measures, including beneficiary disenrollment, CMS may take corrective action. *Form Number:* CMS–10316 (OMB control number: 0938–1113); *Frequency:* Yearly; *Affected Public:* Individuals and Households; *Number of Respondents:* 32,750; *Total Annual Responses:* 32,750; *Total Annual Hours:* 7,055. (For policy questions regarding this collection contact Beth Simons at 415–744–3780).

Dated: February 2, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023–02580 Filed 2–6–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Tribal Maternal, Infant, and Early Childhood Home Visiting Program Implementation Plan Guidance for Development and Implementation and Implementation and Expansion Grantees

AGENCY: Office of Early Childhood Development, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF), Office of Early Childhood Development (ECD) is requesting Office of Management and Budget (OMB) approval of Tribal Maternal, Infant, and Early Childhood Home Visiting (MIECHV) Program Implementation Plan Guidance for Tribal Home Visiting Development and Implementation Grants (DIG) and Tribal Home Visiting Implementation and Expansion Grants (IEG).

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act (PRA) of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing *infocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: Section 511(e)(8)(A) of title V of the Social Security Act requires that grantees under the Tribal MIECHV program, in the first year of their grants, submit an implementation plan on how they will meet the requirements of the program. Section 511(h)(2)(A) further states that the requirements for the MIECHV grants to tribes, tribal organizations, and urban Indian organizations are to be consistent, to the greatest extent practicable, with the requirements for grantees under the MIECHV program for states and jurisdictions.

The ACF Office of Early Childhood Development, in collaboration with the Health Resources and Services Administration, Maternal and Child Health Bureau awarded grants for the Tribal MIECHV Program to support cooperative agreements to conduct community needs assessments; plan for

and implement high-quality, culturally relevant, evidence-based home visiting programs in at-risk tribal communities; establish, measure, and report on progress toward meeting performance measures in six legislatively mandated benchmark areas; and conduct rigorous evaluation activities to build the knowledge base on home visiting among Native populations.

During the first grant year, Tribal Home Visiting grantees must comply with the requirement to submit an implementation plan that should feature planned activities to be carried out under the program in years 2–5 of their cooperative agreements. To assist grantees with meeting these requirements, ACF created guidance for grantees to use when writing their plans. The DIG and IEG guidance specify that grantees must provide a plan to address the following areas:

- Community Needs and Readiness Assessment
- Program Design
- Program Blueprint
- Plan for Data Collection, Management and Performance Measurement
- Fidelity Monitoring and Quality Assurance

Respondents: Tribal Home Visiting Managers (information collection does not include direct interaction with individuals or families that receive the services).

TOTAL BURDEN ESTIMATES

Instrument	Total number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Implementation Plan Guidance for Development and Implementation Grantees	13	1	1,000	13,000
Implementation Plan Guidance for Implementation and Expansion Grantees	35	1	1,000	35,000
Estimated Total Annual Burden Hours:				48,000

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: Title V of the Social Security Act, sections 511(e)(8)(A) and 511(h)(2)(A).

John M. Sweet Jr,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–02543 Filed 2–6–23; 8:45 am]

BILLING CODE 4184–43–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2019–E–5658 and FDA–2019–E–5659]

Determination of Regulatory Review Period for Purposes of Patent Extension; YUPELRI

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for YUPELRI and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect must submit either electronic or written comments and ask for a redetermination by April 10, 2023. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 7, 2023. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

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 April 10, 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 Nos. FDA–2019–E–5658; FDA–2019–E–5659 for Determination of Regulatory Review Period for Purposes of Patent Extension; YUPELRI. 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 § 10.20 (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.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, YUPELRI (revefenacin) indicated for maintenance treatment of patients with chronic obstructive pulmonary disease. Subsequent to this approval, the USPTO received patent term restoration applications for YUPELRI (U.S. Patent Nos. 7,288,657 and 7,585,879) from Theravance Biopharma R&D IP, LLC and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated December 26, 2019, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of YUPELRI represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for YUPELRI is 1,724 days. Of this time, 1,362 days occurred during the testing phase of the regulatory review period, while 362 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* February 21, 2014. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on February 21, 2014.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* November 13, 2017. FDA has verified the applicant's claim that new drug application (NDA) for YUPELRI (NDA 210598) was initially submitted on November 13, 2017.

3. *The date the application was approved:* November 9, 2018. FDA has verified the applicant's claim that NDA 210598 was approved on November 9, 2018.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,042 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see DATES), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket Nos. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 1, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–02498 Filed 2–6–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–0134]

Agency Information Collection Activities; Proposed Collection; Comment Request; Administrative Practices and Procedures; Formal Hearings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection associated with general FDA administrative practices and procedures, including requests for formal hearings.

DATES: Either electronic or written comments on the collection of information must be submitted by April 10, 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 April 10, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received 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–2023–N–0134 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Administrative Practices and Procedures; Formal Hearings.'' 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.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) 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 (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information,

before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following 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.

FDA Administrative Practices and Procedures; Formal Hearings

OMB Control No. 0910–0191—Extension

This information collection supports FDA regulations found in part 10 (21 CFR part 10), parts 12 through 16 (21 CFR parts 12 through 16), and part 19 (21 CFR part 19). These regulations are established in accordance with the Administrative Procedures Act (5 U.S.C. subchapter 11) and implement administrative practice and procedures to give instructions to those conducting business with FDA. Regulations in part 10 describe general administrative practices and include content and format instruction on submitting information to the Agency, petitions for Agency action, and other topics such as the public calendar. Regulations in parts 12 through 16 cover formal evidentiary, public, and regulatory hearings. The information collection also includes burden associated with waiver requests under § 10.19 (21 CFR 10.19). Unless a waiver, suspension, or modification submitted under § 10.19 is granted by the Commissioner of Food and Drugs, the regulations in part 10 apply to all petitions, hearings, and other administrative proceedings and activities conducted by FDA. Because information associated with regulations in parts 12 through 16 is obtained during the conduct of an official administrative action as described under 5 CFR 1320.4, we account only for burden we attribute to initiating the respective actions.

The information collection also includes burden associated with general meeting requests and correspondence submitted to FDA under § 10.65 (21 CFR 10.65), as well as general submissions associated with § 10.115 (21 CFR 10.115) which provides for public participation in the development of Agency guidance documents through requests to our Dockets Management Staff. Most burden attributable to recommendations found in FDA guidance documents is accounted for within information collection request (ICR) approvals respective to the topic-specific guidance document; however here we are accounting for burden associated with general public submissions as described in § 10.115(f)(3).

The information collection also includes burden that may be associated with the procedural guidance document, ''Citizen Petitions and Petitions for Stay of Action Subject to Section 505(q) of the Federal Food, Drug, and Cosmetic Act'' (September 2019), available for download from our website at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/citizen-petitions-and-petitions-stay-action-subject-section-505q-federal-food-drug-and-cosmetic-act.* The guidance document provides information regarding our current thinking on interpreting section 505(q) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(q)) and includes procedural instruction on submitting certain citizen petitions and petitions for stay of FDA action. The guidance document also describes how FDA interprets the provisions of section 505(q) requiring that (1) a petition include a certification and (2) supplemental information or comments on a petition include a verification. It also addresses the relationship between the review of petitions and pending ANDAs, 505(b)(2) applications, and 351(k) applications for which a decision on approvability has not yet made.

We estimate the burden of the information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
10.19—request for waiver, suspension, or modification of requirements	7	1	7	1	7
10.30 and 10.31—citizen petitions and petitions related to ANDA,[2] certain NDAs,[3] or certain BLAs [4]	200	1	200	24	4,800
10.33—administrative reconsideration of action	9	1	9	10	90
10.35—administrative stay of action	12	1	12	10	120
10.65—meetings and correspondence	37	1	37	5	185
10.85—requests for Advisory opinions	1	1	1	16	16
10.115(f)(3)—submitting draft guidance proposals	26	1	26	4	104
12.22—Filing objections and requests for a hearing on a regulation or order	18	1	18	20	360
12.45—Notice of participation	5	1	5	3	15
Total					5,697

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Abbreviated New Drug Applications.
[3] New Drug Applications.
[4] Biologic License Applications.

Based on submissions to FDA's Division of Dockets Management since our last evaluation of the information collection, we have made adjustments to burden estimates associated with the individual activities that correspond to the applicable provisions. As a result, the information collection reflects a decrease of 4,223 annual burden hours.

Dated: February 1, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–02500 Filed 2–6–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–0862]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; The Real Cost Campaign Outcomes Evaluation Study: Cohort 3

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by March 9, 2023.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The title of this information collection is ''The Real Cost Campaign Outcomes Evaluation Study: Cohort 3.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

The Real Cost Campaign Outcomes Evaluation Study: Cohort 3

OMB Control Number 0910—NEW

This information collection supports the development and implementation of FDA's public education campaign related to tobacco use. To reduce the public health burden of tobacco use in the United States and educate the public—especially young people—about the dangers of tobacco use, the FDA Center for Tobacco Products (CTP) is developing and implementing multiple public education campaigns.

FDA launched ''The Real Cost'' in February 2014, seeking to reduce tobacco use among at-risk youth ages 12–17 in the United States who are open to smoking cigarettes and/or using electronic nicotine delivery systems (ENDS) products, or have already experimented with cigarettes and/or ENDS products. Complementary evaluation studies, including the ''Evaluation of FDA's Public Education Campaign on Teen Tobacco (ExPECTT),'' were designed and implemented to measure awareness of and exposure to ''The Real Cost'' paid media campaign among youth ages 12–17 in targeted areas of the United States.

The first cohort (ExPECTT: Cohort 1) assessed the campaign's impact on outcome variables of interest from November 2013 to November 2016. The second cohort (ExPECTT: Cohort 2) has been assessing the campaign's impact on outcome variables of interest from June 2018 and will run through August 2022. To continue assessing the impact of ''The Real Cost'' campaign, FDA will implement The Real Cost Campaign Outcomes Evaluation Study: Cohort 3. The study will consist of four waves of data collection, including the baseline survey and three follow-up (FU) surveys. Online surveys with youth ages 11–20 will be conducted at baseline.

Online surveys of youth will be conducted in the United States to measure the effectiveness of FDA's ''The Real Cost'' campaign. The purpose of FDA's The Real Cost Campaign Outcomes Evaluation Study: Cohort 3 is to evaluate whether changes in key outcomes can be attributed to exposure to the campaign. The strength of the attribution is determined by the ability of the evaluation approach to rule out alternative explanations for observed changes in key outcomes. To improve attribution, we intend to measure self-reported campaign exposure to media advertising, which among many things, will enable FDA to assess its relationship with market-level delivery.

The goal of The Real Cost Campaign Outcomes Evaluation Study: Cohort 3 is to determine whether future waves of ''The Real Cost'' public education campaign will influence key outcomes including:

- Awareness of campaign messages (self-reported exposure)
- Specific beliefs targeted by messages (message-targeted beliefs)
- Psychosocial predictors or precursors of tobacco use behavior
  - Health and addiction risk perceptions
  - Perceived loss of control or threat to freedom expected from tobacco use
  - Anticipated guilt, shame, and regret from tobacco use
  - Tobacco use susceptibility
  - Intention or willingness to use tobacco
  - Intention to quit and/or reduce daily consumption

In support of the provisions of the Tobacco Control Act (Pub. L. 111–31) that require FDA to protect the public health and to reduce tobacco use by minors, FDA requests OMB approval to collect information to evaluate CTP's public education campaign ''The Real Cost'' through the Evaluation Study: Cohort 3.

In the **Federal Register** of July 26, 2022 (87 FR 44409), FDA published a 60-day notice requesting public comment on the proposed collection of information. One PRA related comment was received.

(Comment) The commentor does not support this data collection and expressed concerns with collecting data from those who identify as LGBTQ+. The rational for not collecting these data is because those who identify as LGBTQ+ are at risk for privacy and security concerns by asking them to report their sexual orientation or gender identification. The commentor believes this type of questioning is invasive and may expose LGBTQ+ members to further bias and discrimination. Further, the commentor believes that FDA's proposal to target LGBTQ+ youth aged 11–17 is concerning as youth can be particularly vulnerable to exploitation for two reasons: (1) their minds are still developing, and (2) ''function creep'' occurs when data is collected for one reason and can then be utilized for other, non-intended purposes.

(Response) FDA appreciates the comment in response to the 60-day notice. We provide more information below about why this is an important opportunity to support LGBTQ+ youth populations and how FDA is proposing to carry out this collection of information in a manner that minimizes risks, while building credible and useful evidence about LGBTQ+ youth populations. This data will be used to inform tobacco public education campaigns that aim to reduce tobacco use disparities, including among LGBTQ+ populations. Recent data from the 2021 National Youth Tobacco Survey demonstrates that teens who are sexual or gender minorities have higher rates of cigarette and e-cigarette use compared to heterosexual teens. For

example, 6 percent of heterosexual teens reported ever experimenting with cigarettes, compared to 10.9 percent of gay or lesbian teens, 15.6 percent of bisexual male teens, 14 percent of bisexual female teens, and 11.2 percent of teens who are transgender. Furthermore, 17.9 percent of heterosexual teens reported ever using e-cigarettes, compared to 27.3 percent of bisexual male teens, 29.6 percent of bisexual female teens, and 30.7 percent of teens who are transgender. This is credible evidence as to why LGBTQ+ youth are priority populations when it comes to minimizing health disparities.

The cited negative impact raised by the commentor, in which data collected are misused to the detriment of LGBTQ+ youth, is mitigated by the extensive, specific, and efficacious measures and practices put in place by FDA and its contractors to secure data privacy and avoid individual harm. This is not a broad data collection effort but rather data collection limited in nature solely for the purpose of collecting data to answer a circumscribed set of questions that will support FDA's mission of protecting and promoting public health which includes LGBTQ+ youth populations. To address the privacy concerns mentioned in the comment, FDA has included a document in the docket which details the privacy protections for this study.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Respondent/Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Parent Recruitment Study Materials—Main: Baseline & Follow-up 2 Replenishment.	545,000	1	545,000	0.17 (10 minutes)	92,650
Parent Screener—Main: Baseline & Follow-up 2 Replenishment	272,500	1	272,500	0.08 (5 minutes)	21,800
Household Roster—Main: Baseline & Follow-up 2 Replenishment	5,500	1	5,500	0.08 (5 minutes)	440
CATI Screener—Main: Baseline & Follow-up 2 Replenishment	2,000	1	2,000	0.08 (5 minutes)	160
Parent Permission—Main: Baseline & Follow-up 1,2,3	21,600	1	21,600	0.08 (5 minutes)	1,728
Youth Assent—Main: Baseline & Follow-up 1,2,3	21,600	1	21,600	0.08 (5 minutes)	1,728
Youth Survey—Main: Baseline & Follow-up 1,2,3	21,600	1	21,600	0.50 (30 minutes)	10,800
Youth Screener—Supplemental	5,000	1	5,000	0.08 (5 minutes)	400
Youth Assent—Supplemental: Baseline & Follow-up 1,2,3	4,428	1	4,428	0.08 (5 minutes)	354
Youth Survey—Supplemental: Baseline & Follow-up 1,2,3	4,428	1	4,428	0.50 (30 minutes)	2,214
Total					132,274

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

Main Data Collection

The main data collection will include a baseline survey and three FU surveys. The recruitment sample for the main data collection is youth ages 11–17. We intend to replenish the longitudinal sample at FU2 to obtain 6,000 youth respondents to maintain at least 4,800 respondents at each wave. We expect the screening process to yield a 100:1 ratio of eligible responding households. We estimate that we will mail 400,000 recruitment/study material packages (10 minutes per response) in order to receive at least 200,000 completed screeners (5 minutes per response) by adults within households. Households completing the screener by mail will be contacted to complete a computer-assisted telephone interview (CATI) where an interviewer will determine eligibility and obtain parental permission (5 minutes per response). For households identified as eligible for the study during the screening process (*i.e.,* the presence of 1 or more youth ages 11 to 17), we will ask the parent/guardian to list all eligible youth in their households for study selection, a process called rostering (5 minutes per response). We estimate from the 200,000 completed screeners, we will recruit 6,000 eligible youth from the 4,000 eligible households.

Baseline

At baseline, we plan to collect data from approximately 6,000 youth respondents from the 4,000 eligible households identified through screening. More than one eligible youth per household may be recruited for the study. These 6,000 youth respondents are estimated to provide baseline assent (5 minutes per response) and complete the survey (30 minutes per response). For these youth respondents, we will ask the parent/guardian to provide permission (5 minutes per response) for the youth to participate in the study. We estimate that we will lose approximately 20 percent of the original baseline sample at each FU wave.

Follow-Up 1

We estimate that we will retain 80 percent of the sample from baseline and collect data from 4,800 respondents (5 minutes per response) at FU1. These 4,800 youth respondents are estimated to provide assent (5 minutes per response) for FU1 and complete the survey (30 minutes per response). For these youth respondents, we will ask the parent/guardian to provide permission (5 minutes per response) for the youth to participate in the study. We do not intend to replenish the sample at FU1.

Follow-Up 2

We estimate that we will retain 80 percent of the sample from FU1 resulting in 3,840 respondents at FU2. To replenish the longitudinal sample at FU2, we will send additional ''baseline'' screeners to new households. We intend to send recruitment/study material packages to an additional 145,000 households (10 minutes per response) to receive an estimated 72,500 completed screeners (5 minutes per response). For households identified as eligible for the study during the screening process (*i.e.,* the presence of 1 or more youth ages 11 to 17), we will ask the parent/guardian to list all eligible youth in their households for study selection, a process called rostering (5 minutes per response). Households completing the screener by mail will be contacted to complete a CATI where an interviewer will determine eligibility and obtain parental permission (5 minutes per response). From these completed screeners, we estimate that we will obtain data from an additional 2,160 youth within approximately 1,500 households. Replenishing the sample will allow us to obtain 6,000 youth respondents at FU2 (3,840 from the original sample, and 2,160 from the replenishment sample) and maintain a minimum study sample of 4,800 respondent at all study waves. These 6,000 youth respondents are estimated

to provide assent (5 minutes per response) for FU2 and complete the survey (30 minutes per response). For these youth respondents, we will ask the parent/guardian to provide permission (5 minutes per response) for the youth to participate in the study.

Follow-Up 3

We estimate that we will retain 80 percent of the sample from FU2 and collect data from 4,800 respondents at FU3. We do not intend to replenish the sample at FU3. These 4,800 youth respondents are estimated to provide assent (5 minutes per response) for FU2 and complete the survey (30 minutes per response). For these youth respondents, we will ask the parent/guardian to provide permission (5 minutes per response) for the youth to participate in the study.

Supplemental Data Collection

In addition to the main data collection, we intend to collect data from subpopulations shown to be at higher risk of initiating use of cigarettes and ENDS products, such as youth who identify as LGBTQ+ and youth who have a mental health disorder. Data collection will consist of online self-administered surveys of participants recruited through social media advertisements. The recruitment sample for this data collection will be youth ages 14 to 20 who meet the subpopulation criteria. We intend to collect data at baseline from 1,500 respondents. We anticipate that we will need to screen 5,000 respondents (5 minutes per response) to obtain a baseline sample of 1,500 respondents who meet the subpopulation criteria. At baseline, we plan to collect data from approximately 1,500 respondents identified as eligible through screening. These 1,500 youth respondents are estimated to provide assent (5 minutes per response) and complete the survey (30 minutes per response). We estimate that we will lose approximately 20 percent of the original baseline sample at each FU wave; therefore, estimating 1,200 respondents at FU1, 960 respondents at FU2, and 768 respondents at FU3. For the FU samples, youth will provide assent (5 minutes per response) and complete the survey (30 minutes per response).

We made several minor edits from the 60-day **Federal Register** notice to the 30-day **Federal Register** notice. These edits consisted of (a) minor revisions for clarity (*e.g.,* indicating that self-report exposure is a measures of awareness rather than a unique outcome); (b) removing text alluding to using multiple methods to understand the campaign impact (because the proposed study is just one method); and (c) removing bullets on two outcomes related to perceived norms of tobacco use, as the ads that will be on air at the time of data collection are not attempting to change those particular outcomes so they are not relevant to assess in the study.

Dated: February 1, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–02501 Filed 2–6–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–0008]

Advisory Committee; Cellular, Tissue, and Gene Therapies Advisory Committee; Renewal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; renewal of Federal advisory committee.

SUMMARY: The Food and Drug Administration (FDA) is announcing the renewal of the Cellular, Tissue, and Gene Therapies Advisory Committee by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the Cellular, Tissue, and Gene Therapies Advisory Committee for an additional 2 years beyond the charter expiration date. The new charter will be in effect until the October 28, 2024, expiration date.

DATES: Authority for the Cellular, Tissue, and Gene Therapies Advisory Committee will expire on October 28, 2024, unless the Commissioner formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Christina Vert, Division of Scientific Advisors and Consultants, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 1244, Silver Spring, MD 20993–0002, 240–402–8054, *Christina.Vert@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3.65 and approval by the Department of Health and Human Services and by the General Services Administration, FDA is announcing the renewal of the Cellular, Tissue, and Gene Therapies Advisory Committee (the Committee). The Committee is a discretionary Federal advisory committee established to provide advice to the Commissioner. The Committee advises the Commissioner or designee in discharging responsibilities as they relate to helping to ensure safe and effective drugs for human use and, as required, any other product for which FDA has regulatory responsibility.

The Committee reviews and evaluates available data relating to the safety, effectiveness, and appropriate use of human cells, human tissues, gene transfer therapies, and xenotransplantation products which are intended for transplantation, implantation, infusion, and transfer in the prevention and treatment of a broad spectrum of human diseases and in the reconstruction, repair, or replacement of tissues for various conditions. The Committee also considers the quality and relevance of FDA's research program that provides scientific support for the regulation of these products, and makes appropriate recommendations to the Commissioner.

The Committee shall consist of a core of 13 voting members including the Chair. Members and the Chair are selected by the Commissioner or designee from among authorities knowledgeable in the fields of cellular therapies, tissue transplantation, gene transfer therapies and xenotransplantation (biostatistics, bioethics, hematology/oncology, human tissues and transplantation, reproductive medicine, general medicine, and various medical specialties, including surgery and oncology, immunology, virology, molecular biology, cell biology, developmental biology, tumor biology, biochemistry, rDNA technology, nuclear medicine, gene therapy, infectious diseases, and cellular kinetics). Members will be invited to serve for overlapping terms of up to 4 years. Non-Federal members of this committee will serve as Special Government Employees, representatives, or Ex-Officio members. Federal members will serve as Regular Government Employees or Ex-Officios. The core of voting members may include one technically qualified member, selected by the Commissioner or designee, who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons. In addition to the voting members, the Committee may include one non-voting representative member who is identified with industry interests. There may also be an alternate industry representative.

The Commissioner or designee shall have the authority to select members of other scientific and technical FDA advisory committees (normally not to

exceed 10 members) to serve temporarily as voting members and to designate consultants to serve temporarily as voting members when: (1) expertise is required that is not available among current voting standing members of the Committee (when additional voting members are added to the Committee to provide needed expertise, a quorum will be based on the combined total of regular and added members) or (2) to comprise a quorum when, because of unforeseen circumstances, a quorum is or will be lacking. Because of the size of the Committee and the variety in the types of issues that it will consider, FDA may, in connection with a particular committee meeting, specify a quorum that is less than a majority of the current voting members. The Agency's regulations (21 CFR 14.22(d)) authorize a committee charter to specify quorum requirements.

If functioning as a medical device panel, an additional non-voting representative member of consumer interests and an additional non-voting representative member of industry interests will be included in addition to the voting members.

Further information regarding the most recent charter and other information can be found at *https://www.fda.gov/advisory-committees/blood-vaccines-and-other-biologics/cellular-tissue-and-gene-therapies-advisory-committee* or by contacting the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**). In light of the fact that no change has been made to the committee name or description of duties, no amendment will be made to 21 CFR 14.100.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app.). For general information related to FDA advisory committees, please visit us at *http://www.fda.gov/AdvisoryCommittees/default.htm.*

Dated: February 1, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–02499 Filed 2–6–23; 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; Optimizing Virtual Care Grant Program Performance Measures, OMB No. 0906–0075—NEW

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 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 March 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 acting HRSA Information Collection Clearance Officer, at *paperwork@hrsa.gov* or call (301) 443–9094.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Optimizing Virtual Care Grant Program Performance Measures OMB No. 0915–0075—NEW.

Abstract: The Health Center Program and supplemental awards for health centers are authorized by section 330 of the Public Health Service Act (42 U.S.C. 254b). HRSA is authorized to make supplemental awards for health centers to ''implement evidence-based models for increasing access to high-quality primary care services, which may include models related to expanding the use of telehealth and technology-enabled collaborative learning and capacity building models.'' 42 U.S.C. 254b(d)(1)(E). Under the Optimizing Virtual Care (OVC) grant program, 29 high-performing health centers received 2-year supplemental awards to increase health care access and quality for underserved populations through virtual care such as telehealth, remote patient monitoring, digital patient tools, and health information technology platforms. Specifically, award recipients will use OVC funding to develop and implement innovative evidence-based strategies with the potential to be adapted, leveraged, and scaled across the Health Center Program to increase access to care and improve clinical quality by optimizing the use of virtual care with a specific focus on underserved communities and vulnerable populations.

The goal of the OVC grant program is to continue to support innovation that began during the COVID–19 pandemic, when health centers quickly expanded their use of virtual care to maintain access to essential primary care services for underserved communities. HRSA-funded health centers serve special and vulnerable populations facing barriers to virtual care access, such as low digital literacy, low connectivity capabilities, or limited technology access. The OVC grant recipients will serve as a model for how to increase equitable virtual care, generating and refining strategies that can be adapted and scaled across the Health Center Program.

A 60-day notice published in the **Federal Register**, 87 FR 37874–37875 (June 24, 2022). HRSA received comments from OVC grant recipients during this public comment period. A 30-day notice published in the **Federal Register**, 87 FR 64066–64067 (October 21, 2022). HRSA did not receive comments on the 30-day notice. However, HRSA is republishing the 30-day notice with the correct information collection instrument.

Need and Proposed Use of the Information: The information collected on OVC grant recipient activities and performance will help HRSA demonstrate, adapt, assess, and disseminate promising practices, strategies, and novel models of virtual care across the nation's health centers. The information will support an assessment that yields:

- Increased evidence of how to optimize the use of virtual care in the Health Center Program to enhance access to care and improve clinical quality for underserved communities and special and vulnerable populations.
- Maximized impact of the new OVC grant program, as a model to be adapted,

leveraged, and scaled across other HRSA funding opportunities.

• Enhanced evidence base for recommendations to promote and scale virtual care innovations focused on increasing health equity and specific to Health Center Program patients.

The assessment will include descriptive analyses of the data on grant recipient activities and performance, including analyses of trends over time. The analyses will inform recommendations for performance measures that HRSA could scale across the Health Center Program and across other grant programs like the OVC grant program.

The grant recipient activities related to implementation of novel models of virtual care, including aggregate data on patients served and the services they received, will be captured via monthly progress reports. A set of health center performance measures will be captured in a bi-annual progress report and will provide insight into health equity and virtual care. Grant recipients will collect and report performance measures based on project goals and objectives that span four key population health and clinical domain areas, including (1) Increased Access to Care and Information; (2) Improve Clinical Quality and Health Outcomes; (3) Enhance Patient Care Coordination; and (4) Promote Health Equity.

Based on comments from OVC grant recipients, the average hours of burden per response for the biannual progress report has been increased to 55.9 hours from 48 hours as proposed in the 60-day notice. This new burden estimate accounts for the fact that performance measures in the biannual progress report have different levels of burden per response. For example, some measures required significant workflow changes or had more complexity. In addition, both the biannual progress and monthly progress reports were revised to include updated terms and definitions based on feedback collected from OVC grant recipients during the public comment period.

Likely Respondents: Respondents will be the 29 health centers that received supplemental awards through the OVC grant program.

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
OVC Grant Monthly Progress Report	29	12	348	2.0	696
OVC Grant Bi-Annual Progress Report	29	2	58	55.9	3,242
	29		406		3,938

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. 2023–02544 Filed 2–6–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 of Mental Health Initial Review Group; Mental Health Services Study Section.

Date: March 2–3, 2023.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Aileen Schulte, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Bethesda, MD 20852, 301–443–1225, *aschulte@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: February 2, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–02560 Filed 2–6–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Cancer Institute Council of Research Advocates.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend as well as those who need special assistance, such as sign language interpretation or other reasonable accommodations,

should notify the Contact Person listed below in advance of the meeting. The meeting will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov*).

Name of Committee: National Cancer Institute Council of Research Advocates.

Date: March 1, 2023.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: Welcome and Chairwoman's Remarks, NCI Director's Update, NCI Updates and Legislative Update.

Place: Porter Neuroscience Research Center, Building 35A, Room 610, 35 Convent Drive, Bethesda, MD 20892.

Contact Person: Amy Williams, Acting Director, NCI Office of Advocacy Relations National Cancer Institute, NIH, 9000 Rockville Pike, Building 31, Room 10A28, Bethesda, MD 20892, (240) 781–3406, *williaam@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.

In the interest of security, NIH has procedures at *https://www.nih.gov/about-nih/visitor-information/campus-access-security* for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Additional Health and Safety Guidance: Before attending a meeting at an NIH facility, it is important that visitors review the NIH COVID–19 Safety Plan at *https://ors.od.nih.gov/sr/dohs/safety/NIH-covid-19-safety-plan/Pages/default.aspx* for information about requirements and procedures for entering NIH facilities, especially when COVID–19 community levels are medium or high. In addition, the Safer Federal Workforce website has FAQs for visitors at *https://www.saferfederalworkforce.gov/faq/visitors/.* Please note that if an individual has a COVID–19 diagnosis within 10 days of the meeting, that person must attend virtually. (For more information please read NIH's Requirements for Persons after Exposure at *https://ors.od.nih.gov/sr/dohs/safety/NIH-covid-19-safety-plan/COVID-assessment-testing/Pages/persons-after-exposure.aspx* and What Happens When Someone Tests Positive at *https://ors.od.nih.gov/sr/dohs/safety/NIH-covid-19-safety-plan/COVID-assessment-testing/Pages/test-positive.aspx.*) Anyone from the public can attend the open portion of the meeting virtually via the NIH Videocasting website (*http://videocast.nih.gov*). Please continue checking these websites, in addition to the committee website listed below, for the most up to date guidance as the meeting date approaches.

Information is also available on the Institute's/Center's home page: NCRA: *http://deainfo.nci.nih.gov/advisory/ncra/ncra.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 1, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–02495 Filed 2–6–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Office of AIDS Research Advisory Council.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov/*).

Name of Committee: Office of AIDS Research Advisory Council.

Date: March 2, 2023.

Time: 11:00 a.m. to 4:30 p.m.

Agenda: The sixty-second meeting of the Office of AIDS Research Advisory Council (OARAC) will include the OAR Director's Report; presentation and discussions on HIV and Aging, updates from the Clinical Guidelines Working Groups of OARAC; an overview of ARPA–H; updates from NIH HIV-related advisory councils and NIH-wide programs; and public comment.

Place: Office of AIDS Research, 5601 Fishers Lane, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Mary Glenshaw, Ph.D., MPH, OTR/L, Senior Science Advisor, Office of AIDS Research, Office of the Director, National Institutes of Health, 5601 Fishers Lane, Room 2E61, Rockville, MD 20852, (301) 496–0357, *OARACInfo@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.

Information is also available on the Institute's/Center's home page: *www.oar.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: February 1, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–02493 Filed 2–6–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; BRAIN Initiative: Team-Research BRAIN Circuits U19 Review.

Date: February 26-March 1, 2023.

Time: 6:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Canopy by Hilton, 940 Rose Avenue, North Bethesda, MD 20852.

Contact Person: Tatiana Pasternak, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892, 301–496–9223, *tatiana.pasternak@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Optimization of Genome Editing Therapeutics for Alzheimer's Disease and Alzheimer's Disease-Related Dementias (AD/ADRD) Review (U01).

Date: February 28, 2023.

Time: 1:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Joel A Saydoff, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Blvd., Room 3205, MSC 9529, Bethesda, MD 20892, 301–496–9223, *joel.saydoff@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; HEAL Initiative: Pain Therapeutics Development [Small Molecules and Biologics].

Date: March 1, 2023.

Time: 12:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Ana Olariu, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Blvd., Room 3208, MSC 9529, Bethesda, MD 20892, 301–496–9223, *Ana.Olariu@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NINDS UDALL CENTER REVIEWS.

Date: March 2–3, 2023.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Abhignya Subedi, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Blvd., Room 3208, MSC 9529, Bethesda, MD 20892, 301–496–9223, *abhi.subedi@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; P01 Review.

Date: March 2–6, 2023.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Li Jia, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH, NSC, 6001 Executive Blvd., Room 3208D, MSC 9529, Bethesda, MD 20892, 301–451–2854, *li.jia@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; RM1 HEAL Interdisciplinary Team Science to Uncover the Mechanisms of Pain Relief by Medical Devices.

Date: March 2, 2023.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Ana Olariu, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Blvd., Room 3208, MSC 9529, Bethesda, MD 20892, 301–496–9223, *Ana.Olariu@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS.)

Dated: February 1, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–02492 Filed 2–6–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Chemistry, Biochemistry and Biophysics B.

Date: March 2–3, 2023.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: AC Hotel Bethesda Downtown, 4646 Montgomery Avenue, Bethesda, MD 20814.

Contact Person: Dennis Pantazatos, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–2381, *dennis.pantazatos@nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Cancer and Hematologic Disorders Study Section.

Date: March 2–3, 2023.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Gianina Ramona Dumitrescu, Ph.D., MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4193–C, Bethesda, MD 28092, 301–827–0696, *dumitrescurg@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Instrumentation and Systems Development Study Section.

Date: March 2–3, 2023.

Time: 9:30 a.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kee Forbes, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7806, Bethesda, MD 20892, 301–272–4865, *pyonkh2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Advancing Therapeutics.

Date: March 2–3, 2023.

Time: 9:30 a.m. to 8:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Lystranne Alysia Maynard Smith, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–402–4809, *lystranne.maynard-smith@nih.gov.*

Name of Committee: Infectious Diseases and Immunology B Integrated Review Group; Etiology, Diagnostic, Intervention and Treatment of Infectious Diseases Study Section.

Date: March 2, 2023.

Time: 9:30 a.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Liangbiao Zheng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892, 301–996–5819, *zhengli@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–OD–22–015 Galvanizing Health Equity Through Novel and Diverse Educational Resources (GENDER) Research Education.

Date: March 2, 2023.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Baskaran Thyagarajan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 800B, Bethesda, MD 20892, (301) 867–5309, *thyagarajanb2@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neurobiology of Motivated Behavior Study Section.

Date: March 2–3, 2023.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Janita N. Turchi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 402–4005, *turchij@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: The Cellular and Molecular Biology of Complex Brain Disorders.

Date: March 2–3, 2023.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Adem Can, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7850, Bethesda, MD 20892, (301) 435–1042, *cana2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Molecular and Cellular Sciences and Technologies.

Date: March 3, 2023.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: John Harold Laity, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 402–8254, *laityjh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Special: Topics of Environmental Toxicology.

Date: March 3, 2023.

Time: 11:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jodie Michelle Fleming, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 812R, Bethesda, MD 20892, (301) 867–5309, *flemingjm@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 1, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–02494 Filed 2–6–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2022–0035; OMB No. 1660–0115]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Environmental and Historic Preservation Screening Form

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 30-Day notice of revision and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission seeks comments concerning the information collection activities required to administer the Environmental and Historic Preservation Environmental Screening Form.

DATES: Comments must be submitted on or before March 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 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C Street SW, Washington, DC 20472, email address *FEMA-Information-Collections-Management@fema.dhs.gov* or Beth McWaters-Bjorkman, Environmental Protection Specialist, FEMA, Grant Programs Directorate, 202–431–8594 or *elizabeth.mcwaters-bjorkman@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: FEMA's Grant Programs Directorate (GPD) awards thousands of grants each year through various grant programs. These programs award funds for projects used to improve homeland security and emergency preparedness. The National Environmental Policy Act of 1969 (NEPA) (Pub. L. 91–190, sec. 102 (B) and (C), 42 U.S.C. 4332), the National Historic Preservation Act of 1966 (NHPA) (Pub. L. 89–665, 16 U.S.C. 470f), the Endangered Species Act of 1973 (Pub. L. 93–205, 16 U.S.C. 1531, *et seq.*), and a variety of other environmental and historic preservation laws and Executive Orders (E.O.) require the Federal Government to examine the potential environmental impacts of its proposed actions on communities, public health and safety, and cultural, historic, and natural resources including endangered and threatened species prior to implementing those actions. The GPD process of considering these potential impacts is called an environmental and historic preservation (EHP) review which is employed to achieve compliance with multiple EHP authorities through one consolidated process.

With input from recipients, FEMA is proposing to revise the EHP Screening Form for clarity and ease of use. The 2022 EHP Screening Form does not require any new information and includes an appendix with guidance on providing photographs with the EHP submission. Recipients are no longer required to submit Authorized Equipment List (AEL) numbers.

This proposed information collection previously published in the **Federal Register** on November 4, 2022, at 87 FR 66718 with a 60 day public comment period. No comments were received. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Environmental and Historic Preservation Screening Form.

Type of Information Collection: Extension, with change, of a currently approved information collection.

OMB Number: 1660–0115.

FEMA Forms: FEMA Form FF–119–FY–21–105 (formerly 024–0–1), Environmental and Historic Preservation Screening Form.

Abstract: The National Environmental Policy Act of 1969 (NEPA) requires that each Federal agency examine the impact of a major Federal action (including the actions of recipients using grant funds) significantly affecting the quality of the human environment. This involves considering the environmental impact of the proposed action, alternatives to the proposed action, informing both decision-makers and the public of the impacts through a transparent process, and identifying mitigation measures for any potential adverse impacts (40 CFR 1500.1, 1501.5 and 1501.6). Among other environmental laws, the review also involves considering the effects of the undertaking on historic properties under Section 106 of the National Historic Preservation Act and the effects of the action on any threatened or endangered species and their habitat under Section 7 of the Endangered Species Act of 1973. This Screening Form will facilitate the Federal Emergency Management Agency's (FEMA's) review of recipient Federally-funded actions in FEMA's effort to comply with the environmental requirements.

Affected Public: State, local or Tribal government; Not-for-Profit Institutions.

Estimated Number of Respondents: 2,300.

Estimated Number of Responses: 2,300.

Estimated Total Annual Burden Hours: 16,752.

Estimated Total Annual Respondent Cost: $1,039,877.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $6,153,716.

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. 2023–02573 Filed 2–6–23; 8:45 am]

BILLING CODE 9111–78–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2022–0031; OMB No. 1660–0080]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Application for Surplus Federal Real Property Public Benefit Conveyance and Base Realignment and Closure (BRAC) Program for Emergency Management Use

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 30-Day notice of revision and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will seek comments concerning the application process for the conveyance of Federal real property for public benefit.

DATES: Comments must be submitted on or before March 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 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C Street SW, Washington, DC 20472, email address *FEMA-Information-Collections-Management@fema.dhs.gov* or Justin Dowdy, Realty Specialist, FEMA at 202–212–3631 or *justin.dowdy@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: Excess Federal real property is defined as property that is no longer mission critical to the needs of the Federal Government. The conveyance and disposal of excess real property is governed by the Federal Property and Administrative Services Act of 1949 (Property Act) as amended, 40 U.S.C. 541, *et seq.,* 40 U.S.C. 553, and applicable regulations (41 CFR 102–75.750 through 102.75.815). Under the sponsorship of FEMA, the Property Act gives the Administrator of the General Services Administration (GSA) authority to convey Federal real and related surplus property (without monetary consideration) to units of state and local government for emergency management response purposes, including fire rescue services. The scope and philosophy of GSA's real property policies are contained in 41 CFR part 102–71.

The purpose of this application is to implement the processes and procedures for the successful, lawful, and expeditious conveyance of real property from the Federal Government to public entities such as state, local, city, town, or other like government bodies as it relates to emergency management response purposes, including fire and rescue services. Compliance will ensure that properties will be fully positioned to use at their highest and best potential as required by GSA and Department of Defense regulations, Federal law, Executive Orders, and the Code of Federal Regulations.

This proposed information collection previously published in the **Federal Register** on November 2, 2022, at 87 FR 66206 with a 60 day public comment period. No comments were received. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Application for Surplus Federal Real Property Public Benefit Conveyance and Base Realignment and Closure (BRAC) Program for Emergency Management Use.

Type of Information Collection: Extension, with changes, of a currently approved information collection.

OMB Number: 1660–0080.

FEMA Forms: FEMA Form FF–119–FY–22–133 (formerly 119–0–1), Surplus Federal Real Property Application for Public Benefit Conveyance.

Abstract: Use of the Application for Surplus Federal Real Property Public Benefit Conveyance and Base Realignment and Closure (BRAC) Program for Emergency Management Use is necessary to implement the processes and procedures for the successful, lawful, and expeditious conveyance of real property from the Federal Government to public entities such as state, local, county, city, town, or other like government bodies, as it relates to emergency management response purposes, including fire and rescue services. Utilization of this application will ensure that properties will be fully positioned for use at their highest and best potential as required by General Services Administration and Department of Defense regulations, public law, Executive Orders, and the Code of Federal Regulations.

Affected Public: State, local, or Tribal Government.

Estimated Number of Respondents: 15.

Estimated Number of Responses: 15.

Estimated Total Annual Burden Hours: 68.

Estimated Total Annual Respondent Cost: $5,291.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $3,321.

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. 2023–02572 Filed 2–6–23; 8:45 am]

BILLING CODE 9111–19–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R7–ES–2022–0155; FF07CAMM00–FXES111607MWA07]

Marine Mammal Protection Act; Draft Stock Assessment Reports for the Pacific Walrus Stock and Three Northern Sea Otter Stocks in Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: In accordance with the Marine Mammal Protection Act and its implementing regulations, we, the U.S. Fish and Wildlife Service, have developed draft revised marine mammal stock assessment reports (SAR) for the Pacific walrus (*Odobenus rosmarus divergens*) and for each of the three northern sea otter (*Enhydra lutris kenyoni*) stocks in Alaska. We invite comments on the four SARs from the public and from Federal, tribal, state, and local governments.

DATES: We must receive comments by May 8, 2023. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES:

Obtaining Documents: You may view the draft revised stock assessment reports at *https://www.regulations.gov* under Docket No. FWS–R7–ES–2022–0155, or you may request copies from the contact under **FOR FURTHER INFORMATION CONTACT**.

Submitting Comments: You may submit comments by one of the following methods:

- *Internet: https://www.regulations.gov.* Search for and submit comments on FWS–R7–ES–2022–0155.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–R7–ES–2022–0155, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, Virginia 22041–3803.

We request that you send comments only by one of the two methods described above. We will post all comments at *https://www.regulations.gov.* You may request that we withhold personal identifying information from public review; however, we cannot guarantee that we will be able to do so. For more information, see Public Comment Procedures under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Jenipher Cate, Marine Mammals Management, by telephone at 907–205–8322; by email at *jenipher_cate@fws.gov;* or by mail at U.S. Fish and Wildlife Service, MS–341, 1011 East Tudor Road, Anchorage, Alaska 99503. 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: In accordance with the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and its implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR part 18, we, the U.S. Fish and Wildlife Service (Service), have developed four draft revised marine mammal stock assessment reports (SARs) for species in Alaska. The draft revised SARs are for the Pacific walrus (*Odobenus rosmarus divergens*) and for each of the three stocks of the northern sea otter (*Enhydra lutris kenyoni*) in Alaska—the southwest, southcentral, and southeast stocks. We invite comments on the four draft SARs from the public and from Federal, Tribal, State, and local governments.

Background

Under the MMPA and its implementing regulations, we regulate the taking, possession, transportation, purchasing, selling, offering for sale, exporting, and importing of marine mammals. One of the goals of the MMPA is to ensure that each stock of marine mammals occurring in waters under U.S. jurisdiction does not experience a level of human-caused mortality and serious injury that is likely to cause the stock to be reduced below its optimum sustainable population level (OSP). The MMPA defines the OSP as ''the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element'' (16 U.S.C. 1362).

To help accomplish the goal of maintaining marine mammal stocks at their OSPs, section 117 of the MMPA requires the Service and the National Marine Fisheries Service (NMFS) to prepare an SAR for each marine mammal stock that occurs in waters under U.S. jurisdiction. When preparing SARs, section 117 of the MMPA also

requires the Service to consider the best scientific information available and consult with regional scientific review groups, established under section 117(d) of the MMPA. Pursuant to section 117(a) of the MMPA, each SAR must include: (1) A description of the stock and its geographic range; (2) a minimum population estimate, maximum net productivity rate, and current population trend; (3) an estimate of the annual human-caused mortality and serious injury of the stock by source and, for a strategic stock, other factors that may be causing a decline or impeding recovery of the stock, including effects on marine mammal habitat and prey; (4) commercial fishery interactions; (5) categorization of the status of the stock; and (6) an estimate on the potential biological removal (PBR) level.

The MMPA defines the PBR level as ''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.'' (16 U.S.C. 1362(20)). The PBR is the product of the minimum population estimate of the stock (N_{min}); one-half the maximum theoretical or estimated net productivity rate of the stock at a small population size (R_{max}); and a recovery factor (F_r) of between 0.1 and 1.0, which is intended to compensate for uncertainty and unknown estimation errors. This can be written as: PBR = (Nmin)(½ of the Rmax)(Fr)

Section 117 of the MMPA also requires the Service and NMFS to review the SARs (1) at least annually for stocks that are specified as strategic stocks; (2) at least annually for stocks for which significant new information is available; and (3) at least once every 3 years for all other stocks. If our review of the status of a stock indicates that it has changed or may be more accurately determined, then the SAR must be revised accordingly.

A strategic stock is defined in the MMPA as a marine mammal stock ''(A) for which the level of direct human-caused mortality exceeds the PBR; (B) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), within the foreseeable future; or (C) which is listed as a threatened or endangered species under the ESA, or is designated as depleted under [the MMPA].'' (16 U.S.C. 1362(19)).

Summary of Draft Revised Stock Assessment Reports

The SARs for the Pacific walrus (*Odobenus rosmarus divergens*) and for the southwest, southcentral, and southeast stocks of the northern sea otter (*Enhydra lutris kenyoni*) were last revised in 2014 (79 FR 22154). In 2021, the Service preliminarily concluded that stock assessment revisions are warranted for each of these stocks because the status of the stocks can be more accurately determined at this time. We based this determination on new information that has become available, such as population estimates for all these stocks, that allows us to better describe their status. The Service is in consultation with the Alaska Regional Scientific Review Group, established under section 117 of the MMPA, on these draft revised SARs.

The following table summarizes the draft revised SARs for the Pacific walrus and the southwest, southcentral, and southeast stocks of the northern sea otter, listing each stock's N_{min}, R_{max}, F_r, PBR, annual estimated human-caused mortality and serious injury, and status.

SUMMARY OF DRAFT REVISED STOCK ASSESSMENT REPORTS FOR THE PACIFIC WALRUS AND FOR THE SOUTHWEST, SOUTHCENTRAL, AND SOUTHEAST STOCKS OF THE NORTHERN SEA OTTER

Stock	N_{min}	R_{max}	F_r	PBR	Annual estimated human-caused mortality		Stock status
					Fishery/other	Subsistence	
Pacific Walrus	214,008	0.06	0.5	3,210	<1	4,210	Strategic.
Northern Sea Otter, Southwest Stock	41,666	0.29	0.4	2,417	<1	176	Strategic.
Northern Sea Otter, Southcentral Stock	19,854	0.29	0.75	2,159	<1	389	Nonstrategic.
Northern Sea Otter, Southeast Stock	25,768	0.29	0.75	2,803	<1	851	Nonstrategic.

Public Comment Procedures

If you wish to comment on any of the revised draft SARs, you may submit your comments by one of the methods in **ADDRESSES**. Please identify which revised draft SAR you are commenting on, make your comments as specific as possible, confine comments to issues pertinent to the draft revised SARs, and explain the reasons for any changes you recommend. Where possible, your comments should reference the specific section or paragraph of the SAR that you are addressing. We will consider all comments that are received by the close of the comment period (see **DATES**).

Comments, including names and addresses of respondents, will become part of the administrative record. Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comments to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Next Steps

After consideration of any public comments received, we will revise each of the SARs as appropriate for these stocks. We plan to publish a notice of availability and summary of the final revised SARs, including responses to comments we received.

References

The complete list of references used during the drafting of each of the four draft revised SARs is available at *https://www.regulations.gov* under Docket No. FWS–R7–ES–2022–0155 and upon request from the Alaska Marine Mammals Management Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*).

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2023–02513 Filed 2–6–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVS01000 L1232.0000.EA0000 LVRDNV080000 241A 20X.MO#4500168449]

Notice of Temporary Closure of Public Lands for the 2023 SNORE 250, and 2023 Mint 400 in Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary closure.

SUMMARY: The Las Vegas Field Office announces the temporary closure of certain public lands under its administration. The off-highway vehicle (OHV) race area in the Jean/Roach Dry Lakes Special Recreation Management Area is used by OHV recreationists, and the temporary closure is needed to limit their access to the race area and to minimize the risk of collisions with spectators and racers during the 2023 Southern Nevada Off Road Enthusiasts (SNORE) 250 and Mint 400 OHV Races.

DATES: The temporary closure for the 2023 SNORE 250 will take effect at 12:01 a.m. on February 18, 2023, and will remain in effect until 11:59 p.m. on February 18, 2023. The temporary closure for the 2023 Mint 400 will take effect at 12:01 a.m. on March 10, 2023, and will remain in effect until 11:59 p.m. on March 11, 2023.

ADDRESSES: The temporary closure order, communications plan, and map of the closure area will be posted at the BLM Las Vegas Field Office, 4701 North Torrey Pines Drive, Las Vegas, Nevada 89130 and on the BLM website: *www.blm.gov.* These materials will also be posted at the access points to the Jean/Roach Dry Lakes Special Recreation Management Area.

FOR FURTHER INFORMATION CONTACT: Kenny Kendrick, Supervisory Resource Management Specialist, (702) 515–5073, *kkendrick@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The Las Vegas Field Office announces the temporary closure of certain public lands under its administration. This action is being taken to help ensure public safety and prevent unnecessary environmental degradation during the official permitted running of the 2023 SNORE 250 and Mint 400 OHV races.

The public lands affected by this closure are described as follows:

Mount Diablo Meridian, Nevada

T. 25 S., R. 59 E.,
Sec. 23, those portions of the S½ lying southeasterly of the southeasterly right-of-way boundary of State Route 604, excepting CC–0360;
Sec. 24, excepting CC–0360;
Sec. 25;
Sec. 26, E½, excepting CC–0360;
Sec. 35, lots 4, 5, and 10, excepting CC–0360, and E½;
Sec. 36.
T. 26 S., R. 59 E.,
Sec. 1;
Sec. 2, lots 1 and 2, S½NE¼, E½ SW¼, and SE¼;
Secs. 11 thru 14;
Sec. 22, lot 1, excepting CC–0360, NE¼NE¼, S½ NE¼, excepting CC–0360, and SE¼;
Secs. 23 thru 26;
Sec. 27, lots 4, 5, and 8, excepting CC–0360, NE¼, SE¼SW¼, and SE¼;
Sec. 34, lot 1, excepting CC–0360, NE¼, NE¼NW¼, and SE¼;
Secs. 35 and 36.
T. 27 S., R. 59 E.,
Secs. 1 and 2;
Secs. 3 and 4, excepting CC–0360;
Sec. 5, those portions of the E½ lying easterly of the easterly right-of-way boundary of State Route 604;
Sec. 9, NE¼NE¼, excepting CC–0360 and W½SW¼;
Sec. 10, N½NE¼, SE¼NE¼, and N½NW¼;
Secs. 11 thru 17 and Secs. 21 thru 24.
T. 24 S., R. 60 E.,
Sec. 13;
Sec. 14, NE¼, those portions of the NW¼NW¼ lying southeasterly of the southeasterly right-of-way boundary of State Route 604, S½NW¼, and S½;
Sec. 15, those portions of the SE¼NW¼ and S½ lying southeasterly of the southeasterly right-of-way boundary of State Route 604;
Sec. 16, those portions of the SE¼SE¼ lying southeasterly of the southeasterly right-of-way boundary of State Route 604;
Sec. 20, those portions of the SE¼SE¼ lying southeasterly of the southeasterly right-of-way boundary of State Route 604;
Sec. 21, those portions lying southeasterly of the southeasterly right-of-way boundary of State Route 604;
Secs. 22 thru 28;
Sec. 29, those portions of the NE¼ and S½ lying southeasterly of the southeasterly right-of-way boundary of State Route 604;
Sec. 31, those portions of the E½ lying southeasterly of the southeasterly right-of-way boundary of State Route 604, excepting CC–0360;
Sec. 32, those portions lying southeasterly of the southeasterly right-of-way boundary of State Route 604;
Secs. 33 thru 36.
T. 25 S., R. 60 E., those portions lying southeasterly of the southeasterly right-of-way boundary of State Route 604, excepting CC–0360.
T. 26 S., R. 60 E.,
Secs. 1 thru 24 and Secs. 27 thru 34.
T. 27 S., R. 60 E.,
Secs. 3 thru 10 and Secs. 13 thru 24.
T. 24 S., R. 61 E.,
Secs. 16 thru 21 and Secs. 28 thru 33.
T. 25 S., R. 61 E.,
Secs. 4 thru 9, Secs. 16 thru 21, and Secs. 28 thru 33.
T. 26 S., R. 61 E.,
Secs. 6 and 7;
Sec. 8, SW¼NW¼ and NW¼SW¼, excepting those portions affected by Public Law 107–282.

The area described contains 106,786 acres, more or less, according to the BLM National PLSS CadNSDI and the official plats of the surveys of the said land, on file with the BLM.

Roads leading into the public lands under the temporary closure will be posted to notify the public of the closure. The closure area includes the Jean Dry Lakebed and is bordered by Hidden Valley to the north, the McCullough Mountains to the east, the California State line to the south, and Nevada State Route 604 to the west. Under the authority of Section 303(a) of the Federal Lands Policy and Management Act of 1976 (43 U.S.C. 1733(a)), 43 CFR 8360.0–7, and 43 CFR 8364.1, the BLM will enforce the following rules in the area described earlier:

The entire area as listed in the legal description is closed to all vehicles and personnel except law enforcement, emergency vehicles, event personnel, event participants, and ticketed spectators. Access routes leading to the closed area will be posted as ''Closure Ahead''. No vehicle stopping or parking in the closed area except for designated areas will be permitted. Event participants and spectators are required to remain within designated pit and spectator areas only.

The following restrictions will be in effect for the duration of the closure to ensure public safety of participants and spectators. Unless otherwise authorized, the following activities within the closure area are prohibited:

- Camping;
- Possession and/or consuming any alcoholic beverage unless the person has reached the age of 21 years;
- Discharging or use of firearms or other weapons;
- Possession and/or discharging of fireworks;
- Allowing any pet or other animal in a person's care to be unrestrained at any time. Animals must be on a leash or other restraint no longer than 3 feet;
- Operation of any vehicle that is not legally registered for street and highway

operation, for example: all-terrain vehicles, motorcycles, utility terrain vehicles, golf carts, and any OHV, including operation of such a vehicle in spectator viewing areas;

- Parking any vehicle in violation of posted restrictions, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, property, or feature. Vehicles so parked are subject to citation, removal, and impoundment at the owner's expense;
- Operating a vehicle through, around, or beyond a restrictive sign, barricade, fence, or traffic control barrier or device;
- Failing to maintain control of a vehicle to avoid danger to persons, property, resources, or wildlife; and
- Operating a motor vehicle without due care or at a speed greater than 25 mph.

Signs and maps directing the public to designated spectator areas will be provided by the event sponsor.

Exceptions: Temporary closure restrictions do not apply to BLM employees, contractors, or agents engaged in official duties; any Federal, State, or local officer, or member of an organized rescue or firefighting force engaged in fire, emergency, or law enforcement activities; public utility employees engaged in emergency repairs; or vehicles owned or contracted by the United States, the State of Nevada, or Clark County. The closure restrictions also do not apply to vehicles under permit for operation by event staff, contractors, and race participants. Authorized users must have in their possession a written permit or contract from the BLM signed by the authorized officer.

Enforcement: Any person who violates this temporary closure may be tried before a United States Magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, or both. In accordance with 43 CFR 8365.1–7, State or local officials may also impose penalties for violations of Nevada law.

(Authority: 43 CFR 8360.0–7 and 8364.1)

Coreen Francis-Clark,

Field Manager (Acting)—Las Vegas Field Office.

[FR Doc. 2023–02581 Filed 2–6–23; 8:45 am]

BILLING CODE 4331–21–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORP00000. L10200000.DF0000. LXSSH1040000.222.HAG 23–0003]

Public Meeting for the John Day-Snake Resource Advisory Council, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management's (BLM) John Day-Snake Resource Advisory Council (RAC) will meet as indicated below.

DATES: The RAC will meet Wednesday, February 22, 2023, from 8 a.m. to 4:30 p.m. Pacific Time and Thursday, February 23, 2023, from 8 a.m. to 12 p.m. Pacific Time. The meeting will be held in person in Prineville, Oregon, with a virtual participation option being offered to join via the Zoom for Government platform.

Thirty-minute public comment periods will be offered on February 22 at 4 p.m. and on February 23 at 11:30 a.m. Pacific Time.

ADDRESSES: The in-person meeting will take place at the BLM Prineville District Office, 3050 NE 3rd St, Prineville, OR 97754.

Final agendas for each meeting and contact information regarding Zoom meeting details will be published on the RAC web page at least 10 days in advance at *https://www.blm.gov/get-involved/resource-advisory-council/near-you/oregon-washington/*john-day-rac.

Comments to the RAC can be mailed to: BLM Prineville District; Attn. Amanda Roberts; 3050 NE 3rd St, Prineville, OR 97754.

FOR FURTHER INFORMATION CONTACT: Kaitlyn Webb, Public Affairs Officer, telephone: (541) 460–8781; email: *kwebb@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The 15-member RAC was chartered and appointed by the Secretary of the Interior. Its diverse perspectives are represented in commodity, conservation, and general interests. The RAC provides advice to the BLM and, as needed, to U.S. Forest Service resource managers regarding management plans and proposed resource actions on public land in the John Day-Snake area. All meetings are open to the public in their entirety. Information to be distributed to the RAC must be provided to its members prior to the start of each meeting.

Agenda items for February 22 include agency updates, presentations on the John Day River permit system and new John Day River guidebook, and an update on the Thirtymile Recreation and Travel Management Plan.

Agenda items for February 23 include management of energy and minerals, timber, rangeland and grazing, commercial and dispersed recreation, wildland fire and fuels, and wild horses and burros; review of recommendations regarding proposed actions by the Vale or Prineville BLM Districts and the Wallowa-Whitman, Umatilla, Malheur, Ochoco, and Deschutes National Forests; and any other business that may reasonably come before the RAC.

Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. We ask that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at least seven (7) business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

All calls/meetings are open to the public in their entirety. The public may send written comments to the subcommittee and RAC in response to material presented (see **ADDRESSES** section). Before including your address, phone number, email address, or other personal identifying information in your comments, please 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 we will be able to do so.

(Authority: 43 CFR 1784.4–2)

Amanda S. Roberts,

Acting District Manager, Prineville District.

[FR Doc. 2023–02538 Filed 2–6–23; 8:45 am]

BILLING CODE 4310–33–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–23–010]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: February 10, 2023 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Commission vote on Inv. Nos. 701–TA–684 and 731–TA–1597–1598 (Preliminary) (Gas Powered Pressure Washers from China and Vietnam). The Commission currently is scheduled to complete and file its determinations on February 13, 2023; views of the Commission currently are scheduled to be completed and filed on February 21, 2023.
5. Outstanding action jackets: none.

CONTACT PERSON FOR MORE INFORMATION: Sharon Bellamy, Acting Supervisory Hearings and Information Officer, 202–205–2595.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: February 3, 2023.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2023–02677 Filed 2–3–23; 4:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program: Notice of Federal Agency With Adequate Safeguards To Satisfy the Confidentiality Requirement of the Social Security Act (SSA)

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Federal agency with adequate safeguards.

SUMMARY: As further discussed below, the Department of Labor (Department) and United States Postal Service (USPS), working with states, plan to provide an in-person option for conducting the identity verification states perform in administering Unemployment Insurance (UI) benefits (the ''Project''). In this notice, the Department recognizes that for purposes of conducting in-person identity verification in connection with UI benefits, pursuant to a signed Interagency Agreement (''IAA'') with the Department, the USPS has in place safeguards adequate to satisfy the requirements of section 303(a)(1), SSA. As a result, including the safeguards and security requirements, do not apply to disclosures of confidential unemployment compensation (UC) information by state UC agencies to the Department, for redisclosure to USPS, for the limited purposes set forth herein.

FOR FURTHER INFORMATION CONTACT: Jim Garner, Administrator, Office of Unemployment Insurance, Employment and Training Administration, (202) 693–3029 (this is not a toll-free number) or 1–877–889–5627 (TTY), or by email at *garner.jimmie@dol.gov.*

SUPPLEMENTARY INFORMATION: The Employment and Training Administration (ETA) interprets Federal law requirements pertaining to the Federal-State UC program. ETA interprets section 303(a)(1) of the Social Security Act to require states to maintain the confidentiality of certain UC information. The regulations at 20 CFR part 603 implement this confidentiality requirement. 20 CFR 603.9 requires States and State UC agencies to ensure that recipients of confidential UC information have certain safeguards in place before any confidential UC information may be disclosed. Section 603.9(d) provides that States are not required to apply the requirements of § 603.9, including these safeguards and security requirements, to a Federal agency which the Department has determined, by notice published in the **Federal Register**, to have in place safeguards adequate to satisfy the confidentiality requirement of section 303(a)(1), SSA.

The authority for USPS to enter into an agreement with the Department is 39 U.S.C. 411 and 39 CFR 259.1, which permit USPS to furnish nonpersonal services to Executive agencies within the meaning of 5 U.S.C. 105. The Department is authorized, under section 2118 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (15 U.S.C. 9034), to fund and administer projects that detect and prevent fraud, promote equitable access, and ensure the timely payment of benefits with respect to UC programs. Under these authorities, ETA plans to implement the Project as a pilot that will be tested in several states. Based on the pilot's results, the in-person identity verification may be expanded to other states. USPS and the Department will implement the Project, in accordance with the terms of the IAA, to offer claimants filing an unemployment claim in a participating state the option to verify their identity in-person at specified USPS locations, which requires the sharing of confidential UC information among the participating state UC agencies, the Department, and USPS.

During the pilot, the initial disclosure of confidential UC information will be from the state UC agency to the Department, as permitted by the public official exception at 20 CFR 603.5(e). The Department will then redisclose the information to USPS. Prior to any disclosures taking place for the Project, a signed IAA will be in place between the Department and USPS, and an agreement meeting the requirements of 20 CFR 603.10 will be in place between the Department and each participating state UC agency.

The Department has determined that for the limited purposes of the Project, the methods and procedures employed by USPS for the protection of confidential UC information received from the Department, or states participating in the Project who have disclosed confidential UC information to the Department, meet the requirements of section 303(a)(1), SSA. USPS operates information technology and database systems (collectively, the IT systems) that USPS regularly reviews for compliance and security through the USPS Accreditation & Authorization (A&A) process. The USPS A&A process aligns with the requirements contained in the Federal Information Security Management Act of 2002 (FISMA), as amended by the Federal Information Security Modernization Act of 2014. In addition, the USPS A&A process aligns with the *International Organization for Standardization (ISO) 27001:2013 and 27002:2013* and National Institute of Standards and Technology (NIST) Risk Management Framework (RMF) guidance, including *NIST SP 800–37, Risk Management Framework for Information Systems and Organizations,* which provides detailed guidance for the IT systems authorization process. USPS data security controls are a combination of USPS specific controls, ISO 27001, and NIST SP 800–53 Security and Privacy Controls for Information Systems and Organizations controls. All USPS controls map

directly to SP 800–53 rev5 controls. Confidential UC information received by USPS in connection with the Project will be stored in an on-premises USPS system of records that is within the USPS secure network infrastructure. See Identity and Document Verification Services, USPS 910.000. Access to the confidential UC information USPS receives during the Project will be strictly controlled and monitored by both physical and electronic means, limited to authorized USPS staff, and not available to any third party. USPS will not utilize any subcontractors or third parties to participate in the Project. USPS staff who work on the Project undergo required privacy and information security training established for USPS employees. No images of documents or credentials that claimants present to USPS during the identity verification process will be captured or stored by USPS. Any confidential UC information that is stored electronically in connection with the Project is expunged from the USPS IT systems when the purpose for the disclosure is finished, as per the IAA and Project specifications. In addition, USPS maintains IT systems sufficient to allow for audits and inspections as set forth in the IAA.

With this notice, the Department recognizes that USPS has in place safeguards adequate to satisfy the requirements of section 303(a)(1), SSA, for purposes of the confidential UC information received in connection with the Project. Thus, pursuant to 20 CFR 603.9(d), the requirements of 20 CFR 603.9 do not apply to disclosures of confidential UC information to USPS for purposes of the Project. This notice is published to inform the public of the Department's determination with respect to this agency.

Brent Parton,

Acting Assistant Secretary for Employment and Training.

[FR Doc. 2023–02517 Filed 2–6–23; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Student Safety Assessment (SSA) of Job Corps Centers

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL or Department) Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Student Safety Assessment (SSA) of Job Corps Centers.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by April 10, 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 Hilda Alexander by telephone at 202–693–3843 (this is not a toll-free number), TTY 1–877–889–5627 (this is not a toll-free number), or by email at *alexander.hilda@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training—Job Corps, 200 Constitution Ave NW, N–4459, Washington DC 20210; by email: *alexander.hilda@dol.gov;* or by fax: 240–531–6732.

FOR FURTHER INFORMATION CONTACT: Hilda Alexander by telephone at 202–693–3843 (this is not a toll-free number) or by email at alexander.*hilda@dol.gov.*

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

WIOA authorizes the collection of information from Job Corps applicants to determine eligibility for the Job Corps program, 29 U.S.C. 3194–3195. Applicant and student data is maintained in accordance with the Department's Privacy Act System of Records Notice DOL/GOVT–2 Job Corps Student Records authorizes this information collection.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0542.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, (*e.g.,* permitting electronic submission of responses).

Agency: DOL–ETA.

Type of Review: Revision.

Title of Collection: Student Safety Assessment (SSA) of Job Corps Centers.

Forms: N/A.

OMB Control Number: 1205–0542.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 139,956.

Frequency: Once.

Total Estimated Annual Responses: 139,956.

Estimated Average Time per Response: .25 hours.

Estimated Total Annual Burden Hours: 34,989 hours.

Total Estimated Annual Other Cost Burden: $0.

(Authority: 44 U.S.C. 3506(c)(2)(A))

Brent Parton,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2023–02516 Filed 2–6–23; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Job Corps Placement and Assistance Record

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL or Department) Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Job Corps Placement and Assistance Record.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by April 10, 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 Hilda Alexander by telephone at 202–693–3843 (this is not a toll-free number), TTY 1–877–889–5627 (this is not a toll-free number), or by email at *alexander.hilda@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training—Job Corps, 200 Constitution Ave NW, N–4459, Washington DC 20210; by email: *alexander.hilda@dol.gov;* or by fax: 240–531–6732.

FOR FURTHER INFORMATION CONTACT: Hilda Alexander by telephone at 202–693–3843 (this is not a toll-free number) or by email at alexander.*hilda@dol.gov.*

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

WIOA authorizes the collection of information from Job Corps applicants to determine eligibility for the Job Corps program. 29 U.S.C. 3194–3195. Applicant and student data is maintained in accordance with the Department's Privacy Act System of Records Notice DOL/GOVT–2 Job Corps Student Records authorizes this information collection.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0035.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, (*e.g.,* permitting electronic submission of responses).

Agency: DOL–ETA.

Type of Review: Revision.

Title of Collection: Job Corps Placement and Assistance Record.

Forms: ETA 678.

OMB Control Number: 1205–0035.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 34,000.

Frequency: Once.

Total Estimated Annual Responses: 34,000.

Estimated Average Time per Response: 7.43 minutes.

Estimated Total Annual Burden Hours: 4,210 hours.

Total Estimated Annual Other Cost Burden: 0.

(Authority: 44 U.S.C. 3506(c)(2)(A))

Brent Parton,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2023–02515 Filed 2–6–23; 8:45 am]

BILLING CODE 4510–FT–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 23–CRB–0001–AU (Sonos Radio)]

Notice of Intent To Audit

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Public notice.

SUMMARY: The Copyright Royalty Judges announce receipt from SoundExchange, Inc., of notice of intent to audit the 2020, 2021, and 2022 statements of account submitted by commercial webcaster licensee Sonos Radio concerning royalty payments it made pursuant to two statutory licenses.

ADDRESSES: *Docket:* For access to the docket to read background documents, go to eCRB at *https://app.crb.gov* and perform a case search for docket number 23–CRB–0001–AU (Sonos Radio).

FOR FURTHER INFORMATION CONTACT: Anita Brown, (202) 707–7658, *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: The Copyright Act grants to sound recordings copyright owners the exclusive right to publicly perform sound recordings by means of certain digital audio transmissions, subject to limitations. Specifically, the right is limited by the statutory license in section 114 of the Copyright Act, which allows nonexempt noninteractive digital subscription services, eligible nonsubscription services, and preexisting satellite digital audio radio services to perform publicly sound recordings by means of digital audio transmissions. 17 U.S.C. 114(f). In addition, a statutory license in section 112 of the Copyright Act allows a service to make necessary ephemeral reproductions to facilitate digital transmission of the sound recordings. 17 U.S.C. 112(e).

Licensees may operate under these licenses provided they pay the royalty fees and comply with the terms set by the Copyright Royalty Judges (Judges). The rates and terms for the section 112 and 114 licenses are codified in 37 CFR parts 380 and 382–84.

As one of the terms for these licenses, the Judges designated SoundExchange, Inc., (SoundExchange) as the Collective, *i.e.,* the organization charged with collecting the royalty payments and statements of account submitted by licensees, including those that operate commercial webcaster services, preexisting satellite digital audio radio services, new subscription services, and those that make ephemeral copies for transmission to business establishments. The Collective is also charged with distributing royalties to copyright owners and performers entitled to receive them under the section 112 and 114 licenses. *See* 37 CFR 380.4(d)(1), 382.5(d)(1), 383.4(a), and 384.4(b)(1).

As the Collective, SoundExchange may, only once a year, conduct an audit of a licensee for any or all of the prior three calendar years to verify royalty payments. SoundExchange must first file with the Judges a notice of intent to audit a licensee and deliver the notice to the licensee. *See* 37 CFR 380.6(b), 382.7(b), 383.4(a), and 384.6(b).

On January 20, 2023, SoundExchange filed with the Judges a notice of intent to audit Sonos Radio for the years 2020, 2021, and 2022. The Judges must publish notice in the **Federal Register** within 30 days of receipt of a notice announcing the Collective's intent to conduct an audit. *See* 37 CFR 380.6(c), 382.7(c), 383.4(a), and 384.6(c). This notice fulfills that obligation with respect to SoundExchange's January 20, 2023 notice of intent to audit Sonos Radio for the years 2020, 2021 and 2022.

David P. Shaw,

Chief Copyright Royalty Judge.

[FR Doc. 2023–02582 Filed 2–6–23; 8:45 am]

BILLING CODE 1410–72–P

NATIONAL SCIENCE FOUNDATION

Request for Information on the 2023 Federal Cybersecurity Research and Development Strategic Plan

AGENCY: Networking and Information Technology Research and Development (NITRD) National Coordination Office (NCO), National Science Foundation (NSF).

ACTION: Request for information.

SUMMARY: Pursuant to the Cybersecurity Enhancement Act of 2014, Federal agencies must update the Federal cybersecurity research and development (R&D) strategic plan every four years. The NITRD NCO seeks public input for the 2023 update of the Federal cybersecurity R&D strategic plan. The updated plan will be used to guide and coordinate federally funded research in cybersecurity, including cybersecurity education and workforce development, and the development of consensus-based standards and best practices in cybersecurity.

DATES: To be considered, submissions must be received on or before 11:59 p.m. (ET) on March 3, 2023.

ADDRESSES: Submissions to this notice may be sent by any of the following methods:

(a) *Email: cybersecurity@nitrd.gov.* Email submissions should be machine-readable and not be copy-protected. Submissions should include ''RFI Response: Federal Cybersecurity R&D Strategic Plan'' in the subject line of the message.

(b) *Fax:* 202–459–9673, Attn: Tomas Vagoun.

(c) *Mail:* NCO/NITRD, Attn: Tomas Vagoun, 2415 Eisenhower Avenue, Alexandria, VA 22314, USA.

Instructions: Response to this RFI is voluntary. Submissions must not exceed 25 pages in 12-point or larger font, with a page number provided on each page. Responses should include the name of the person(s) or organization(s) providing the submission.

Responses to this RFI may be posted online at *https://www.nitrd.gov.* Therefore, we request that no business-proprietary information, copyrighted information, or personally identifiable information be submitted in response to this RFI.

In accordance with FAR 15.202(3), responses to this notice are not offers and cannot be accepted by the Federal Government to form a binding contract. Responders are solely responsible for all expenses associated with responding to this RFI.

FOR FURTHER INFORMATION CONTACT: Tomas Vagoun at *cybersecurity@nitrd.gov* or 202–459–9674, or by mailing to NCO/NITRD, 2415 Eisenhower Avenue, Alexandria, VA 22314, USA. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Cybersecurity Enhancement Act of 2014 (*https://www.gpo.gov/fdsys/pkg/PLAW-113publ274/pdf/PLAW-113publ274.pdf*) requires that every four years the applicable Federal agencies, working through the National Science and Technology Council and the Networking and Information Technology R&D (NITRD) program, develop and update a Federal cybersecurity research and development strategic plan. The most recent version of the strategic plan was released in December 2019 (*https://www.nitrd.gov/pubs/Federal-Cybersecurity-RD-Strategic-Plan-2019.pdf*).

On behalf of Federal agencies and the NITRD Cyber Security and Information Assurance Interagency Working Group, the NCO for NITRD seeks public input on Federal priorities in cybersecurity R&D. Responders should consider a 10-year time frame when characterizing the challenges, prospective research activities, and desired outcomes. Responders are asked to answer one or more of the following questions:

1. What new innovations have the potential to greatly enhance the security, reliability, resiliency, trustworthiness, and privacy protections of the digital ecosystem (including but not limited to data, computing, networks, cyber-physical systems, and participating entities such as people and organizations)?

2. Are there mature solutions in the marketplace that address the deficiencies raised in the 2019 Strategic Plan? What areas of research or topics of the 2019 Strategic Plan no longer need to be prioritized for federally funded basic and applied research?

3. What areas of research or topics of the 2019 Strategic Plan should continue to be a priority for federally funded research and require continued Federal R&D investments?

4. What objectives not included in the 2019 Strategic Plan should be strategic priorities for federally funded R&D in cybersecurity? Discuss the challenges, desired capabilities and outcomes, and objectives that should guide research to achieve the desired capabilities, and why those capabilities and outcomes should be strategic priorities for federally funded R&D.

5. What other scientific, technological, economic, legal, or societal changes and developments occurring now or in the foreseeable future have the potential to significantly disrupt our abilities to secure the digital ecosystem and make it resilient? Discuss what federally funded R&D could improve the understanding of such developments and improve the capabilities needed to mitigate against such disruptions.

6. What further advancements to cybersecurity education and workforce development, at all levels of education, should be considered to prepare students, faculty, and the workforce in the next decade for emerging cybersecurity challenges, such as the implications of artificial intelligence, quantum computing, and the Internet of Things on cybersecurity?

7. What other research and development strategies, plans, or activities, domestic or in other countries, should inform the U.S. Federal cybersecurity R&D strategic plan?

Following the receipt of comments, the NITRD Cyber Security and Information Assurance Interagency Working will consider the input provided when updating the Federal cybersecurity R&D strategic plan.

Submitted by the National Science Foundation in support of the Networking and Information Technology Research and Development (NITRD) National Coordination Office (NCO) on February 1, 2023.

(Authority: 42 U.S.C. 1861.)

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2023–02578 Filed 2–6–23; 8:45 am]

BILLING CODE 7555–01–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m., Thursday, February 16, 2023.

PLACE: 1255 Union Street NE, Fifth Floor, Washington, DC 20002.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Regular Board of Directors meeting.

The General Counsel of the Corporation has certified that in his opinion, one or more of the exemptions set forth in the Government in the Sunshine Act, 5 U.S.C. 552b (c)(2) and (4) permit closure of the following portion(s) of this meeting:

- Executive Session

Agenda

I. Call to Order

II. Sunshine Act Approval of Executive (Closed) Session

III. Executive Session Special Topic

IV. Executive Session Report from CEO

V. Executive Session: Report from CFO

VI. Executive Session: General Counsel Report

VII. NeighborWorks Compass Update

VIII. Action Item Authority to Contract for Development Services for NW Compass

IX. Action Item Approval of Minutes

X. Action Item Election of Vice Chair

XI. Action Item FY23 All-Sources Budget

XII. Action Item Authority to Increase Spend for Procurement Management System (PRISM)

XIII. Discussion Item Report from CIO

XIV. Discussion Item CIGNA Special Delegation

XV. Discussion Item DC Office Relocation Update

XVI. Management Program Background and Updates

XVII. Adjournment

PORTIONS OPEN TO THE PUBLIC: Everything except the Executive Session.

PORTIONS CLOSED TO THE PUBLIC: Executive Session.

CONTACT PERSON FOR MORE INFORMATION: Lakeyia Thompson, Special Assistant, (202) 524–9940; *Lthompson@nw.org.*

Lakeyia Thompson,

Special Assistant.

[FR Doc. 2023–02707 Filed 2–3–23; 4:15 pm]

BILLING CODE 7570–02–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0067]

Information Collection: NRC Policy Statement, ''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement,'' Maintenance of Existing Agreement State Programs, Requests for Information Through the Integrated Materials Performance Evaluation Program (IMPEP) Questionnaire, and Agreement State Participation in IMPEP

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, NRC Policy Statement, ''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement,'' Maintenance of Existing Agreement State Programs, Requests for Information Through the Integrated Materials Performance Evaluation Program (IMPEP) Questionnaire, and Agreement State Participation in IMPEP.

DATES: Submit comments by March 9, 2023. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David C. Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0067 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0067.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The supporting statement is available in ADAMS under Accession No. ML23024A143.
- *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 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, NRC Policy Statement, ''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement,'' Maintenance of Existing Agreement State Programs, Requests for Information Through the Integrated Materials Performance Evaluation Program (IMPEP) Questionnaire, and Agreement State Participation in IMPEP. The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on October 18, 2022, 87 FR 63105.

1. *The title of the information collection:* NRC Policy Statement, ''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement,'' Maintenance of Existing Agreement State Programs, Requests for Information Through the Integrated Materials Performance Evaluation Program (IMPEP) Questionnaire, and Agreement State Participation in IMPEP.
2. *OMB approval number:* 3150–0183.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* Not applicable.
5. *How often the collection is required or requested:* Every 4 years for completion of the IMPEP questionnaire in preparation for an IMPEP review. One time for new Agreement State applications. Annually for participation by Agreement States in the IMPEP reviews and fulfilling requirements for Agreement States to maintain their programs.
6. *Who will be required or asked to respond:* All Agreement States who have signed Agreements with NRC under Section 274b. of the Atomic Energy Act (the Act) and any non-Agreement State seeking to sign an Agreement with the Commission.
7. *The estimated number of annual responses:* 65.
8. *The estimated number of annual respondents:* 41.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 290,822.
10. *Abstract:* The States wishing to become Agreement States are requested to provide certain information to the NRC as specified by the Commission's Policy Statement, ''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement.'' The Agreement States need to ensure that the radiation control program under the Agreement remains adequate and compatible with the requirements of Section 274 of the Act and must maintain certain information. The NRC conducts periodic evaluations through IMPEP to ensure that these programs are compatible with the NRC's program, meet the applicable parts of the Act, and adequate to protect public health and safety.

Dated: February 1, 2023.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2023–02520 Filed 2–6–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0088]

Information Collection: NRC Form 327, Special Nuclear Material (SNM) and Source Material (SM) Physical Inventory Summary Report, and NUREG/BR–0096, Instructions and Guidance for Completing Physical Inventory Summary Reports

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the

Office of Management and Budget (OMB) for review. The information collection is entitled, ''NRC Form 327, Special Nuclear Material (SNM) and Source Material (SM) Physical Inventory Summary Report, and NUREG/BR–0096, Instructions and Guidance for Completing Physical Inventory Summary Reports.''

DATES: Submit comments by March 9, 2023. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David C. Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0088 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0088.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession Nos. ML22167A077 and ML082620258. The supporting statement is available in ADAMS under Accession No. ML23023A236.
- *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 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''NRC Form 327, Special Nuclear Material (SNM) and Source Material (SM) Physical Inventory Summary Report, and NUREG/BR–0096, Instructions and Guidance for Completing Physical Inventory Summary Reports.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on November 23, 2022, 87 FR 71693.

1. *The title of the information collection:* ''NRC Form 327, Special Nuclear Material (SNM) and Source Material (SM) Physical Inventory Summary Report, and NUREG/BR–0096, Instructions and Guidance for Completing Physical Inventory Summary Reports.''

2. *OMB approval number:* 3150–0139.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* NRC Form 327.

5. *How often the collection is required or requested:* Certain licensees possessing strategic SNM are required to report inventories on NRC Form 327 every 6 months. Licensees possessing SNM of moderate strategic significance must report every 9 months. Licensees possessing SNM of low strategic significance must report annually, except one licensee (enrichment facility) that must report its dynamic inventories every 2 months and its static inventory annually.

6. *Who will be required or asked to respond:* Fuel facility licensees possessing SNM, *i.e.,* enriched uranium, plutonium, or U–233.

7. *The estimated number of annual responses:* 69.

8. *The estimated number of annual respondents:* 6.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 276.

10. *Abstract:* NRC Form 327 is submitted by certain fuel cycle facility licensees to account for SNM. The data is used by the NRC to assess licensee material control and accounting programs and to confirm the absence of (or detect the occurrence of) SNM theft or diversion. NUREG/BR–0096 provides guidance and instructions for completing the form in accordance with the requirements appropriate for a particular licensee.

Dated: February 1, 2023.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2023–02519 Filed 2–6–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0021]

Application for Amendment to Facility Operating License Involving a Proposed No Significant Hazards Consideration and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; notice of opportunity to comment, request a hearing, and petition for leave to intervene; order imposing procedures.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of one amendment request. The amendment request is for Callaway Plant, Unit No. 1. For the amendment request, the NRC proposes to determine that it involves no significant hazards consideration (NSHC). Because the amendment request contains sensitive unclassified non-safeguards information (SUNSI), an order imposes procedures to obtain access to SUNSI for contention preparation by persons who file a hearing request or petition for leave to intervene.

DATES: Comments must be filed by March 9, 2023. A request for a hearing or petitions for leave to intervene must be filed by April 10, 2023. Any potential party as defined in section 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR) who believes access to SUNSI is necessary to respond to this notice must request document access by February 17, 2023.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0021. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Rhonda Butler, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–8025, email: *Rhonda.Butler@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2023–0021, facility name, unit number, docket number, application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0021.
- *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 (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2023–0021, facility name, unit number(s), docket number(s), application date, and subject, in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the NRC is publishing this notice. The Act requires the Commission to publish notice of any amendments issued or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves NSHC, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes a notice of amendment containing SUNSI.

III. Notice of Consideration of Issuance of Amendments to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment request involves NSHC. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for the amendment request is shown in this notice.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be

considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish a notice of issuance in the **Federal Register**. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by any of these actions may file a request for a hearing and petition for leave to intervene (petition) with respect to that action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's public website at *https://www.nrc.gov/reading-rm/doc-collections/cfr.* If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) the name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions that the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion that support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one that, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of NSHC, the Commission will make a final determination on the issue of NSHC. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves NSHC, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a petition is submitted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all

adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the ''Guidance for Electronic Submissions to the NRC'' (ADAMS Accession No. ML13031A056) and on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html.*

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9:00 a.m. and 6:00 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

Union Electric Company; Callaway Plant, Unit No. 1; Callaway County, MO

Docket No	50–483.
Application Date	August 29, 2022, as supplemented by letter(s) dated October 26, 2022.
ADAMS Accession Nos	ML22242A122 (Package), ML22299A232 (Package).
Location in Application of NSHC	Pages 22–25 of Enclosure 1.
Brief Description of Amendment	The proposed amendment would revise the Technical Specifications (TSs), the TS Bases, and the Final Safety Analysis Report to reflect the results of an updated criticality safety analysis (CSA) for the storage of spent fuel. The updated CSA (1) revises the current CSA based on the latest methodologies consistent with current NRC guidance and acceptance criteria, (2) simplifies the storage configuration by establishing two regions within the spent fuel racks located within the spent fuel pool, and (3) provides an evaluation that encompasses a future fuel design. The scope of this change does not include the new fuel storage facility.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Jay E. Silberg, Pillsbury Winthrop Shaw Pittman LLP, 1200 17th St. NW, Washington, DC 20036.
NRC Project Manager, Telephone Number	Mahesh Chawla, 301–415–8371.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation Union Electric Company; Callaway Plant, Unit No. 1; Callaway County, MO

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing or opportunity for hearing, any potential party who believes access to SUNSI is necessary to respond to this notice may request access to SUNSI. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Deputy General Counsel for Licensing, Hearings, and Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email addresses for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *RidsOgcMailCenter.Resource@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C, the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2), the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and requisite need, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if this individual is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(3) Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within 5 days of the notification by the NRC staff of its grant of access and must be filed with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if this individual is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. The attachment to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated: January 11, 2023.

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012, 78 FR 34247, June 7, 2013) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

For the Nuclear Regulatory Commission.

Brooke P. Clark,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/activity
0	Publication of **Federal Register** notice of hearing or opportunity for hearing, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no ''need'' or no likelihood of standing, the deadline for petitioner/requestor to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Agreement or Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement or Affidavit for SUNSI.
A	If access granted: issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Agreements or Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or notice of opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2023–00745 Filed 2–6–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–608; NRC–2022–0135]

SHINE Medical Technologies, LLC; Medical Isotope Production Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Supplement to the final environmental impact statement; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued Supplement 1 to NUREG–2183, ''Environmental Impact Statement Supplement Related to the Operating License for the SHINE Medical Isotope Production Facility.'' NUREG–2183 was issued October 2015. SHINE Medical Technologies, LLC (SHINE) is requesting a license to operate the Medical Isotope Production Facility (SHINE facility) in Janesville, Wisconsin.

DATES: Supplement 1 to NUREG–2183 referenced in this document is available as of January 31, 2023.

ADDRESSES: Please refer to Docket ID NRC–2022–0135 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–2022–0135. 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.* Supplement 1 to NUREG–2183 is available in ADAMS under Accession No. ML23026A312.
- *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 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.
- *Public Library:* Supplement 1 to NUREG–2183 is available for public inspection at the Hedberg Public Library, 316 South Main Street, Janesville, WI, 53545.

FOR FURTHER INFORMATION CONTACT: Lance J. Rakovan, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–2589; email: *Lance.Rakovan@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

When a final environmental impact statement (FEIS) has been prepared in connection with the issuance of a construction permit for a production or utilization facility, the NRC staff is required to prepare a supplement to the FEIS in connection with any issuance of an operating license for that facility in accordance with paragraph 51.95 (b) of title 10 of the *Code of Federal Regulations.* This supplement updates the prior environmental review and only covers matters that differ from those or that reflect significant new information relative to that discussed in the FEIS. Accordingly, in response to an operating license application for the SHINE facility, the NRC staff prepared Supplement 1 to NUREG–2183, the FEIS, on the SHINE facility construction permit application. The NRC published for public comment a draft of Supplement 1 to NUREG–2183 in the **Federal Register** on July 8, 2022 (87 FR 40868). The NRC also held a public meeting on July 27, 2022, to collect comments on the draft of Supplement 1 to NUREG–2183. The public comment period ended on August 22, 2022, and the comments received are addressed in the final draft of Supplement 1 to NUREG–2183. Supplement 1 to NUREG–2183 is available as indicated in the **ADDRESSES** section of this document.

II. Discussion

The NRC issued Supplement 1 to NUREG–2183 on January 31, 2023. Supplement 1 to NUREG–2183 updates the prior environmental review by the NRC staff for the SHINE facility construction permit application and only covers matters that differ from or that reflect significant new information concerning matters discussed in NUREG–2183. Supplement 1 to NUREG–2183 includes the NRC staff's analysis of the environmental impacts of the proposed action of deciding whether to issue a license to SHINE to operate the SHINE facility for a period of 30 years. After weighing the environmental, economic, technical, and other benefits against environmental and other costs, the NRC staff recommends, unless safety issues mandate otherwise, the issuance of an operating license to SHINE for the SHINE facility. This recommendation is based on: (1) the operating license application, including SHINE's supplemental environmental report; (2) consultation with Federal, State, Tribal, and local agencies; (3) the staff's independent review; and (4) the consideration of public comments.

Dated: February 1, 2023.

For the Nuclear Regulatory Commission.

Theodore B. Smith,

Chief, Environmental Review License Renewal Branch, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2023–02419 Filed 2–6–23; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Securities Exchange Act of 1934; Release No. 34–96788/February 1, 2023]

In the Matter of the MEMX LLC Regarding an Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, To Establish a Retail Midpoint Liquidity Program (File No. SR–MEMX–2021–10); Order Scheduling Filing of Statements on Review

On August 18, 2021, MEMX LLC (''MEMX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a Retail Midpoint Liquidity Program. The proposed rule change was published for comment in the **Federal Register** on September 8, 2021.[3] On October 19, 2021, the Division of Trading and Markets (''Division''), for the Commission pursuant to delegated authority,[4] designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[5] On December 7, 2021, the Division, for the Commission pursuant to delegated authority,[6] instituted proceedings under Section 19(b)(2)(B) of the Act [7] to determine whether to approve or disapprove the proposed rule change.[8]

On January 27, 2022, MEMX filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change as originally filed.[9] On February 14, 2022, the Division, for the Commission pursuant to delegated authority,[10] published for comment notice of Amendment No. 1 and designated a longer period for Commission action on the proposed rule change, as modified by Amendment No. 1.[11] The Commission received comment letters on the proposed rule change.[12]

On May 6, 2022, the Division, for the Commission pursuant to delegated authority,[13] issued an order disapproving the proposed rule change, as modified by Amendment No. 1.[14] On May 10, 2022, the Assistant Secretary of the Commission notified MEMX that, pursuant to Commission Rule of Practice 431,[15] the Commission would review the Division's action pursuant to delegated authority and that the Division's action pursuant to delegated authority was stayed until the Commission orders otherwise.[16]

Accordingly, *it is ordered*, pursuant to Commission Rule of Practice 431, that on or before March 3, 2023, any party or other person may file a statement in support of, or in opposition to, the action made pursuant to delegated authority.

It is further *ordered* that the automatic stay of delegated action pursuant to Commission Rule of Practice 431(e) is hereby discontinued. The order disapproving the proposed rule change

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 92844 (Sept. 1, 2021), 86 FR 50411 (Sept. 8, 2021).

[4] *See* 17 CFR 200.30–3(a)(31).

[5] *See* Securities Exchange Act Release No. 93383 (Oct. 19, 2021), 86 FR 58964 (Oct. 25, 2021).

[6] *See* 17 CFR 200.30–3(a)(57).

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 93727 (Dec. 7, 2021), 86 FR 70874 (Dec. 13, 2021).

[9] MEMX provided a copy of Amendment No. 1 to the Commission as a comment letter. MEMX also posted Amendment No. 1 to MEMX's website. *See https://info.memxtrading.com/wp-content/uploads/2022/01/SR-MEMX-2021-10-Amendment-No.-1.pdf.* Due to a technological error, MEMX's comment letter providing a copy of Amendment No. 1 was not posted in the relevant comment file. *See* Securities Exchange Act Release No. 96005 (Oct. 7. 2022), 87 FR 63016 (Oct. 18, 2022). As discussed in the order disapproving the proposed rule change referred to below, the Commission previously considered Amendment No. 1. *See also infra* note 11 and accompanying text.

[10] *See* 17 CFR 200.30–3(a)(12) and (57).

[11] *See* Securities Exchange Act Release No. 94189 (Feb. 8, 2022), 87 FR 8305 (Feb. 14, 2022).

[12] Comments received on the proposal are available at *https://www.sec.gov/comments/sr-memx-2021-10/srmemx202110.htm.*

[13] *See* 17 CFR 200.30–3(a)(12).

[14] *See* Securities Exchange Act Release No. 94866 (May 6, 2022), 87 FR 29193 (May 12, 2022).

[15] *See* 17 CFR 201.431.

[16] *See* Letter from J. Matthew DeLesDernier, Assistant Secretary, Commission, to Anders Franzon, General Counsel, MEMX, dated May 10, 2022, *available at https://www.sec.gov/rules/sro/memx/2022/34-94866-letter-from-assistant-secretary-051022.pdf.*

SR–MEMX–2021–10 shall remain in effect pending the Commission's review.

By the Commission.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–02523 Filed 2–6–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96782; File No. SR–ISE–2023–01]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend ISO Functionality

February 1, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 19, 2023, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend intermarket sweep order (''ISO'') functionality.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/ise/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Options 3, Section 11 with respect to the ability of Members to submit ISOs in the Exchange's Facilitation Mechanism (''Facilitation ISO''), and Solicited Order Mechanism (''Solicitation ISO''), to codify current System functionality.[3]

As set forth in Options 3, Section 11(b), the Facilitation Mechanism is a process wherein the Electronic Access Member seeks to facilitate a block-size order it represents as agent, and/or a transaction wherein the Electronic Access Member solicited interest to execute against a block-size order it represents as agent. Electronic Access Members must be willing to execute the entire size of orders entered into the Facilitation Mechanism. As set forth in Options 3, Section 11(d), the Solicited Order Mechanism is a process by which an Electronic Access Member can attempt to execute orders of 500 or more contracts it represents as agent against contra orders it solicited. Each order entered into the Solicited Order Mechanism shall be designated as all-or-none.

An ISO is defined in Options 3, Section 7(b)(4) as a limit order that meets the requirements of Options 5, Section 1(h) and trades at allowable prices on the Exchange without regard to the ABBO. Simultaneously with the routing of the ISO to the Exchange, one or more additional ISOs, as necessary, are routed to execute against the full displayed size of any Protected Bid, in the case of a limit order to sell, or any Protected Offer, in the case of a limit order to buy, for the options series with a price that is superior to the limit price of the ISO.[4] A Member may submit an ISO to the Exchange only if it has simultaneously routed one or more additional ISOs to execute against the full displayed size of any Protected Bid, in the case of a limit order to sell, or Protected Offer, in the case of a limit order to buy, for an options series with a price that is superior to the limit price of the ISO.

As discussed further below, none of the proposed rule changes will amend current functionality. Rather, these changes are designed to bring greater transparency around certain order types currently available on the Exchange. The Exchange notes that the Facilitation ISO and Solicitation ISO[5] are functionally similar to the Exchange's Price Improvement Mechanism[6] ISO (''PIM ISO'') as set forth in Supplementary Material .08 to Options 3, Section 13, as further discussed below.[7]

Facilitation ISO

Today, the Exchange allows the submission of ISOs into its Facilitation Mechanism as Facilitation ISOs. To promote transparency, the Exchange proposes to memorialize Facilitation ISOs as an order type in Supplementary Material .06 to Options 3, Section 11. Specifically, the Exchange proposes:

A Facilitation ISO order (''Facilitation ISO'') is the transmission of two orders for crossing pursuant to paragraph (b) above without regard for better priced Protected Bids or Protected Offers (as defined in Options 5, Section 1) because the Member transmitting the Facilitation ISO to the Exchange has, simultaneously with the transmission of the Facilitation ISO, routed one or more ISOs, as necessary, to execute

[3] This functionality is currently offered on the Exchange, so the proposed rule change codifies existing functionality in the Exchange's rules.

[4] ''Protected Bid'' or ''Protected Offer'' means a Bid or Offer in an options series, respectively, that: (a) is disseminated pursuant to the Options Order Protection and Locked/Crossed Market Plan; and (b) is the Best Bid or Best Offer, respectively, displayed by an Eligible Exchange. *See* Options 5, Section 1(o).

[5] The Exchange notes that it has an ISO trade through surveillance in place that will identify and capture when a Member marks a Facilitation or Solicitation ISO and the order possibly trades through a Protected Bid or Protected Offer price at an away exchange. The Exchange will monitor the NBBO prior to and after the order trades on the Exchange to detect potential trade through violations.

[6] The Price Improvement Mechanism (''PIM'') is a process that allows an Electronic Access Member to provide price improvement opportunities for a transaction wherein the Electronic Access Member seeks to facilitate an order it represents as agent, and/or a transaction wherein the Electronic Access Member solicited interest to execute against an order it represents as agent. *See* Options 3, Section 13(a).

[7] The Exchange also notes that its affiliates, Nasdaq BX (''BX'') and Nasdaq Phlx (''Phlx''), currently allow ISOs to be entered into BX's Price Improvement Mechanism (''PRISM'') and Phlx's Price Improvement XL (''PIXL''), respectively. *See* BX Options 3, Section 13(ii)(K) (describing PRISM ISOs) and Phlx Options 3, Section 13(b)(11) (describing PIXL ISOs). Other options exchanges like Cboe Exchange, Inc. (''Cboe'') and Cboe EDGX Exchange, Inc. (''EDGX'') similarly allow ISOs to be entered into their auction mechanisms. *See* Cboe Rule 5.37(b)(4)(A) and EDGX Rule 21.19(b)(3)(A) (allowing ISOs to be entered into Cboe's and EDGX's Automated Improvement Mechanism (''AIM ISOs'')) and Cboe Rule 5.39(b)(4) and EDGX Rule 21.21(b)(4) (allowing ISOs to be entered into Cboe's and EDGX's Solicitation Auction Mechanism (''SAM ISOs'')). *See also* Securities Exchange Act Release No. 60551 (August 20, 2009), 74 FR 43196 (August 26, 2009) (SR–CBOE–2009–040) (Order Granting Approval of a Proposed Rule Change to Adopt Rules Implementing the Options Order Protection and Locked/Crossed Market Plan, including to adopt AIM ISOs).

against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting Facilitation auction price. Any execution(s) resulting from such sweeps shall accrue to the Agency order.

Today, the Exchange will accept a Facilitation ISO provided the order adheres to the current order entry requirements for the Facilitation Mechanism as set forth in Options 3, Section 11(b)(1),[8] but without regard to the ABBO (similar to a regular ISO in Options 3, Section 7(b)(4)). Therefore, Facilitation ISOs must be entered at a price that is equal to or better than the Exchange best bid or offer on the same side of the market as the agency order unless there is a Priority Customer order on the same side Exchange best bid or offer, in which case the Facilitation ISO must be entered at an improved price. The Exchange does not check the Exchange best bid or offer on the opposite side of the Facilitation ISO because the underlying Facilitation Mechanism similarly does not check the opposite side Exchange best bid or offer. As discussed above, the Facilitation Mechanism only requires that the opposite side of the Facilitation order be equal to or better than the ABBO.[9] The Facilitation Mechanism does not check the opposite side Exchange best bid or offer because any interest that is available on the opposite side of the market would allocate against the Facilitation agency order and provide price improvement. As an example of the current underlying Facilitation Mechanism:

Assume the following market:
Exchange BBO: 1×2 (also NBBO)
CBOE: $0.75. \times 2.25$ (next best exchange quote)
Facilitation order is entered to buy 50 contracts @2.05
No Responses are received.

The Facilitation order executes with resting 50 lot quote @2. In this instance, the Facilitation order is able to begin crossed with the contra side Exchange BBO because in execution, the resting 50 lot quote @2 is able to provide price improvement to the facilitation order.

Given that the Facilitation ISO is accepted so long as it adheres to the order entry requirements of the underlying Facilitation Mechanism, but without regard to the ABBO, the Exchange believes that it is appropriate and logical to align the order entry checks of the Facilitation ISO in the manner discussed above.

The Exchange processes the Facilitation ISO in the same manner that it processes any other Facilitation orders, except that it will initiate a Facilitation auction without protecting prices away. Instead, the Member entering the Facilitation ISO will bear the responsibility to clear all better priced interest away simultaneously with submitting the Facilitation ISO to the Exchange. The Exchange believes that offering this order type is beneficial for Members as it provides them with an efficient method to initiate a Facilitation auction while preventing trade-throughs.

The Exchange notes that the Facilitation ISO is similar to the PIM ISO that is currently described in Supplementary Material .08 to Options 3, Section 13.[10] Similar to the Facilitation ISO, the PIM ISO must meet the order entry requirements for PIM in Options 3, Section 13(b) but does not consider the ABBO.[11] Further, the Exchange processes a PIM ISO order the same way as any other PIM order except the Exchange will initiate a PIM auction without protecting away prices. As with Facilitation ISOs, the Member entering the PIM ISO bears responsibility to clear all better priced interest away simultaneously with submitting the PIM ISO to the Exchange.

The following example illustrates how Facilitation ISO operates:

Assume:
ABBO: 1×1.20
Exchange BBO: 0.90×1.30
Member enters Facilitation ISO with Agency side to buy 50 @1.25 and simultaneously routes multiple ISOs to execute against the full displayed size of any Protected Bids priced better than the starting Facilitation auction price
Facilitation ISO auction period concludes with no responses arriving
Facilitation ISO executes with contra side 50 @1.25 because the away market Best Offer of 1.20 has been cleared by the ISOs clearing the way for the Agency side to trade with the counter-side order at 1.25.

Solicitation ISO

Today, the Exchange allows the submission of ISOs into its Solicited Order Mechanism as Solicitation ISOs. To promote transparency, the Exchange proposes to memorialize Solicitation ISOs as an order type in Supplementary Material .07 to Options 3, Section 11. Specifically, the Exchange proposes:

A Solicitation ISO order (''Solicitation ISO'') is the transmission of two orders for crossing pursuant to paragraph (d) above without regard for better priced Protected Bids or Protected Offers (as defined in Options 5, Section 1) because the Member transmitting the Solicitation ISO to the Exchange has, simultaneously with the transmission of the Solicitation ISO, routed one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting Solicitation auction price and has swept all interest in the Exchange's book priced better than the proposed auction starting price. Any execution(s) resulting from such sweeps shall accrue to the Agency order.

Today, the Exchange will accept a Solicitation ISO provided the order adheres to the current order entry requirements for the Solicited Order Mechanism as set forth in Options 3, Section 11(d)(1),[12] but without regard to

[8] Specifically, Options 3, Section 11(b)(1) provides that orders must be entered into the Facilitation Mechanism at a price that is (A) equal to or better than the NBBO on the same side of the market as the agency order unless there is a Priority Customer order on the same side Exchange best bid or offer, in which case the order must be entered at an improved price; and (B) equal to or better than the ABBO on the opposite side. Orders that do not meet these requirements are not eligible for the Facilitation Mechanism and will be rejected. The Exchange notes that it is amending this provision in a concurrent rule filing (SR–ISE–2022–25), but that the proposed changes in this filing do not impact SR–ISE–2022–25 and vice versa. *See* Securities Exchange Act Release No. 96362 (November 18, 2022), 87 FR 72539 (November 25, 2022) (SR–ISE–2022–25).

[9] *Id.*

[10] Supplementary Material .08 to Options 3, Section 13 defines PIM ISO as the transmission of two orders for crossing pursuant to this Rule without regard for better priced Protected Bids or Protected Offers (as defined in Options 5, Section 1) because the Member transmitting the PIM ISO to the Exchange has, simultaneously with the routing of the PIM ISO, routed one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting PIM auction price and has swept all interest in the Exchange's book priced better than the proposed auction starting price. Any execution(s) resulting from such sweeps shall accrue to the PIM order.

[11] Unlike the Facilitation Mechanism, PIM requires an opposite side NBBO check, which would include the Exchange best bid or offer. As discussed above, the Facilitation order entry checks only require that the opposite side of the Facilitation order be equal to or better than the ABBO (*i.e.,* there is no opposite side local book check). For PIM, the order must be entered at one minimum price improvement increment better than the NBBO on the opposite side of the market if the Agency Order is for less than 50 option contracts and if the difference between the NBBO is $0.01. If the Agency Order is for 50 option contracts or more, or if the difference between the NBBO is greater than $0.01, the PIM order must be entered at a price that is equal to or better than the NBBO on the opposite side. *See* Options 3, Section 13(b)(1) and (2). As such, PIM ISOs additionally require the entering Member to sweep all interest in the Exchange's book priced better than the proposed auction starting price (unlike Facilitation ISO which does not have a similar sweep requirement).

[12] Specifically, Options 3, Section 11(d)(1) provides that orders must be entered into the Solicited Order Mechanism at a price that is equal to or better than the NBBO on both sides of the market; provided that, if there is a Priority Customer order on the Exchange best bid or offer, the order must be entered at an improved price. Orders that do not meet these requirements are not

the ABBO (similar to a regular ISO in Options 3, Section 7(b)(4)). Therefore, Solicitation ISOs must be entered at a price that is equal to or better than the Exchange best bid or offer on both sides of the market; provided that, if there is a Priority Customer order on the Exchange best bid or offer, the Solicitation ISO must be entered at an improved price.

The Exchange processes the Solicitation ISO in the same manner that it processes other orders entered in the Solicited Order Mechanism, except that it will initiate a Solicited Order auction without protecting away prices. Instead, the Member entering the Solicitation ISO will bear the responsibility to clear all better priced interest away simultaneously with submitting the Solicitation ISO to the Exchange. Similar to the Facilitation ISO discussed above, the Exchange believes that offering this order type is beneficial for Members as it provides them with an efficient method to initiate an auction in the Solicited Order Mechanism while preventing trade-throughs. Furthermore, Solicitation ISOs are similar to PIM ISOs in the manner described above for Facilitation ISOs.[13] In addition, other options exchanges currently offer a substantially similar order type as the Exchange's Solicitation ISO.[14]

The following example illustrates how the Solicitation ISO operates:

Assume:

ABBO: 1×1.20

Exchange BBO: 0.90×1.30

Member enters Solicitation ISO with Agency side to buy 500 @1.25 and simultaneously routes multiple ISOs to execute against the full displayed size of any Protected Bids priced better than the starting Solicitation auction price

Solicitation ISO auction period concludes with no responses arriving

Solicitation ISO executes with contra side 500 @1.25

Note that in the case a Solicitation ISO was entered with the Agency side to buy 500 @1.35, it would be rejected because it was not at or better than the NBBO on both sides (which is inclusive of an Exchange book check). While the 1.20 away Best Offer was cleared by the simultaneously routed ISOs, the Exchange Best Offer of 1.30 would now be viewed as the National Best Offer for purposes of the Solicitation ISO.

Further note that a Facilitation ISO entered with the Agency side to buy 50 @1.35 can start in the same example above because it does not have a contra-side (from the Agency order perspective) Exchange book check to begin. The Facilitation ISO would go on to allocate against the 1.30 offer on the Exchange book upon the conclusion of the auction.

Intermarket Sweep Orders

In light of the changes proposed above to adopt the Facilitation ISO and Solicitation ISO into its Rulebook, the Exchange proposes to make related amendments to the ISO rule in Options 3, Section 7(b)(4) to add that ''ISOs may be entered on the single leg order book or into the Facilitation Mechanism, Solicited Order Mechanism, or Price Improvement Mechanism, pursuant to Supplementary Material .06 and .07 to Options 3, Section 11, and Supplementary Material .08 to Options 3, Section 13.''

The proposed rule text will be similar to BX's current ISO rule in BX Options 3, Section 7(a)(6), except the Exchange's ISO rule will refer to Exchange functionality that BX does not have today. Specifically, BX does not currently offer Facilitation ISOs or Solicitation ISOs. PIM ISOs are currently codified in Supplementary Material .08 to Options 3, Section 13, so the proposed rule text herein is a non-substantive amendment to add a cross-reference to the PIM ISO rule. The proposed language does not amend the current ISO functionality but rather is intended to add more granularity and more closely align the ISO rule with BX's ISO rule.[15]

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[16] in general, and furthers the objectives of section 6(b)(5) of the Act,[17] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Facilitation and Solicitation ISOs

The Exchange believes that the proposal to adopt Facilitation ISOs and Solicitation ISOs in Supplementary Material .06 and .07 to Options 3, Section 11 is consistent with the Act. The proposal will codify current functionality, thereby promoting transparency in the Exchange's rules and reducing any potential confusion. As it relates to Solicitation ISOs, the Exchange believes that the proposed rule change promotes fair competition. Specifically, the proposal allows the Exchange to offer Members an order type that is already offered by other options exchanges.[18]

In addition, offering the Facilitation ISO and Solicitation ISO benefits market participants and investors because this functionality provides an additional and efficient method to initiate a Facilitation or Solicited Order auction while preventing trade-throughs. As discussed above, the Exchange processes the Facilitation and Solicitation ISO in the same manner as it processes any other order entered into the Facilitation and Solicited Order Mechanism, except the Exchange will initiate a Facilitation auction or Solicited Order auction without protecting away prices (similar to a regular ISO in Options 3, Section 7(b)(4)). Instead, the entering Member, simultaneous with the transmission of the Facilitation ISO or Solicitation ISO to the Exchange, remains responsible for routing one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting Facilitation or Solicitation auction price, and for Solicitation ISO, has

eligible for the Solicited Order Mechanism and will be rejected. Similar to the Facilitation Mechanism, the Exchange is amending the entry checks for the Solicited Order Mechanism in SR–ISE–2022–25; however, the proposed changes in this filing do not impact SR–ISE–2022–25 and vice versa. *See supra* note 8.

[13] The Exchange notes that similar to the PIM ISO, but unlike Facilitation ISO, the Solicitation ISO requires entering Members to sweep all interest in the Exchange's book priced better than the proposed auction starting price. The order entry checks for the Solicited Order Mechanism, similar to PIM, requires an opposite side NBBO check, which would include the Exchange best bid or offer. *See supra* notes 11—12.

[14] As noted above, both Cboe and EDGX currently offer a SAM ISO order type, which is defined as the submission of two orders for crossing in a SAM Auction without regard for better-priced Protected Quotes (as defined in Cboe Rule 5.65 and EDGX Rule 27.1) because the Initiating TPH routed an ISO(s) simultaneously with the routing of the SAM ISO to execute against the full displayed size of any Protected Quote that is better than the stop price and has swept all interest in the Book with a price better than the stop price. Any execution(s) resulting from these sweeps accrue to the SAM Agency Order. *See* Cboe Rule 5.39(b)(4) and EDGX Rule 21.21(b)(4). *See also* Securities Exchange Act Release Nos. 87192 (October 1, 2019), 84 FR 53525 (October 7, 2019) (SR–CBOE–2019–063) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change related to the SAM Auction, including to adopt the SAM ISO); and 87060 (September 23, 2019), 84 FR 51211 (September 27, 2019) (SR-CboeEDGX–2019–047) (Order Approving a Proposed Rule Change to Adopt a SAM Auction, including to adopt the SAM ISO).

[15] BX's ISO rule currently has more granularity than the Exchange's ISO rule, such as requiring ISOs to have a TIF designation of IOC and prohibiting ISOs from being submitted during the opening process. The Exchange will add identical granularity to its ISO rule in a separate rule related to intermarket sweep order (''ISO'') functionality filing.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] *See supra* note 14.

swept all interest in the Exchange's book priced better than the proposed auction starting price.[19] As discussed above, these order types operate in a similar manner to the PIM ISO that is currently described in Supplementary Material .08 to Options 3, Section 13.[20]

Intermarket Sweep Orders

The Exchange believes that the proposed changes to the definition of ISOs in Options 3, Section 7(b)(4) are consistent with the Act. As discussed above, the proposed changes are intended to add more granularity and more closely align the level of detail in the ISO rule with BX's ISO rule in BX Options 3, Section 7(a)(6) by specifying how ISOs may be submitted.[21] As such, the Exchange believes that its proposal will promote transparency in the Exchange's rules and consistency across the rules of the Nasdaq affiliated options exchanges. While the proposed changes to the Exchange's ISO rule generally track BX's ISO rule, the proposed language will refer to certain Exchange functionality that BX does not have today (*i.e.,* Facilitation ISOs or Solicitation ISOs).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Offering Facilitation and Solicitation ISOs does not impose an undue burden on competition because it enables the Exchange to provide market participants with an additional and efficient method to initiate a Facilitation or Solicited Order auction while preventing trade-throughs, as discussed above. In addition, all Members may submit a Facilitation ISO or Solicitation ISO. As it relates to the Solicitation ISO, the Exchange believes that the proposed rule change will promote fair competition among options exchanges as it will allow the Exchange to compete with other markets that already allow ISOs in their solicitation auction mechanisms.[22]

The Exchange further believes that the proposed changes to its ISO rule do not impose an undue burden on competition. As discussed above, the proposed changes are intended to add more granularity and more closely align the level of detail in the ISO rule with BX's ISO rule in BX Options 3, Section 7(a)(6) by specifying how ISOs may be submitted, except the Exchange's ISO rule will refer to Exchange functionality that BX does not have today (*i.e.,* Facilitation and Solicitation ISOs).[23] With the proposed changes, the Exchange believes that its proposal will promote transparency in the Exchange's rules and consistency across the rules of the Nasdaq affiliated options exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[24] and subparagraph (f)(6) of Rule 19b–4 thereunder.[25]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2023–01 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–ISE–2023–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2023–01 and should be submitted on or before February 28, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Sherry R. Haywood,

Assistant Secretary.

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[19] *See supra* note 13.

[20] *See supra* notes 11 and 13.

[21] *See supra* note 15.

[22] *See supra* note 14.

[23] *See supra* note 15.

[24] 15 U.S.C. 78s(b)(3)(A)(iii).

[25] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96786; File No. SR–NSCC–2022–005]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3, To Revise the Excess Capital Premium Charge

February 1, 2023.

I. Introduction

On May 20, 2022, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–NSCC–2022–005 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b-4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on June 8, 2022,[3] and the Commission has received comments regarding the proposed rule change.[4]

On July 11, 2022, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.[6] On September 1, 2022, the Commission instituted proceedings, pursuant to Section 19(b)(2)(B) of the Act,[7] to determine whether to approve or disapprove the proposed rule change.[8]

On July 6, 2022, NSCC filed a partial amendment (''Amendment No. 2'') to modify the proposed rule change.[9] On November 28, 2022, NSCC filed another amendment (''Amendment No. 3'') to modify the proposed rule change.[10] On December 1, 2022, the Commission published notice of filing of Amendment Nos. 2 and 3 and of an extension to the action date for the proposed rule change.[11]

For the reasons discussed below, the Commission is approving the proposed rule change, as modified by Amendment Nos. 1, 2 and 3 (hereinafter, ''proposed rule change'').

II. Description of the Proposed Rule Change [12]

NSCC provides clearing, settlement, risk management, central counterparty services, and a guarantee of completion for virtually all broker-to-broker trades involving equity securities, corporate and municipal debt securities, and unit investment trust transactions in the U.S. markets. A key tool that NSCC uses to manage its credit exposure to its members is collecting an appropriate Required Fund Deposit (*i.e.,* margin) from each member.[13] A member's margin is designed to mitigate potential losses to NSCC associated with liquidation of the member's portfolio in the event of that member's default.[14] The aggregate of all NSCC members' margin deposits (together with certain other deposits required under the Rules) constitutes NSCC's Clearing Fund, which NSCC would access should a member default and that member's margin, upon liquidation, be insufficient to satisfy NSCC's losses.[15]

A member's margin consists of a number of applicable components, each of which addresses specific risks faced by NSCC.[16] Many of those components are designed to measure risks presented by the net unsettled positions a member submits to NSCC to be cleared and settled; however, certain components, often referred to as margin ''add-ons,'' measure and mitigate other risks that NSCC may face, such as credit risks.

NSCC's excess capital premium (''ECP'') is one such add-on that makes up part of the margin that a member must pay to NSCC. The purpose of this charge is to mitigate the heightened default risk a member could pose to NSCC if it operates with lower capital levels relative to its margin requirements.[17] Put another way, the ECP charge operates to collect additional margin if a member's exposure to NSCC based on its clearing activity is out of proportion to its capital.

As described in more detail below, the ECP charge applies when a specified portion of a member's required margin exceeds its capital by a ratio of more than 1.0 (defined in the Rules as the ''Excess Capital Ratio'').[18] When the charge applies, NSCC determines its amount by multiplying the member's capital by this ratio, with the resulting amount serving as the add-on charge.

NSCC's proposal would change both the calculation methodology and governance of the ECP charge in its Rules. With respect to the calculation of the charge, NSCC proposes to: (1) use the volatility charge of a member's margin requirement to compare a member's applicable capital amounts, as opposed to the current methodology which uses a specific ''calculated amount'' identified in the Rules; (2) when calculating the ECP charge, for members that are broker-dealers, use net capital amounts rather than excess net capital, and for all other members, use equity capital in the calculation of the ECP charge; and (3) establish a cap of 2.0 for the Excess Capital Ratio that is used in calculating a member's ECP charge. With respect to governance, NSCC proposes to: (1) identify the particular circumstances in which NSCC has the ability to waive the charge, including the information that NSCC would review in deciding whether to waive the ECP charge as well as the governance around the application of such waiver; and (2) provide that NSCC may calculate the charge based on updated capital information.

NSCC has estimated the potential impacts of the proposal during the period of June 1, 2020 through December 31, 2021. The study showed that the proposal would have had no impact to NSCC's overall or member-level margin coverage, that is, that

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] Securities Exchange Act Release No. 95026 (June 2, 2022), 87 FR 34913 (June 8, 2022) (''Notice''). The Notice referred to an incorrect filing date of May 30, 2022; however, the proposal was filed on May 20, 2022, as indicated here. Moreover, the Notice reflected the filing of Amendment No. 1, which made a correction to Exhibit 5 of the filing, specifically, to insert an additional cross-reference into a proposed definition that had been omitted.

[4] Comments are available at *https://www.sec.gov/comments/sr-nscc-2022-005/srnscc2022005.htm.*

[5] 15 U.S.C. 78s(b)(2).

[6] Securities Exchange Act Release No. 95245 (July 11, 2022), 87 FR 42523 (July 15, 2022).

[7] 15 U.S.C. 78s(b)(2)(B).

[8] Securities Exchange Act Release No. 95656 (Sept. 1, 2022), 87 FR 55058 (Sept. 8, 2022).

[9] Amendment No. 2 partially amended the proposed rule change to update the description of the impact of the proposal. In Amendment No. 2, NSCC also provided a revised version of the confidential impact study that it included as Exhibit 3a to the proposed rule change.

[10] Amendment No. 3 amended and replaced the proposed rule change in its entirety. Specifically, it clarified the particular circumstances in which NSCC would retain the ability to waive the excess capital premium charge, rather than remove NSCC's discretion to waive or reduce the charge as was initially proposed in the proposed rule change.

[11] Securities Exchange Act Release No. 96426 (Dec. 1, 2022), 87 FR 75105 (Dec. 7, 2022) (''Amended Notice'').

[12] Capitalized terms not defined herein are defined in NSCC's Rules and Procedures (''Rules''), *available at http://dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.*

[13] *See* Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters) of the Rules, *supra* note 12.

[14] Under NSCC's Rules, a default would generally be referred to as a ''cease to act'' and could encompass a number of circumstances, such as a member's failure to make a margin deposit in a timely fashion. *See* Rule 46 (Restrictions on Access to Services), *supra* note 12.

[15] *See id.*

[16] *See* Procedure XV, *supra* note 12.

[17] *See* Securities Exchange Act Release No. 54457 (Sept. 15, 2006), 71 FR 55239 (Sept. 21, 2006) (SR–FICC–2006–03 and SR–NSCC–2006–03) (approving the ECP charge as a new component of the margin methodology).

[18] *See* Section I(B)(2) of Procedure XV, *supra* note 12.

NSCC would continue to collect margin that would cover its credit exposures to its members under the proposal. Further, the study showed that the proposal would have reduced the number of ECP charges that would have been triggered by the calculation by 65 percent, from 347 ECP charges triggered for 19 members to 122 ECP charges triggered for 14 members. The total aggregate amount that would have been triggered by the proposed calculation if the proposal was effective during that time would have been reduced from $51.31 billion (the actual total amount of ECP charges triggered by the current calculation during that period) to approximately $17.44 billion (the total amount of ECP charges that would have been triggered during that time by the proposed calculation), with the average amount per member reducing from $147.9 million to approximately $143.0 million.[19]

A. Current Calculation and Governance of the ECP Charge

NSCC's current methodology for determining applicability of the ECP charge is as follows. First, NSCC determines the member's ''Calculated Amount,'' pursuant to the Rules. The Calculated Amount is designed to represent the member's margin requirements to NSCC resulting from its unsettled positions, and it is made up of a number of the components of a member's margin.[20] NSCC then divides the member's Calculated Amount by its current capital amount, which is the amount reported to NSCC pursuant to its ongoing membership standards.[21]

Next, if the member's Calculated Amount divided by the applicable capital amount (referred to as the member's Excess Capital Ratio) is greater than 1.0, NSCC may require that member to make an ECP charge.[22] The applicable ECP charge is the product of (1) the amount by which a member's Calculated Amount exceeds its applicable capital amount, multiplied by (2) the member's Excess Capital Ratio. However, NSCC has the authority to collect a lower ECP charge than the amount calculated pursuant to the Rules or to determine not to collect the ECP charge from a member at all, and it may return all or a portion of a collected ECP charge if it believes the imposition or maintenance of the ECP charge is not necessary or appropriate.[23]

The Rules describe some circumstances when NSCC may determine not to collect an ECP charge from a member, which includes, for example, when an ECP charge results from trading activity for which the member submits later offsetting activity that lowers its Required Fund Deposit.[24] The discretion to adjust, waive or return an ECP charge was designed to allow NSCC to determine when a calculated ECP charge may not be necessary or appropriate to mitigate the risks it was designed to address.[25]

B. Amendments to the Calculation of the ECP Charge

Use Members' Volatility Component Instead of the Calculated Amount. NSCC proposes to replace the Calculated Amount with the amount collected as that member's volatility component of its margin for purposes of determining the applicability of the ECP charge. The volatility component measures the market price volatility of a member's portfolio,[26] and it usually comprises the largest portion of a member's margin.

Currently, determining a member's Calculated Amount requires a more complicated calculation, as it uses a member's margin, but excludes certain components and includes other deposits. The proposal would simplify this calculation by using only the volatility component. NSCC states that one of the tools it provides to its members is a calculator that allows them to determine their potential volatility charge based on trading activity, and that, therefore, this proposed change would make the calculation of the ECP charge both clearer and more predictable for members.[27]

Use Net Capital for Broker-Dealer Members and Equity Capital for All Other Members in the Calculation of the ECP Charge.[28] NSCC is proposing to use net capital, rather than excess net capital, for broker-dealer members when calculating the ECP charge. NSCC states that this revision would align the capital measures used for broker-dealer members and other members, which would result in more consistent calculations of the ECP charge across different types of members.[29] NSCC also states that using net capital rather than excess net capital would provide NSCC with a better measure of the increased default risks presented when a broker-dealer member operates at low net capital levels relative to its margin requirements.[30]

In addition, NSCC is proposing to provide that, for all members that are not broker-dealers, it would use equity capital in calculating the ECP charge, rather than the capital amount set forth in NSCC's membership standards.[31]

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[19] *See* Amended Notice, *supra* note 11, 87 FR 75111. NSCC also submitted more detailed results of the impact study as confidential Exhibit 3 to the proposed rule change. NSCC requested confidential treatment of Exhibit 3 pursuant to 17 CFR 240.24b-2.

[20] Specifically, the Rules define the Calculated Amount as a member's Required Fund Deposit excluding any applicable special charge, margin requirement differential charge, coverage component charge or margin liquidity adjustment charge, plus any additional amounts the member is required to deposit to the Clearing Fund either due to being placed on the Watch List or as an assurance of financial responsibility or operational capability. These various margin components and other concepts are described in the NSCC Rules. *See* Procedure XV, Sections I(A)(1)(c) and (2)(c) (special charge), I(A)(1)(e) and (2)(d) (margin requirement differential), I(A)(1)(f) and (2)(e) (coverage component), and I(A)(1)(g) and (2)(f) (margin liquidity adjustment charge), *supra* note 12; *see also* Rule 15, Section 2b(iv), *supra* note 12 (setting forth NSCC's authority to require adequate assurances of a member's financial responsibility).

[21] Members that are broker-dealers are required to maintain a certain level of excess net capital, and bank members are required to maintain a certain level of equity capital as a requirement for continued membership with NSCC. *See* Addendum B, *supra* note 12. Members are required to provide NSCC with financial information, including information regarding members' current capital amounts, on a regular basis, and NSCC uses these reported capital amounts in the calculation of the ECP charge. *See* Rule 2B, Section 2, *supra* note 12.

[22] Section I(B)(2) of Procedure XV, *supra* note 12.

[23] *Id.*

[24] *See* footnote 7 of Procedure XV, *supra* note 12.

[25] *See* note 17 *supra.*

[26] *See* Sections I(A)(1)(a)(i)–(iii) and (2)(a)(i)–(iii) of Procedure XV of the Rules, *supra* note 12. NSCC has two methodologies for calculating the volatility component—a model-based volatility-at-risk, or VaR, charge, and a haircut-based calculation, for certain positions that are excluded from the VaR charge calculation.

[27] Amended Notice, *supra* note 11, 87 FR at 75108.

[28] To effectuate these changes, NSCC proposes to adopt revised and new defined terms. Specifically, NSCC would include a new defined term for ''Equity Capital'' and revise a defined term for ''Net Capital.'' The proposal would also revise the Rules describing the calculation of the ECP charge and identifying membership qualifications, to use the new and/or revised defined terms, as appropriate. In addition, NSCC would identify the reporting requirements that NSCC relies on to obtain the capital information for members.

[29] Amended Notice, *supra* note 11, 87 FR at 75108.

[30] *See id.* NSCC states that this approach would be consistent with the rationale for the Commission's amendments to Rule 15c3–1 under the Act, which were designed to promote a broker-dealer's capital quality and require the maintenance of ''net capital'' (*i.e.,* capital in excess of liabilities) in specified amounts as determined by the type of business conducted. *Id.* (citing 17 CFR 240.15c3–1; Securities Exchange Act Release No. 70072 (July 30, 2013), 78 FR 51823 (Aug. 21, 2013) (File No. S7–08–07)). NSCC believes that Rule 15c3–1 provides an effective process of separating liquid and illiquid assets and computing a broker-dealer's regulatory net capital that should replace NSCC's existing practice of using excess net capital in the calculation of the ECP charge. *Id.*

[31] NSCC's Rules identify the applicable capital measures as follows: for bank members, equity capital; for members that are trust companies and not banks, consolidated capital; and for other legal entities that are members, an amount determined by NSCC. *See* Section 1.B of Addendum B, *supra* note 12.

Currently, for all members that are not banks, non-bank trusts or broker-dealers (which generally include, for example, exchanges and registered clearing agencies), NSCC uses those members' reported equity capital in the calculation of the ECP charge. Therefore, in practice, the ECP charge is calculated for the majority of members that are not broker-dealers using their equity capital, and this proposed change is not expected to have a material impact on the collection of ECP charges.[32] NSCC states that the proposal would simplify the calculation of the ECP charge for members that are not broker-dealers by providing that NSCC would use equity capital rather than use different measures that are based on other membership requirements, and that it would also create consistency across members.[33]

Establish a Cap for the Excess Capital Ratio. NSCC is proposing to set a maximum amount of the Excess Capital Ratio that is used in calculating members' ECP charge of 2.0. Specifically, the Excess Capital Ratio is the multiplier that is applied to the difference between a member's volatility charge and its applicable capital measure. Currently, the Rules do not include any cap on the Excess Capital Ratio.

NSCC states that capping the multiplier would allow it to address the risks it faces without imposing an overly burdensome ECP charge.[34] NSCC further states that, historically, the Excess Capital Ratio has rarely exceeded 2.0 in the calculation of members' ECP charges, and in cases when 2.0 was exceeded NSCC typically exercised the discretion provided to it in the Rules to reduce the applicable charge, which was appropriate because NSCC believes it is able to mitigate the risks presented to it by a member's lower capital levels by collecting an ECP charge calculated with an Excess Capital Ratio that is at or below 2.0.[35] NSCC also states that this proposed change would provide members with more clarity and transparency, by allowing them to predict and estimate the maximum amount of their potential ECP charge.[36]

C. Changes Regarding Governance of the ECP Charge

NSCC's Ability to Waive the ECP Charge. NSCC would also revise its Rules to specify particular circumstances in which NSCC retains the ability to waive the ECP charge. NSCC states that the proposed changes to the calculation of the ECP charge would, taken together, eliminate most circumstances in which NSCC would have exercised this discretion. For example, the proposal to cap the Excess Capital Ratio at 2.0 and the proposal to specify that NSCC may calculate an ECP charge based on updated capital amounts (as described below), both address the most common circumstances when NSCC has either waived or reduced the ECP charge in the past.[37]

However, NSCC believes that there may still be circumstances when it may not be necessary or appropriate to collect an ECP charge from a member, for example, in certain exigent circumstances when NSCC observes unexpected changes in market volatility or trading volumes.[38] Therefore, NSCC is proposing to retain discretion to waive an ECP charge in certain defined circumstances and to specify the approval required to apply such discretion.

As proposed, NSCC's Rules would describe the exigent circumstances in which NSCC would retain the ability to waive an ECP charge as those when NSCC, in its sole discretion, observes extreme market conditions or other unexpected changes in factors such as market volatility, trading volumes or other similar factors. As noted above, NSCC states that, based on a review of past data, the proposed changes to the calculation of the ECP charge would otherwise eliminate most prior instances when an ECP charge was waived.[39]

NSCC also states that there have been instances, particularly in recent years, when NSCC has waived the ECP charge in circumstances that would fall within the proposed identification of exigent circumstances, and that the ECP charge would have been triggered in such circumstances, even as amended by this proposed rule change. Such instances occurred multiple times in recent years, including, for example, during the extreme market volatility experienced in early 2020 related to the global outbreak of the COVID–19 coronavirus and the meme stock market event in early 2021.[40] Further, NSCC believes there remains some ongoing possibility that an unexpected increase in market volatility, for example, could cause a relative increase in a member's volatility charge, which may, in turn, trigger an ECP charge, even under the proposal.[41]

In such circumstances, under the proposal, NSCC would determine if the ECP charge being triggered at that time is not primarily caused by the risk presented by a member's capital levels and whether NSCC can effectively address the risk exposure presented by that member without the collection of the ECP charge. Alternatively, NSCC may determine, based on its review of the information available to it, that the ECP charge was appropriately triggered by a member's capital position or trading activity and was not driven primarily by the prevailing market conditions or other exigent circumstances. Therefore, NSCC believes it is appropriate to retain a certain amount of discretion to review an ECP charge that is triggered in such circumstances to determine whether a waiver of the ECP charge may be appropriate.[42]

In addition to defining the circumstances in which NSCC may waive the ECP charge, the proposed changes would also describe the review NSCC would conduct in deciding to waive the charge in the exigent circumstances, the information NSCC would consider in such review, and the approval required to waive the ECP charge. More specifically, the proposed rule change provides that NSCC would review all relevant facts and other information available to it at the time of its decision, including the degree to which a member's capital position and trading activity compare or correlate to the prevailing exigent circumstances and whether NSCC can effectively address the risk exposure presented by a member without the collection of the ECP charge from that member. For example, as noted above, if NSCC believes, based on its review of the relevant circumstances, that the risk exposure presented by a member is driven by the unexpected increase in

[32] Amended Notice, *supra* note 11, 87 FR at 75108.

[33] *Id.* at 75109.

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *Id.* at 75109–10.

[38] *Id.*

[39] Specifically, over the impact study period, NSCC waived and adjusted calculated ECP charges by $38.80 billion. NSCC waived a total of 33 ECP charges that totaled approximately $26.12 billion. Under the proposal, however, 14 of these charges would have been collected from members (although the amount would have been reduced), totaling $6.46 billion, 14 charges would not have been triggered as the calculated ECP ratio was below 1.0, and NSCC would have waived 5 of the ECP charges, mainly following receipt of updated financial information. NSCC adjusted the amount of 16 ECP charges by a total of approximately $12.69 billion. Under the proposal, 7 of these charges would have been still collected, totaling $6.48 billion, and 9 charges would not have been triggered as the calculated ECP ratio was below 1.0. *See id.* at 75111. *See also supra* note 17.

[40] Amended Notice, *supra* note 11, 87 FR at 75109–10.

[41] *Id.* at 75110.

[42] *Id.*

market volatility and not by a member's capital levels, NSCC may determine that it is appropriate to address such risk through the collection of a special charge from that member rather than an ECP charge.[43]

Finally, the proposed rule change would specify the governance around a decision to waive an ECP charge, by identifying the level of NSCC officer who would be authorized to apply a waiver and by requiring that the decision be documented in a written report that is made available upon request to the affected member.[44]

NSCC's Ability to Consider Updated Capital Information. Under the proposal, NSCC would provide that it may calculate the ECP charge based on updated capital information. As described above, NSCC would use the net capital or equity capital amounts that are reported on members' most recent financial reporting or financial statements delivered to NSCC in connection with the ongoing membership reporting requirements. Under the proposal, if a member's capital amounts change between the dates when it submits these financial reports, it may provide NSCC with updated capital information for purposes of calculating the ECP charge.

NSCC is proposing to retain some discretion in when it would accept updated capital information for this purpose. For example, NSCC may require a member to provide documentation of the circumstances that caused a change in capital information, and if adequate evidence is not available or NSCC does not believe the evidence sufficiently verifies that the member's capital position has changed, NSCC would continue to calculate the ECP charge for that member based on the prior capital information available to NSCC until the next financial reporting or financial statements are delivered. NSCC believes it is appropriate to retain some discretion to allow NSCC to determine if updated capital information is adequately verified before it agrees to rely on that information for this calculation.[45]

[43] *See* Section I(A)(1)(c) and (2)(c) of Procedure XV, *supra* note 12 (allowing NSCC to collect, as part of margin ''[a]n additional payment (''special charge'') . . . in view of price fluctuations in or volatility or lack of liquidity of any security'').

[44] NSCC also states that it would update its internal procedures to include waivers of the ECP charge in its regular updates to the Commission. Amended Notice, *supra* note 11, 87 FR at 75110 n.37.

[45] *Id.* at 75110.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act[46] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. After carefully considering the proposed rule change, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to NSCC. In particular, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F)[47] of the Act and Rules 17Ad–22(e)(6)(i) and (e)(23)(ii) thereunder.[48]

A. Consistency With Section 17(A)(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and protect investors and promote the public interest.[49]

The Commission believes that the proposed changes to the calculation of the ECP charge described in section II.B above should allow NSCC to ensure that it continues to collect margin sufficient to address the heightened default risk presented by a member operating with lower capital levels relative to its margin requirements. Based on its review of the proposed rule change, including the detailed impact analysis submitted as a confidential exhibit,[50] the Commission understands that NSCC's margin coverage would not be impacted by this change and that NSCC would continue to collect sufficient margin to manage its potential exposure to its members.

In addition, the Commission believes that the proposed changes to the calculation of the ECP charge described in section II.B should result in a simplified and more straight-forward method for calculating the ECP charge, based on understandable metrics with which NSCC's members are familiar. For example, using a member's volatility charge, which is an established aspect of the overall margin requirements identified in NSCC's Rules, as opposed to the Calculated Amount that involves both including and excluding various margin components, is clearer and more predictable while still consistent with the purpose of the ECP charge. Similarly, using net capital and equity capital for broker-dealer members and all other members, respectively, in the calculation of the ECP charge would result in a more consistent calculation across different types of members.[51] Moreover, capping the Excess Capital Ratio at 2.0 would be an appropriate balance between addressing the heightened default risk without imposing overly burdensome ECP charges.

Together, by improving the consistency and predictability of the ECP charge, the proposed enhancements would also improve NSCC's ability to collect margin amounts that reflect the risks posed by its members such that, in the event of member default, NSCC's operations would not be disrupted, and non-defaulting members would not be exposed to losses they cannot anticipate or control. In this way, the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible, consistent with Section 17A(b)(3)(F) of the Act.[52]

The Commission believes that the proposed changes set forth in both

[46] 15 U.S.C. 78s(b)(2)(C).

[47] 15 U.S.C. 78q–1(b)(3)(F).

[48] 17 CFR 240.17Ad–22(e)(6)(i) and (e)(23)(ii).

[49] 15 U.S.C. 78q–1(b)(3)(F).

[50] *See* note 19 *supra.* The confidential analysis identified, on a member-by-member basis, the number of backtesting deficiencies during the impact study period.

[51] One commenter asserted that NSCC should also consider the member's ability to pay for customer trades by settlement. Letter from John S. Markle, VP and Deputy General Counsel, Robinhood Inc., at 3–4 (Aug. 3, 2022), *available at https://www.sec.gov/comments/sr-nscc-2022-005/srnscc2022005-20135431-306323.pdf* (''Robinhood Letter''). However, NSCC does not have access to that information as part of its normal course. The Commission therefore does not believe that it would be appropriate for NSCC to include that as part of the ECP charge calculation. However, this would not prohibit NSCC from considering that fact as part of its consideration of whether to waive an ECP charge. Similarly, the commenter asserted that NSCC should include a member's committed lines of credit in its determination of the member's capital. *Id.* at 4. However, the Commission believes that NSCC's stated desire to align the capital used for purposes of determining the ECP charge with the existing capital standards required for members is reasonable because it allows for consistency between different aspects of the Rules. In addition, the Commission believes that NSCC could, as part of its consideration whether to waive an ECP charge, consider such additional sources of funding if appropriate.

[52] 15 U.S.C. 78q–1(b)(3)(F).

sections II.B and II.C should improve transparency and understanding of the NSCC's governance and application of the ECP charge. For example, NSCC's proposal would describe the exigent circumstances in which NSCC may waive the ECP charge, describe what information NSCC would consider when determining whether to waive the charge, and specify the approval necessary to waive the charge.[53] Moreover, using commonly understood inputs as the determinants of the ECP charge (*i.e.,* using the volatility charge instead of the Calculated Amount and using net capital and equity capital instead of the current standards) and capping the Excess Capital Ratio at 2.0 should help members better anticipate and plan for a potential ECP charge. Through its client portal, NSCC provides regularly updated information to members about their volatility charges, such that a member should be able to better calculate and understand its potential ECP charge by using that information in conjunction with their capital, while also considering how the proposed cap on the Excess Capital Ratio would affect any eventual charge.[54]

Taken together, these proposed changes should help NSCC's members better anticipate their required margin because of the use of simplified inputs to the calculation of the ECP charge and the imposition of a cap on the applicable Excess Capital Ratio. This improved understanding of the potential margin requirements should, in turn, facilitate prompt and accurate clearance and settlement by removing potential ambiguity or confusion about a member's obligations to NSCC. Similarly, the Commission believes that the improved transparency provided by this proposed rule change both with respect to a member's margin obligations and the process by which NSCC would consider waiver of an ECP charge should provide members and the public with more clarity about the nature and application of the ECP charge and resolve potential ambiguity about when the ECP charge would or would not apply, which is consistent with promoting the public interest.

For these reasons, the Commission therefore believes that the proposed changes are consistent with Section 17A(b)(3)(F) of the Act.[55]

B. Consistency With Rule 17Ad–22(e)(6)(i)

Rule 17Ad–22(e)(6)(i) under the Act requires that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.[56]

The Required Fund Deposits are made up of risk-based components (as margin) that are calculated and assessed daily to limit NSCC's exposures to members. NSCC's proposed changes to use the volatility charge rather than the Calculated Amount, and to use net capital and equity capital, as appropriate, in the calculation of the ECP charge would collectively make the calculation clearer and more predictable to members, while continuing to apply an appropriate risk-based charge designed to mitigate the risks presented to NSCC. Similarly, the proposal to cap the Excess Capital Ratio at 2.0 would allow NSCC to appropriately address the risks it faces without imposing an overly burdensome ECP charge and would reduce the circumstances in which NSCC may waive the charge, resulting in a more transparent margining methodology.[57] Finally, the proposed rule change would clarify the exigent circumstances when NSCC may determine that it is appropriate to waive the ECP charge. Overall, these proposed changes would improve the effectiveness of the calculation of the ECP charge and, therefore, allow NSCC to more effectively address the increased default risks presented by members that operate with lower capital levels relative to their margin requirements.

Taken together, the proposed changes enhance the ability of the ECP charge to produce margin levels commensurate with the risks NSCC faces related to its members' operating capital levels. Therefore, the Commission believes that the proposed rule change is consistent with Rule 17Ad–22(e)(6)(i) under the Act.[58]

C. Consistency With Rule 17Ad–22(e)(23)(ii)

Rule 17Ad–22(e)(23)(ii) under the Act requires that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for providing sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in NSCC.[59]

As discussed above in section III.A, the Commission believes that the proposed changes set forth in both sections II.B and II.C should improve NSCC's members' ability to understand and estimate the potential magnitude of any ECP charge and to better anticipate when such a charge would apply and in what exigent circumstances NSCC would be able to waive the charge. The proposal would do this in several ways, including by simplifying and clarifying the inputs to the calculation of the ECP

[53] The Commission received comments on this aspect of the proposal as it was initially filed, before Amendment No. 3, which are no longer relevant in light of the changes set forth in Amendment No. 3. *See* Robinhood Letter at 1–3; Letter from William Capuzzi, Chief Executive Officer, Apex Clearing Corporation, at 2 (Aug. 24, 2022), *available at https://www.sec.gov/comments/sr-nscc-2022-005/srnscc2022005-20137445-307938.pdf* (''Apex Letter''). Specifically, the commenters asserted that NSCC did not explain what would happen to members incurring an ECP charge if NSCC no longer had the discretion to waive the charge, as NSCC had proposed in the initial filing before Amendment No. 3. Because Amendment No. 3 reintroduced the ability to waive the ECP charge in specified exigent circumstances, the Commission believes that these comments are addressed by the amendment.

[54] Commenters also asserted that NSCC should provide a curative period for members to address any potential application of the ECP charge, for example, by increasing the available capital or taking other measures. *See* Robinhood Letter at 4–5; Apex Letter at 2. However, the Commission disagrees that such a curative period would be appropriate. The ECP charge is a part of a member's financial obligation to NSCC, payment of which is governed by NSCC's Rules, *see* Procedure XV, Section II(B), *supra* note 12, and is directly related to the exposure that the member poses to NSCC. Therefore, consistency in the timeframes for payment for the overall margin amount makes sense and helps NSCC to manage its exposure to its members. The Commission does not believe that the ECP charge necessitates a specific additional cure period, given that NSCC would still be obligated to guarantee the transactions of a defaulting member during the purported curative period.

[55] 15 U.S.C. 78q–1(b)(3)(F).

[56] 17 CFR 240.17Ad–22(e)(6)(i).

[57] One commenter asserted that NSCC should provide further support for capping the Excess Capital Ratio at 2.0, as opposed to a different figure such as 1.5. Robinhood Letter at 5. The commenter referenced statements that NSCC made in the proposed rule change, to argue that the ratio was not supported and that further analysis would be appropriate. *Id.* However, the Commission also reviewed the underlying impact analysis, submitted confidentially as part of the proposed rule change, *see* note 19 *supra*, which allows for a more detailed understanding of what the Excess Capital Ratio would have been under the proposal in each instance in which the ECP charge applied over the impact study period and, therefore, an understanding of how often the ratio would be, for example, between 1.5 and 2.0. Based on the confidential data submitted, there is very limited incidence of members having an Excess Capital Ratio between 1.5 and 2.0; using a ratio of 1.5 as suggested by the commenter, therefore, generally would not have a significant effect on the costs presented to members. The Commission therefore believes that the determination to use 2.0 is reasonable and represents an appropriate balance of addressing the risk presented and not being overly burdensome.

[58] *Id.*

[59] 17 CFR 240.17Ad–22(e)(23)(ii).

charge, capping the Excess Capital Ratio at 2.0, and by providing additional information regarding NSCC's ability to waive the charge.

Therefore, the Commission believes that these changes are consistent with Rule 17Ad–22(e)(23)(ii) under the Act.[60]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1, 2, and 3, is consistent with the requirements of the Act, and in particular, the requirements of Section 17A of the Act[61] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2)[62] of the Act, that the proposed rule change (SR–NSCC–2022–005), as modified by Amendment Nos. 1, 2, and 3, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[63]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–02509 Filed 2–6–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96787; File No. SR–ICEEU–2023–004]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to Amendments to the ICE Clear Europe Counterparty Credit Risk Policy and Counterparty Credit Risk Procedures

February 1, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 20, 2023, ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes described in Items I, II and III below, which Items have been prepared primarily by ICE Clear Europe. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') proposes to modify its Counterparty Credit Risk Policy (the ''CC Risk Policy'') and Counterparty Credit Risk Procedures (the ''CC Risk Procedures'') to provide that the Clearing House's framework for monitoring counterparty credit risk covers links,[3] as defined in the Commission's standards for clearing agencies. The Clearing House also proposes to make certain further updates and clarifications to the CC Risk Procedures.[4]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe 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. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICE Clear Europe is proposing to revise the CC Risk Policy in order to provide that the Clearing House's policies for monitoring counterparty credit risk apply to links, as defined in the Commission's regulations. ICE Clear Europe is also proposing to revise the CC Risk Procedures to make conforming updates in respect of links and to make certain other clarifications and enhancements.

I. Counterparty Credit Risk Policy

The amendments to the CC Risk Policy would include as part of the description of the Clearing House's counterparty credit risk the risk that a ''link'' defaults, leaving the Clearing House to fund material contractual or operational arrangements. A definition of ''link'', based on the definition in Rule 17Ad–22(a)(8),[5] would be added. Conforming references to links would be added in relevant portions of the CC Risk Policy: the amendments would add that an objective of the CC Risk Policy is to minimize the risk of the Clearing House realizing a material loss due to a link defaulting, and that a means by which the Clearing House achieves this objective is to identify, monitor and manage risks from links. The amendments would also clarify the credit scoring with respect to links (which may use credit criteria other than those used with respect to CMs) and provide that for link counterparties whose credit scores are worse than a required threshold, a mitigating action that the Clearing House may take is to change its usage of links.

Non-substantive drafting and formatting updates would also be made.

II. CC Risk Procedures

The CC Risk Procedures, which supplement the CC Risk Policy, would be updated to make conforming changes to those discussed above with respect to links, including as to including the risk of a link default as a type of counterparty credit risk that Clearing House seeks to manage. The amendments would provide that in order to minimize counterparty credit risk, the Clearing House would identify, monitor and manage material risks from links as well as ensure that all counterparty risks are eliminated prior to off-boarding counterparties.

The amendments would remove a specific statement that FSPs must be legal entities in approved jurisdictions. Consistent with other ICE Clear Europe policies and current practice, the Clearing House legal department separately reviews and determines approved jurisdictions, and accordingly a reference to this process in the CC Risk Procedures is unnecessary. The amendments would also add a specific reference to Anti-Money Laundering and Know-Your-Customer screenings. These amendments would also state that agreements with FSPs are subject to review by the legal team, including analysis of legal risk relating to governing law and in that context jurisdiction. These changes are intended to more clearly reflect current practice of the Clearing House.

Similar to the changes in the CC Policy, the amendments would revise the discussion of credit scoring to reflect that the Clearing House may use related

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[60] *Id.*

[61] 15 U.S.C. 78q-1(b)(3)(F).

[62] 15 U.S.C. 78s(b)(2)(C).

[63] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''Link'' means ''a set of contractual and operational arrangements between two or more clearing agencies, financial market utilities, or trading markets that connect them directly or indirectly for the purposes of participating in settlement, cross margining, expanding their services to additional instruments or participants, or for any other purposes material to their business.'' 17 CFR 240.17Ad–2(a)(8).

[4] Capitalized terms used but not defined herein have the meanings specified in the ICE Clear Europe Clearing Rules and the CC Risk Policy and CC Risk Procedures, as applicable.

[5] 17 CFR 240.17Ad–22(a)(8).

credit criteria (as opposed to credit scores) to evaluate credit quality of counterparties. The amendments reflect the fact that different criteria may be appropriate for evaluation of the credit risks of FSPs and links, as compared to CMs. Conforming changes to refer to such related criteria would be made where applicable in the CC Risk Procedures. Such evaluations will continue to be made daily as set out in the counterparty risk reviews section of the CC Risk Procedures and the related Counterparty Credit Risk Parameters (''Parameters'') (notwithstanding removal of certain duplicative language in the discussion of credit scoring). A statement that the CRS may incorporate exposure information reflecting the risk of the CM's portfolio held with the Clearing House (specifically, loss given default) or analyze exposure with reference to financial metrics would be removed, to be consistent with changes to the relevant credit risk model used in determining CRS scoring (which does not consider such exposures).

The amendments would provide that late submissions of quarterly financial statements by counterparties would be communicated and escalated as set out in the Parameters. In the discussion of risk classification, the amendments would provide that CMs who reach the Watch List Criteria are added automatically to the Watch List, and that the Watch List Criteria are set out in the Parameters. These updates are to ensure alignment between the Clearing House's risk management framework documentation, including the CC Risk Procedures and the Parameters.

In the section describing the Clearing House's counterparty credit risk monitoring, the amendments would add that such monitoring and review includes monitoring for cross-exposures of CMs' affiliates (defined in the relevant Parameters as uncollateralized stress loss for clearing members, unsecured exposure for FSPs and estimate loss for purposes of links). Such continuous monitoring would, in addition to other sources, be based on credit scores and public news. The continuous monitoring will facilitate production of daily, rather than weekly, risk reviews. Other reviews of monitoring activity would continue to be carried out monthly and quarterly. The amendments would also provide that review frequency and criteria in addition to findings and recommendations from the counterparty risk reviews would be approved based on the Parameters.

The amendments would add to the discussion of the Clearing House's practices for monitoring its exposures to CMs that the Clearing House also monitors at least monthly credit cross-exposures among counterparties and their affiliates in all their capacities. These amendments are intended to reflect the expansive nature of the Clearing House's current risk management practices.

With respect to exposure limits and related capital calculations for purposes of CMs that are part of a Systemically Important Institution, the amendments will use the more specific definition of Systemically Important Institutions in the Parameters as an institution with assets greater than 200 billion Euros that is treated as a Globally Systemically Important Institution by the European Banking Authority. This would replace the previous, more subjective standard. A reference to the institution being in a robust legal jurisdiction has been removed as unnecessary in light of the revised definition and approach to AML/KYC and governing law review discussed above.

Non-substantive drafting and formatting updates would also be made.

(b) Statutory Basis

ICE Clear Europe believes that the amendments to the CC Risk Policy and the CC Risk Procedures are consistent with the requirements of section 17A of the Act [6] and the regulations thereunder applicable to it. In particular, section 17A(b)(3)(F) of the Act [7] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest.

The amendments to the CC Risk Procedures and CC Risk Policy are designed to more clearly document certain of the Clearing House's practices with respect to the management of counterparty credit risk and would explicitly include references to losses from defaulting links (in addition to the existing references to losses resulting from defaulting CMs and losses resulting from the default of other FSPs). The amendments would make certain other updates and clarifications with respect to counterparty credit risk evaluation more generally. The proposed amendments thus enhance the overall risk management of the Clearing House and promote the stability of the Clearing House and the prompt and accurate clearance and settlement of cleared contracts. The proposed amendments to the CC Risk Policy and CC Risk Procedures are thus also generally consistent with the protection of investors and the public interest in the safe operation of the Clearing House. The aspects of the updates to the CC Risk Policy and CC Risk Procedures that relate to counterparty credit risk for FSPs or links will also help manage the risk of assets held by the Clearing House from CMs and their customers that may otherwise be affected by the default of an FSP or link, and thus enhance the safeguarding of securities and funds in ICE Clear Europe's custody or control or for which it is responsible. Accordingly, the amendments satisfy the requirements of section 17A(b)(3)(F).[8]

The amendments to the CC Risk Policy and the Risk Procedures are also consistent with relevant provisions of Rule 17Ad–22. Rule 17Ad–22(e)(3)(i) [9] provides that the ''covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [. . .] maintain a sound risk management framework that'' among other matters identifies, measures, monitors and manages the range of risks that it faces. The amendments to the CC Risk Policy and the CC Risk Procedures are to enhance the Clearing House's policies and practices for monitoring and reviewing counterparty credit risk and related exposures, provide clear descriptions of such policies and processes, as well as align with other documents in ICE Clear Europe's overall risk management framework. The amendments would thus strengthen the management of potential counterparty risks, and risk management more generally. In ICE Clear Europe's view, the amendments are therefore consistent with the requirements of Rule 17Ad–22(e)(3)(i).[10]

Rule 17A–22(e)(16) provides that the ''covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [. . .] safeguard [its] own and its participants' assets, minimize the risk of loss and delay in access to these assets, and invest such assets in instruments with minimal credit, market and liquidity risks.'' [11] As discussed above, the amendments to the CC Risk Policy and CC Risk Procedures are intended to document Clearing House practices with

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 17 CFR 240.17 Ad–22(e)(3)(i).

[10] 17 CFR 240.17 Ad–22(e)(3)(i).

[11] 17 CFR 240.17Ad–22(e)(16).

respect to the management of credit risk with respect to FSPs and links, including any through which assets of the Clearing House and CMs may be invested or maintained. The policy and procedures address the monitoring of an FSP or link's credit risk and the steps the Clearing House may take to mitigate such risk where it exceeds exposure limits. As such, the CC Risk Policy and CC Risk Procedures will continue to enable the Clearing House to safeguard such assets and minimize the risk of loss from FSP default, consistent with the requirements of Rule 17Ad–22(e)(16).[12]

For similar reasons, the amendments to the CC Risk Policy and the CC Risk Procedures are consistent with the requirements of Rule 17A–22(e)(20),[13] which provides that the ''covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [. . .] identify, monitor, and manage risks related to any link the covered clearing agency establishes with one or more other clearing agencies, financial market utilities, or trading markets''. The amendments document the Clearing House practices and policies with respect to the management of credit risk and related exposure with respect to link counterparties, and in ICE Clear Europe's view are therefore consistent with the requirements of Rule 17Ad–22(e)(20).[14]

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed documents would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The amendments to the CC Risk Policy and the CC Risk Procedures are intended to enhance practices with respect to counterparty credit risk monitoring and management, for CMs, FSPs and links, and are not intended to impose new requirements on CMs. The proposed amendments clarify ICE Clear Europe's risk management procedures and ensure that ICE Clear Europe continues to appropriately monitors and limit risks relating to CMs, FSPs and links' credit risk. The proposed amendments are not expected to materially change margin requirements or costs for CMs and any such change which may occur would be tailored to the counterparty credit risk presented by a particular CM. ICE Clear Europe does not believe that the proposed amendments will otherwise impact competition among Clearing Members or other market participants or affect the ability of market participants to access clearing generally. Therefore, ICE Clear Europe does not believe the proposed rule change imposes any burden on competition that is inappropriate or unnecessary in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed amendments have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any written comments received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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–ICEEU–2023–004 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–ICEEU–2023–004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at *https://www.theice.com/clear-europe/regulation.*

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–ICEEU–2023–004 and should be submitted on or before February 28, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–02510 Filed 2–6–23; 8:45 am]

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[12] 17 CFR 240.17Ad–22(e)(16).

[13] 17 CFR 240.17Ad–22(e)(20).

[14] 17 CFR 240.17Ad–22(e)(20).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96783; File No. SR–GEMX–2023–01]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend ISO Functionality

February 1, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 19, 2023, Nasdaq GEMX, LLC (''GEMX''

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Options 3, Section 11 with respect to the ability of Members to submit ISOs in the Exchange's Facilitation Mechanism (''Facilitation ISO''), and Solicited Order Mechanism (''Solicitation ISO''), to codify current System functionality.[3]

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/gemx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Options 3, Section 11 with respect to the ability of Members to submit ISOs in the Exchange's Facilitation Mechanism (''Facilitation ISO''), and Solicited Order Mechanism (''Solicitation ISO''), to codify current System functionality.[4]

As set forth in Options 3, Section 11(b), the Facilitation Mechanism is a process wherein the Electronic Access Member seeks to facilitate a block-size order it represents as agent, and/or a transaction wherein the Electronic Access Member solicited interest to execute against a block-size order it represents as agent. Electronic Access Members must be willing to execute the entire size of orders entered into the Facilitation Mechanism. As set forth in Options 3, Section 11(d), the Solicited Order Mechanism is a process by which an Electronic Access Member can attempt to execute orders of 500 or more contracts it represents as agent against contra orders it solicited. Each order entered into the Solicited Order Mechanism shall be designated as all-or-none.

An ISO is defined in Options 3, Section 7(b)(5) as a limit order that meets the requirements of Options 5, Section 1(h) and trades at allowable prices on the Exchange without regard to the ABBO. Simultaneously with the routing of the ISO to the Exchange, one or more additional ISOs, as necessary, are routed to execute against the full displayed size of any Protected Bid, in the case of a limit order to sell, or any Protected Offer, in the case of a limit order to buy, for the options series with a price that is superior to the limit price of the ISO.[5] A Member may submit an ISO to the Exchange only if it has simultaneously routed one or more additional ISOs to execute against the full displayed size of any Protected Bid, in the case of a limit order to sell, or Protected Offer, in the case of a limit order to buy, for an options series with a price that is superior to the limit price of the ISO.

As discussed further below, none of the proposed rule changes will amend current functionality. Rather, these changes are designed to bring greater transparency around certain order types currently available on the Exchange. The Exchange notes that the Facilitation ISO and Solicitation ISO[6] are functionally similar to the Exchange's Price Improvement Mechanism[7] ISO (''PIM ISO'') as set forth in Supplementary Material .08 to Options 3, Section 13, as further discussed below.[8]

Facilitation ISO

Today, the Exchange allows the submission of ISOs into its Facilitation Mechanism as Facilitation ISOs. To promote transparency, the Exchange proposes to memorialize Facilitation ISOs as an order type in Supplementary Material .06 to Options 3, Section 11. Specifically, the Exchange proposes:

A Facilitation ISO order (''Facilitation ISO'') is the transmission of two orders for crossing pursuant to paragraph (b) above without regard for better priced Protected Bids or Protected Offers (as defined in Options 5, Section 1) because the Member transmitting the Facilitation ISO to the Exchange has, simultaneously with the transmission of the Facilitation ISO, routed one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting Facilitation auction price. Any execution(s) resulting from such sweeps shall accrue to the Agency order.

Today, the Exchange will accept a Facilitation ISO provided the order adheres to the current order entry requirements for the Facilitation Mechanism as set forth in Options 3, Section 11(b)(1),[9] but without regard to

[3] This functionality is currently offered on the Exchange, so the proposed rule change codifies existing functionality in the Exchange's rules.

[4] This functionality is currently offered on the Exchange, so the proposed rule change codifies existing functionality in the Exchange's rules.

[5] ''Protected Bid'' or ''Protected Offer'' means a Bid or Offer in an options series, respectively, that: (a) is disseminated pursuant to the Options Order Protection and Locked/Crossed Market Plan; and (b) is the Best Bid or Best Offer, respectively, displayed by an Eligible Exchange. *See* Options 5, Section 1(o).

[6] The Exchange notes that it has an ISO trade through surveillance in place that will identify and capture when a Member marks a Facilitation or Solicitation ISO and the order possibly trades through a Protected Bid or Protected Offer price at an away exchange. The Exchange will monitor the NBBO prior to and after the order trades on the Exchange to detect potential trade through violations.

[7] The Price Improvement Mechanism (''PIM'') is a process that allows an Electronic Access Member to provide price improvement opportunities for a transaction wherein the Electronic Access Member seeks to facilitate an order it represents as agent, and/or a transaction wherein the Electronic Access Member solicited interest to execute against an order it represents as agent. *See* Options 3, Section 13(a).

[8] The Exchange also notes that its affiliates, Nasdaq BX (''BX'') and Nasdaq Phlx (''Phlx''), currently allow ISOs to be entered into BX's Price Improvement Mechanism (''PRISM'') and Phlx's Price Improvement XL (''PIXL''), respectively. *See* BX Options 3, Section 13(ii)(K) (describing PRISM ISOs) and Phlx Options 3, Section 13(b)(11) (describing PIXL ISOs). Other options exchanges like Cboe Exchange, Inc. (''Cboe'') and Cboe EDGX Exchange, Inc. (''EDGX'') similarly allow ISOs to be entered into their auction mechanisms. *See* Cboe Rule 5.37(b)(4)(A) and EDGX Rule 21.19(b)(3)(A) (allowing ISOs to be entered into Cboe's and EDGX's Automated Improvement Mechanism (''AIM ISOs'')) and Cboe Rule 5.39(b)(4) and EDGX Rule 21.21(b)(4) (allowing ISOs to be entered into Cboe's and EDGX's Solicitation Auction Mechanism (''SAM ISOs'')). *See also* Securities Exchange Act Release No. 60551 (August 20, 2009), 74 FR 43196 (August 26, 2009) (SR–CBOE–2009–040) (Order Granting Approval of a Proposed Rule Change to Adopt Rules Implementing the Options Order Protection and Locked/Crossed Market Plan, including to adopt AIM ISOs).

[9] Specifically, Options 3, Section 11(b)(1) provides that orders must be entered into the Facilitation Mechanism at a price that is (A) equal to or better than the NBBO on the same side of the market as the agency order unless there is a Priority Customer order on the same side Exchange best bid or offer, in which case the order must be entered at an improved price; and (B) equal to or better than the ABBO on the opposite side. Orders that do not meet these requirements are not eligible for the Facilitation Mechanism and will be rejected. The

Continued

the ABBO (similar to a regular ISO in Options 3, Section 7(b)(5)). Therefore, Facilitation ISOs must be entered at a price that is equal to or better than the Exchange best bid or offer on the same side of the market as the agency order unless there is a Priority Customer order on the same side Exchange best bid or offer, in which case the Facilitation ISO must be entered at an improved price. The Exchange does not check the Exchange best bid or offer on the opposite side of the Facilitation ISO because the underlying Facilitation Mechanism similarly does not check the opposite side Exchange best bid or offer. As discussed above, the Facilitation Mechanism only requires that the opposite side of the Facilitation order be equal to or better than the ABBO.[10] The Facilitation Mechanism does not check the opposite side Exchange best bid or offer because any interest that is available on the opposite side of the market would allocate against the Facilitation agency order and provide price improvement. As an example of the current underlying Facilitation Mechanism:

Assume the following market:

Exchange BBO: 1 × 2 (also NBBO)

CBOE: 0.75. × 2.25 (next best exchange quote)

Facilitation order is entered to buy 50 contracts @2.05

No Responses are received.

The Facilitation order executes with resting 50 lot quote @2. In this instance, the Facilitation order is able to begin crossed with the contra side Exchange BBO because in execution, the resting 50 lot quote @2 is able to provide price improvement to the facilitation order.

Given that the Facilitation ISO is accepted so long as it adheres to the order entry requirements of the underlying Facilitation Mechanism, but without regard to the ABBO, the Exchange believes that it is appropriate and logical to align the order entry checks of the Facilitation ISO in the manner discussed above.

The Exchange processes the Facilitation ISO in the same manner that it processes any other Facilitation orders, except that it will initiate a Facilitation auction without protecting prices away. Instead, the Member entering the Facilitation ISO will bear the responsibility to clear all better priced interest away simultaneously with submitting the Facilitation ISO to the Exchange. The Exchange believes that offering this order type is beneficial for Members as it provides them with an efficient method to initiate a Facilitation auction while preventing trade-throughs.

The Exchange notes that the Facilitation ISO is similar to the PIM ISO that is currently described in Supplementary Material .08 to Options 3, Section 13.[11] Similar to the Facilitation ISO, the PIM ISO must meet the order entry requirements for PIM in Options 3, Section 13(b) but does not consider the ABBO.[12] Further, the Exchange processes a PIM ISO order the same way as any other PIM order except the Exchange will initiate a PIM auction without protecting away prices. As with Facilitation ISOs, the Member entering the PIM ISO bears responsibility to clear all better priced interest away simultaneously with submitting the PIM ISO to the Exchange.

The following example illustrates how Facilitation ISO operates:

Assume:

ABBO: 1 × 1.20

Exchange BBO: 0.90 × 1.30

Member enters Facilitation ISO with Agency side to buy 50 @1.25 and simultaneously routes multiple ISOs to execute against the full displayed size of any Protected Bids priced better than the starting Facilitation auction price

Facilitation ISO auction period concludes with no responses arriving

Facilitation ISO executes with contra side 50 @1.25 because the away market Best Offer of 1.20 has been cleared by the ISOs clearing the way for the Agency side to trade with the counter-side order at 1.25.

Solicitation ISO

Today, the Exchange allows the submission of ISOs into its Solicited Order Mechanism as Solicitation ISOs. To promote transparency, the Exchange proposes to memorialize Solicitation ISOs as an order type in Supplementary Material .07 to Options 3, Section 11. Specifically, the Exchange proposes:

A Solicitation ISO order (''Solicitation ISO'') is the transmission of two orders for crossing pursuant to paragraph (d) above without regard for better priced Protected Bids or Protected Offers (as defined in Options 5, Section 1) because the Member transmitting the Solicitation ISO to the Exchange has, simultaneously with the transmission of the Solicitation ISO, routed one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting Solicitation auction price and has swept all interest in the Exchange's book priced better than the proposed auction starting price. Any execution(s) resulting from such sweeps shall accrue to the Agency order.

Today, the Exchange will accept a Solicitation ISO provided the order adheres to the current order entry requirements for the Solicited Order Mechanism as set forth in Options 3, Section 11(d)(1),[13] but without regard to the ABBO (similar to a regular ISO in Options 3, Section 7(b)(5)). Therefore, Solicitation ISOs must be entered at a price that is equal to or better than the Exchange best bid or offer on both sides of the market; provided that, if there is a Priority Customer order on the Exchange best bid or offer, the Solicitation ISO must be entered at an improved price.

The Exchange processes the Solicitation ISO in the same manner that it processes other orders entered in the Solicited Order Mechanism, except

Exchange notes that it is amending this provision in a concurrent rule filing (SR–GEMX–2022–10), but that the proposed changes in this filing do not impact SR–GEMX–2022–10 and vice versa. *See* Securities Exchange Act Release No. 96363 (November 18, 2022), 87 FR 72556 (November 25, 2022) (SR–GEMX–2022–10).

[10] *Id.*

[11] Supplementary Material .08 to Options 3, Section 13 defines PIM ISO as the transmission of two orders for crossing pursuant to this Rule without regard for better priced Protected Bids or Protected Offers (as defined in Options 5, Section 1) because the Member transmitting the PIM ISO to the Exchange has, simultaneously with the routing of the PIM ISO, routed one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting PIM auction price and has swept all interest in the Exchange's book priced better than the proposed auction starting price. Any execution(s) resulting from such sweeps shall accrue to the PIM order.

[12] Unlike the Facilitation Mechanism, PIM requires an opposite side NBBO check, which would include the Exchange best bid or offer. As discussed above, the Facilitation order entry checks only require that the opposite side of the Facilitation order be equal to or better than the ABBO (*i.e.,* there is no opposite side local book check). For PIM, the order must be entered at one minimum price improvement increment better than the NBBO on the opposite side of the market if the Agency Order is for less than 50 option contracts and if the difference between the NBBO is $0.01. If the Agency Order is for 50 option contracts or more, or if the difference between the NBBO is greater than $0.01, the PIM order must be entered at a price that is equal to or better than the NBBO on the opposite side. *See* Options 3, Section 13(b)(1) and (2). As such, PIM ISOs additionally require the entering Member to sweep all interest in the Exchange's book priced better than the proposed auction starting price (unlike Facilitation ISO which does not have a similar sweep requirement).

[13] Specifically, Options 3, Section 11(d)(1) provides that orders must be entered into the Solicited Order Mechanism at a price that is equal to or better than the NBBO on both sides of the market; provided that, if there is a Priority Customer order on the Exchange best bid or offer, the order must be entered at an improved price. Orders that do not meet these requirements are not eligible for the Solicited Order Mechanism and will be rejected. Similar to the Facilitation Mechanism, the Exchange is amending the entry checks for the Solicited Order Mechanism in SR–GEMX–2022–10; however, the proposed changes in this filing do not impact SR–GEMX–2022–10 and vice versa. *See supra* note 8.

that it will initiate a Solicited Order auction without protecting away prices. Instead, the Member entering the Solicitation ISO will bear the responsibility to clear all better priced interest away simultaneously with submitting the Solicitation ISO to the Exchange. Similar to the Facilitation ISO discussed above, the Exchange believes that offering this order type is beneficial for Members as it provides them with an efficient method to initiate an auction in the Solicited Order Mechanism while preventing trade-throughs. Furthermore, Solicitation ISOs are similar to PIM ISOs in the manner described above for Facilitation ISOs.[14] In addition, other options exchanges currently offer a substantially similar order type as the Exchange's Solicitation ISO.[15]

The following example illustrates how the Solicitation ISO operates:

Assume:

ABBO: 1 × 1.20
Exchange BBO: 0.90 × 1.30
Member enters Solicitation ISO with Agency side to buy 500 @1.25 and simultaneously routes multiple ISOs to execute against the full displayed size of any Protected Bids priced better than the starting Solicitation auction price
Solicitation ISO auction period concludes with no responses arriving
Solicitation ISO executes with contra side 500 @1.25

Note that in the case a Solicitation ISO was entered with the Agency side to buy 500 @1.35, it would be rejected because it was not at or better than the NBBO on both sides (which is inclusive of an Exchange book check). While the 1.20 away Best Offer was cleared by the simultaneously routed ISOs, the Exchange Best Offer of 1.30 would now be viewed as the National Best Offer for purposes of the Solicitation ISO.

Further note that a Facilitation ISO entered with the Agency side to buy 50 @1.35 can start in the same example above because it does not have a contra-side (from the Agency order perspective) Exchange book check to begin. The Facilitation ISO would go on to allocate against the 1.30 offer on the Exchange book upon the conclusion of the auction.

Intermarket Sweep Orders

In light of the changes proposed above to adopt the Facilitation ISO and Solicitation ISO into its Rulebook, the Exchange proposes to make related amendments to the ISO rule in Options 3, Section 7(b)(5) to add that ''ISOs may be entered on the order book or into the Facilitation Mechanism, Solicited Order Mechanism, or Price Improvement Mechanism, pursuant to Supplementary Material .06 and .07 to Options 3, Section 11, and Supplementary Material .08 to Options 3, Section 13.''

The proposed rule text will be similar to BX's current ISO rule in BX Options 3, Section 7(a)(6), except the Exchange's ISO rule will refer to Exchange functionality that BX does not have today. Specifically, BX does not currently offer Facilitation ISOs or Solicitation ISOs. PIM ISOs are currently codified in Supplementary Material .08 to Options 3, Section 13, so the proposed rule text herein is a non-substantive amendment to add a cross-reference to the PIM ISO rule. The proposed language does not amend the current ISO functionality but rather is intended to add more granularity and more closely align the ISO rule with BX's ISO rule.[16]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Section 6(b)(5) of the Act,[18] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Facilitation and Solicitation ISOs

The Exchange believes that the proposal to adopt Facilitation ISOs and Solicitation ISOs in Supplementary Material .06 and .07 to Options 3, Section 11 is consistent with the Act. The proposal will codify current functionality, thereby promoting transparency in the Exchange's rules and reducing any potential confusion. As it relates to Solicitation ISOs, the Exchange believes that the proposed rule change promotes fair competition. Specifically, the proposal allows the Exchange to offer Members an order type that is already offered by other options exchanges.[19]

In addition, offering the Facilitation ISO and Solicitation ISO benefits market participants and investors because this functionality provides an additional and efficient method to initiate a Facilitation or Solicited Order auction while preventing trade-throughs. As discussed above, the Exchange processes the Facilitation and Solicitation ISO in the same manner as it processes any other order entered into the Facilitation and Solicited Order Mechanism, except the Exchange will initiate a Facilitation auction or Solicited Order auction without protecting away prices (similar to a regular ISO in Options 3, Section 7(b)(5)). Instead, the entering Member, simultaneous with the transmission of the Facilitation ISO or Solicitation ISO to the Exchange, remains responsible for routing one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting Facilitation or Solicitation auction price, and for Solicitation ISO, has swept all interest in the Exchange's book priced better than the proposed auction starting price.[20] As discussed above, these order types operate in a similar manner to the PIM ISO that is currently described in Supplementary Material .08 to Options 3, Section 13.[21]

Intermarket Sweep Orders

The Exchange believes that the proposed changes to the definition of ISOs in Options 3, Section 7(b)(5) are consistent with the Act. As discussed above, the proposed changes are intended to add more granularity and more closely align the level of detail in the ISO rule with BX's ISO rule in BX Options 3, Section 7(a)(6) by specifying

[14] The Exchange notes that similar to the PIM ISO, but unlike Facilitation ISO, the Solicitation ISO requires entering Members to sweep all interest in the Exchange's book priced better than the proposed auction starting price. The order entry checks for the Solicited Order Mechanism, similar to PIM, requires an opposite side NBBO check, which would include the Exchange best bid or offer. *See supra* notes 11–12.

[15] As noted above, both Cboe and EDGX currently offer a SAM ISO order type, which is defined as the submission of two orders for crossing in a SAM Auction without regard for better-priced Protected Quotes (as defined in Cboe Rule 5.65 and EDGX Rule 27.1) because the Initiating TPH routed an ISO(s) simultaneously with the routing of the SAM ISO to execute against the full displayed size of any Protected Quote that is better than the stop price and has swept all interest in the Book with a price better than the stop price. Any execution(s) resulting from these sweeps accrue to the SAM Agency Order. *See* Cboe Rule 5.39(b)(4) and EDGX Rule 21.21(b)(4). *See also* Securities Exchange Act Release Nos. 87192 (October 1, 2019), 84 FR 53525 (October 7, 2019) (SR–CBOE–2019–063) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change related to the SAM Auction, including to adopt the SAM ISO); and 87060 (September 23, 2019), 84 FR 51211 (September 27, 2019) (SR–CboeEDGX–2019–047) (Order Approving a Proposed Rule Change to Adopt a SAM Auction, including to adopt the SAM ISO).

[16] BX's ISO rule currently has more granularity than the Exchange's ISO rule, such as requiring ISOs to have a TIF designation of IOC and prohibiting ISOs from being submitted during the opening process. The Exchange will add identical granularity to its ISO rule in a separate rule filing.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] *See supra* note 14.

[20] *See supra* note 13.

[21] *See supra* notes 11 and 13.

how ISOs may be submitted.[22] As such, the Exchange believes that its proposal will promote transparency in the Exchange's rules and consistency across the rules of the Nasdaq affiliated options exchanges. While the proposed changes to the Exchange's ISO rule generally track BX's ISO rule, the proposed language will refer to certain Exchange functionality that BX does not have today (*i.e.,* Facilitation ISOs or Solicitation ISOs).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Offering Facilitation and Solicitation ISOs does not impose an undue burden on competition because it enables the Exchange to provide market participants with an additional and efficient method to initiate a Facilitation or Solicited Order auction while preventing trade-throughs, as discussed above. In addition, all Members may submit a Facilitation ISO or Solicitation ISO. As it relates to the Solicitation ISO, the Exchange believes that the proposed rule change will promote fair competition among options exchanges as it will allow the Exchange to compete with other markets that already allow ISOs in their solicitation auction mechanisms.[23]

The Exchange further believes that the proposed changes to its ISO rule do not impose an undue burden on competition. As discussed above, the proposed changes are intended to add more granularity and more closely align the level of detail in the ISO rule with BX's ISO rule in BX Options 3, Section 7(a)(6) by specifying how ISOs may be submitted, except the Exchange's ISO rule will refer to Exchange functionality that BX does not have today (*i.e.,* Facilitation and Solicitation ISOs).[24] With the proposed changes, the Exchange believes that its proposal will promote transparency in the Exchange's rules and consistency across the rules of the Nasdaq affiliated options exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

[22] *See supra* note 15.

[23] *See supra* note 14.

[24] *See supra* note 15.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[25] and subparagraph (f)(6) of Rule 19b–4 thereunder.[26]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–GEMX–2023–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–GEMX–2023–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–GEMX–2023–01 and should be submitted on or before February 28, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–02508 Filed 2–6–23; 8:45 am]

BILLING CODE 8011–01–P

[25] 15 U.S.C. 78s(b)(3)(A)(iii).

[26] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[27] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17769 and #17770; Alabama Disaster Number AL–00130]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Alabama

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of ALABAMA (FEMA–4684–DR), dated 01/31/2023.

Incident: Severe Storms, Straight-line Winds, and Tornadoes.

Incident Period: 01/12/2023.

DATES: Issued on 01/31/2023.

Physical Loan Application Deadline Date: 04/03/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 10/31/2023.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 01/31/2023, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Autauga, Barbour, Chambers, Conecuh, Coosa, Dallas, Elmore, Hale, Tallapoosa.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 17769 C and for economic injury is 17770 0.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Acting Associate Administrator for Disaster Recovery and Resilience.

[FR Doc. 2023–02491 Filed 2–6–23; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice 11987]

Notice of Shipping Coordinating Committee Meeting in Preparation for International Maritime Organization LEG 110 Meeting

The Department of State will conduct a public meeting at 1:00 p.m. on Tuesday, March 21, 2023, both in-person at Coast Guard Headquarters in Washington, DC, and via teleconference. The primary purpose of the meeting is to prepare for the 110th session of the International Maritime Organization's (IMO) Legal Committee (LEG 110) to be held in London, United Kingdom from March 27 to March 31, 2023.

Members of the public may participate up to the capacity of the teleconference phone line, which can handle 500 participants or up to the seating capacity of the room if attending in-person. The meeting location will be the United States Coast Guard Headquarters, Room 6K15–15, and the teleconference line will be provided to those who RSVP. To RSVP, participants should contact the meeting coordinator, Mr. Stephen Hubchen, by email at *Stephen.K.Hubchen@uscg.mil.*

Mr. Hubchen will provide access information for in-person and virtual attendance. The agenda items to be considered at this meeting mirror those to be considered at LEG 110, and include:

- Adoption of the agenda
- Report of the Secretary-General on credentials
- Facilitation of the entry into force and harmonized interpretation of the 2010 HNS Protocol
- Fair treatment of seafarers:
  a. Provision of financial security in case of abandonment of seafarers, and shipowners' responsibilities in respect of contractual claims for personal injury to, or death of, seafarers, in light of the progress of amendments to the ILO Maritime Labour Convention, 2006
  b. Fair treatment of seafarers in the event of a maritime accident
  c. Fair treatment of seafarers detained on suspicion of committing maritime crimes
  d. Guidelines for port State and flag State authorities on how to deal with seafarer abandonment cases
- Advice and guidance in connection with the implementation of IMO instruments

(a) Impact on shipping and seafarers of the situation in the Black Sea and the Sea of Azov

- Measures to prevent unlawful practices associated with the fraudulent registration and fraudulent registries of ships
- Measures to assess the need to amend liability limits
- Claims Manual for the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001
- Piracy and armed robbery against ships
- Guidance for the proper implementation and application of IMO liability and compensation conventions
- Work of other IMO bodies
- Technical cooperation activities related to maritime legislation
- Review of the status of conventions and other treaty instruments emanating from the Legal Committee
- Work programme
- Election of officers
- Any other business
- Consideration of the report of the Committee on its 110th session

Please note: The IMO may, on short notice, adjust the LEG 110 agenda to accommodate the constraints associated with the meeting format. Any changes to the agenda will be reported to those who RSVP.

Those who plan to participate should contact the meeting coordinator, Mr. Stephen Hubchen, by email at *Stephen.K.Hubchen@uscg.mil,* by phone at (202) 372–1198, or in writing at United States Coast Guard (CG–LMI–P), ATTN: Mr. Stephen Hubchen, 2703 Martin Luther King Jr. Ave. SE Stop 7509, Washington DC 20593–7509 not later than March 14, 2023. Please note, that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Douglas A. Munro Coast Guard Headquarters Building at St. Elizabeth's. This building is accessible by taxi, public transportation, and privately owned conveyance (upon request).

Additionally, members of the public needing reasonable accommodation should advise the meeting coordinator not later than March 14, 2023. Requests made after that date will be considered but might not be able to fulfill.

Additional information regarding this and other IMO public meetings may be found at: *https://www.dco.uscg.mil/IMO.*

(Authority: 22 U.S.C. 2656 and 5 U.S.C. 552)

Emily A. Rose,

Coast Guard Liaison Officer, Office of Ocean and Polar Affairs, Department of State.

[FR Doc. 2023–02541 Filed 2–6–23; 8:45 am]

BILLING CODE 4710–09–P

SURFACE TRANSPORTATION BOARD

30-Day Notice of Intent To Seek Extension of Approval of Collection: Statutory Authority To Preserve Rail Service

AGENCY: Surface Transportation Board.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Surface Transportation Board (Board) gives

notice of its intent to request from the Office of Management and Budget (OMB) approval without change of the existing collection, Preservation of Rail Service, OMB Control No. 2140–0022, as described below.

DATES: Comments on this information collection should be submitted by March 9, 2023.

ADDRESSES: Written comments should be identified as ''Paperwork Reduction Act Comments, Surface Transportation Board, Statutory Authority to Preserve Rail Service.'' Written comments for the proposed information collection should be submitted via *www.reginfo.gov/public/do/PRAMain.* This information collection can be accessed by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. As an alternative, written comments may be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Michael J. McManus, Surface Transportation Board Desk Officer: via email at *oira_submission@omb.eop.gov;* by fax at (202) 395–1743; or by mail to Room 10235, 725 17th Street NW, Washington, DC 20503.

Please also direct all comments to Chris Oehrle, PRA Officer, Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001, or to *PRA@stb.gov.* When submitting comments, please refer to ''Statutory Authority to Preserve Rail Service.'' For further information regarding this collection, contact Mike Higgins at (866) 254–1792 (toll-free) or 202–245–0238, or by emailing *rcpa@stb.gov.* Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Board previously published a notice about this collection in the **Federal Register** (87 FR 69074 (Nov. 17, 2022)). That notice allowed for a 60-day public review and comment period. No comments were received.

Comments are requested concerning each collection as to (1) whether the particular collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate. Submitted comments will be included and summarized in the Board's request for OMB approval.

Subject: In this notice, the Board is requesting comments on the extension of the following information collection:

Description of Collection

Title: Preservation of Rail Service.

OMB Control Number: 2140–0022.

STB Form Number: None.

Type of Review: Extension without change.

Respondents: Affected shippers, communities, or other interested persons seeking to preserve rail service over rail lines that are proposed or identified for abandonment, and railroads that are required to provide information to the offeror or applicant: Approximately 15.

Frequency: On occasion, as follows:

TABLE—NUMBER OF YEARLY RESPONSES

Type of filing	Estimated annual average number of filings (2019–2022)
Offer of Financial Assistance (and related filings)	1
Request for Public Use Condition	1
Feeder Line Application	1
Trail Use Request (with extensions)	13

Total Burden Hours (annually including all respondents): 185 hours (total of estimated hours per response × number of responses for each type of filing).

TABLE—ESTIMATED TOTAL BURDEN HOURS

Type of filing	Estimated annual average number of filings (2019–2021)	Number of hours per response	Total estimated burden hours
Offer of Financial Assistance (and related filings)	1	46	46
Request for Public Use Condition	1	4	4
Feeder Line Application	1	70	70
Trail Use Request (with extensions)	13	5	65
Total burden hours	.....	.....	185

Total ''Non-hour Burden'' Cost: While the collections are submitted electronically to the Board, respondents are sometimes required to send consultation letters to various other governmental agencies. Copies of these letters are part of an environmental and historic report that must be filed with this collection (unless waived by the Board). Because some of these other agencies may require hard copy letters, there may be some limited mailing costs, which staff estimates in total to be approximately $1,800.00.

Needs and Uses: The Surface Transportation Board is, by statute, responsible for the economic regulation of common carrier freight railroads and certain other carriers operating in the United States. Under the laws the Board administers, persons seeking to preserve

rail service may file pleadings before the Board to acquire or subsidize a rail line for continued service, or to impose a trail use or public use condition.

When a line is proposed for abandonment, affected shippers, communities, or other interested persons may seek to preserve rail service by filing with the Board: an offer of financial assistance (OFA) to subsidize or purchase a rail line for which a railroad is seeking abandonment (49 U.S.C. 10904), including a request for the Board to set terms and conditions of the financial assistance; a request for a public use condition (§ 10905); or a trail use request (16 U.S.C. 1247(d)). Similarly, when a line is placed on a system diagram map identifying it as an anticipated or potential candidate for abandonment, affected shippers, communities, or other interested persons may seek to preserve rail service by filing with the Board a feeder line application to purchase the identified rail line (§ 10907). Additionally, the railroad owning the rail line subject to abandonment must, in some circumstances, provide information to the applicant or offeror.

As to trail use, the STB will issue a CITU or NITU to a prospective trail sponsor who seeks an interim trail use agreement with the rail carrier of the rail line that is being abandoned. The CITU/NITU permits parties to negotiate for an interim trail use agreement. The parties may also agree to an extension of the negotiating period. If parties reach an agreement, then they must jointly notify the Board of that fact and of any modification or vacancy of the agreement. There is a one-year period for any initial interim trail use negotiating period (with potential extensions).

The Board makes this submission because, under the PRA, a federal agency that conducts or sponsors a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under 44 U.S.C. 3506(c)(2)(A), federal agencies are required to provide, prior to an agency's submitting a collection to OMB for approval, a 60-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: February 2, 2023.

Raina White,

Clearance Clerk.

[FR Doc. 2023–02569 Filed 2–6–23; 8:45 am]

BILLING CODE 4915–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2023–0001]

Interim Extension and Request for Comments on COVID-Related Product Exclusions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice and request for comments.

SUMMARY: In prior notices, the U.S. Trade Representative modified the actions in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation by excluding from additional duties certain medical-care products needed to address COVID, and subsequently extended certain of these exclusions. The current COVID exclusions—covering 81 medical-care products—are scheduled to expire on February 28, 2023. In light of developments in the production capacity of the United States, and continuing efforts to combat COVID, USTR is requesting public comments on whether to further extend particular exclusions. This notice also announces the U.S. Trade Representative's determination to adopt an interim, 75-day extension of the 81 COVID related product exclusions to allow for consideration of public comments.

DATES:

February 6, 2023: The public docket on the web portal at *http://comments.USTR.gov* will open for interested persons to submit comments.

March 7, 2023 at 11:59 p.m. ET: To be assured of consideration, submit written comments on the public docket by this time.

The interim extension announced in this notice will extend the COVID-related product exclusions through May 15, 2023.

ADDRESSES: You must submit all comments through the online portal: *https://comments.ustr.gov/.*

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Associate General Counsel Philip Butler or Assistant General Counsel Edward Marcus at (202) 395–5725. For specific questions on customs classification or implementation of the product exclusions, contact *traderemedy@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

In the course of this investigation, the U.S. Trade Representative has imposed additional duties on products of China in four tranches. *See* 83 FR 28719 (June 20, 2018); 83 FR 40823 (August 16, 2018); 83 FR 47974 (September 21, 2018), as modified by 83 FR 49153 (September 28, 2018); and 84 FR 43304 (August 20, 2019), as modified by 84 FR 69447 (December 18, 2019) and 85 FR 3741 (January 22, 2020).

For each tranche, the U.S. Trade Representative established a process by which interested persons could request the exclusion of particular products from the additional duties.

On March 25, 2020, USTR requested public comments on proposed modifications to exclude from additional duties certain medical-care products related to the U.S. response to COVID. 85 FR 16987 (March 25, 2020).

On December 29, 2020, USTR announced 99 product exclusions for medical-care products and products related to the U.S. COVID response. The December 29 notice further provided that the U.S. Trade Representative might consider further extensions and/or modifications as appropriate. *See* 85 FR 85831.

These 99 exclusions were later extended until September 30, 2021. 86 FR 13785. On August 27, 2021, USTR published a notice requesting public comments on whether any of these exclusions should be further extended for up to six months. 86 FR 48280. To provide time for USTR to review the comments it received in response to the August 27 notice, the 99 exclusions were subsequently extended. *See* 86 FR 54011 (September 29, 2021).

On November 16, 2021, USTR announced the U.S. Trade Representative's determination to extend of 81 of the COVID exclusions for an additional six months (until May 31, 2022). *See* 86 FR 63438 (November 16, 2021) (November 16, 2021 notice). The notice further provided that the U.S. Trade Representative might consider further extensions and/or modifications as appropriate. 86 FR 63438. These 81 exclusions were subsequently extended through February 28, 2023. *See* 87 FR 33871 (June 03, 2022); 87 FR 73383 (November 29, 2022).

B. Request for Public Comments

Subsequent to USTR's prior request for public comments regarding the extension of the COVID exclusions in August 2021, the rates of infection of COVID in the United States continue to fluctuate. Domestic production of certain products covered by these exclusions also has increased. In light of these circumstances, USTR is requesting public comment on whether to extend particular exclusions for COVID products for up to six months.

USTR will evaluate each exclusion on a case-by-case basis. The evaluation will examine whether it remains appropriate to exclude certain products from the additional Section 301 duties in light of the changing circumstances, including the spread of variants or subvariants and the increased domestic production and availability of certain products, and taking account of the overall impact of these exclusions on the goals of this Section 301 investigation.

C. Procedures To Comment on Particular COVID Exclusions

The 81 COVID exclusions can be found in annex B of the November 16, 2021 notice, as well as in U.S. notes 20(sss)(i), 20(sss)(ii), 20(sss)(iii), and 20(sss)(iv) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS). As noted above, the public docket on the portal will be open from February 6, 2023 to March 7, 2023. Fields on the comment form marked with an asterisk (*) are required fields. Fields with gray (BCI) notation are for business confidential information, which will not be publicly available. Fields with a green (Public) notation will be publicly available. Additionally, interested person will be able to upload documents to supplement their comments. Commenters will be able to review the public version of their comments before they are posted.

Set out below is a summary of the information to be entered on the exclusion comment form.

- Contact information, including the full legal name of the organization making the comment, whether the commenter is a third party (*e.g.,* law firm, trade association, or customs broker) submitting on behalf of an organization or industry, and the name of the third party organization, if applicable.
- The exclusion from annex B of the November 16, 2021 notice covered by the comment.
- Whether you support or oppose extending the exclusion beyond May 15, 2023.
- Rationale for supporting or opposing an extension.
- The availability of products covered by the exclusion from sources in the United States or third countries.
- Whether extending or not extending the exclusion will impact the domestic supply of products covered by the exclusion, including the price and availability of the products.

D. Submission Instructions

To be assured of consideration, you must submit your comment when the public docket on the portal is open—from February 6, 2023 to March 7, 2023. Interested persons seeking to comment on two or more exclusions must submit a separate comment for each exclusion. By submitting a comment, the commenter certifies that the information provided is complete and correct to the best of their knowledge.

E. Determination To Extend COVID Exclusions

To provide time for a consideration of the comments received in response to this Notice, and, pursuant to sections 301(b), 301(c), and 307(a) of the Trade Act of 1974, as amended, the U.S. Trade Representative has determined to adopt an interim extension of the 81 COVID exclusions through May 15, 2023. The U.S. Trade Representative's determination considers public comments previously submitted, advice of advisory committees, advice of the interagency Section 301 Committee, and the advice of the White House COVID–19 Response Team. As provided in the November 16, 2021 notice, the exclusions extensions are available for any product that meets the description in the product exclusion. Further, the scope of each exclusion and modification is governed by the scope of the ten-digit HTSUS subheadings and product descriptions in annex B of the November 16, 2021 notice. U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

The U.S. Trade Representative may continue to consider further extensions and/or additional modifications as appropriate.

Annex

The U.S. Trade Representative has determined to extend all exclusions previously extended under heading 9903.88.66 and U.S. notes 20(sss)(i), 20(sss)(ii), 20(sss)(iii), and 20(sss)(iv) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS). *See* 87 FR 73383 (November 29, 2022). The extension is effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on March 1, 2023, and before 11:59 p.m. eastern daylight time on May 15, 2023. Effective on March 1, 2023, the article description of heading 9903.88.66 of the HTSUS is modified by deleting ''February 28, 2023'' and by inserting ''May 15, 2023'' in lieu thereof.

Greta Peisch,

General Counsel, Office of the United States Trade Representative.

[FR Doc. 2023–02570 Filed 2–6–23; 8:45 am]

BILLING CODE 3390–F3–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2023–01]

Petition for Exemption; Summary of Petition Received; The Boeing Company

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before February 27, 2023.

ADDRESSES: Send comments identified by docket number FAA–2022–1397 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

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

FOR FURTHER INFORMATION CONTACT: Lesley Haenny, AIR–612, Federal Aviation Administration, 10101 Hillwood Pkwy., Fort Worth, TX 76177, email *Lesley.M.Haenny@faa.gov.*

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on February 2, 2023.

Candace E. Keefe,

Acting Manager, Technical Writing Section.

Petition for Exemption

Docket No.: FAA–2022–1397.

Petitioner: The Boeing Company.

Section(s) of 14 CFR Affected: §§ 25.863(a), 25.863(b)(3), 25.901(c), 25.981(a)(3), 25.981(b), 25.981(d), 25.1309(b), and item 2 Alternative Fuel Tank Structural Lightning Protection Requirements of Special Conditions 25–414–SC.

Description of Relief Sought: Boeing Commercial Airplanes is petitioning for an exemption of the affected sections of 14 CFR to allow for independent incorporation of four specific safety improvements on Model 787–8, 787–9, and 787–10 airplanes. The relief requested is for the retrofit of in-service airplanes only and is for the purpose of expediting the incorporation of safety improvements while preventing prolonged removal from service.

[FR Doc. 2023–02588 Filed 2–6–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2023–0289]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Alternative Pilot Physical Examination and Education Requirements (BasicMed)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request Office of Management and Budget (OMB) approval to renew an information collection. The Federal Aviation Administration Extension, Safety, and Security Act of 2016 (FESSA) was enacted on July 15, 2016. Section 2307 of FESSA, Medical Certification of Certain Small Aircraft Pilots, directed the FAA to ''issue or revise regulations to ensure that an individual may operate as pilot in command of a covered aircraft'' without having to undergo the medical certification process prescribed by FAA regulations if the pilot and aircraft meet certain prescribed conditions as outlined in FESSA. This collection enables those eligible airmen to establish their eligibility with the FAA.

DATES: Written comments should be submitted by April 10, 2023.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: Christopher Morris, AFS–850, 800 Independence Ave. SW, Washington, DC 20591.

By email: chris.morris@faa.gov.

FOR FURTHER INFORMATION CONTACT: Brad Zeigler by email at: *bradley.c.zeigler@faa.gov;* phone: 202–267–9601.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0770.

Title: Alternative Pilot Physical Examination and Education Requirements (BasicMed).

Form Numbers: FAA forms 8700–2 and 8700–3.

Type of Review: Renewal.

Background: The FAA will use this information to determine that individual pilots have met the requirements of section 2307 of Public Law 114–190. It is important for the FAA to know this information as the vast majority of pilots conducting operations described in section 2307 of Public Law 114–190 must either hold a valid medical certificate or be conducting operations using the requirements of section 2307 as an alternative to holding a medical certificate.

The FAA published a final rule, Alternative Pilot Physical Examination and Education Requirements, to implement the provisions of section 2307, on January 11, 2017.

Respondents: Approximately 50,000 individuals.

Frequency: Course: Once every two years; medical exam: once every four years.

Estimated Average Burden per Response: 21 minutes.

Estimated Total Annual Burden: 17,500 hours.

Issued in Washington, DC, on February 1, 2023.

D.C. Morris,

Project Manager, Flight Standards Service, General Aviation and Commercial Division.

[FR Doc. 2023–02511 Filed 2–6–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent of Waiver With Respect to Land; Indianapolis Downtown Heliport, Indianapolis, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA is considering a proposal to permanently close the Indianapolis Downtown Heliport and change 5.36 acres of land from aeronautical use to non-aeronautical use and to authorize the sale of all heliport property located at the Indianapolis Downtown Heliport, Indianapolis, Indiana. The Indianapolis Airport Authority (Authority) has submitted a request to release the Authority from its

Federal Airport Improvement Program (AIP) obligations associated with Indianapolis Downtown Heliport. The request includes the closure of the heliport and sale of all heliport property for non-aeronautical redevelopment.

DATES: Comments must be received on or before March 9, 2023.

ADDRESSES: Documents are available for review by appointment at the FAA Chicago Airports District Office, Melanie Myers, Program Manager, 2300 East Devon Avenue, Des Plaines, IL 60018, Telephone: (847) 294–7525/Fax: (847) 294–7046 and Eric Anderson, Director of Properties, Indianapolis Airport Authority, 7800 Col. H. Weir Cook Memorial Drive, Indianapolis, IN 46241, Telephone: (317) 487–5135.

Written comments on the Sponsor's request must be delivered or mailed to: Melanie Myers, Program Manager, Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Telephone Number: (847) 294–7525/FAX Number: (847) 294–7046.

FOR FURTHER INFORMATION CONTACT: Melanie Myers, Program Manager, Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Telephone Number: (847) 294–7525/FAX Number: (847) 294–7046.

SUPPLEMENTARY INFORMATION: In accordance with section 47107(h) of Title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

The 5.36 acre subject property makes up the Indianapolis Downtown Heliport. The Heliport is comprised of a surface parking lot, roadway, fuel farm, apron, a building offering office space, a parking garage, and two hangars. The land is proposed to be sold for commercial redevelopment. AIP grants were issued in 1983 and 1984 to reimburse the Authority the original land purchases for development of the heliport. Two independent appraisals and a review appraisal have been conducted to determine the property's valuation. The Authority will receive fair market value for the sale of the subject property.

The disposition of proceeds from the sale of the heliport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999 (64 FR 7696).

This notice announces that the FAA is considering the release of the subject heliport property at the Indianapolis Downtown Heliport, Indianapolis, Indiana from federal land covenants, subject to reservations and restrictions on the released property as required in FAA Order 5190.6B, Change 2, section 22.16. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject heliport property nor a determination of eligibility for grant-in-aid funding from the FAA.

Record Land Descriptions

Instrument No. 840072769

A part of Square 80 and a part of vacated New Jersey Street of the Public Donation Lands to the City of Indianapolis, Lying in Center Township, Marion County, Indiana and more particularly described as follows:

Commencing at the northwest corner of square 79, which point is in the east line of Alabama Street and South 00 degrees 12 minutes 32 seconds West 420.00 feet from south line of Washington Street; thence South 89 degrees 49 minutes 55 seconds East 457.29 feet along north line of John M. & Esther C. LaRosa property to the Point of Beginning; thence continue South 89 degrees 49 minutes 55 seconds East 57.45 feet to the point of curvature of a tangent curve concave to the north; thence Easterly 134.17 feet along said curve, having a radius of 954.68 feet and subtended by a long chord bearing North 86 degrees 08 minutes 34 seconds East 134.06 to the Northeast corner of John M. and Esther C. LaRosa property; thence South 00 degrees 12 minutes 27 Seconds West 67.27 feet along east line of said property; thence North 81 degrees 13 minutes 52 seconds West 68.25 feet; thence North 68 degrees 45 minutes 21 seconds West 132.51 feet to the Point of Beginning. Containing 0.159 acres (6926 square feet more or less).

Instrument No. 850065433

A part of Lots 7 and 8 and a part of the West Half of vacated New Jersey Street in Yandes & Wilkins Subdivision of Square 62, an addition to the City of Indianapolis, the plat of which is recorded in Plat Book 1, page 293 in the Office of Recorder of Marion County, Indiana, more particularly described as follows:

Commencing at the southwest corner, of Lot 4 in said subdivision; thence South 89 degrees 49 minutes 55 seconds East 322.94 feet along the south line of Lots 4 and 5; thence North 0 degrees 12 minutes 27 seconds East 105.00 feet to the south line of Lot 7 and the Point of Beginning; thence continue North 0 degrees 12 minutes 27 seconds East 90.00 feet to the north line of Lot 8; thence South 89 degrees 49 minutes 55 seconds East 142.00 feet along said north line; thence South 0 degrees 12 minutes 27 seconds West 90.00 feet; thence North 89 degrees 49 minutes 55 seconds West 142.00 feet along the south line of Lot 7 to the point of Beginning and containing 12,780 square feet, more or less.

Instrument No. 8000316

A part of the Northeast quarter of the Northwest Quarter and part of the Northwest Quarter of the Northeast Quarter of Section 12, Township 15 North, Range 3 East lying in Center Township, Marion County, Indiana, being a part of Square 80 and part of Out Lots 83 and 84 in the City of Indianapolis, Indiana and also being designated as Parcel I.D. No. INF–10H–145B on Railroad Valuation Map No. 072–5010–0–7–7 as revised on January 27, 1969, being the land of the Cleveland, Cincinnati, Chicago, and St. Louis Railway Company, more particularly described follows:

Each of the following points referred to as monuments and not otherwise described are ⅝ inch steel rods with aluminum caps stamped LS 7749 and were set by this survey.

Commencing at a monument set at the intersection of the South line of Washington Street and the West line of Liberty Street (now Park Avenue); thence South 00 degrees 01 minute 33 seconds West, an assumed bearing, along the West line of Liberty Street (now Park Avenue) a distance of 179.34 feet to a monument; the following five courses describe a part of the South line of the Chicago, Indianapolis, and Louisville Railway Company (now the Louisville and Nashville Railroad Company) Property, after said Railway Company did convey and quit claim to the Cleveland. Cincinnati, Chicago, and St. Louis Railway, on June 4, 1923, all the land lying South of said line by an indenture recorded in Deed Records (Town Lots) Book #697, pages 117 and 118 in the Marion County Recorder's Office.

(1) Thence South 73 degrees 02 minutes 20 seconds West a distance of 28.16 feet to a Monument set distant 40.00 feet Northwesterly measured perpendicularly from the center line of the Northerly track of the Indianapolis Railway Company as it was located November 7, 1977 and being the point of beginning of the following described tract;

(2) Thence continuing South 73 degrees 02 minutes 20 seconds West a distance of 411.68 feet to a monument set above the East line of East Street, (up

on elevated property) 308.88 feet South of the South line of Washington Street measured along the East line of East Street;

(3) Thence continuing South 73 degrees 02 minutes 20 seconds West a distance of 94.20 feet to a monument set above the West line of East Street (up on elevated property) 336.62 feet South of the South line of Washington Street measured along the West line of East Street;

(4) Thence continuing South 73 degrees 02 minutes 20 seconds West a distance of 139.29 feet to a monument set at the point of curvature of the following described tangential curve;

(5) Thence Southwesterly along said curve to the right having a radius of 954.68 feet and a chord of 151.07 feet bearing South 77 degrees 34 minutes 50 seconds West for an arc distance of 151.23 feet to a monument set on the East line of Parcel No. INF–10H–145A;

Thence South 00 degrees 12 minutes 27 degrees West along said East line parallel to the East line of New Jersey Street a distance of 234.91 feet to a monument set 40.00 feet Northwesterly measured perpendicularly from the center line of the Northerly track of the Indianapolis Railway Company as it was located November 7, 1977; thence North 62 degrees 46 minutes 20 seconds East parallel to said track center line a distance of 316.01 feet to a monument above the West line of East Street (up on elevated property); thence continuing North 62 degrees 46 minutes 20 seconds East parallel to said track center line a distance of 65.42 feet to a monument set at the point of curvature of the following described tangential curve; thence Northeasterly parallel to said track center line along said curve to the left having a radius of 1927.76 feet and a chord of 36.17 feet bearing North 62 degrees 13 minutes 47 seconds East for an arc distance of 36.17 feet to a monument set above the East line of East Street (up on elevated property); thence continuing Northeasterly along said curve parallel to said track center line having a radius of 1927.76 feet and a chord of 82.56 feet bearing North 60 degrees 28 minutes 16 seconds East for an arc distance of 82.57 feet to a monument at the point of tangency; thence North 59 degrees 14 minutes 18 seconds East parallel to said track center line a distance of 98.43 feet to a monument set at the point of curvature of the following described tangential curve; thence Northeasterly along said curve to the left parallel to said track center line having a radius of 852.70 feet and a chord of 110.42 feet bearing North 55 degrees 32 minutes 01 second East for an arc distance of 110.49 feet to a monument set at the point of tangency; thence North 51 degrees 49 minutes 16 seconds East parallel to said track center line for a distance of 36.88 feet to a monument set at the point of curvature of the following described tangential curve; thence Northeasterly along said curve to the right parallel to said track center line having a radius of 2801.94 feet and a chord of 122.86 feet bearing North 53 degrees 04 minutes 28 seconds East for an arc distance of 122.87 feet to a monument set at the point of tangency; thence North 54 degrees 19 minutes 51 seconds East parallel to said track center line a distance of 24.20 feet to the point of beginning.

Instrument No. 83–69617

A tract of land lying on the east side of Alabama Avenue and south side of Pearl Street and being a part of the Northwest Quarter and part of the Northeast Quarter of Section 12, Township 15 North, Range 3 East in Center Township, Marion County Indiana, being a part of Square 61, Square 62, Square 79, Square 80, and Out Lots 82, 83 and 84 in the City of Indianapolis, more particularly described as follows:

Commencing at the intersection of the south line of Washington Street and the west line of Liberty Street (now Park Avenue); thence South 0 degrees 01 minute 33 seconds West (assumed bearing), one hundred and seventy-nine and three hundred forty thousandths (179.340) feet along west line of Liberty Street to a point in the south line of the Chicago, Indianapolis and Louisville Railroad (and now Seaboard System Railroad, Inc. by virtue of merger and name change) and the Point of Beginning; (next 3 courses along said south line) thence South 73 degrees 02 minutes 20 seconds West, six hundred seventy-three and three hundred thirty thousandths (673.330) feet to point of curvature of a tangent curve; thence Southwesterly two hundred eighty-five and four hundred ten thousandths (285.410) feet along said curve concave to the northwest having a radius of nine hundred fifty-four and sixty-three hundredths (954.63) feet and subtended by a long chord bearing South 81 degrees 36 minutes 13 seconds West, two hundred eighty-four and three hundred fifty thousandths (284.350) feet; thence North 89 degrees 49 minutes 55 seconds West, five hundred fourteen and seven hundred forty thousandths (514.740) feet to a point in the east line of Alabama Street; thence North 0 degrees 12 minutes 32 seconds East, ninety-three (93.000) feet; thence South 89 degrees 49 minutes 55 seconds East, two hundred nine and nine hundred seventy thousandths (209.970) feet; thence North 0 degrees 12 minutes 36 seconds East, twelve (12.000) feet; thence South 89 degrees 49 minutes 55 seconds East, two hundred fifty-four and nine hundred seventy thousandths (254.970) feet; thence North 0 degrees 12 minutes 27 seconds East, one hundred (100.000) feet; thence South 89 degrees 49 minutes 55 seconds East, four hundred sixty-four and fifty-four thousandths (464.054) feet to a point in the west line of East Street (on the east face of an existing concrete retaining wall); thence South 0 degrees 17 minutes 36 seconds East, thirty-nine and four hundred sixty-four thousandths (39.464) feet along West line of East Street; thence North 76 degrees 45 minutes 56 seconds East, thirteen and three hundred twenty-seven thousandths (13.327) feet along north face of existing concrete retaining wall (elevated above East Street); thence North 80 degrees 45 minutes 30 seconds East, seventy-six and seven hundred ninety-three thousandths (76.793) feet along said retaining wall to a point in the east line of East Street (also, at the west face of a concrete retaining wall—following sixteen (16) courses along said concrete retaining wall); thence North 2 degrees 10 minutes 42 seconds East, twenty-four and one hundred thousandths (24.100) feet; thence South 89 degrees 48 minutes 13 seconds East, one hundred five and three hundred twenty-eight thousandths (105.328) feet; thence South 2 degrees 11 minutes 16 seconds East, one and seven hundred eighty-one thousandths (1.781) feet; thence South 89 degrees 38 minutes 56 seconds East, one hundred four and nine hundred forty-eight thousandths (104.948) feet; thence North 76 degrees 56 minutes 40 seconds East, twenty-five and four hundred ninety-four thousandths (25.494) feet; thence North 73 degrees 04 minutes 30 seconds East, fifty-three and three hundred thirty-five thousandths (53.335) feet; thence North 75 degrees 50 minutes 54 seconds East, thirty-five and one hundred thirty-four thousandths (35.134) feet; thence North 77 degrees 04 minutes 43 seconds East, forty-one and thirteen thousandths (41.013) feet; thence North 74 degrees 17 minutes 52 seconds East, twenty-one and four hundred fifty-seven thousandths (21.457) feet; thence South 1 degree 25 minutes 21 seconds West, two and four hundred seventeen thousandths (2.417) feet; thence North 68 degrees 57 minutes 00 seconds East, twenty-two (22.000) feet; thence North 0 degrees 44 minutes 36 seconds East, five and three hundred nineteen thousandths (5.319) feet; thence North

71 degrees 00 minutes 22 seconds East, fifty-one and four hundred sixty-four thousandths (51.464) feet; thence North 65 degrees 58 minutes 43 seconds East, sixty-seven and one hundred fifteen thousandths (67.115) feet; thence North 54 degrees 04 minutes 39 seconds East, forty-three and one hundred thirty-eight thousandths (43.138) feet; thence South 0 degrees 39 minutes 20 seconds West, four and twenty thousandths (4.020) feet to a point in the north line of the former Cleveland, Cincinnati, Chicago and St. Louis Railway; thence South 50 degrees 03 minutes 42 seconds West, one hundred thirty-nine and one hundred thirty thousandths (139.130) feet along said north line; thence South 73 degrees 02 minutes 20 seconds West, twelve and eight hundred thousandths (12.800) feet to the Point of Beginning and containing 3.564 acres more or less and being a part of the same property acquired by the Louisville and Nashville Railroad Company through merger between the Louisville and Nashville Railroad Company and the Monon Railroad Company on July 31, 1971, the Agreement of Merger recorded as Instrument No. 72–18527, and acquired by the Seaboard Coast Line Railroad Company through merger between the Seaboard Coast Line Railroad Company and the Louisville and Nashville Railroad Company, effective December 29, 1982, recorded as Instrument No. 83–03020, and name of the surviving company changed to the Seaboard System Railroad, Inc., by virtue of name change effective December 29, 1982, recorded as Instrument No. 83–03019, all in the Recorder's office, Marion County, Indiana.

Exceptions

Instrument No. 840071517

A part of Lots 3 and 4 in Yandes and Wilkins Subdivision of Square 62, an addition to the City of Indianapolis, the plat of which is recorded in Plat Book 1, page 293 in the Office of the Recorder of Marion County, Indiana, described as follows:

Beginning at the Southwest corner of said Lot 4, thence North 00 degrees 02 minutes 00 seconds East 93.00 feet along the west line of said Lots 4 and 3 to the northwest comer of said Lot 3, thence South 89 degrees 57 minutes 50 seconds East 167.24 feet along the north line of said Lot 3; thence South 37 degrees 55 minutes 27 seconds West 9.68 feet, thence Southwesterly 122.39 feet along an arc to the right having a radius of 454.26 feet and subtended by a long chord having a bearing of South 45 degrees 38 minutes 33 seconds West and a length of 122.02 feet to the south line of said Lot 4, thence North 89 degrees 57 minutes 50 seconds West 74.10 feet along said south line to the point of beginning and containing 11,637 square feet, more or less.

Instrument No. 850065435

A part of Lots 3, 4, 5 and 6 and a part of vacated Erie Street and a part of vacated alley between Lots 6 and *7,* all in Yandes & Wilkins Subdivision of Square 62, an addition to the City of Indianapolis, the plat of which is recorded in Plat Book 1, page 293 in the Office of Recorder of Marion County, Indiana more particularly described as follows:

Commencing at the southwest corner of Lot 4 in said subdivision; thence South 89 degrees 49 minutes 55 seconds East 74.10 feet along south line of Lot 4 to the Point of Beginning; thence Northeasterly 122.44 feet along a curve to the left having a radius of 454.26 feet and subtended by a long chord bearing North 45 degrees 47 minutes 56 seconds East 122.07 feet to point of tangency; thence North 38 degrees 03 minutes 22 seconds East 9.68 feet to north line of Lot 3; thence South 89 degrees 49 minutes 55 seconds East 42.73 feet; thence North 0 degrees 12 minutes 27 seconds East 12.00 feet; thence South 89 degrees 49 minutes 55 seconds East 112.97 feet along south line of Lot 7; thence South 0 degrees 12 minutes 27 seconds West 105.00 feet to south line of Lot 5; thence North 89 degrees 49 minutes 55 seconds West 248.84 feet along said south line to the Point of Beginning, and containing 19,752 square feet, more or less.

Issued in Des Plaines, Illinois, on February 2, 2023.

Debra L. Bartell,

Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2023–02562 Filed 2–6–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on a Land Release Request To Sell On-Airport Property Conveyed by the United States of America Through a Surplus Property Act and Remove It From Airport Dedicated Use at the New Castle Airport (ILG), New Castle, DE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of release request to sell on-airport property conveyed through a Surplus Property Act and remove it from dedicated use.

SUMMARY: The FAA is requesting public comment on the Delaware River and Bay Authority's proposed land release and sale of 2.94 acres of airport property at the New Castle County Airport in Wilmington, Delaware. The subject property was conveyed by the United States of America through a Surplus Property Act instrument of transfer in 1949. In accordance with Federal regulations, this notice is required to be published in the **Federal Register** 30 days before the FAA can approve the sale of this property.

DATES: Comments must be received on or before March 2, 2023.

ADDRESSES: Comments on this application may be emailed or delivered to the following address:

Greg Suchanoff, Senior Project Engineer III, New Castle County Airport, 2162 New Castle Ave., New Castle, DE 19720, (302) 571–6492

and at the FAA Harrisburg Airports District Office:

Rick Harner, Manager, Harrisburg Airports District Office, 3905 Hartzdale Dr., Suite 508, Camp Hill, PA 17011, (717) 730–2830.

FOR FURTHER INFORMATION CONTACT: Paul Higgins, Project Manager, Harrisburg Airports District Office, 717–730–2843, location listed above. The request to release airport property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The Delaware River and Bay Authority, operating consistent with the operating agreement with New Castle County (owner of property) is proposing the land release and sale of 2.94 acres of airport property at the New Castle County Airport in Wilmington, Delaware. The 2.94 acre subject parcel includes a 26,783 square foot office building, and approximately 4,800 square yards of vehicle parking, with the remaining area comprised primarily of mowed lawn. The parcel is not currently required or anticipated to be required for aeronautical use. The subject parcel is bounded as follows:

All that certain tract, piece or parcel of land situate 12 Penn's Way, New Castle Hundred, New Castle County, Delaware and shown on a plan prepared by VanDemark & Lynch, Inc., Engineers, Planners and Surveyors, Wilmington, Delaware, dated January 6, 2020, entitled ''Exhibit Plan, 12 Penn's Way'', File No. 23599.35–EXHIB–01 and being more particularly bounded and described as follows, to wit:

Beginning at an iron pin found, a southerly corner for land now or formerly of the Delaware River & Bay

Authority (Deed Record 2090, Page 252) on the northeasterly side of Penn's Way (a 60 foot wide public road), said point being measured along the northeasterly and easterly sides of said Penn's Way, the three (3) following described courses and distances from the southwesterly end of a corner cut-off joining the southerly side of Commons Boulevard (a 110 foot wide public road) with said easterly side of Penn's Way:

1. South 06°04′44″ East, 108.30 feet to a point of curvature;

2. Southeasterly, by a curve to the left having a radius of 242.84 feet, an arc length of 192.59 feet to a point of tangency, said point being distant by a chord of South 28°47′56″ East, 187.58 feet from the last described point; and

3. South 51°31′08″ East, 484.38 feet to the Point of Beginning;

Thence, from the said point of Beginning, along southeasterly, southwesterly and northwesterly lines for said land now or formerly of the Delaware River & Bay Authority (Deed Record 2090, Page 252), the three (3) following described courses and distances:

1. North 38°23′27″ East, 373.10 feet to a point;

2. South 51°36′33″ East, 345.90 feet to a bent iron pin found; and

3. South 38°23′27″ West, 347.43 feet to a bent iron pin found on said northeasterly side of Penn's Way;

Thence along said northeasterly side of Penn's Way, the three (3) following described courses and distances:

Northwesterly, by a curve to the right having a radius of 242.83 feet, an arc length of 113.87 feet to a point of tangency, said point being distant by a chord of North 64°57′10″ West, 112.83 feet from the last described point; and

North 51°31′08″ West, 236.11 feet to the point and place of Beginning. Containing within said metes and bounds, 2.94 acres of land, being the same, more or less.

The proposed action consists of the land release for sale of Tax Parcel ID #10–018.00–006 (the PARCEL) from Wilmington/New Castle County Airport (ILG) ownership. The existing office space on the parcel is currently vacant. The interested buyer intends to use existing office building and parking area as a pandemic response center for the Delaware Air National Guard which would be considered a non-aeronautical use. No exterior physical alternations to the subject parcel are currently proposed. The parcel is located on the on the northwest portion of ILG. Any person may inspect the request by appointment at the FAA office address listed above. Interested persons are invited to comment on the proposed release. All comments will be considered by the FAA to the extent practicable.

Issued in Camp Hill, Pennsylvania, January 31, 2023.

Rick Harner,

Manager, Harrisburg Airports District Office.

[FR Doc. 2023–02478 Filed 2–6–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Corridor Identification and Development Program

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of solicitation and funding opportunity (NOFO or notice); extension of application submittal period.

SUMMARY: FRA is extending the application submittal period for its Notice for the Corridor Identification and Development program published on December 20, 2022, from March 20, 2023, to March 27, 2023.

DATES: FRA extends the NOFO application period and applications are now due by 5 p.m. ET on March 27, 2023.

FOR FURTHER INFORMATION CONTACT: For further information related to this notice and the Corridor Identification and Development Program, please contact Mr. Peter Schwartz, Acting Director, Office of Railroad Planning and Engineering at *PaxRailDev@dot.gov* or 202–493–6360.

SUPPLEMENTARY INFORMATION: FRA amends its NOFO for the Corridor Identification and Development Program published on December 20, 2022 (87 FR 77920), by extending the period for submitting applications to 5 p.m. ET on March 27, 2023. The reason for the extension is due to a technical issue preventing applications from being received on March 20, 2023.

Issued in Washington, DC.

Amitabha Bose,

Administrator.

[FR Doc. 2023–02566 Filed 2–6–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2022–0065; Notice 2]

Columbus Trading-Partners USA, Inc., Denial of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petition.

SUMMARY: Columbus Trading-Partners USA, Inc., (CTP), has determined that certain Cybex child restraint systems distributed by CTP do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 213, *Child Restraint Systems.* CTP filed an original noncompliance report dated June 30, 2022. CTP petitioned NHTSA on July 5, 2022, and amended the petition on August 4, 2022, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces the denial of CTP's petition.

FOR FURTHER INFORMATION CONTACT: Kelley Adams-Campos, Safety Compliance Engineer, NHTSA, Office of Vehicle Safety Compliance, *kelley.adamscampos@dot.gov,* (202) 366–7479.

SUPPLEMENTARY INFORMATION:

I. Overview: CTP has determined that certain child restraint systems manufactured under the brand name CYBEX and distributed by CTP do not fully comply with paragraph S5.4.1.2(b)(1) of FMVSS No. 213, *Child Restraint Systems* (49 CFR 571.213). CTP filed an original noncompliance report dated June 30, 2022, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* CTP petitioned NHTSA on July 5, 2022, and amended the petition on August 4, 2022, 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 CTP's petition was published with a 30-day public comment period, on August 26, 2022, in the **Federal Register** (87 FR 52674). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Then

follow the online search instructions to locate docket number ''NHTSA–2022–0065.''

II. Child Restraint Systems Involved: Approximately 31,080 Aton M, Aton 2, Aton, Aton Q, and Cloud Q model child restraint systems manufactured by CYBEX approximately between June 6, 2017,[1] and November 1, 2020, are potentially involved.

III. Noncompliance: After being subjected to abrasion, the breaking strength of the harness central adjuster (adjuster) webbing on the subject child restraint systems was less than 75 percent of the new webbing strength as required by S5.4.1.2(b)(1) of FMVSS No. 213.

IV. Rule Requirements: Paragraphs S5.4.1.2(a) and S5.4.1.2(b)(1) of FMVSS No. 213 include the requirements relevant to this petition. The webbing of belts provided with a child restraint system which are used to restrain the child within the system shall, after being subjected to abrasion as specified in S5.1(d) or S5.3(c) of FMVSS No. 209 (§ 571.209), have a breaking strength of not less than 75 percent of the new webbing strength when tested in accordance with S5.1(b) of FMVSS No. 209. ''New webbing'' means webbing that has not been exposed to abrasion, light, or micro-organisms as specified elsewhere in FMVSS No. 213.

V. Background: In response to a July 2021 Information Request (IR) from NHTSA's Office of Vehicle Safety Compliance (OVSC) relating to this noncompliance, and after learning that CTP's supplier, Holmbergs, did not have any historical test data for abrasion testing pursuant to FMVSS No. 213 S5.4.1.2(b)(1),[2] CTP claims it conducted abrasion testing on 2018 production adjuster webbing samples that would have been used on the (US) Aton M child restraint systems. As stated in CTP's petition, the results from this testing were that the webbing abraded using the hex bar test subceeded the required 75 percent of the new webbing breaking strength, averaging a median value of 64 percent, and the webbing abraded using CTP's ''through-adjuster'' test exceeded the required 75 percent of the new webbing breaking strength. CTP shared the results with NHTSA, submitting that FMVSS No. 213 S5.4.1.2(b)(1) provides two alternative abrasion test compliance options. The first, as provided in FMVSS No. 209 S5.1(d), (hex bar test) and the second, as provided in FMVSS No. 209 S5.3(c), referred to by CTP as ''through-adjuster test.'' CTP filed a form 573 Noncompliance report acknowledging the noncompliance with the abrasion tests in FMVSS No. 209 and then filed a petition, as summarized below.

VI. Summary of CTP's Petition: CTP explains that the adjuster webbing retained only 56.9 percent of the new webbing strength following the hex bar abrasion test [3] as specified in S5.1(d) of FMVSS No. 209.[4] CTP also acknowledges that, using an alternate ''through-adjuster'' [5] test methodology it developed, the adjuster webbing is noncompliant because CTP's test methods were ''not an appropriate interpretation of FMVSS No. 209.'' The views and arguments provided by CTP are presented in this section, ''VI. Summary of CTP's Petition.'' They do not reflect the views of the Agency. CTP describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

CTP believes that the subject noncompliance with the hex bar test is inconsequential to motor vehicle safety based on results from overload dynamic crash tests it conducted on Aton M child restraints assembled using abraded adjuster webbing. CTP states that this webbing was sourced from the same batch of webbing samples where some were tested for breaking strength after being abraded. Those tested for breaking strength averaged a median value of 64 percent retention of strength. CTP asserts that because the adjuster webbing loads (1,014 N maximum) measured in the dynamic tests were only a small fraction (11 percent) of the abraded webbing's retained strength, a significant safety margin is built into the adjuster webbing making it ''sufficient for this application,'' *i.e.,* Aton M and similar. This difference, CTP explains, shows that significantly more degradation (of webbing strength) could be tolerated. According to internal crash test data collected from tests varying in configuration, ATDs, attachment methods and crash severities, CTP states that the peak adjuster strap load recorded was 4,745 N. CTP also states that the dynamic crash tests of the child restraints with the hex bar abraded webbing showed that structural integrity of the child restraint was maintained and that the occupant was retained.

CTP notes that NHTSA's laboratory test procedure for FMVSS No. 209 Seat Belt Assemblies [6] ''specifies that for webbing resistance to abrasion tests performed pursuant to FMVSS § 4.2(d), 5.1(d), and 5.3(c) the assembly ''*shall* be subjected to the buckle abrasion test'' if the ''assembly contain [*sic*] a manual adjusting device'' with the emphasis added. CTP then explains its methodology for the ''through-adjuster'' testing it employed. With respect to the requirements of FMVSS No. 209 S5.3(c) *Resistance to buckle abrasion,* CTP states, with the emphases added, that ''[t]he *webbing* shall be pulled back and forth through the *buckle* or *manual adjusting device* as shown schematically in Figure 7 . . .'' and ''[t]he *webbing* shall pass through the *buckle* . . .'' CTP contends that the referenced schematic in Figure 7 of Standard No. 209 ''should only be viewed as a general visual aid,'' and that the schematic ''contradict[s] the plain language of the FMVSS.'' CTP states that although the schematic (in Figure 7 of Standard No. 209) does not appear to show the buckle or adjusting device opening and closing, ''that action certainly must occur to meet the plain language and clear intent of the regulation.'' When CTP performed its ''through-adjuster'' testing on the 2018 production webbing samples, the webbing was cycled through the adjuster containing a cam lock. CTP states that the cam lock ''must be opened during the lengthening stroke'' otherwise the adjuster will ''not allow webbing to move,'' *i.e.,* pass through it. CTP investigated a variety of test conditions it claims are related to FMVSS No. 209 S5.3(c) ''varying the amount and timing of the central adjuster cam opening'' in each. CTP believes the ''through-adjuster'' abrasion test it used accurately exposes the webbing to the abrading environment that exists in the real-world application, and that ''the language of the regulation, as well as the stated purpose of the regulation, should control the test methodology employed.''

CTP explains it ''relies on its suppliers to self-certify compliance to certain standards and requirements'' and that Holmbergs ''was following the Aton M US Control Plan'' based on CTP's On-going Quality Control (OQC) reports. CTP provided the Control Plan, OQC and other documents in its April 14, 2022, supplemental response to NHTSA.

CTP states it has implemented replacement adjuster webbing on new

[1] In its June 30, 2022, Part 573 submission, CTP reported production dates between March 7, 2017, and November 1, 2020.

[2] In section 2 of its petition, CTP mistakenly referred to S5.4.1.2(b)(1) of FMVSS No. 213 as S5.4.2.1(b)(1).

[3] OVSC compliance test report available at *https://static.nhtsa.gov/odi/ctr/9999/TRTR-647389-2020-001.pdf.*

[4] In its petition, CTP mistakenly referred to FMVSS No. 209 as FMVSS No. 213.

[5] In its petition, CTP refers to S5.3(c) of FMVSS No. 209 *Resistance to buckle abrasion* as ''through-adjuster'' test.

[6] Dated December 7, 2007.

child restraints manufactured beginning October 27, 2021, and that this webbing complies with all retained breaking [7] strength requirements after having been subject to both hex bar and ''through-adjuster'' testing. Additionally, CTP states it has clarified to its webbing supplier that the supplied webbing must comply with both available abrasion tests in its specifications. Finally, CTP states that since 2017 no adjuster webbing or adjuster assembly issues have been observed.

Details of CTP's investigation and testing can be found in its amended petition at *https://www.regulations.gov/document/NHTSA-2022-0065-0001.*

CTP concludes by stating its belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety and its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

VII. NHTSA's Analysis: The burden of establishing the inconsequentiality of a failure to comply with a *performance requirement* in an FMVSS is substantial and difficult to meet. Accordingly, the Agency has not found many such noncompliances inconsequential.[8]

In determining inconsequentiality of a noncompliance, NHTSA focuses on the safety risk to individuals who experience the type of event against which a recall would otherwise protect.[9] In general, NHTSA does not consider the absence of complaints or injuries when determining if a noncompliance is inconsequential to safety. The absence of complaints does not mean vehicle occupants have not experienced a safety issue, nor does it mean that there will not be safety issues in the future.[10] Thus CTP's claim that, since 2017, no adjuster webbing or adjuster assembly issues have been observed is not persuasive in evaluating if this noncompliance is inconsequential to safety.

As CTP's petition explains, S5.4.1.2(b)(1) of FMVSS No. 213 provides two alternative abrasion test compliance options: the hex bar test (FMVSS No. 209 S5.1(d)) and the resistance to buckle abrasion test (FMVSS No. 209 S5.3(c)). Note that in its petition, CTP mischaracterizes the resistance to buckle abrasion test as a ''through-adjuster'' test; NHTSA takes this opportunity to correct this mischaracterization of Standard No. 209 S5.3(c) from hereon.

With respect to CTP's argument that the webbing's maximum load, 1,014 N, measured during its overload dynamic crash testing using child restraint systems assembled with hex bar abraded adjuster webbing, or 4,745 N from its other internal crash test data, compared to the average median breaking strength, 9,506 N,[11] from its hex bar abraded webbing tests does not meet its burden of persuasion. The Agency does not find the argument that abraded webbing with a breaking strength less than the required minimum is offset, compliant or inconsequential to safety by exceeding webbing loads observed in dynamic crash tests. If we did, the minimum requirements would be written to accommodate it. Consistent with past Agency denials [12] for inconsequentiality petitions for noncompliant child restraint webbing that used dynamic crash test analyses in its basis, NHTSA is not compelled by CTP's arguments.

Furthermore, neither CTP's dynamic test analysis nor its claims based on other internal crash test data address the potential for safety issues resulting from possible further loss in webbing strength with continued long-term use. The webbing breaking strength test and child restraint system dynamic test do not test for the same conditions and serve distinct purposes. Requirements that apply to new child restraints only, such as the dynamic sled tests conducted on the child restraint as a system, do not provide comparable assurances for components, such as webbing, tested independently from the child restraint system.

Among our concerns is also that, according to its petition, CTP assembled the Aton M child restraints in the foregoing overload dynamic crash tests with adjuster webbing, after being abraded, sourced from the 2017–2018 production adjuster webbing batches ''that would have been used on the (US) Aton M'' subject to its petition. Adjuster webbing from these batches were also used in CTP's hex bar abrasion and breaking strength tests, where the webbing's median breaking strength retention ranged from 61 percent to 66.2 percent.[13] CTP relies on the average of these degradation rates as being representative of all adjuster webbing coming from these 2017–2018 batches. However, in the Aton M models tested in the OVSC's compliance testing, assembled with adjuster webbing that CTP asserts would have come from these same 2017–2018 production batches, the breaking strength retention after abrasion was 56.9 percent, a significantly lower degradation rate. Even if CTP's test results were relevant, NHTSA does not find them persuasive. Notwithstanding that other webbing samples from the same batches could have even greater degradation rates, *i.e.,* lower breaking strength retention percentages, the webbing strength could degrade to levels even lower than in these foregoing instances over an entire lifetime of actual use.

CTP uses its dynamic testing to argue that the adjuster webbing's absolute strength, versus the required 75 percent retention strength, after abrasion is sufficient for its application in an infant child restraint. According to CTP, all that matters is whether webbing that has been subjected to the abrasion test is stronger than certain loads it claims to have measured on the webbing in limited dynamic testing, tantamount to establishing an ''effective minimum.'' This argument challenges the stringency of the requirement in the standard, to which a petition for rulemaking, not an inconsequentiality petition, is the appropriate means.[14] CTP's approach is additionally inconsistent with the two-faceted regulatory structure that NHTSA

[7] In its petition, CTP mistakenly refers to breaking as tensile.

[8] *Cf. Gen. Motors Corporation; Ruling on Petition for Determination of Inconsequential Noncompliance,* 69 FR 19897, 19899 (Apr. 14, 2004) (citing prior cases where noncompliance was expected to be imperceptible, or nearly so, to vehicle occupants or approaching drivers).

[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] *See Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance,* 81 FR 21663, 21666 (Apr. 12, 2016); *see also United States* v. *Gen. Motors Corp.,* 565 F.2d 754, 759 (DC 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'').

[11] CTP determined the median value in each of four tests (each test contained 3 samples) and then averaged the four median values to come up with an ''average median breaking strength'' of 9,506 N.

[12] Combi USA, Inc., Denial of Petition for Decision of Inconsequential Noncompliance, 86 FR 47723 (and decisions cited therein) (August 26, 2021).

[13] Section 8, Table ''HEX-BAR ABRASION TEST RESULTS (performed Sept 2021), FMVSS213. S5.4.1.2(b)'' in CTP's petition.

[14] *See Dorel Juvenile Group; Denial of Appeal of Decision on Inconsequential Noncompliance,* 75 FR 510, January 5, 2010.

adopted in the 2005–2006 rulemaking,[15] establishing a minimum breaking strength requirement for new webbing. In that rulemaking, the Agency explained that the fact that webbing has a particular strength after being subjected to the abrasion test does not mean further degradation is not possible.[16] Both the new webbing strength and degradation rate requirements after abrasion are important from a safety perspective [17] and do not vary based on probable use patterns, *e.g.,* infant child restraints or otherwise.

The abrasion test is an accelerated aging test that provides a snapshot of the webbing over prolonged exposure to environmental conditions. The tests do not, and are not intended to, assess how strong a particular tested specimen will be at the end of its life.[18] The tests do not replicate the lifetime use of the webbing.[19] In the 2006 Final Rule, the Agency affirmed that retaining control over webbing material degradation rates is critical to ensure sufficient webbing strength over time. NHTSA believes that when a required webbing degradation rate is not met, as in the case of CTP's Aton M adjuster webbing, its performance as it ages will expose child occupants to a risk that increases with long-term use, thus we are not persuaded with this argument made by CTP that the noncompliance is inconsequential to safety.

Figure 7 of Standard No. 209 illustrates the required setup for the resistance to buckle abrasion testing specified in S5.3(c). NHTSA does not agree with CTP's argument that the schematic in Figure 7 ''should only be used as a general visual aid.'' In fact, the regulatory text specifically states, ''[t]he webbing shall be pulled back and forth through the buckle or manual adjusting device as shown schematically in Figure 7.'' The design of the manual adjusting device for the adjuster on the subject child restraint systems does not facilitate performing the test in the manner specified in S5.3(c) or as shown in Figure 7. This is illustrated by CTP's alternate test methodology it performed, explaining that in order for the webbing to be pulled back and forth through the manual adjusting device as shown in Figure 7 its cam lock ''must be opened during the lengthening stroke'' otherwise the manual adjusting device will ''not allow webbing to move,'' *i.e.,* pass through it. In its petition, CTP states that it investigated a variety of test conditions related to FMVSS No. 209 S5.3(c) that included ''varying the amount and timing of the central adjuster cam opening'' and that the results exceeded the retained breaking strength requirement of 75 percent.

The Agency does not find these results to be impactful because the way in which they were obtained is not consistent with any procedure established in the standard and therefore does not demonstrate compliance. Intentionally and actively, *i.e.,* manually, opening the cam lock, as CTP did, in any amount, regardless of the timing cadence, is in direct conflict with S5.3(c) and Figure 7 of FMVSS No. 209. Such manipulation, or any other purposeful means of releasing the buckle or manual adjusting device, is not specified in S5.3(c) or elsewhere in Standard No. 209. Moreover, such manipulation directly reduces the amount of contact between the adjusting device and the adjuster webbing, making the test less severe.

The Agency reiterates its long-standing position that a manufacturer may choose any means of evaluating its products to determine whether the vehicle or item of equipment complies with the requirements of that standard, provided the manufacturer exercises due care in ensuring that the vehicle or equipment will comply with Federal requirements when tested by the Agency according to the procedures specified in the standard. In other words, the manufacturer must show that its chosen means is a reasonable surrogate for the test procedure specified by the standard [20] and should be sufficient to support the conclusion that, if tested under the specified conditions, the product would perform as required.[21] CTP's procedure was not sufficient as a surrogate or otherwise in demonstrating compliance with FMVSS No. 213 because its procedure did not replicate the abrading produced by following S5.3(c) of FMVSS No. 209. CTP appears to suggest that the schematic in Figure 7 of Standard No. 209 has little value in defining the required test methodology, through its belief that ''the language of the regulation, as well as the stated purpose of the regulation, should control the test methodology employed.'' CTP's assertion is incorrect. FMVSS No. 209 S5.3(c) states that ''[t]he webbing shall be pulled back and forth through the buckle or manual adjusting device as shown schematically in Figure 7.'' Thus, Figure 7 is directly incorporated into the standard.

CTP asserts in its petition that the Agency's laboratory test procedure (TP) for enforcement of FMVSS No. 209 Seat Belt Assemblies,[22] specifies that if the ''assembly contain [*sic*] a manual adjusting device'' the assembly shall be subjected to the buckle abrasion test. As explained in a legal note set forth at its beginning, ''[t]he OVSC Test Procedures are prepared for the limited purpose of use by independent laboratories under contract to conduct compliance tests for the OVSC. The TPs are not rules, regulations or NHTSA interpretations regarding the FMVSS.'' The note continues to explain that as long as the tests are performed in a manner consistent with the FMVSS itself, NHTSA may authorize contractors to deviate from the procedures. In order to be consistent with the requirement options provided in FMVSS No. 213 S5.4.1.2(b)(1) for the abrasion testing of the adjuster webbing, and to conduct the tests as specified with respect to the design of the subject child restraint system, the hex bar test of S5.1(d) of FMVSS No. 209 was the correct procedure in this case. Despite CTP's contention that its test methodology ''accurately exposes the central adjuster webbing to the abrading environment that exists in the [child restraint] application'' NHTSA concludes that because of CTP's deviations from the protocol established in the FMVSS, the protocol fabricated by CTP with its ''through-adjuster'' test was less stringent than required by the standard and does not establish compliance with it.

In regard to CTP's description that what caused the noncompliance of the subject child restraint systems was its reliance on its suppliers to self-certify to the FMVSSs, NHTSA takes this opportunity to remind the reader of the following. First, the National Traffic and Motor Vehicle Safety Act [23] (the Safety Act) requires that motor vehicles or motor vehicle equipment meet two separate requirements before they may be sold or otherwise introduced into interstate commerce in the United

[15] *See Federal Motor Vehicle Safety Standards; Child Restraint Systems,* 70 FR 37731 and 71 FR 32855.

[16] *See Federal Motor Vehicle Safety Standards; Child Restraint Systems,* 71 FR 32858–859, June 7, 2006.

[17] *See Dorel Juvenile Group; Denial of Appeal of Decision on Inconsequential Noncompliance,* 75 FR 510, January 5, 2010.

[18] *Id.*

[19] ''The primary purposes of laboratory tests are merely to save valuable time and to serve as controls in the manufacture of basic materials.'' Plastics Engineering Handbook of the Society of the Plastics Industry, Inc., Third Ed., Van Nostrand Reinhold Company, 1960.

[20] *https://www.nhtsa.gov/interpretations/aiam4760.*

[21] *https://www.nhtsa.gov/interpretations/aiam0434.*

[22] Dated December 7, 2007.

[23] 49 U.S.C. 30101.

States: (1) they must be compliant with the FMVSS, and (2) they must be certified as compliant by a manufacturer exercising reasonable care.[24] ''Manufacturer'' means a person manufacturing or assembling motor vehicles or motor vehicle equipment, or importing motor vehicles or motor vehicle equipment for resale.[25] Second, as previously stated, a manufacturer may choose any means of evaluating its products to determine whether the vehicle or equipment will comply with the safety standards when tested by the agency according to the procedures specified in the standard. In this case, it appears that CTP fully and solely relied on its supplier to produce webbing compliant with S5.4.1.2(b)(1) of FMVSS No. 213. While this may be legally permitted, as the distributor whose name appears on the child restraint system, CTP accepted certification responsibility of the subject child restraint systems, and ultimately is accountable for it.

CTP claims it has implemented replacement adjuster webbing on newly manufactured child restraints beginning October 27, 2021, and that this webbing complies with all retained breaking strength requirements after having been subjected to both hex bar and resistance to buckle abrasion testing. In its petition, CTP attached Exhibit A [26] in support of its claim that child restraints with webbing manufactured in 2021 were verified to be compliant with FMVSS No. 213 S5.4.1.2(b)(1). Exhibit A contained portions of the January 14, 2022, OVSC test report [27] for FMVSS No. 213 Component Tests for Aton M models tested as part of its FY2021 compliance program. The date of manufacture of the Aton M models tested in that report was 11/26/2020. NHTSA does not consider CTP's Exhibit A to be relevant to its petition because it did not apply to the child restraint systems that were the subject of its petition.

VIII. NHTSA's Decision: In consideration of the foregoing, NHTSA has decided that CTP has not met its burden of persuasion that the subject FMVSS No. 213 noncompliance is inconsequential to motor vehicle safety. Accordingly, CTP's petition is hereby denied, and CTP is 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. 2023–02577 Filed 2–6–23; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2023–0016]

60-Day Notice of Request for Renewal of a Previously Approved Collection

AGENCY: Office of the Secretary (OST), Department of Transportation (Department) or (DOT).

ACTION: Notice and request for comments.

SUMMARY: The OSDBU invites public comments about our intention to request the Office of Management and Budget's (OMB) approval to renew an information collection. The collection involves ''SBTRC Regional Field Offices Intake Form (DOT F 4500)'' with *OMB Control Number* 2105–0554.

DATES: Please submit comments by April 10, 2023.

ADDRESSES: You may submit comments [identified by Docket No. DOT–OST–2023–0016 through one of the following methods:

- *Office of Management and Budget, Attention: Desk Officer for U.S. Department of Transportation, Office of the Secretary of Transportation, 725 17th Street NW, Washington, DC 20503,*
- *email: oira_submission@omb.eop.gov.*
- *Fax: (202) 395–5806.*

FOR FURTHER INFORMATION CONTACT: Peter Kontakos, 202–366–1930 ext. 62253, Office of Small and Disadvantaged Business Utilization, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W56–444, Washington, DC 20590. Office hours are from 9:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: SBTRC Regional Field Offices Intake Form (DOT F 4500).

OMB Control Number: 2105–0554.

Background: In accordance with Public Law 95–507, an amendment to the Small Business Act and the Small Business Investment Act of 1953, OSDBU is responsible for the implementation and execution of DOT activities on behalf of small businesses, in accordance with sections 8, 15 and 31 of the Small Business Act (SBA), as amended. The Office of Small and Disadvantaged Business Utilization also administers the provisions of title 49, of the United States Cole, section 332, the Minority Resource Center (MRC) which includes the duties of advocacy, outreach, and financial services on behalf of small and disadvantaged businesses and those certified under CFR 49 parts 23 and or 26 as Disadvantaged Business Enterprises (DBE). SBTRC's Regional Field Offices will collect information on small businesses, which includes Disadvantaged Business Enterprise (DBE), Women-Owned Small Business (WOB), Small Disadvantaged Business (SDB), 8(a), Service Disabled Veteran Owned Business (SDVOB), Veteran Owned Small Business (VOSB), HubZone, and types of services they seek from the Regional Field Offices. Services and responsibilities of the Field Offices include business analysis, general management & technical assistance and training, business counseling, outreach services/ conference participation, short-term loan and bond assistance. The cumulative data collected will be analyzed by the OSDBU to determine the effectiveness of services provided, including counseling, outreach, and financial services. Such data will also be analyzed by the OSDBU to determine agency effectiveness in assisting small businesses to enhance their opportunities to participate in government contracts and subcontracts.

We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995, Public Law 104–13.

Title: Small Business Transportation Resource Center Regional Field Office Intake Form (DOT F 4500).

Form Numbers: DOT F 4500.

Type of Review: Renewal of an information collection.

The Regional Field Offices Intake Form, (DOT F 4500) is used to enroll small business clients into the program in order to create a viable database of firms that can participate in government contracts and subcontracts, especially those projects that are transportation related. Each area on the fillable pdf form must be filled in electronically by the Field Offices and submitted every quarter to OSDBU. The Offices will retain a copy of each Intake Form for their records. The completion of the form is used as a tool for making decisions about the needs of the business, such as; referral to technical assistance agencies for help, identifying the type of profession or trade of the business, the type of certification that the business holds, length of time in

[24] 49 U.S.C. 30112, 30115.

[25] 49 U.S.C 30102.

[26] In its petition, CTP mistakenly referred to Exhibit A as Exhibit 1.

[27] *https://static.nhtsa.gov/odi/ctr/9999/TRTR-647554-2021-001.pdf.*

business, and location of the firm. This data can assist the Field Offices in developing a business plan or adjusting their business plan to increase its ability to market its goods and services to buyers and potential users of their services.

Respondents: SBTRC Regional Field Offices.

Estimated Number of Respondents: 100.

Frequency: The information will be collected quarterly.

Estimated Number of Responses: 100.

Estimated Total Annual Burden on Respondents: 600 hours per year.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information collection; and d) ways to minimize the burden of the collection of information on respondents, by the use of electronic means, including the use of automated collection techniques or other forms of information technology. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1:48.

Issued in Washington, DC, on February 1, 2023.

Peter Kontakos,

Manager, Regional Assistance Division, Office of Small and Disadvantaged Business Utilization.

[FR Doc. 2023–02542 Filed 2–6–23; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT–OST–2003–15962]

Agency Request for Extension of a Previously Approved Information Collection: Procedures and Evidence Rules for Air Carrier Authority Applications

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: The Department of Transportation (DOT) invites public comments about our intention to request the Office of Management and Budget (OMB) approval to extend an information collection. The collection involves anyone who wants to provide air transportation service. The information collected will be used to determine if the applicant meets the requirements to perform the proposed service and is necessary because of title 49 of the United States Code. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Written comments on this notice should be submitted by April 10, 2023.

ADDRESSES: You may submit comments identified by Docket No. DOT–OST–2003–15962 by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Operations Office, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Snoden, (202) 366–4834, Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2106–0023.

Title: Procedures and Evidence Rules for Air Carrier Authority Applications: 14 CFR part 201—Air Carrier Authority under Subtitle VII of Title 49 of the United States Code—(Amended); 14 CFR part 204—Data to Support Fitness Determinations; 14 CFR part 291—Cargo Operations in Interstate Air Transportation.

Type of Review: Extension of a previously approved information collection.

Background: To determine the fitness of persons seeking authority to engage in air transportation, the Department collects information from them about their ownership, citizenship, managerial competence, operating proposal, financial condition, and compliance history. The specific information to be filed by respondents is set forth in 14 CFR parts 201 and 204.

Respondents: Persons seeking initial or continuing authority to engage in air transportation of persons, property, and/or mail.

Estimated Number of Respondents: 69.

Frequency of collection: Occasional.

Estimated Number of responses: 207.

Average Annual Burden per Respondent: 60 hours.

Estimated Total Burden on Respondents: 10,215 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden cold be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:48.

Issued in Washington, DC, on February 2, 2023.

Lauralyn Jean Remo Temprosa,

Associate Director, Air Carrier Fitness Division, Office of Aviation Analysis.

[FR Doc. 2023–02586 Filed 2–6–23; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT–OST–2003–15623]

Agency Request for Extension of a Previously Approved Information Collection: Use and Change of Names of Air Carriers, Foreign Air Carriers, and Commuter Air Carriers

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: The Department of Transportation (DOT) invites public comment about our intention to request the Office of Management and Budget (OMB)'s approval to extend an information collection. The collection involves information from air carriers who seek new, reissued, or transferred authority in a new name or use of a trade name. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Written comments should be submitted by April 10, 2023.

ADDRESSES: You may submit comments [identified by Docket Number DOT–OST–2003–15623] by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Operations Office, U.S. Department of Transportation, 1200 New Jersey

Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Snoden, (202) 366–4834, Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2106–0043.

Title: Use and Change of Names of Air Carriers, Foreign Air Carriers, and Commuter Air Carriers.

Type of Request: Extension of a previously approved collection.

Background: In accordance with the procedures set forth in 14 CFR part 215, before a holder of certificated, foreign, or commuter air carrier authority may hold itself out to the public in any particular name or trade name, it must register that name or trade name with the Department, and notify all other certificated, foreign, and commuter air carriers that have registered the same or similar name(s) of the intended name registration.

Respondents: Persons seeking to use or change the name or trade name in which they hold themselves out to the public as an air carrier or foreign air carrier.

Estimated Number of Respondents: 12.

Estimated Total Burden on Respondents: 60 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1:48.

Issued in Washington, DC, on February 2, 2023.

Lauralyn Jean Remo Temprosa,

Associate Director, Air Carrier Fitness Division, Office of Aviation Analysis.

[FR Doc. 2023–02595 Filed 2–6–23; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT–OST–2004–16951]

Agency Request for Extension of a Previously Approved Information Collection: Aircraft Accident Liability Insurance

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: The Department of Transportation (DOT) invites public comment about our intention to request the Office of Management and Budget (OMB)'s approval to extend an information collection. The collection involves information from U.S. air carrier's policies of insurance for aircraft accident bodily injury and property damage liability and their filings of a two-page form. The information collected is necessary for DOT to determine whether the air carrier meets DOT criteria for insurance. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Written comments should be submitted by April 10, 2023.

ADDRESSES: You may submit comments [identified by Docket Number DOT–OST–2004–16951] by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Operations Office; U.S. Department of Transportation, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Snoden, (202) 366–4834, Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2106–0030.

Title: Aircraft Accident Liability Insurance, 14 CFR part 205.

Type of Request: Extension of a previously approved collection.

Abstract: 14 CFR part 205 contains the minimum requirements for air carrier accident liability insurance to protect the public from losses, and directs that certificates evidencing appropriate coverage must be filed with the Department.

Respondents: U.S. and foreign air carriers.

Estimated Number of Respondents: 2,562.

Estimated Total Burden on Respondents: 894 hours.

Comments are invited on: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 14 CFR part 205.

Issued in Washington, DC, on February 2, 2023.

Lauralyn Jean Remo Temprosa,

Associate Director, Air Carrier Fitness Division, Office of Aviation Analysis.

[FR Doc. 2023–02587 Filed 2–6–23; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

[Docket No. DOT–OST–2023–0021]

Notice of Request for Clearance of a New Information Collection: Ocean Shipping Reform Act of 2022 (OSRA 22)

AGENCY: Bureau of Transportation Statistics (BTS), Office of the Assistant Secretary for Research and Technology (OST–R), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, BTS announces the intension to request the Office of Management and Budget (OMB) for its review and renewal of the Ocean Shipping Reform Act (OSRA) 2022 Pilot Data Collection. Section 16 of OSRA 2022 mandates that the Bureau of Transportation Statistics (BTS) collect chassis and container street dwell time, as well as chassis out of service data monthly from each port, marine terminal operator, and chassis owner or

provider with a fleet of over 50 chassis that supply chassis for a fee. The information collected from this data collection will be used to provide, at the least, national level street dwell and out of service statistics. The monthly statistics will be published by BTS on the BTS OSRA web page at: *www.bts.gov/osra.*

DATES: Comments must be submitted on or before April 10, 2023.

ADDRESSES: You may submit comments identified by DOT Docket ID Number DOT–OST–2022–0095 to the U.S. Department of Transportation (DOT), Dockets Management System (DMS). You may submit your comments by mail or in person to the Docket Clerk, Docket No., U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building, Room W12–140, Washington, DC 20590. Comments should identify the docket number as indicated above. Paper comments should be submitted in duplicate. The DMS is open for examination and copying, at the above address, from 9 a.m. to 5 p.m., Monday through Friday, except federal holidays. If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: ''Comments on Docket DOT–OST–2022–0095.'' The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (the internet, fax, or professional delivery service) to submit comments to the docket and ensure their timely receipt at U.S. DOT. You may fax your comments to the DMS at (202) 493–2251. Comments can also be viewed and/or submitted via the Federal Rulemaking Portal: *http://www.regulations.gov.*

Please note that anyone is able to electronically search all comments received into our docket management system by the name of the individual submitting the comment (or signing the comment if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; pages 19475–19570) or you may review the Privacy Act Statement at *http://www.gpoaccess.gov/fr/.*

FOR FURTHER INFORMATION CONTACT: April Gadsby, (470) 718–5798, Mathematical Statistician, BTS, OST–R, Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590. Office hours are from 8:00 a.m. to 5:00 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Ocean Shipping Reform Act of 2022 (OSRA 22).

Background: In response to supply chain challenges, Congress passed the Ocean Shipping Reform Act of 2022 (OSRA 22). Section 16 of the OSRA 22 mandates BTS to produce statistics on ''the total street dwell time from all causes of marine containers and chassis and the average out of service percentage of chassis.'' OSRA 22 grants BTS authority to collect data from ''each port, marine terminal operator, and chassis owner or provider with a fleet of over 50 chassis that supply chassis for a fee'' as deemed necessary to produce these statistics.

Per the law, BTS must produce the first monthly report no later than February 10, 2023 (240 days from the request). For this, OMB issued an emergency clearance OMB 2138–0050 expiring February 10, 2023. This clearance will serve to continue the national data collection until the sunset of the program as detailed by congress by December 2026.

This new data collection will require that BTS establish a sample frame and research available data sources and data items from in scope ports, terminals, and intermodal equipment providers, ocean carriers and non-vessel operating common carriers. The results from the initial data collection that will be published by February 10, 2023, under the emergency clearance will provide the foundation upon which the national program can be built.

The data collection will be administered to ''each port, marine terminal operator, and chassis owner or provider with a fleet of over 50 chassis that supply chassis for a fee'' (OSRA 22) as deemed necessary to produce these statistics.

The data collection will include approximately 190–265 data providers representing the approximate set of 90 chassis owners, motor carriers, and/or intermodal equipment providers (IEPs), as well as all ports, including inland ports and their approximately 75–150 intermodal terminal facilities, inland dry ports, intermodal terminal facilities operators (*e.g.,* ICTF = Intermodal Container Transfer Facility). The data collection will request respondents to provide information such as the estimated inventory of intermodal chassis and/or marine containers under their control measured by TEU in the U.S., how dwell time, out of service rates, and/or unavailable chassis are defined, tracked, and at what frequency they can be reported for the equipment under their control. The data collection will yield statistics on the total intermodal marine container and chassis street dwell time and the chassis out of service rate to satisfy the OSRA 22 mandate.

Respondents: The target population for the data collection will be approximately 190–265 respondents representing the approximate set of 90 chassis owners, motor carriers, and/or intermodal equipment providers (IEPs), as well as all ports, including inland ports and their approximately 75–150 intermodal terminal facilities, inland dry ports, and ICTFs.

Estimated Average Burden per Response: The burden per respondent is estimated to be an average of 2 hours. This average is based on the resulting test data sets received from data respondents.

Estimated Total Annual Burden: The total monthly burden (once the program is fully developed and all participants have been asked to submit data) is estimated to be 808 hours (that is 2 hours per data provider for 404 data providers equals 808 hours).

Frequency: Monthly until the data collection sunset, December 2026.

Public Comments Invited: Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) the necessity and utility of the information collection for the proper performance of the functions of the DOT; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, clarity and content of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Authority: The Transportation Equity Act for the 21st Century, Pub. L. 105–178, section 1207(c), The Safe, Accountable, Flexible Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU), Pub. L. 109–59, Moving Ahead for Progress in the 21st Century Act (MAP–21), Pub. L. 112–141, 49 CFR 1.46, and Fixing America's Surface Transportation Act (FAST Act), Pub. L. 114–94, sec. 1112.

Issued in Washington, DC, on the 2nd day of February 2023.

Cha-Chi Fan,

Director, Office of Data Development and Standards, Bureau of Transportation Statistics, Office of the Assistant Secretary for Research and Technology.

[FR Doc. 2023–02583 Filed 2–6–23; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

On February 1, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

BILLING CODE 4810–AL–P

Individuals

1. ZIMENKOV, Igor Vladimirovich (Cyrillic: ЗИМЕНКОВ, Игорь Владимирович), Moscow, Russia; Cyprus; DOB 19 Dec 1968; POB Tashkent, Uzbekistan; nationality Russia; alt. nationality Israel; citizen Russia; alt. citizen Cyprus; Gender Male; Passport 720969676 (Russia); Tax ID No. 770508895203 (Russia) (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(i) of Executive Order 14024 of April 15, 2021, "Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation," 86 FR 20249 (Apr. 15, 2021) (E.O. 14024) for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

2. ZIMENKOV, Jonatan (a.k.a. ZIMENKOV, Jonathan; a.k.a. ZIMENKOV, Natan Igorevich (Cyrillic: ЗИМЕНКОВ, Натан Игоревич)), Russia; DOB 11 Sep 1994; POB Haifa, Israel; nationality Russia; alt. nationality Italy; alt. nationality Israel; Gender Male; Digital Currency Address - XBT bc1qfg4gfg0y6t6xjnpmlhuwx5k0wlw6nmfzxn2psc; Digital Currency Address - ETH 0x39D908dac893CBCB53Cc86e0ECc369aA4DeF1A29; Passport YB0612378 (Italy); Tax ID No. 770509857842 (Russia) (individual) [RUSSIA-EO14024] (Linked To: ZIMENKOV, Igor Vladimirovich; Linked To: ROSOBORONEKSPORT OAO).

   Designated pursuant to section 1(a)(vi)(B) of E.O. 14024 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Igor Zimenkov, a person whose property and interests in property are blocked pursuant to E.O. 14024, and for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Rosoboroneksport OAO, a person whose property and interests in property are blocked pursuant to E.O. 14024.

3. PIFLAKS, Maks Borisovich (Cyrillic: ПИФЛАКС, Макс Борисович) (a.k.a. PIFLAX, Max Borisovich), Uzbekistan; DOB 14 Jun 1962; nationality

Uzbekistan; Gender Male (individual) [RUSSIA-EO14024] (Linked To: MATEAS LIMITED).

Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of Mateas Limited, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

4. PIFLAKS, Gilad, Israel; DOB 23 Sep 1992; POB Tashkent, Uzbekistan; nationality Uzbekistan; alt. nationality Israel; Gender Male (individual) [RUSSIA-EO14024] (Linked To: PIFLAKS, Maks Borisovich).

Designated pursuant to section 1(a)(v) of E.O. 14024 for being a spouse or adult child of Maks Borisovich Piflaks, a person whose property and interests in property are blocked pursuant to section 1(a)(ii) or 1(a)(iii) of E.O. 14024.

5. VOLFOVICH, Alexander (a.k.a. VOLFOVICH, Aleksandr (Cyrillic: ВОЛФОВИЧ, Александр); a.k.a. VOLFOVITS, Alexanter; a.k.a. WOLFOVITZ, Alexander), 1 Danias, Agios Tychonas, Limassol, Cyprus; DOB 26 Oct 1961; nationality Cyprus; alt. nationality Israel; Gender Male (individual) [RUSSIA-EO14024] (Linked To: ZIMENKOV, Igor Vladimirovich).

Designated pursuant to section 1(a)(vi)(B) of E.O. 14024 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Igor Zimenkov, a person whose property and interests in property are blocked pursuant to E.O. 14024.

6. PALNYCHENKO, Igor (a.k.a. PALNITSENKO, Igkor (Greek: ΠΑΛΝΙΤΣΕΝΚΟ, Ιγκορ)), Cyprus; DOB 04 Jan 1969; nationality Cyprus; Gender Male; Passport K00405440 (Cyprus) (individual) [RUSSIA-EO14024] (Linked To: GMI GLOBAL MANUFACTURING & INTEGRATION LTD).

Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of GMI Global Manufacturing & Integration LTD, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

7. VOLFOVICH, Stanislav (a.k.a. VOLFOVITS, Stanislav (Greek: ΒΟΛΦΟΒΙΤΣ, Στανισλαβ)), Cyprus; Israel; DOB 04 May 1983; POB Dnepropetrovsk, Ukraine; nationality Cyprus; alt. nationality Israel; citizen Cyprus; Gender Male (individual) [RUSSIA-EO14024] (Linked To: VFC SOLUTIONS LTD).

Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of VFC Solutions LTD, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

8. VOLFOVICH, Ariel (a.k.a. VOLFOVITS, Ariel (Greek: ΒΟΛΦΟΒΙΤΣ, Αριελ)), Cyprus; DOB 17 Nov 1992; nationality Cyprus; citizen Cyprus; Gender Male; Passport L00019196 (Cyprus) expires 19 Apr 2031 (individual) [RUSSIA-EO14024] (Linked To: VFC SOLUTIONS LTD).

   Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of VFC Solutions LTD, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

9. NG, Serena Bee Lin, Singapore; DOB 25 Jan 1958; POB Singapore; nationality Singapore; citizen Singapore; Gender Female; National ID No. S1296118I (Singapore) (individual) [RUSSIA-EO14024] (Linked To: ASIA TRADING & CONSTRUCTION PTE LTD).

   Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of Asia Trading & Construction PTE Limited, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

10. BLATS, Marks (a.k.a. BLATT, Mark), Latvia; DOB 23 Sep 1962; nationality Latvia; Gender Male; National ID No. 23062-12608 (Latvia) (individual) [RUSSIA-EO14024] (Linked To: TEXEL F.C.G. TECHNOLOGY 2100 LTD).

    Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of Texel F.C.G. Technology 2100 Limited, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

Entities

1. GBD LIMITED (f.k.a. KOLNET LIMITED), Afstralias 6, Limassol 3017, Cyprus; Organization Established Date 03 Aug 1998; Organization Type: Non-specialized wholesale trade; Registration Number C96489 (Cyprus) [RUSSIA-EO14024] (Linked To: VOLFOVICH, Alexander).

   Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Alexander Volfovich, a person whose property and interests in property are blocked pursuant to E.O. 14024.

2. KLIOSA LIMITED, 6023 Afstralias 6, Larnaca 3017, Cyprus; Organization Established Date 10 Jun 2009; Organization Type: Non-specialized wholesale trade; Registration Number C250934 (Cyprus) [RUSSIA-EO14024] (Linked To: VOLFOVICH, Alexander).

   Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of,

directly or indirectly, Alexander Volfovich, a person whose property and interests in property are blocked pursuant to E.O. 14024.

3. MATEAS LIMITED, Afstralias 6, Limassol 3017, Cyprus; Organization Established Date 04 Feb 2002; Registration Number C127590 (Cyprus) [RUSSIA-EO14024] (Linked To: VOLFOVICH, Alexander).

   Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Alexander Volfovich, a person whose property and interests in property are blocked pursuant to E.O. 14024.

4. U-STONE LIMITED EOOD (a.k.a. U-STONE LIMITED (Cyrillic: Ю-СТОУН ЛИМИТЕД)), Lyuben Karavelov 32, Ap. 4, Sofia 1142, Bulgaria; Organization Established Date 26 Jun 2019; Registration Number 205721650 (Bulgaria) [RUSSIA-EO14024] (Linked To: VOLFOVICH, Alexander).

   Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Alexander Volfovich, a person whose property and interests in property are blocked pursuant to E.O. 14024.

5. GMI GLOBAL MANUFACTURING & INTEGRATION LTD (a.k.a. GMI GLOBAL MANUFACTURING AND INTEGRATION LTD; f.k.a. PRUVIA LIMITED), Afstralias 6, Limassol 3017, Cyprus; Organization Established Date 02 Dec 2009; Registration Number C258701 (Cyprus) [RUSSIA-EO14024] (Linked To: VOLFOVICH, Alexander).

   Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Alexander Volfovich, a person whose property and interests in property are blocked pursuant to E.O. 14024.

6. PITARON LIMITED, 103, Afstralias 6, Limassol, Cyprus; Organization Established Date 15 Sep 2017; Registration Number C373784 (Cyprus) [RUSSIA-EO14024] (Linked To: PALNYCHENKO, Igor).

   Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Igor Palnychenko, a person whose property and interests in property are blocked pursuant to E.O. 14024.

7. TERRA-AZ LIMITED, 103, Afstralias 6, Limassol 3017, Cyprus; Organization Established Date 15 Sep 2017; Registration Number C373788 (Cyprus) [RUSSIA-EO14024] (Linked To: PALNYCHENKO, Igor).

   Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Igor Palnychenko, a person whose property and interests in property are blocked pursuant to E.O. 14024.

8. VFC SOLUTIONS LTD, Danias 1, Limassol 4521, Cyprus; Organization Established Date 19 Jul 2019; Registration Number C400224 (Cyprus) [RUSSIA-EO14024] (Linked To: VOLFOVICH, Alexander).

   Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Alexander Volfovich, a person whose property and interests in property are blocked pursuant to E.O. 14024.

9. D.E.S. DEFENSE ENGINEERING SOLUTIONS LTD (Hebrew: פתרונות הגנה הנדסיים בע"מ - אס. אי. די) (f.k.a. RISKORT LTD), 13 Ner Halalila, Entrance B, Netanya 4220913, Israel; Organization Established Date 05 Dec 2005; Registration Number 513758151 (Israel) [RUSSIA-EO14024] (Linked To: VOLFOVICH, Alexander).

   Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Alexander Volfovich, a person whose property and interests in property are blocked pursuant to E.O. 14024.

10. ASIA TRADING & CONSTRUCTION PTE LTD (a.k.a. ASIA TRADING AND CONSTRUCTION PTE LTD; f.k.a. FIVE STAR RESORT PTE LTD), 20 Peck Seah Street #02-00, Singapore 79312, Singapore; Organization Established Date 18 Jan 2014; Organization Type: Construction of buildings; Registration Number 201401923D (Singapore) [RUSSIA-EO14024] (Linked To: STATE CORPORATION ROSTEC).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, State Corporation Rostec, a person whose property and interests in property are blocked pursuant to E.O. 14024.

11. ELEKTROOPTIKA SIA (a.k.a. ELECTROOPTIKA), Vidus Prosp. 45 K-1-1, Jurmala 2010, Latvia; G. Zemgala Gatve 74, Riga 1039, Latvia; Organization Established Date 21 Mar 2013; Registration Number 40103651284 (Latvia) [RUSSIA-EO14024] (Linked To: BLATS, Marks).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Marks Blats, a person whose property and interests in property are blocked pursuant to E.O. 14024.

12. TEXEL F.C.G. TECHNOLOGY 2100 LTD, 7 Haeshel, Qesarya 3079504, Israel; Organization Established Date 1994; Registration Number 512036625 (Israel) [RUSSIA-EO14024] (Linked To: ASIA TRADING & CONSTRUCTION PTE LTD).

    Designated pursuant to section 1(a)(vi)(B) of E.O. 14024 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Asia

Trading & Construction PTE Limited, a person whose property and interests in property are blocked pursuant to E.O. 14024.

Dated: February 1, 2023.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–02506 Filed 2–6–23; 8:45 am]

BILLING CODE 4810–AL–C

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Application for Change in Accounting Method

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 3115, Application for Change in Accounting Method.

DATES: Comments should be received on or before March 9, 2023 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Copies of the submissions may be obtained from Melody Braswell by emailing *PRA@treasury.gov,* calling (202) 622–1035, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

Title: Form 3115, Application for Change in Accounting Method.

OMB Number: 1545–2070.

Form Number: Form 3115.

Abstract: Internal Revenue Code (IRC) section 446(e) provides that a taxpaying entity that changes its method of accounting for computing taxable income must first secure the consent of the Secretary. The taxpayer uses Form 3115 to obtain this consent.

Current Actions: There are changes to the existing collection: (1) Four questions were added to Form 3115 to reflect changes in IRS guidance documents and regulations, and (2) citations were added and updated to reflect current IRC sections, regulations, and guidance documents.

Type of Review: Reinstatement of a previously approved collection.

Affected Public: Estates, trusts, and not-for-profit institutions.

Estimated Number of Respondents: 190.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 190.

Estimated Time per Respondent: 99.99 hours.

Estimated Total Annual Burden Hours: 18,998.

Authority: 44 U.S.C. 3501 *et seq.*

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2023–02585 Filed 2–6–23; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

United States Mint

Pricing for the Silver Medals

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint is announcing pricing for Silver Medals as follows:

Product	Retail price
Presidential Silver Medals	$75.00
Armed Forces 1 oz. Silver Medal	75.00
Armed Forces 2.5 oz. Silver Medals	175.00

FOR FURTHER INFORMATION CONTACT: Ann Bailey, Sr. Program Manager for Sales and Marketing; United States Mint; 801 9th Street NW; Washington, DC 20220; or call 202–354–7500.

Authority: 31 U.S.C. 5111(a)(2).

Eric Anderson,

Executive Secretary, United States Mint.

[FR Doc. 2023–02549 Filed 2–6–23; 8:45 am]

BILLING CODE 4810–37–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on the Readjustment of Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. 10, that the Advisory Committee on the Readjustment of Veterans will hold a meeting virtually. The meeting will begin, and end as follows, and is open to the public:

Date	Time	Open session
March 7, 2023	1 p.m. to 3 p.m. EST	Yes.

The purpose of the Committee is to advise the Department of Veterans Affairs (VA) regarding the provision by VA of benefits and services to assist Veterans in the readjustment to civilian life. In carrying out this duty, the Committee shall take into account the needs of Veterans who served in combat theaters of operation. The Committee assembles, reviews, and assesses information relating to the needs of Veterans readjusting to civilian life and the effectiveness of VA services in assisting Veterans in that readjustment.

The Committee, comprised of 13 subject matter experts, advises the Secretary, through the VA Readjustment Counseling Service, on the provision by VA of benefits and services to assist Veterans in the readjustment to civilian life. In carrying out this duty, the Committee assembles, reviews, and assesses information relating to the needs of Veterans readjusting to civilian life and the effectiveness of VA services in assisting Veterans in that readjustment, specifically taking into account the needs of Veterans who served in combat theaters of operation.

On March 07, 2023, the agenda will include review of the 23rd report, a calendar forecast and discussion over subject matter experts to consider presenting at the next full committee meeting. For public members wishing to join the meeting, please use the following Webex link: *https://veteransaffairs.webex.com/wbxmjs/joinservice/sites/veteransaffairs/meeting/download/c09a9a0363db4de6bc4c04e59514dbfc?siteurl=veteransaffairs&MTID=m3e3c396408384bc7dc792eef124b54d8.*

No time will be allotted for receiving oral comments from the public;

however, the committee will accept written comments from interested parties on issues outlined in the meeting agenda or other issues regarding the readjustment of Veterans. Parties should contact Mr. Richard Barbato via email at *VHA10RCSAction@va.gov,* or by mail at Department of Veterans Affairs, Readjustment Counseling Service (10RCS), 810 Vermont Avenue, Washington, DC 20420. Any member of the public seeking additional information should contact Mr. Barbato at the phone number or email addressed noted above.

Dated: February 2, 2023.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2023–02546 Filed 2–6–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Matching Program

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of a new computer matching program.

SUMMARY: The Department of Veterans Affairs (VA) provides notice that it intends to conduct a recurring computer-matching program matching Social Security Administration (SSA) Master Beneficiary Records (MBRs) and the Master Files of Social Security Number (SS) Holders and SSN Applications (Enumeration System) with VA pension, compensation, and dependency and indemnity compensation (DIC) records. The goal of this match is to identify beneficiaries, who are receiving VA benefits and SSA benefits or earned income, and to reduce or terminate VA benefits, if appropriate. The match will include records of current VA beneficiaries. A plain-language description of the matching program.

DATES: Comments on this matching program must be received no later than [Insert date 30 days after date of publication in the **Federal Register**]. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the new agreement will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary. This matching program will be valid for 18 months from the effective date of this notice.

ADDRESSES: Comments may be submitted through *www.Regulations.gov* or mailed to VA Privacy Service, 810 Vermont Avenue NW, (005R1A), Washington, DC 20420. Comments should indicate that they are submitted in response to SSA's Earnings Recording and Self-Employment Income System, CMA 1050. Comments received will be available at regulations.gov for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Victor Hall, (202) 461–9385, *victor.hall2@va.gov,* Pension and Fiduciary Service, Front Office, Pension and Fiduciary Service (21P), Department of Veterans Affairs, 810 Vermont Ave. NW, Washington, DC 20420, (202) 632–8863.

SUPPLEMENTARY INFORMATION: VA will use this information to verify the income information submitted by beneficiaries in VA's needs-based benefit programs and adjust VA benefit payments as prescribed by law.

The legal authority to conduct this match is 38 U.S.C. 5106, which requires any Federal department or agency to provide VA such information as VA requests for the purposes of determining eligibility for benefits or verifying other information with respect to payment of benefits.

Participating Agencies: The Social Security Administration (SSA) and Department of Veterans Affairs (VA).

Authority for Conducting the Matching Program: 38 U.S.C. 5106 requires Federal agencies to furnish VA with information the VA Secretary may request for determining eligibility for or the amount of VA benefits.

Purpose(s): To confirm eligibility of those receiving income-dependent benefits and those beneficiaries who are receiving disability compensation at the 100 percent rate because of unemployability.

Categories of Individuals: Veterans and beneficiaries who apply for VA income benefits.

Categories of Records: VA will provide SSA with an electronic file in a format defined by SSA that contains the Social Security number (SSN), name, date of birth, and report year for each applicant, beneficiary, and eligible dependent(s) for whom VA is requesting tax return information.

System(s) of Records: SSA will match the data in VA's electronic file with SSA Enumeration data from the Master Files of SSN Holders and SSN Applications (referred to as the Enumeration System), 60–0058, last fully published at 87 FR 263 (January 4, 2022). SSA will disclose matched data to VA from SSA's Earnings Recording and Self-Employment Income System (referred to as the Master Earnings File (MEF)), 60–0059, last fully published at 71 FR 1819 (January 11, 2006) and amended at 78 FR 40542 (July 5, 2013) and 83 FR 54969 (November 1, 2018).

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John Oswalt, Chief Privacy Officer and Chair of the Data Integrity Board, Department of Veterans Affairs approved this document on January 30, 2023 for publication.

Dated: February 1, 2023.

Amy L. Rose,

Program Analyst, VA Privacy Service, Office of Information Security, Office of Information and Technology, Department of Veterans Affairs.

[FR Doc. 2023–02489 Filed 2–6–23; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 88 Tuesday,
No. 25 February 7, 2023

Part II

Department of Agriculture

Food and Nutrition Service

7 CFR Parts 210, 215, 220, et al.
Child Nutrition Programs: Revisions to Meal Patterns Consistent With the 2020 Dietary Guidelines for Americans; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 210, 215, 220, 225 and 226

[FNS–2022–0043]

RIN 0584–AE88

Child Nutrition Programs: Revisions to Meal Patterns Consistent With the 2020 Dietary Guidelines for Americans

AGENCY: Food and Nutrition Service (FNS), U.S. Department of Agriculture (USDA).

ACTION: Proposed rule with request for comments.

SUMMARY: This rulemaking proposes long-term school nutrition standards based on the *Dietary Guidelines for Americans, 2020–2025,* and feedback the U.S. Department of Agriculture received from child nutrition program stakeholders during a robust stakeholder engagement campaign. Notably, this rulemaking proposes new added sugars standards for the school lunch and breakfast programs. It also proposes gradually reducing school meal sodium limits, consistent with research recommending lower sodium intake beginning early in life to reduce children's risk of chronic disease. In addition to addressing nutrition standards, this proposes measures to strengthen the Buy American provision in the school meal programs. As described below, this document also addresses long-term milk and whole grain standards; proposes a variety of changes to school meal requirements; addresses proposals from a prior rulemaking; and makes several technical corrections to child nutrition program regulations. The U.S. Department of Agriculture expects to issue a final rule in time for schools to plan for school year 2024–2025.

DATES: Written comments on this proposed rule should be received on or before April 10, 2023 to receive consideration.

ADDRESSES: The Food and Nutrition Service, USDA, invites interested persons to submit written comments on the provisions of this proposed rule. Comments related to this proposed rule may be submitted in writing by one of the following methods:

- *Online (preferred):* Go to *https://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Send comments to School Meals Policy Division, Food and Nutrition Service, P.O. Box 9233, Reston, Virginia 20195.

All written comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. The Food and Nutrition Service will make the written comments publicly available on the internet via *https://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Tina Namian, Director, School Meals Policy Division—4th floor, Food and Nutrition Service, 1320 Braddock Place, Alexandria, VA 22314; telephone: 703–305–2590.

SUPPLEMENTARY INFORMATION:

Table of Contents

Table of Abbreviations

CACFP—Child and Adult Care Food Program
CNA—Child Nutrition Act
CN–OPS—Child Nutrition Operations Study
FDA—U.S. Food and Drug Administration
FNS—Food and Nutrition Service
HEI—Healthy Eating Index
ICN—Institute of Child Nutrition
NASEM—National Academies of Science, Engineering, and Medicine
NSLA—National School Lunch Act
NSLP—National School Lunch Program
RFI—Request for Information
SBP—School Breakfast Program
SFSP—Summer Food Service Program
SMP—Special Milk Program
SY—School Year
USDA—United States Department of Agriculture

Section 1: Background

On February 7, 2022, the U.S. Department of Agriculture (USDA) published *Child Nutrition Programs: Transitional Standards for Milk, Whole Grains, and Sodium*[1] to support schools after more than two years of serving meals under pandemic conditions. Instead of making permanent changes, this rule, hereafter referred to as ''the transitional standards rule,'' began a multi-stage approach to strengthen the school meal nutrition standards. USDA intended for the transitional standards rule to apply for two school years, during which it would provide immediate relief as schools return to traditional school meal service following extended use of COVID–19 meal pattern flexibilities. This proposed rule begins the next stage, where USDA will further improve the school meal pattern requirements through this notice-and-comment rulemaking based on a comprehensive review of the *Dietary Guidelines for Americans, 2020–2025* (Dietary Guidelines), robust stakeholder input on school nutrition standards, and lessons learned from prior rulemakings.[2] With this rulemaking, USDA is integrating each of these important factors in a way that puts children's health at the forefront while also ensuring that the nutrition standards are achievable and set schools up for success.

The transitional standards rule finalized USDA's *Restoration of Milk, Whole Grains, and Sodium Flexibilities Proposed Rule* (85 FR 75241, November 25, 2020) with some modifications. Effective July 1, 2022, the transitional standards rule:

- Allowed local operators of the National School Lunch Program (NSLP) and School Breakfast Program (SBP) to offer flavored, low-fat milk (1 percent fat) for students in grades K through 12 and for sale as a competitive beverage. It also allowed flavored, low-fat milk in the Special Milk Program (SMP) and in the Child and Adult Care Food Program (CACFP) for participants ages 6 and older.
- Required at least 80 percent of the weekly grains in the school lunch and breakfast menus to be whole grain-rich.[3]
- Established Sodium Target 1 as the sodium limit for school lunch and

[1] *Child Nutrition Programs: Transitional Standards for Milk, Whole Grains, and Sodium* (87 FR 6984, February 7, 2022). Available at: *https://www.federalregister.gov/documents/2022/02/07/2022-02327/child-nutrition-programs-transitional-standards-for-milk-whole-grains-and-sodium.*

[2] U.S. Department of Agriculture and U.S. Department of Health and Human Services. *2020–2025 Dietary Guidelines for Americans. 9th Edition.* December 2020. Available at: *https://www.dietaryguidelines.gov/.*

[3] To meet USDA's whole grain-rich criteria, a product must contain at least 50 percent whole grains, and the remaining grain content of the product must be enriched.

breakfast in school year (SY) SY 2022–2023 and implemented a Sodium Interim Target 1A effective for school lunch beginning in SY 2023–2024.

The transitional standards represented a middle ground between the 2012 standards for milk, whole grains, and sodium, and the temporary meal pattern waivers that many schools relied on due to the COVID–19 pandemic.[4] The 2012 standards,[5] which were a key component of the Healthy, Hunger-Free Kids Act, improved school meal standards for the first time in 15 years by increasing the availability of fruits, vegetables, whole grains, and fat-free and low-fat milk in school meals; limiting sodium and saturated fat and eliminating *trans* fat in school meals; and establishing calorie ranges to support age-appropriate meals for school children. Regarding milk, whole grains, and sodium, the 2012 standards allowed flavoring only in fat-free milk in the NSLP and SBP; required all grains offered in the NSLP and SBP to be whole grain-rich, effective SY 2014–2015; and required schools participating in the NSLP and SBP to reduce the sodium content of meals offered on average over the school week by meeting progressively lower sodium targets over a 10-year period. With the transitional standards, USDA intended to balance the needs of schools as they recover from supply chain and other pandemic-related challenges, while taking measured steps towards improving nutritional quality.

USDA is embarking on the next stage of updating the school nutrition standards in this proposed rulemaking to further align school meal nutrition standards with the goals of the *Dietary Guidelines, 2020–2025.* As described throughout this preamble, USDA worked closely with stakeholders to gather input for this proposed rule. Informed by this extensive stakeholder engagement, which allowed USDA to listen and learn from schools, advocacy organizations, industry partners, and others, USDA intends to develop standards that improve the nutritional quality of school meals based on the latest nutrition science, that are durable and built to last, and that result in meals children will enjoy. USDA encourages further stakeholder input on all aspects of this proposed rule.

This preamble discusses alternatives to certain proposals. For example, for milk, USDA will consider two proposals: under one proposal, USDA would limit milk choices in elementary and middle schools (grades K–8) to a variety of unflavored milks only, while under the other proposal, USDA would maintain the current standard allowing all schools (grades K–12) to offer fat-free and low-fat milk, flavored and unflavored, in reimbursable school meals. For whole grains, USDA will consider maintaining the current requirement that at least 80 percent of the weekly grains offered are whole grain-rich, based on ounce equivalents of grains offered, and will also consider an alternative under which all grains offered must meet the whole grain-rich requirement, except that one day each school week, schools may offer enriched grains. For sodium, USDA proposes a gradual series of reductions but may adjust the frequency of the sodium reductions as well as the proposed levels for those reductions for the final rule based on public comment. As noted above, USDA encourages public input on all aspects of this proposed rule, including the alternatives provided for certain provisions.

This proposed rule also addresses the Buy American provision, which requires school food authorities to purchase, to the maximum extent practicable, domestic commodities or products for use in the NSLP and SBP. The Buy American provision supports the mission of the child nutrition programs, which is to serve children nutritious meals and support American agriculture. This requirement was first implemented in the school meal programs in 1998. However, USDA understands that school food authorities and other stakeholders find the Buy American provision to be ambiguous, due to the lack of specificity in the regulation. USDA is proposing to clarify and strengthen the Buy American provision in the school meal programs.

USDA expects to issue a final rule in time for schools to plan for SY 2024–2025. However, as noted throughout this preamble, not all of the standards outlined in this proposed rule would be fully implemented for SY 2024–2025. Based on stakeholder input and prior rulemaking experience, USDA intends to phase in certain requirements so that State agencies, schools, and the food industry have time to prepare for the changes (for example, see *Section 2: Added Sugars* and *Section 5: Sodium*). This additional time will also allow USDA to provide guidance and support to State agencies and schools, so that they are well equipped to meet the updated standards upon implementation. USDA welcomes public input on the proposed implementation dates, including if delayed implementation is warranted for any provisions where it is not already specified. Additionally, in prior rulemakings, USDA has included an effective date, as well as a delayed compliance date, for certain provisions. This approach allows State and local operators to focus on technical assistance, rather than on compliance, during the initial implementation period. USDA welcomes public input on whether a similar approach should be used for this rulemaking.

The remainder of *Section 1: Background* provides general information to explain the need for this rulemaking. Sections 2 through 15 provide specific information regarding each of the proposed changes, which includes an overview of the current standard and the proposed change. *Section 16: Summary of Changes* briefly summarizes all the provisions included in this proposed rule and the specific public comments requested throughout the preamble. Individuals and organizations may choose to use this summary section as an outline for submitting their public comments.

Dietary Guidelines

The *Dietary Guidelines for Americans* are the foundation of the school nutrition standards. First released in 1980, the *Dietary Guidelines* are jointly published by the USDA and the U.S. Department of Health and Human Services every five years. The *Dietary Guidelines* are required by law to be based on the preponderance of current scientific and medical knowledge.[6] They inform Federal nutrition requirements, consumer health messages, and other science-based nutrition and health education efforts. USDA is required to develop school nutrition standards that are consistent with the goals of the most recent *Dietary Guidelines* (National School Lunch Act, 42 U.S.C. 1758(f)) and that consider the nutrient needs of children who may be at risk for inadequate food intake and food insecurity. Following the recommendations in the *Dietary Guidelines* can help people lower their

[4] For example, in SY 2021–2022, USDA issued a nationwide waiver allowing schools to request targeted meal pattern waivers from their State agency. See: *Nationwide Waiver to Allow Specific School Meal Pattern Flexibility for SY 2021–2022.* Available at: *https://www.fns.usda.gov/cn/covid-19-child-nutrition-response-90.*

[5] *Nutrition Standards in the National School Lunch and School Breakfast Programs* (77 FR 4088, January 26, 2012). Available at: *https://www.federalregister.gov/documents/2012/01/26/2012-1010/* nutrition-standards-in-the-national-school-lunch-and-school-breakfast-programs.

[6] U.S. Department of Agriculture and U.S. Department of Health and Human Services. *About.* Available at: *https://www.dietaryguidelines.gov/about-dietary-guidelines/process/monitoring-act.*

risk of heart disease, type 2 diabetes, and cancer.[7]

The *Dietary Guidelines, 2020–2025* provide four overarching recommendations:

- Follow a healthy dietary pattern [8] at every life stage.
- Customize and enjoy nutrient-dense food and beverage choices to reflect personal preferences, cultural traditions, and budgetary considerations.
- Focus on meeting food group needs with nutrient-dense foods and beverages and stay within calorie limits.
- Limit foods and beverages higher in added sugars, saturated fat, and sodium, and limit alcoholic beverages.

Through this rulemaking, USDA is exercising broad discretion authorized by Congress to administer the school lunch and breakfast programs and ensure meal pattern standards ''are consistent with the goals of the most recent'' *Dietary Guidelines.* See 42 U.S.C. 1752, 1758(a)(1)(B), 1758(k)(1)(B), 1758(f)(1)(A), and 1758(a)(4)(B). Consistent with its historical position, USDA interprets ''consistent with the goals of'' the *Dietary Guidelines* to be a broad, deferential phrase that requires consistency with the ultimate objectives of *Dietary Guidelines* but not necessarily the adoption of the specific consumption requirements or specific quantitative recommendations in the *Dietary Guidelines.* Accordingly, through this proposed rule, USDA is working to ensure an appropriate degree of consistency between school meal standards and the *Dietary Guidelines* by considering operational feasibility and the ongoing recovery from the impacts of COVID–19, while also ensuring schools can plan appealing meals that encourage consumption and intake of key nutrients that are essential for children's growth and development.

Through this rulemaking, USDA intends to further align school meal nutrition standards with the goals of the *Dietary Guidelines, 2020–2025.* This effort is described in greater detail throughout the preamble, and particularly in *Section 2: Added Sugars,* where USDA proposes to establish added sugars limits for the school meal programs and proposes to update the CACFP total sugars limits to align with the proposed NSLP and SBP added sugars limits for ease of operations.

Healthy Eating Index

The Healthy Eating Index (HEI) is a measure of diet quality used to assess how well a set of foods, such as foods provided through the school meal programs, align with the *Dietary Guidelines.* Overall, a higher total HEI score indicates a diet that aligns more closely with dietary recommendations. An ideal overall HEI score of 100 suggests that the set of foods is in line with the *Dietary Guidelines* recommendations.

USDA used the HEI to measure improvements in school meals following the 2012 final rule and found that the updated standards resulted in healthier meals offered to children.[9] For example, the school lunch average total HEI score increased by 24 points (57.9 to 81.5) from SY 2009–2010 to SY 2014–2015. For school breakfast, the average total HEI score increased by 21 points (49.6 to 71.3) over the same time.[10] USDA also looked at the impact of the 2012 rule on specific meal components. The HEI component score for fruits at lunch jumped from 77 percent to 95 percent of the maximum score following the 2012 final rule, and the score for vegetables at lunch jumped from 75 percent to 82 percent. Of all the school lunch components, the score for whole grains increased the most, moving from 25 percent to 95 percent of the maximum score. At the same time, USDA recognizes that there is room for improvement in certain areas, such as sodium. While the score for sodium improved, it remains well below the maximum score, at 27 percent for lunch. With this proposed rule, USDA intends to maintain the already significant improvements in school meals, while continuing steady progress in other areas; for example, by continuing to gradually reduce sodium.

Nutrition Security

In addition to requiring that USDA develop school nutrition standards that are consistent with the goals of the most recent *Dietary Guidelines,* as described above, the National School Lunch Act also requires USDA to ''consider the nutrient needs of children who may be at risk for inadequate food intake and food insecurity'' (42 U.S.C. 1758(f)(1)(B)). Along with addressing food insecurity, [11] USDA has made addressing nutrition security a key policy priority. ''Nutrition security'' [12] means consistent access to the safe, healthy, affordable foods essential to health and well-being. It builds on food security by focusing on how diet quality can help reduce diet-related diseases. Nutrition security also emphasizes equity and the importance of addressing long-standing health disparities. Though poor nutrition affects every demographic, diet-related diseases disproportionately impact historically underserved communities, largely due to long-standing structural and institutional racism in the United States.[13] Promoting food and nutrition security is critical to addressing health disparities and improving health outcomes. To that end, USDA is evaluating its nutrition assistance programs to ensure that they serve all Americans equitably, removing systemic barriers that may hinder participation.[14] USDA research suggests that Black and

[7] U.S. Department of Agriculture and U.S. Department of Health and Human Services. *The Dietary Guidelines for Americans Can Help You Eat Healthy to Be Healthy.* December 2020. Available at: *https://www.dietaryguidelines.gov/sites/default/files/2020-12/Infographic_Eat_Healthy_Be_Healthy.pdf.*

[8] A dietary pattern is the combination of foods and beverages that constitutes an individual's complete dietary intake over time. This may be a description of a customary way of eating or a description of a combination of foods recommended for consumption. U.S. Department of Agriculture and U.S. Department of Health and Human Services. *Dietary Guidelines for Americans, 2020–2025.* 9th Edition. December 2020. Available at: *https://www.dietaryguidelines.gov/.*

[9] U.S. Department of Agriculture. *School Meals Are More Nutritious After Updated Nutrition Standards.* Available at: *https://fns-prod.azureedge.us/sites/default/files/resource-files/SNMCS_infographic2_NutritionalQualityofSchool%20Meals.pdf.*

[10] *School Nutrition and Meal Cost Study* findings suggest that the updated nutrition standards have had a positive and significant influence on the nutritional quality of school meals. Between SY 2009–2010 and SY 2014–2015, ''Healthy Eating Index—2010'' (HEI) scores for NSLP and SBP increased significantly, suggesting that the updated standards significantly improved the nutritional quality of school meals. Over this period, the mean HEI score for NSLP lunches increased from 57.9 to 81.5, and the mean HEI score for SBP breakfasts increased from 49.6 to 71.3. The study is available at: *https://www.fns.usda.gov/school-nutrition-and-meal-cost-study.* (OMB Control Number 0584–0596, expiration date 07/31/2017.) To see the impact of the 2012 final rule on school breakfast meal component scores, see Figure ES.17. *Comparison of Healthy Eating Index—2010 Component Scores, as a Percentage of Maximum Scores, for SBP Breakfasts Served in SY 2009–2010 and SY 2014–2015: All Schools.*

[11] Food insecurity is the limited or uncertain availability of nutritionally adequate and safe foods or limited or uncertain ability to acquire acceptable foods in socially acceptable ways. See: U.S. Department of Agriculture. *Measurement.* Available at: *https://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-u-s/measurement/.*

[12] U.S. Department of Agriculture. *What is Nutrition Security?* Available at: *https://www.usda.gov/nutrition-security.*

[13] U.S. Department of Agriculture. *USDA Actions on Nutrition Security.* Available at: *https://www.usda.gov/sites/default/files/documents/usda-actions-nutrition-security.pdf.*

[14] U.S. Department of Agriculture. *U.S. Agriculture Secretary Tom Vilsack Highlights Key Work in 2021 to Promote Food and Nutrition Security.* Available at: *https://www.fns.usda.gov/news-item/usda-0024.22.* See also: U.S. Department of Agriculture, *USDA Equity Action Plan in Support of Executive Order (E.O.) 13985 Advancing Racial Equity and Support for Underserved Communities through the Federal Government,* February 10, 2022. Available at: *https://www.usda.gov/equity/action-plan.*

Hispanic children participate in the school meal programs at higher rates than white children,[15] making improving the school meal nutrition standards an important part of USDA's efforts to improve access to healthy foods that promote well-being in an equitable way.[16]

USDA's work to advance nutrition security focuses on four pillars:

- Meaningful support
- Healthy food
- Collaborative action
- Equitable systems

This proposed rule touches on all four pillars. It supports USDA's efforts to foster healthy eating across all life stages, with a special focus on young children, by proposing to update school meal standards to reflect the latest nutrition science. This, in turn, is expected to expand access to and increase consumption of healthy and nutritious food among school children. As discussed below, to develop this proposed rule, USDA collaborated with a variety of stakeholders, including nutrition and health advocacy groups, the education community, Tribal stakeholders, and many others. Finally, regarding the fourth pillar, USDA is taking steps to improve school meal nutrition standards for all children, including to better serve American Indian and Alaska Native children as part of its effort to prioritize equity in the school meal programs (see *Section 6: Menu Planning Options for American Indian and Alaska Native Students*).

Practical and Durable Standards

USDA intends to develop nutrition standards that are durable and built to last. For this rulemaking, USDA recognizes that continued, meaningful improvement in the nutritional quality of meals consumed by students is best achieved by standards that are both ambitious and can be implemented successfully. USDA has incorporated lessons learned from prior rulemakings and stakeholder input (described below) by proposing ambitious changes that occur over time and in clear and predictable increments. USDA's proposed approach also reflects an understanding that changes in school meals must occur in the context of broader efforts to achieve improvements in diet quality for all Americans. School nutrition standards cannot be so far out of step with U.S. diets that they are not achievable. This is particularly important regarding standards for sodium levels, where current consumption levels far exceed dietary recommendations. In this proposal, USDA seeks to align reductions in school meal sodium levels with broader efforts to reduce sodium in the U.S. food supply being led by the Food and Drug Administration (FDA).

This approach also reflects USDA's recognition that the food industry must be engaged in and support schools' efforts to meet nutrition standards by developing, marketing, and supplying products that support them. USDA is supporting this goal with the Healthy Meals Incentives initiative, which will include support for collaborative and innovative efforts by school districts, food producers, suppliers, distributors, and community partners to develop creative solutions for increasing the availability of and access to nutritious foods for school meals.

Based on stakeholder input and experience with the 2012 standards, USDA also recognizes the importance of encouraging meals that meet local and cultural preferences and ensuring the nutrition standards allow them. This priority is reflected in the proposed standards. For example, the whole grain-rich proposal would allow schools to occasionally serve white rice or non-whole grain-rich tortillas, while still promoting whole grain-rich foods throughout the school week. This approach is expected to promote nutritious meals while increasing the variety of foods available for students to enjoy.

Finally, USDA also acknowledges that there are unforeseeable events, such as the recent supply chain challenges, that can make it difficult for schools to fully comply with the nutrition standards in all circumstances. In response to recent challenges, USDA has provided waivers to the requirement for State agencies to apply fiscal action for missing food components, for missing production records, and for repeated violations involving milk type and vegetable subgroups due to supply chain disruptions.[17] State agencies also have discretion regarding fiscal action for repeat violations of the requirements for food quantities, whole grain-rich foods, and the dietary specifications for calories, saturated fat, sodium, and *trans* fat through current program regulations, and USDA has encouraged States to use this flexibility in appropriate circumstances.[18] Emergency procurement flexibilities at 2 CFR 200.320(c) may also be a resource for State agencies and schools facing challenges meeting the meal pattern requirements due to supply chain challenges or other emergencies. These flexibilities, when used appropriately, can provide relief in those circumstances when it is not feasible for schools to meet all aspects of strong nutrition standards in every instance.

Stakeholder Engagement: Listening Sessions

To develop these proposed standards, USDA relied on input from key child nutrition program stakeholders. Throughout 2022, USDA held over 50 listening sessions with State agencies, school food authorities, advocacy organizations (including a parent organization), Tribal stakeholders, professional associations, food manufacturers, and other Federal agencies. During these conversations, participants shared their insights and perspectives on developing ambitious, achievable, and durable standards to improve children's health. These conversations were part of USDA's effort to build consensus on long-term solutions for healthier school meals through collaborative action. Stakeholders also provided important insight into the successes and challenges that schools experience implementing the nutrition standards, including input on the support, guidance, and resources needed from USDA to improve school meals for children.

Several themes emerged from these discussions. For example, USDA heard that uncertainty around school meal nutrition standards makes product development and planning difficult and that clear expectations and consistent standards are needed. Having time to plan for updated standards, in advance of implementation, is important to many stakeholders. Listening session participants also offered specific input

[15] Overall, 70 percent of Hispanic and non-Hispanic Black students participated in the NSLP on the study's target day in SY 2014–2015, compared with about half of non-Hispanic white students. See: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, *School Nutrition and Meal Cost Study, Final Report Volume 4: Student Participation, Satisfaction, Plate Waste, and Dietary Intakes,* by Mary Kay Fox, Elizabeth Gearan, Charlotte Cabili, Dallas Dotter, Katherine Niland, Liana Washburn, Nora Paxton, Lauren Olsho, Lindsay LeClair, and Vinh Tran. Project Officer: John Endahl. Alexandria, VA: April 2019. Available at: *https://www.fns.usda.gov/school-nutrition-and-meal-cost-study.* (OMB Control Number 0584–0596, expiration date 07/31/2017.)

[16] Indeed, a study published in 2021 concluded that from 2003 to 2018, the quality of foods consumed from school improved significantly without population disparities. These findings suggest that improvements to the school meal nutrition standards following the 2010 Healthy, Hunger-Free Kids Act produced significant, specific, and equitable changes in dietary quality of school foods. See: Liu J, Micha R, Li Y, Mozaffarian D. *Trends in Food Sources and Diet Quality Among US Children and Adults,* 2003–2018. JAMA Netw Open. 2021;4(4):e215262. doi:10.1001/jamanetworkopen.2021.5262.

[17] See: 7 CFR 210.18(l)(2)(i) and (ii).

[18] See: 7 CFR 210.18(l)(2)(iii) and (iv).

on the types of standards they prefer. For example, regarding sodium limits, many stakeholders preferred continuing with weekly limits rather than moving to per-product limits. Participants suggested that weekly limits give schools more flexibility to craft weekly menus that may include some higher sodium foods, provided they are balanced out with lower sodium foods on other days.

A number of listening sessions included a discussion about the financial challenges facing school meal operations. Several participants raised concerns about the standard meal reimbursement rates, which in their view are too low. Participants also expressed concerns about their inability to pay competitive salaries to their staff, who are stretched thin and do not always have the financial support they need to be successful. Cost constraints limit school food service professionals' ability to offer the types of meals and variety of foods that children enjoy, which participants argued negatively impacts student participation. These challenges are exacerbated by current supply chain issues and inflation, which listening session participants emphasized significantly impact school meal operations.

Many participants urged USDA to work with the food industry to make sure products that meet the standards are available to schools at reasonable prices. Listening sessions with the food industry focused largely on the time and cost associated with reformulating food products to meet updated standards. Participants representing the food industry and schools emphasized the importance of reformulating products or recipes in a way that maintains palatability and children's participation; some were concerned that too much change in the formulation of products will negatively impact the taste of foods that children enjoy. These challenges are discussed in greater detail throughout the preamble.

Some participants suggested that USDA do more to communicate the value of school meals to families and communities. For example, participants recommended USDA develop education campaigns to share the value of improved nutrition standards. Others suggested highlighting other benefits of school meal participation, such as the time families can save by not having to pack a lunch from home. Several participants expressed general support for the school meal nutrition standards and encouraged USDA to go further, for example, by adopting a nutrition standard for added sugars.

USDA greatly appreciates the individuals and organizations that participated in the listening sessions throughout 2022. Through these listening sessions, USDA gained valuable insights into the successes and challenges that schools experience implementing the school meal standards. By hearing the on-the-ground perspective of individuals who work in schools every day, USDA better understands the support that schools will need to be successful in implementing updated standards. As part of its effort to support schools working to meet updated nutrition standards, in June 2022, USDA announced the Healthy Meals Incentives initiative,[19] which represents a $100 million investment in nutritious school meals. The Healthy Meals Incentives initiative will improve the nutritional quality of school meals through food systems transformation, school food authority recognition and technical assistance, the generation and sharing of innovative ideas and tested practices, and grants. The recognition program includes a specific focus on celebrating schools that exceed nutrition requirements for sodium and whole grains, reduce added sugars in school breakfasts, implement innovative practices in scratch cooking and nutrition education, and provide meals that reflect the cultures of their students.

It is also important to recognize that at the time of these listening sessions, in spring and summer 2022, school meal stakeholders at all levels were facing significant challenges related to the COVID–19 pandemic and associated supply chain issues. They were also preparing to transition off of nationwide child nutrition program waivers for the first time in over two years due to the expiration of USDA's statutory nationwide waiver authority. USDA recognizes that these issues present immediate challenges for schools, but also appreciates the importance of looking to the future and prioritizing children's health in the long-term. This rulemaking will allow a phase-in period, during which USDA will provide implementation support to State agencies and schools. As discussed further in the section-by-section analysis, USDA also intends to work with the food industry and other partners to ensure schools have adequate products to meet the standards, particularly for sodium and added sugars. USDA welcomes public input on other steps the Department can take to ensure schools successfully meet the proposed standards.

[19] U.S. Department of Agriculture. *Healthy Meals Incentives.* Available at: *https://www.fns.usda.gov/cnp/healthy-meals-incentives.*

Stakeholder Engagement: Public Comments on Transitional Standards Rule

Unlike most final rules, USDA requested public comment on the transitional standards rule. In addition to accepting comments on the provisions in the rule, interested persons were invited to comment on ''considerations for future rulemaking related to the school nutrition requirements.''

USDA appreciates public interest in the transitional standards rule. During the 45-day comment period (February 7, 2022, through March 24, 2022), USDA received over 8,000 comments. Of the total, about 7,000 comments were form letter copies from 12 form letter campaigns and about 1,100 were unique submissions.

USDA worked in collaboration with a data analysis company to code and analyze the public comments using a commercial web-based software product. The Summary of Public Comments report is available under the Supporting Documentation tab in docket FNS–2020–0038. All comments are posted online at *https://www.regulations.gov*. See docket FNS–2020–0038–2936, *Child Nutrition Programs: Transitional Standards for Milk, Whole Grains, and Sodium.*

The following paragraphs describe general themes from the public comments. Many respondents specifically addressed added sugars, milk, whole grains, and sodium; feedback from these comments is included in the specific sections of the preamble, as applicable.

Public Comments: Need for Transitional Standards

Many respondents cited the benefits of the transitional standards rule, which they suggested will help schools get back on track following COVID–19 operations. An industry respondent asserted that the transitional standards rule balanced the need for near-term flexibility while still providing nutritious foods to school children. They expressed support for USDA's efforts to work towards achievable and durable school meal nutrition standards that align with the current *Dietary Guidelines.* Other respondents agreed, noting that the pandemic has impacted schools extensively and that fully returning to the 2012 standards for milk, whole grains, and sodium may not be feasible for schools and children. An advocacy organization focused on

nutrition science argued that the unprecedented supply chain disruptions have placed immense challenges on schools, and that the temporary relief provided by the transitional standards rule is warranted.

Public Comments: Nutrition and Health

Many respondents noted the benefits of strong nutrition standards and the important role that schools play in providing access to nutritious foods. Respondents emphasized that developing healthy habits in childhood is important for lifelong health and noted the value of adopting science-based standards that align with the goals of the *Dietary Guidelines* in the long-term. They also mentioned the importance of nutritious meals in helping children succeed academically and noted that many children consume a substantial portion of their dietary intake during the school day. Respondents cited concerns about diet-related chronic diseases, such as diabetes and high blood pressure. They emphasized the role that excess sodium and added sugars play in increasing children's risk of developing these diseases and noted that improving the long-term nutrition standards could help to address these serious health concerns.

One respondent stated that they understood that, during the pandemic, the focus was on maintaining meal access, but that transitioning back to more nutritious meals is crucial for children's long-term health. Another respondent agreed, noting the importance of providing flexibility and a ''ramp'' to stronger nutrition standards following the pandemic. Other respondents described the transitional standards as a step in the right direction but emphasized the need to do more to improve the healthfulness of school meals. For example, for the long-term standards, respondents recommended including a limit on added sugars, significantly reducing sodium in school foods, and increasing whole grains. One respondent cited the importance of ensuring school meal standards encourage long-term healthy habits. Another respondent suggested that reducing sodium and added sugars in foods marketed to children outside of the school meal programs, across the U.S. food supply, would improve overall health outcomes for children.

Public Comments: Product Availability

Several respondents noted the importance of ensuring products that meet school meal standards are widely available. For example, one respondent questioned whether manufacturers would be willing to reformulate their products to meet USDA standards and expressed concern about price points. They claimed that school nutrition programs are a very ''hard customer'' already. Similarly, another respondent asserted that the food industry is no longer making specialty products for schools, making it difficult for schools to find compliant products. A school food service respondent in a rural community also expressed concern about their ability to find products, stating that manufacturers have discontinued their school food lines due to decreased staff and raw material availability. This respondent also asserted that some vendors have stopped providing foods to schools because the school food market is not profitable enough. A trade association noted that school meal programs are facing higher costs, including food and transportation costs, and that supply chain challenges could continue. They suggested that USDA establish realistic standards and phase in any new standards over time.

Public Comments: Staffing Challenges

A few respondents cited challenges in the school food labor force, noting that funding and low pay for staff at their school make it difficult to serve fresh and homemade foods. Respondents expressed a strong commitment to nutritious school meals but faced difficulty due to staffing challenges and rising food costs. Another respondent agreed, asserting that they would like to see more fresh food offered at their school, but they simply do not have the time or the staff to cook fresh meals daily. Citing concerns about funding, one school food service respondent asserted that budget constraints lead to staffing reductions, lower quality meals from less scratch cooking, and lower wages compared to other sectors. This respondent noted that school food service employees are overworked and underappreciated.

Several respondents argued that now is not the time to place more burden on schools still recovering from the pandemic. For example, one school food service respondent opposed the transitional standards, suggesting the standards are too restrictive and make the jobs of school food professionals difficult. They expressed concerns about USDA issuing the standards at a time when schools are still struggling with supply chain and staffing challenges.

Miscellaneous Comments

Several school food service respondents cited concerns about food waste, encouraging USDA to develop regulations that result in meals that students will enjoy eating. They also emphasized the importance of quality and taste in maintaining student participation in the programs. One respondent suggested that USDA should measure program success based on student participation, not based on compliance with improved meal standards.

A few respondents identified their priorities for this proposed rule, including meeting children's dietary needs and preferences.[20] For example, some respondents suggested USDA encourage more vegan, vegetarian, or plant-based meals in the school meal programs. Others recommended that USDA make changes to increase fiber intake, to exclude processed meats, or to better account for specific diets, such as those of student athletes, who one respondent argued require more calories than the current meal patterns allow.

Several respondents requested technical assistance and training to implement the transitional standards. One advocacy organization said that technical assistance will help school nutrition professionals prepare and serve meals that will encourage meal participation and reduce waste. Some respondents encouraged USDA to provide support to schools facing difficulty implementing new standards, instead of penalizing non-compliance.

Stakeholder Engagement: Public Comments on Buy American Request for Information

In August 2021, USDA published *Request for Information: Buy American in the National School Lunch Program and School Breakfast Program.* Through this request for information (RFI), USDA asked for public feedback on the Buy American provision, exceptions to the requirement, and other related USDA policy guidance. USDA included 13 questions for consideration but was open to any comments or feedback that stakeholders wanted to share. USDA received 154 comments in response to the RFI. A wide variety of respondents submitted comments. The majority of comments came from local entities, such as school food authorities, but other interested parties, such as State agencies, national and regional industry members, Tribal stakeholders, and members of the U.S. House of

[20] Existing regulations at 7 CFR 210.10(m)(1), 215.7a(b), 220.8(m), and 226.20(h) require Program operators to make appropriate substitutions or modifications for milks and foods served under the NSLP, SBP, SMP, and CACFP for children with a disability which restricts their diet. This proposed rule makes no change in these requirements.

Representatives, also submitted comments.

Many respondents voiced support for the Buy American provision. Respondents mentioned the importance of the Buy American provision and its role in encouraging the consumption of domestic food. They emphasized that the Buy American provision supports American agriculture and the domestic economy. However, even while expressing support, many respondents made it clear that challenges exist in implementation of the Buy American provision. The most frequently mentioned themes in these comments included difficulties managing exceptions to the regulation and the time-consuming paperwork required to document exceptions. State agencies and school food authorities cited challenges with managing the documentation and monitoring use of exceptions during reviews. Overall, respondents suggested that the Buy American provision plays a critical role in providing children with nutritious meals that support American agriculture but emphasized that USDA must do more to support implementation. In this proposed rule, USDA aims to respond to this feedback by providing clarification to the requirements and supporting State agency and school efforts to successfully implement the provision.

Section 2: Added Sugars

Current Requirement

Currently, there is no added sugars limit in the school meal programs. Under the current regulations, schools may choose to serve some menu items and meals that are high in added sugars, provided they meet weekly calorie limits (7 CFR 210.10(f)(1) and 220.8(f)(1)). However, USDA has determined that the calorie limits alone are not enough to meet recommendations for limiting children's intake of added sugars. USDA expects that a targeted limit would better support reducing added sugars in school meals, especially school breakfast.

The *Dietary Guidelines for Americans, 2020–2025* recommends limiting intake of added sugars to less than 10 percent of calories per day. According to the *Dietary Guidelines,* when a person's intake of added sugars exceeds this recommended limit, a healthy dietary pattern within calorie limits is very difficult to achieve. This is because added sugars contribute calories without contributing essential nutrients to the diet. The *Dietary Guidelines* indicates that about 70 to 80 percent of school-aged children exceed the recommended limit for added sugars.[21] In 2016, FDA issued a final rule updating the Nutrition Facts label, which requires in part, a declaration of the amount of added sugars in a serving of a product as well as the percent Daily Value (% DV) for added sugars.[22] Manufacturers with $10 million or more in annual sales were required to update their labels by January 1, 2020; manufacturers with less than $10 million in annual food sales were required to update their labels by January 1, 2021.[23]

According to the most recent research available using USDA school meal data from SY 2014–2015, the average percentage of calories from added sugars is approximately 11 percent at school lunch and 17 percent at school breakfast.[24] Consuming too many added sugars can lead to health problems, such as type 2 diabetes and heart disease.[25] Additionally, schools that serve meals that are high in added sugars have less room within the established calorie limits to offer nutrient-rich foods and beverages that are essential to establishing healthy dietary patterns.

Stakeholder Engagement on Added Sugars Standards: Public Comments and Listening Sessions

USDA received extensive stakeholder input to develop the proposed added sugars standards through public comments and through listening sessions held in spring and summer 2022. This section provides an overview of input received through public comments, followed by input shared during the listening sessions.

Although the transitional standards rule did not establish added sugars limits, USDA received public comments about added sugars in school meals. Over 4,000 comments addressed sugars or added sugars in school meals. The majority of these were form letters, but over 100 unique comments were submitted about sugars or added sugars.

Many respondents recommended that USDA implement an added sugars limit to better align school meal standards with the *Dietary Guidelines.* Several advocacy organizations stated that the *Dietary Guidelines* recommend that added sugars contribute less than 10 percent of total calories, and suggested USDA establish a standard that aligns with this recommendation. One advocacy organization representing children's health noted that in the U.S., children consume 17 percent of their calories from added sugars. They stated that excess consumption of added sugars increases the risk for dental decay, cardiovascular disease, hypertension, type 2 diabetes, and a variety of other health conditions. Another advocacy organization focused on public health asserted that most school meals exceed the *Dietary Guidelines* recommendations for added sugars. They also noted that flavored milk is the leading source of added sugars in school breakfast and lunch.

One respondent who identified as a pediatric cardiologist stated that added sugars are a significant source of excess calories and have no nutritional value. They also noted that cases of diabetes among children are significantly increasing and suggested that limiting added sugars in school meals could help reverse this trend. A school food service respondent also expressed concern about added sugars in school meals, arguing that children do not need so much sugar in their diets. A respondent who identified as a nurse educator agreed, asserting that added sugars have no nutritional value and increase the risk of heart disease. An advocacy organization focused on public health noted that excess added sugars consumption is linked to several metabolic abnormalities, a shortfall of essential nutrients, and increased risk of high blood pressure, high cholesterol, diabetes, and inflammation in the body.

Several respondents were especially concerned about added sugars in school breakfasts. A few advocacy organizations asserted that at current levels, a typical school breakfast can easily exceed the recommended maximum added sugars for an entire day for a young child. Respondents were concerned about added sugars in a variety of foods commonly offered at breakfast, including flavored milks, sweetened cereals, muffins, and condiments and toppings. Two State agencies suggested limiting grain-based desserts at breakfast to 2 ounce equivalents per week (which is the current limit at lunch) to reduce added

[21] U.S. Department of Agriculture and U.S. Department of Health and Human Services. *2020–2025 Dietary Guidelines for Americans. 9th Edition.* December 2020. Available at: *https://www.dietaryguidelines.gov/.*

[22] *Food Labeling: Revision of the Nutrition and Supplement Facts Labels* (81 FR 33741, May 27, 2016). Available at: *https://www.federalregister.gov/documents/2016/05/27/2016-11867/food-labeling-revision-of-the-nutrition-and-supplement-facts-labels.* See also: 21 CFR 101.9(c)(6)(iii).

[23] U.S. Food and Drug Administration. *Changes to the Nutrition Facts Label.* Available at: *https://www.fda.gov/food/food-labeling-nutrition/changes-nutrition-facts-label.*

[24] Fox MK, Gearan EC, Schwartz C. *Added Sugars in School Meals and the Diets of School-Age Children.* Nutrients. 2021; 13(2):471. Available at: *https://doi.org/10.3390/nu13020471.*

[25] Centers for Disease Control and Prevention, *Know Your Limit for Added Sugars.* Available at: *https://www.cdc.gov/healthyweight/healthy_eating/sugar.html.*

sugars. Regarding flavored milk, one advocacy organization argued that numerous studies suggest that sugar can be reduced in flavored milk over time without impacting consumption.

One advocacy organization focused on nutrition and science argued that product-specific targets alone would not be sufficient to reduce added sugars in school meals; they asserted that a weekly limit would also be needed for meals to meet the *Dietary Guidelines* recommendations. A few industry respondents opposed product-specific limits, asserting that individual food products, such as flavored milk and yogurt, can fit into a healthy diet. At the same time, one industry respondent described its success in reducing added sugars in its products, including a 20 percent reduction in breakfast cereals. However, this respondent encouraged USDA to develop a ''realistic'' standard that includes adequate time for industry to develop products and integrate them into the food system for student acceptance.

An advocacy organization affirmed that product reformulation to reduce added sugars is achievable, and if done gradually, does not change consumer preferences. Another advocacy organization stated that consumer demand for low-sugar products has grown in recent years, and that due to mounting scientific evidence of the harmful effects of added sugars, it is urgent to establish an added sugars standard for school meals. Another advocacy organization agreed, stating that consumer preferences have already spurred industry to innovate and reformulate foods.

Listening session participants raised many similar themes. Most participants supported the idea of a new added sugars standard for school meals. They emphasized that sugary school breakfasts are seen as an issue by parents, guardians, and teachers and expected that the public would support an added sugars standard. Some recommended following a similar model to the current total sugar limits for breakfast cereals and yogurts in CACFP but noted that more may be needed to meet the recommendations in the *Dietary Guidelines.* Several participants emphasized that added sugars are more of an issue in school breakfast and suggested that encouraging more protein-rich breakfasts could help to address this problem. Listening session participants recommended limiting added sugars in specific products, such as flavored milk, yogurt, and certain grain products, as well as establishing a weekly limit for added sugars. However, some participants noted that certain products that are high in added sugars, such as grain-based desserts, are also very popular with students.

Proposed Standard

This rulemaking proposes the following added sugars limits in the school lunch and breakfast programs:

- *Product-based limits:* Beginning in SY 2025–2026, this rulemaking proposes to implement quantitative limits for leading sources of added sugars in school meals, including grain-based desserts, breakfast cereals, yogurts, and flavored milks.
- *Weekly dietary limit:* Beginning in SY 2027–2028, this rulemaking proposes to implement a dietary specification limiting added sugars to less than 10 percent of calories per week in the school lunch and breakfast programs; this weekly limit would be in addition to the product-based limits described above.

The proposed product-based limits are as follows:

- *Grain-based desserts:* would be limited to no more than 2 ounce equivalents per week in school breakfast, consistent with the current limit for school lunch. Grain-based desserts include cereal bars, doughnuts, sweet rolls, toaster pastries, coffee cakes, and fruit turnovers.[26]
- *Breakfast cereals:* would be limited to no more than 6 grams of added sugars per dry ounce.
- *Yogurt:* would be limited to no more than 12 grams of added sugars per 6 ounces.
- *Flavored milk:* would be limited to no more than 10 grams of added sugars per 8 fluid ounces or, for flavored milk sold as a competitive food for middle and high schools, 15 grams of added sugars per 12 fluid ounces.[27]

As described in more detail below, under *Product-based Limits,* these proposed product-based limits address several leading sources of added sugars in school breakfast. More information and rationale for the specific added sugars limits proposed in this rulemaking may be found in the Regulatory Impact Analysis in *Section 18: Procedural Matters.*

The gradual, phased-in approach proposed in this rulemaking is expected to make implementation of the added sugars standards achievable for schools. USDA expects that the proposed product-based limits would incentivize the food industry to develop products with less added sugars. This would in turn help schools to develop lunch and breakfast menus that are lower in added sugars, which would better position schools to successfully meet the weekly dietary limit for added sugars upon implementation.

For consistency, USDA also proposes to apply the product-based added sugars limits for breakfast cereals and yogurts to the CACFP; the *added* sugars limits would replace the current *total* sugar limits for breakfast cereal and yogurt in CACFP. Total sugars include both added sugars and sugars naturally present in many nutritious foods and beverages, such as sugar in milk and fruit, while added sugars include sugars that are added during the processing of foods, foods packaged as sweeteners (such as table sugar), sugars from syrups and honey, and sugars from concentrated fruit or vegetable juices.[28] Since 2015, the *Dietary Guidelines* have recommended limiting calories from *added* sugars to less than 10 percent of calories per day. Current CACFP regulations state that breakfast cereals must contain no more than 6 grams of total sugar per dry ounce (7 CFR 226.20(a)(4)(ii)) and that yogurt must contain no more than 23 grams of total sugars per 6 ounces (7 CFR 226.20(a)(5)(iii)(B)). Proposing to change the CACFP total sugar limits for breakfast cereals and yogurt to added sugar limits, consistent with the proposed requirements for school lunch and breakfast, aligns program requirements, reflects current dietary recommendations, and is expected to simplify operations for schools that participate both in school meals and CACFP. Because most sugars included in breakfast cereals are added sugars, USDA does not expect this change to significantly impact the types of

[26] U.S. Department of Agriculture, *Food Buying Guide for Child Nutrition Programs.* Available at: *https://foodbuyingguide.fns.usda.gov/Appendix/DownLoadFBG.* See: Section 4—Grains, Exhibit A: Grain Requirements for Child Nutrition Programs, for a list of grain-based desserts.

[27] For clarification, USDA is proposing a higher added sugars limit for flavored milk sold as a competitive food in middle and high schools due to the larger serving size. The serving size for milk offered as part of a reimbursable meal is 8 fluid ounces. Milks sold to middle and high school students as a competitive food may be up to 12 fluid ounces. One alternative proposed by USDA in *Section 3: Milk* would allow flavored milk (fat-free and low-fat) at school lunch and breakfast for high school children only, effective SY 2025–2026. Under this alternative, USDA is proposing that children in grades K–8 would be limited to a variety of unflavored milk. The proposed regulatory text for Alternative A would allow flavored milk for high school children only (grades 9–12). USDA also requests public input on whether to allow flavored milk for children in grades 6–8 as well as high school children (grades 9–12). If in the final rule, based on public input, USDA finalizes the option allowing flavored milk only in high schools (grades 9–12), flavored milk would only be allowed as a competitive food in high schools.

[28] See: ''Total Sugars'' at 21 CFR 101.9(c)(6)(ii) and ''Added Sugars'' at 21 CFR 101.9(c)(6)(iii).

breakfast cereals allowed in CACFP. Yogurt contains sugars found naturally in milk and fruit, making it more difficult to directly compare the current total sugars limit in CACFP to the proposed added sugars limit. However, USDA has confirmed that a variety of yogurt products that meet the current CACFP total sugars limit would also meet the proposed added sugars standard.[29]

USDA seeks comments on these proposed changes, found at 7 CFR 210.10(b)(2)(iv), 210.10(c), 210.10(d)(1)(i), 210.10(f)(4), 210.10(h), 220.8(b)(2)(iv), 220.8(c), 220.8(f)(4), 226.20(a)(4)(ii), 226.20(a)(5)(iii)(B), and 226.20(c) of the proposed rule.

In developing these proposed changes, USDA considered several important factors, outlined below.

Product-Based Limits

A study published in January 2021 provided valuable information in the development of this proposal. The study, *Added Sugars in School Meals and the Diets of School-Age Children,*[30] found that a majority of schools exceeded the *Dietary Guidelines* recommended limit for added sugars at lunch (69 percent) and breakfast (92 percent). The study also identified the leading sources of added sugars within the programs. Flavored milk was the leading source of added sugars in both programs, contributing half of the added sugars at lunch and about 30 percent of the added sugars at breakfast.

In addition to flavored milk, this proposed rule also addresses several other leading sources of added sugars in school breakfasts, where added sugars are more of an issue compared to school lunch. This proposal covers the following food items, which the study found to be among the top ten sources of added sugars in the SBP:

- Breakfast cereals
- Granola bars and breakfast bars
- Toaster pastries
- Cinnamon buns
- Yogurt

Under this proposed rule, breakfast cereals would be limited to 6 grams of added sugars per ounce and yogurts would be limited to 12 grams of added sugars per 6 ounces. The other items listed above would be covered by the weekly limits for grain-based desserts. Granola bars, breakfast bars, toaster pastries, and cinnamon buns (a type of sweet roll) are all grain-based desserts, according to USDA guidance.[31]

As noted above, USDA has already successfully implemented product-based limits for breakfast cereals, yogurt, and grain-based desserts in its child nutrition programs. For example, NSLP regulations currently limit how often grain-based desserts may be served in reimbursable meals to encourage more nutrient-dense choices; [32] this proposed rule would apply the same limit to the SBP. Further, CACFP currently has total sugar limits for breakfast cereals and yogurt. This proposed rule would build on these successes by also applying product-based limits for breakfast cereals and yogurt to the NSLP and SBP. The proposed limits in this rulemaking are based on added sugars for consistency with the *Dietary Guidelines.* USDA is also proposing to update the CACFP total sugars limits for breakfast cereals and yogurts to align with the proposed NSLP and SBP added sugars limits for ease of operations. The new added sugars limit for flavored milks served in the school meal programs will follow a similar framework. The products covered by this proposal are commonly served in the programs, are popular with children, and have room to reduce added sugars while maintaining palatability.

The WIC Program has also successfully implemented product-based specifications for certain foods in the WIC food packages. Recently, USDA proposed revisions to the WIC food packages to incorporate recommendations from the National Academies of Science, Engineering, and Medicine (NASEM) in its 2017 scientific report, ''Review of WIC Food Packages: Improving Balance and Choice,'' and to align the food packages with the *Dietary Guidelines for Americans, 2020–2025.* The WIC rule, *Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Revisions in the WIC Food Packages,*[33] proposes to revise limits on total sugars for yogurt and soy beverage, consistent with recommendations in the NASEM report. The Department is seeking comments on the provisions related to sugar in the WIC proposed rule with specific interest in comments on an added versus total sugars limit for foods that currently have total sugar limits: yogurt, soy beverage, and breakfast cereal. Both the WIC proposed rule and this proposed rule share the common goal of limiting sugar intake and promoting healthy dietary patterns among program participants.

USDA expects that the product-specific limits in this proposed rule would incentivize the school food industry to develop products with less added sugars. This would in turn help schools to develop lunch and breakfast menus that are lower in added sugars. As noted, some food manufacturers have already begun reducing added sugars in their products; USDA commends and would like to see these efforts continued. USDA also encourages other food companies to follow this lead, with a particular focus on the products included in this proposal and other products that are popular with school-age children and that are commonly served in school meals. With the product-specific standards in place, USDA expects that schools would be better positioned to successfully meet the weekly dietary limit for added sugars, described further below.

Weekly Dietary Limit

USDA expects the product-based limits to have a meaningful impact on the added sugars offered in school meals but recognizes that a weekly limit is also helpful to achieve consistency with the *Dietary Guidelines* recommendation. While the proposed product-based limits target leading sources of added sugars in school meals, other foods also contribute to children's overall added sugars intake in the NSLP and SBP. Therefore, this rulemaking also proposes a weekly dietary limit, or dietary specification, for added sugars, to be implemented in SY 2027–2028. The dietary specification would require that less than 10 percent of calories per meal come from added sugars, averaged over one school week by program.[34] USDA expects that the product-based limits will help with initial added

[29] USDA reviewed nutrition label data for yogurt and breakfast cereal products in May 2022 using K–12 school and food service product catalogs directly from food company websites.

[30] Fox MK, Gearan EC, Schwartz C. *Added Sugars in School Meals and the Diets of School-Age Children.* Nutrients. 2021; 13(2):471. Available at: *https://doi.org/10.3390/nu13020471.*

[31] U.S. Department of Agriculture, *Food Buying Guide for Child Nutrition Programs.* Available at: *https://foodbuyingguide.fns.usda.gov/Appendix/DownLoadFBG.* See: Section 4—Grains, Exhibit A: Grain Requirements for Child Nutrition Programs, for a list of grain-based desserts.

[32] See: 7 CFR 210.10(c)(2)(iv)(C).

[33] *Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Revisions in the WIC Food Packages* (87 FR 71090, November 21, 2022). Available at: *https://www.federalregister.gov/documents/2022/11/21/2022-24705/special-supplemental-nutrition-program-for-women-infants-and-children-wic-revisions-in-the-wic-food.* USDA is accepting comments on this proposed rule through February 21, 2023.

[34] For comparison, as noted, according to the most recent research available using USDA school meal data from SY 2014–2015, the average percentage of calories from added sugars is approximately 11 percent at school lunch and 17 percent at school breakfast. See: Fox MK, Gearan EC, Schwartz C. *Added Sugars in School Meals and the Diets of School-Age Children.* Nutrients. 2021; 13(2):471. Available at: *https://doi.org/10.3390/nu13020471.*

sugars reductions in school meals by targeting leading sources of added sugars; the subsequent weekly limit will further support USDA's efforts to help school children meet dietary recommendations. USDA expects that the weekly limit will encourage schools to plan overall menus with less added sugars. For example, schools may opt to remove foods that are high in added sugars from their menus, choose to offer those foods less often, and/or select similar products with less added sugars than the products they are serving today.

Phasing in this requirement will give schools time to adjust menus and help children adapt to meals with less added sugars. For example, schools might consider serving more protein-rich foods at breakfast in place of grain-based foods, which tend to have more added sugars (see *Section 17: Proposals from Prior USDA Rulemaking).* The phase-in period will also allow USDA to update its nutrient analysis software to include a dietary specification for added sugars, and to provide additional technical assistance to schools on reducing added sugars in school meals.

Public Comments Requested

USDA will consider public input on the following questions when developing the final rule and may incorporate changes to the added sugars proposals based on public input. USDA invites public input on these proposals in general, and requests specific input on the following questions:

- USDA is proposing product-specific limits on the following foods to improve the nutritional quality of meals served to children: grain-based desserts, breakfast cereals, yogurt, and flavored milk. Do stakeholders have input on the products and specific limits included in this proposal?
- Do the proposed implementation timeframes provide appropriate lead time for food manufacturers and schools to successfully implement the new added sugars standards? Why or why not?
- What impact will the proposed added sugars standards have on school meal menu planning and the foods schools serve at breakfast and lunch, including the overall nutrition of meals served to children?

Section 3: Milk

Current Requirement

The National School Lunch Act (NSLA, 42 U.S.C. 1758(a)(2)(i) and (ii)) requires schools to offer students a variety of fluid milk at lunch; such milk must be consistent with the most recent *Dietary Guidelines.* The Child Nutrition Act (CNA, 42 U.S.C. 1773(e)(1)(A)) requires school breakfasts to meet the same terms and conditions set forth for school lunches in the National School Lunch Act (NSLA, 42 U.S.C. 1758), including the requirements for fluid milk. Current regulations at 7 CFR 210.10(d)(1)(i), 220.8(d), and 210.11(m)(1)(ii), (m)(2)(ii) and (m)(3)(ii) allow schools to offer fat-free and low-fat (1 percent fat) milk, flavored and unflavored, in reimbursable school lunches and breakfasts, and for sale as a competitive beverage. The current regulations also require that unflavored milk be offered at each school meal service. Fat-free and low-fat milk, flavored and unflavored, may also be offered to participants ages 6 and older in the SMP and CACFP (7 CFR 215.7a(a) and 226.20(a)(1)(iii)). Lactose-free and reduced-lactose milk meet the meal pattern requirements for fluid milk (7 CFR 210.10(d)(1)(i), 215.7a(a), 220.8(d), and 226.20(a)(1)). The current milk requirement took effect on July 1, 2022.

For comparison, the 2012 final rule permitted flavoring in fat-free milk only and required low-fat milk to be unflavored in school lunch and breakfast. This requirement went into effect in SY 2014–2015. However, Congressional and administrative actions beginning in SY 2017–2018 allowed schools to offer low-fat, flavored milk.[35] Prior to the COVID–19 pandemic, in SY 2019–2020, schools were allowed to offer fat-free and low-fat milk, flavored and unflavored, in reimbursable school meals.

Stakeholder Engagement on Milk Standards: Public Comments and Listening Sessions

USDA received extensive stakeholder input on the milk standards through public comments and listening sessions held in spring and summer 2022. This section provides an overview of input received through public comments, followed by input shared during the listening sessions.

Several public comments supported the transitional standard allowing low-fat, flavored milk, arguing that, in their view, children prefer flavored milk. One respondent asserted that the nutritional difference between low-fat, flavored milk and fat-free, flavored milk is insignificant. A few State agencies that supported allowing low-fat flavored milk argued that more children select and consume milk when flavored milk is offered, helping them receive important nutrients.

Some respondents cited concerns about the amount of added sugars in flavored milk, suggesting that USDA address this concern. A few respondents recommended that USDA disallow all flavored milks in the programs; one advocacy organization was concerned that offering flavored milk every day would train a child's palate to prefer sugar-sweetened foods. Another advocacy organization focused on public health suggested that if USDA continues to allow flavored, low-fat milk, it should establish a limit to prevent schools from serving flavored milks that are high in added sugars. An industry respondent noted that milk processors have already significantly reduced the added sugars content of flavored milk. They stated that between SY 2006–2007 and SY 2019–2020 the average added sugars level in flavored milk declined by 57 percent.[36]

A few respondents suggested that USDA allow whole milk to be served in the school meal programs, arguing that whole milk would help reduce food waste and provide children with important vitamins and nutrients. One industry respondent stated that dairy products at all fat levels, including reduced-fat and whole milk, should be permitted as options in school meals. The same respondent pointed out that reduced-fat and whole milk make up most retail sales of milk and asserted that many parents in the U.S. believe that these milk types are the healthiest options for their children. A few respondents argued that it is better for children to drink whole, flavored milk than to not drink milk at all.

Several respondents shared input on lactose-free milk and non-dairy fluid milk substitutes. One respondent noted that lactose-free milk provides children who are lactose intolerant the protein and calcium they need without gastro-intestinal distress, but cited cost as a barrier, noting that lactose-free milk costs about twice as much as milk with lactose. The respondent, who stated that a significant portion of their student population is lactose intolerant, suggested additional funding would help schools to offer lactose-free milk. An advocacy organization focused on animal rights urged USDA to allow plant-based milks and other non-dairy beverages for all children. They argued

[35] See page 6991–6992 of *Child Nutrition Programs: Transitional Standards for Milk, Whole Grains, and Sodium* (87 FR 6984, February 7, 2022). Available at: *https://www.federalregister.gov/documents/2022/02/07/2022-02327/child-nutrition-programs-transitional-standards-for-milk-whole-grains-and-sodium#footnote-29-p6991.*

[36] According to this comment, the average added sugars level for flavored milk declined by 57 percent, going from 16.7 grams to 7.1 grams in an 8 fluid ounce serving of flavored milk.

that this change would support children who are lactose intolerant and reduce the environmental harms caused by concentrated animal feeding operations. Another respondent suggested almond or other nut milks as an alternative to cow's milk. An advocacy organization recommended that USDA better communicate its policy allowing fluid milk substitutes for children with medical or special dietary needs.

Listening session participants raised many similar themes. Several participants suggested that overall milk consumption increases when low-fat, flavored milk is an option and recommended USDA continue to allow low-fat, flavored milk. Some listening session participants noted that fat-free, flavored milk is not widely available in the retail market, and that, in their view, children are not familiar with and do not like the way it tastes. Listening session participants representing the food industry emphasized the importance of considering palatability and acceptability when establishing milk standards and suggested that added sugars and sodium standards could impact milk options available to schools. Participants also raised cost constraints as a limitation to offering lactose-free milk and milk alternatives for children who cannot consume cow's milk.

Proposed Standard

This rulemaking proposes two alternatives for the milk standard:

- *Alternative A:* Proposes to allow flavored milk (fat-free and low-fat) at school lunch and breakfast for high school children only, effective SY 2025–2026. Under this alternative, USDA is proposing that children in grades K–8 would be limited to a variety of unflavored milk. The proposed regulatory text for Alternative A would allow flavored milk for high school children only (grades 9–12). USDA also requests public input on whether to allow flavored milk for children in grades 6–8 as well as high school children (grades 9–12). Children in grades K–5 would again be limited to a variety of unflavored milk. Under both Alternative A scenarios, flavored milk would be subject to the new proposed added sugars limit.
- *Alternative B:* Proposes to maintain the current standard allowing all schools to offer fat-free and low-fat milk, flavored and unflavored, with the new proposed added sugars limit for flavored milk.

Several additional proposals would apply under either alternative. As discussed in *Section 2: Added Sugars,* this rulemaking will limit the amount of added sugars in flavored milk to no more than 10 grams per 8 fluid ounces, effective SY 2025–2026. This proposed added sugars standard would apply to milk served in reimbursable school lunches and breakfasts, and for sale as a competitive beverage. Consistent with current requirements, this rulemaking would require that unflavored milk be offered at each school meal service. This rulemaking also proposes to continue to allow fat-free and low-fat milk, flavored and unflavored, to be offered to participants ages 6 and older in the SMP and CACFP. However, as noted below, USDA requests public input on allowing unflavored milks only for children in grades K–8 or K–5, as applicable, in SMP and CACFP, if Alternative A is finalized with restrictions on flavored milk for grades K–8 or K–5 in NSLP and SBP. While USDA appreciates comments on whole milk, allowing whole milk in the school meal programs would make it harder for children to meet nutrient needs while staying within calorie and saturated fat limits. Additionally, the *Dietary Guidelines, 2020–2025 recommends unsweetened fat-free or low-fat milk for school-aged children.* Therefore, USDA does not propose allowing whole milk in the school meal programs.

USDA also proposes to reorganize the regulatory text related to fluid milk substitutes for non-disability reasons. This rulemaking would move the regulatory text explaining the fluid milk substitute requirements from paragraph (m) of 7 CFR 210.10—which currently discusses exceptions and variations allowed in reimbursable meals—to paragraph (d) of 7 CFR 210.10—which discusses the fluid milk requirements. These changes are expected to help clarify the requirements for fluid milk substitutions. Fluid milk substitutions are addressed further below.

Under Alternative A, USDA is proposing to allow flavored milk for high school children only (grades 9–12). This approach would reduce exposure to added sugars and would promote the more nutrient-dense choice of unflavored milk for young children when their tastes are being formed. The proposed regulatory text for this alternative would allow flavored milk only for high schools (grades 9–12); however, regarding this alternative, USDA requests public input on whether to allow flavored milk only in high schools (grades 9–12) or in middle schools and high schools (grades 6–12). USDA aims to balance the importance of reducing young children's exposure to added sugars with the importance of providing older children the autonomy to choose among a greater variety of milk beverages that they enjoy; respondents are encouraged to provide input on how to balance these important priorities. Respondents are also invited to provide input on any operational considerations that USDA should keep in mind regarding school configurations; for example, how such a standard should apply to schools that serve children in grades K–12. While not proposed in this rulemaking, should Alternative A be finalized with restrictions on flavored milk for grades K–8 or K–5 in NSLP and SBP, USDA also requests public input on whether to pursue a similar change in SMP and CACFP.

As noted in *Section 2: Added Sugars,* flavored milk is the leading source of added sugars in the school lunch and breakfast programs, contributing half of the added sugars at lunch and about 30 percent of the added sugars at breakfast. While USDA expects the proposed product-based added sugars limit for flavored milk would support reducing added sugars for schoolchildren of all ages, this additional measure would further reduce elementary and middle schoolchildren's exposure to added sugars. According to the *Dietary Guidelines* ''consuming beverages with no added sugars is particularly important for young children.'' The *Dietary Guidelines* also recommend young children make healthier, more nutrient-dense food choices, including choosing unsweetened beverages instead of beverages with added sugars. As noted below, USDA invites public input on both proposed alternatives. Respondents that support Alternative A are encouraged to provide specific input on whether USDA should limit flavored milk to high schools (grades 9–12) or to middle schools and high schools (grades 6–12). After considering public input, USDA will determine which alternative to finalize.

USDA seeks comments on these proposals, which are both found at 7 CFR 210.10(d), 210.11(m), and 220.8(d) of the proposed rule.

Below, USDA addresses important topics raised by comments.

Added Sugars in Milk

The *Dietary Guidelines, 2020–2025* recommend consumption of beverages that contain no added sugars, such as water and unsweetened fat-free or low-fat milk, as the primary choice for children and adolescents. They also note that early food preferences influence later food choices and assert that decreasing the consumption of sugar-sweetened beverages will help reduce added sugars intake and will allow children to achieve a healthy

dietary pattern. According to the *Dietary Guidelines,* sugar-sweetened beverages—a top contributor of added sugars—make up 15 to 25 percent of total added sugars intake in childhood, and 32 percent in adolescence.[37]

Flavored milks are the top contributor of added sugars in the school meal programs. USDA expects that the proposed added sugars limit for flavored milk, discussed in *Section 2: Added Sugars,* will help to address this issue in the near-term and may support children's consumption of nutrient-dense foods later in life.[38] Additionally, USDA understands that dairy, including fluid milk and fluid milk substitutes, provide protein and a variety of nutrients that are underconsumed during childhood and adolescence. According to *Dietary Guidelines,* average intake of dairy foods, which provide potassium, calcium, and vitamin D, is typically below recommended intake levels for adolescents.[39] USDA recognizes that for some children, flavored milk is a palatable option that improves consumption of these important nutrients, which support the accrual of bone mass. The National School Lunch Act currently requires a variety of fluid milk to be offered with every school lunch and breakfast. USDA appreciates the benefit of allowing flavored milk—a fluid milk option that many children enjoy and may be less likely to waste. For example, USDA research from SY 2014–2015 found that about 18 percent of low-fat, flavored milk offered with school lunch was wasted, compared to 35 percent of low-fat, unflavored milk.[40] However, schools are not required to offer flavored milk, and may consider offering unflavored milk options only at certain meals or on certain days to promote more nutrient-dense choices.

Fluid Milk Substitutes

As noted, many commenters raised concerns on behalf of children who cannot consume, or have difficulty consuming, cow's milk. USDA appreciates the public's concern about children's access to fluid milk substitutes, particularly given the disproportionate rates of lactose intolerance among communities of color. For example, according to the National Institutes of Health, in the United States, African Americans, American Indians, Asian Americans, and Hispanics/Latinos are more likely to have lactose malabsorption, and ''lactose intolerance is least common among people who are from, or whose families are from, Europe.''[41] Global estimates find that about 5 to 15 percent of Europeans are lactose intolerant, compared to 65 to 90 percent of adults in Africa and East Asia.[42]

In addition to fluid milk, yogurt, and cheese, the *Dietary Guidelines* include ''fortified soy beverages'' as part of the dairy group because they are similar to milk and yogurt based on nutrient composition and in their use in meals. However, as noted, the National School Lunch Act requires fluid milk (cow's milk) to be offered with every school breakfast and lunch. The statute is also very specific about allowable fluid milk substitutes for non-disability reasons. To provide a substitute for cow's milk, the statute requires:

- That the non-dairy beverage is nutritionally equivalent to fluid milk and meets nutritional standards established by the Secretary, which must include fortification of calcium, protein, vitamin A, and vitamin D to levels found in cow's milk (42 U.S.C. 1758(a)(2)(B)(i)).
- That the substitution is requested in writing by a medical authority or the student's parent or legal guardian (42 U.S.C. 1758(a)(2)(B)(ii)).
- That the school notify the State agency if it is providing fluid milk substitutes for non-disability reasons (42 U.S.C. 1758(a)(2)(B)(ii)).
- That the school cover any expenses related to providing fluid milk substitutes in excess of program reimbursements (42 U.S.C. 1758(a)(2)(B)(iii)).

USDA recognizes that the specific nutrition and paperwork requirements and cost burden associated with fluid milk substitutes present barriers for schools and families. Additionally, USDA recognizes that under the statute, schools are allowed—but not required—to provide fluid milk substitutes for non-disability reasons; this means that, due to budget constraints, some schools may opt not to provide a fluid milk substitute requested for non-disability reasons on behalf of a child. As noted below, USDA requests public input on the current fluid milk substitute process. While USDA does not have the authority to change the statutory requirements outlined above, better understanding challenges associated with the current process may help USDA address the concerns raised by commenters.

As a point of clarification, the statute and regulation require schools to provide meal modifications for children with a disability that restricts their diet. Lactose intolerance may be considered a disability; for example, a child whose digestion is impaired due to lactose intolerance may be considered a person with a disability that requires a menu substitution for fluid milk. In 2020, USDA proposed changes to align regulatory requirements for disability-related meal modifications with the Americans with Disabilities Act of 1990 (ADA), as amended. The ADA Amendments Act of 2008 (Pub. L. 110–235) clarified the meaning and interpretation of the ADA definition of ''disability'' to ensure that the definition of disability would be broadly construed and applied without extensive analysis. These proposed changes to meal modifications for disability reasons will be further addressed in the forthcoming final rule, as discussed in *Section 17: Proposals from Prior USDA Rulemaking.* For up-to-date information about meal modifications for disability reasons, see USDA policy guidance: *Modifications to Accommodate Disabilities in the School Meal Programs.*[43]

Public Comments Requested

For the final rule, USDA is considering two different milk

[37] See page 87. U.S. Department of Agriculture and U.S. Department of Health and Human Services. *2020–2025 Dietary Guidelines for Americans. 9th Edition*. December 2020. Available at: *https://www.dietaryguidelines.gov/*.

[38] See Figure 2–1: ''Science shows that early food preferences influence later food choices. Make the first choice the healthiest choices . . .'' U.S. Department of Agriculture and U.S. Department of Health and Human Services. *2020–2025 Dietary Guidelines for Americans. 9th Edition*. December 2020. Available at: *https://www.dietaryguidelines.gov/*.

[39] See page 76 and page 88. U.S. Department of Agriculture and U.S. Department of Health and Human Services. *2020–2025 Dietary Guidelines for Americans. 9th Edition*. December 2020. Available at: *https://www.dietaryguidelines.gov/*.

[40] See Table 5.1: *Mean Percentage of Observed Trays including Specific Foods and Mean Percentage of Observed Foods Wasted in NSLP Lunches*. U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, *School Nutrition and Meal Cost Study, Final Report Volume 4: Student Participation, Satisfaction, Plate Waste, and Dietary Intakes,* by Mary Kay Fox, Elizabeth Gearan, Charlotte Cabili, Dallas Dotter, Katherine Niland, Liana Washburn, Nora Paxton, Lauren Olsho, Lindsay LeClair, and Vinh Tran. Project Officer: John Endahl. Alexandria, VA: April 2019. Available at: *https://www.fns.usda.gov/school-nutrition-and-meal-cost-study*. (OMB Control Number 0584–0596, expiration date 07/31/2017.)

[41] National Institute of Diabetes and Digestive and Kidney Diseases. *Definition & Facts for Lactose Intolerance*. Available at: *https://www.niddk.nih.gov/health-information/digestive-diseases/lactose-intolerance/definition-facts*.

[42] InformedHealth.org [internet]. Cologne, Germany: Institute for Quality and Efficiency in Health Care (IQWiG); 2006-. *Lactose intolerance: Overview*. 2010 Sep 15 [Updated 2018 Nov 29]. Available at: *https://www.ncbi.nlm.nih.gov/books/NBK310267/*.

[43] U.S. Department of Agriculture, *Modifications to Accommodate Disabilities in the School Meal Programs,* September 27, 2016. Available at: *https://www.fns.usda.gov/cn/modifications-accommodate-disabilities-school-meal-programs*.

proposals and invites comments on both. These two proposals are included in the regulatory text as Alternative A and Alternative B:

- *Alternative A:* Proposes to allow flavored milk (fat-free and low-fat) at school lunch and breakfast for high school children only, effective SY 2025–2026. Under this alternative, USDA is proposing that children in grades K–8 would be limited to a variety of unflavored milk. The proposed regulatory text for Alternative A would allow flavored milk for high school children only (grades 9–12). USDA also requests public input on whether to allow flavored milk for children in grades 6–8 as well as high school children (grades 9–12). Children in grades K–5 would again be limited to a variety of unflavored milk. Under both Alternative A scenarios, flavored milk would be subject to the new proposed added sugars limit.
- *Alternative B:* Proposes to maintain the current standard allowing all schools to offer fat-free and low-fat milk, flavored and unflavored, with the new proposed added sugars limit for flavored milk.

USDA will consider the following questions when developing the final rule and may incorporate changes to the milk proposals based on public input. USDA invites public input on these proposals in general, and requests specific input on the following questions:

- The *Dietary Guidelines* state that ''consuming beverages with no added sugars is particularly important for young children.'' As discussed above, one of the two proposals USDA is considering would limit milk choices in elementary and middle schools (grades K–8) to unflavored milk varieties only at school lunch and breakfast. To reduce young children's exposure to added sugars and promote the more nutrient-dense choice of unflavored milk, should USDA finalize this proposal? Why or why not?
  - Respondents that support Alternative A are encouraged to provide specific input on whether USDA should limit flavored milk to high schools only (grades 9–12) or to middle schools and high schools only (grades 6–12).
- If Alternative A is finalized with restrictions on flavored milk for grades K–8 or K–5 in NSLP and SBP, should USDA also pursue a similar change in SMP and CACFP? Are there any special considerations USDA should keep in mind for SMP and CACFP operators, given the differences in these programs compared to school meal program operators?
- What feedback do stakeholders have about the current fluid milk substitute process? USDA is especially interested in feedback from parents and guardians and program operators with firsthand experience requesting and processing a fluid milk substitute request.

Section 4: Whole Grains

Current Requirement

Current regulations at 7 CFR 210.10(c)(2)(iv) and 220.8(c)(2)(iv) require at least 80 percent of the weekly grains offered in the school lunch and breakfast programs to be whole grain-rich. The remaining grain items offered must be enriched. To meet USDA's whole grain-rich criteria, a product must contain at least 50 percent whole grains; any grain ingredients that are not whole grain must be enriched, bran, or germ. In other words, whole grain-rich products are at least half whole grain. Products that exceed the 50 percent whole grain threshold, such as products that are 100 percent whole grain, also meet the whole grain-rich criteria. The current whole grain-rich requirement took effect on July 1, 2022.

For comparison, the 2012 final rule required all grains offered in the school lunch and breakfast programs to meet the whole grain-rich criteria. However, successive legislative and administrative action beginning in 2012 prevented full implementation of the whole grain-rich requirement.[44] Prior to the COVID–19 pandemic, in SY 2019–2020, at least 50 percent of the weekly grains offered in the school lunch and breakfast programs were required to be whole grain-rich.

Stakeholder Engagement on Grains Standards: Public Comments and Listening Sessions

USDA received extensive stakeholder input on the grains standards through public comments and listening sessions held in spring and summer 2022. This section provides an overview of input received through public comments, followed by input shared during the listening sessions.

Many public comments cited the importance of increasing whole grains in children's diets. For example, respondents stated that whole grains provide important nutrients and fiber and improve diet quality. A few advocacy organizations noted that diets high in whole grains and fiber are associated with decreased risk of cardiovascular disease, stroke, and diabetes. Advocacy organizations also expressed concern that children ages 4 to 18 do not currently meet the recommended intake for whole grains and exceed the recommended limit for refined grains.

Several respondents offered specific suggestions for USDA to consider when developing this proposed rule. A school food service respondent suggested that the school meal standards follow MyPlate guidelines: make half of your grains whole grain.[45] This respondent noted that they use MyPlate to teach students and families about healthy eating. An advocacy organization focused on public health noted that schools have made significant progress in offering whole grain-rich foods and argued that it is possible to offer all grains as whole grain-rich. One respondent stated that whole grain-rich foods are accepted by students at their school, while another asserted that school districts have been able to create healthy, delicious meals with entirely whole grain-rich foods. An advocacy organization representing food and nutrition professionals supported the 80 percent whole grain-rich requirement in the transitional standards rule as a ''steppingstone'' towards stronger requirements. Other respondents suggested maintaining the 80 percent whole grain-rich standard in the long-term, arguing it is strict enough. For example, one respondent noted that the 80 percent standard allows for some enriched grains, which they argued improves palatability. This respondent asserted that children would appreciate the inclusion of some enriched grains at breakfast and lunch. Similarly, one industry respondent suggested allowing some flexibility for schools to offer fortified and enriched grains, stating that this would help schools provide more menu options that kids enjoy. Several respondents recommended that USDA ease back on the requirement and require half of the grains offered to meet the whole grain-rich criteria.

Many respondents noted the importance of working with the food industry to ensure that whole grain-rich items are readily available and affordable for schools. For example, one school district respondent emphasized that school meals ''do not exist in a vacuum'' and are a part of the broader commercialized food system. Some respondents expressed concerns with

[44] See page 6994 of *Child Nutrition Programs: Transitional Standards for Milk, Whole Grains, and Sodium* (87 FR 6984, February 7, 2022). Available at: *https://www.federalregister.gov/documents/2022/02/07/2022-02327/child-nutrition-programs-transitional-standards-for-milk-whole-grains-and-sodium#footnote-29-p6991.*

[45] U.S. Department of Agriculture. *Grains.* Available at: *https://www.myplate.gov/eat-healthy/grains.*

the availability or acceptability of specific products, including whole grain-rich tortillas, pastas, and biscuits; for example, one school nutrition director suggested that whole grain-rich tortillas and pastas ''crumble'' and are not accepted by students. Conversely, some industry respondents shared their success developing a wide array of whole grain-rich products. One industry respondent successfully developed whole grain-rich breakfast entrées, ready-to-eat breakfast cereals, and biscuits; this respondent supported stronger whole grain-rich standards. Another industry respondent stated its intent to continue innovating and expanding whole grain-rich options, even though its core K–12 grain portfolio already meets USDA's whole grain-rich criteria. A different industry respondent stated that they have 25 entrée items containing whole grain-rich pasta or breading that are accepted by students; however, this respondent indicated that development of these products required heavy collaboration and several changes in formulations over time.

Listening session participants raised many similar themes. Many participants generally supported increasing whole grains in the programs, noting that schools have been successful in meeting the whole grain-rich standards. Participants also stated that many products that children enjoy are available in the market. However, some participants noted that certain menu items, such as pasta and tortillas, are still not available or acceptable in whole grain-rich form, while others cited concerns about supply chain issues impacting the availability of certain products. Some listening session participants supported a 100 percent whole grain-rich requirement for consistency with the *Dietary Guidelines,* while others argued a 100 percent whole grain-rich standard is not realistic. Listening session participants also recommended a 50 percent whole grain-rich standard or an 80 percent whole grain-rich standard.

Proposed Standard

For the whole grains requirement in the school lunch and breakfast programs, USDA is considering two different options and invites comments on both. This rulemaking:

- Proposes to maintain the current whole grains requirement that at least 80 percent of the weekly grains offered are whole grain-rich, based on ounce equivalents of grains offered.
- Requests public input on an alternative whole grains option, which would require that all grains offered must meet the whole grain-rich requirement, except that one day each school week, schools may offer enriched grains.

The alternative approach is described in greater detail below. USDA will consider public input when developing the final rule and may incorporate changes to the whole grains proposal based on public input. Either approach would promote whole grain-rich foods while allowing schools to occasionally serve non-whole grain-rich products that stakeholders and public comments have suggested are popular with students. USDA expects that both standards would be achievable for schools and would result in meals that students enjoy.

In addition, USDA also proposes to add a regulatory definition of ''whole grain-rich'' for clarity. The definition would read as follows: *Whole grain-rich is the term designated by FNS to indicate that the grain content of a product is between 50 and 100 percent whole grain with any remaining grains being enriched.* This proposed definition would not change the meaning of whole grain-rich, which has previously been communicated in USDA guidance; USDA is instead proposing to define the term in regulation for clarity. This definition would be included in NSLP, SBP, and CACFP regulations.

As noted above, as an alternative to the proposal to maintain the current whole grains requirement that at least 80 percent of the weekly grains offered are whole grain-rich, USDA is considering a days-per-week model. This alternative would require that all grains offered in the school lunch and breakfast programs must meet the whole grain-rich requirement, except that one day each school week, schools may offer enriched grains. For most school weeks, this would result in four days of whole grain-rich grains, with enriched grains allowed on one day. On the day enriched grains are permitted, schools may choose to offer enriched grains, whole grain-rich grains, 100 percent whole grains, or a combination of these. This alternative proposal would prevent enriched grains from being offered in competition with whole grain-rich grains on a daily basis, since it would limit enriched grains to one day per week in each program. As such, under this alternative, all students that participate in NSLP or SBP would be offered only whole grain-rich grains on most school days. Based on public input, USDA may choose to finalize this alternative in the final rule. As noted below, USDA seeks public input on both approaches.

Finally, USDA proposes a corresponding change to the definition of ''entrée'' in the competitive food, or ''Smart Snack'' regulations.[46] The competitive food regulations allow entrée items to be sold à la carte on the day they are served and the day after, even if the entrée does not comply with the competitive food standards. This exemption helps school food professionals to better manage their programs and prevent food waste. It also helps to reduce potential confusion about whether an entrée served to some students as part of a meal can be purchased à la carte by other students. The current definition of ''entrée'' in the competitive food regulations specifies that grain entrées must be whole grain-rich; however, under the proposed standard, enriched grains may be served as part of a reimbursable meal entrée. USDA proposes to remove the whole grain-rich criteria from the definition of ''entrée,'' which would allow any reimbursable meal entrée that includes enriched grains to also be sold as a Smart Snack on the day it is served in the school lunch or breakfast program, and the day after. This proposal would not impact the general standards for competitive foods, which would continue to require all other grain items sold as Smart Snacks to meet USDA's whole grain-rich criteria.

USDA seeks comments on this proposal, found at 7 CFR 210.2, 210.10(c)(2)(iv), 210.11(a)(3), 220.2, 220.8(c)(2)(iv), and 226.2 of the proposed rule.

In developing this proposal, USDA considered several important factors, outlined below.

Dietary Recommendations

Whole grains are an important source of dietary fiber, which is considered a dietary component of public health concern for the general U.S. population.[47] The *Dietary Guidelines, 2020–2025* recommend that at least half of total grains consumed should be whole grains. The *Dietary Guidelines* also note that while school-age children, on average, meet the recommended intake of total grains, they do not meet the recommendation to make half of their grains whole grains. Although the *Dietary Guidelines* do not use the term

[46] For more information on Smart Snacks in Schools, see: *Tools for Schools—Focusing on Smart Snacks.* Available at: *https://www.fns.usda.gov/cn/tools-schools-focusing-smart-snacks.*

[47] U.S. Department of Agriculture and U.S. Department of Health and Human Services. *Current Dietary Guidelines—Food Sources of Select Nutrients.* Available at: *https://www.dietaryguidelines.gov/resources/2020-2025-dietary-guidelines-online-materials/food-sources-select-nutrients.*

''whole grain-rich,'' it states that one way to meet the recommendation is to choose products with at least 50 percent of the total weight made up of whole grain ingredients, which is consistent with USDA's whole grain-rich criteria.

Consuming whole grains may provide many health benefits, such as reducing the risk of heart disease and supporting healthy digestion.[48] Studies have found a connection between whole grains consumption and better health. For example, according to the Harvard T.H. Chan School of Public Health, a meta-analysis of seven major studies found that cardiovascular disease was 21 percent less likely in people who ate two and a half or more servings of whole grain foods each day compared with people who ate less than two servings each week.[49] Another study found that women who averaged two to three servings of whole grains each day were 30 percent less likely to have developed type 2 diabetes compared to those who rarely ate whole grains.[50]

Research also demonstrates that USDA standards make a difference in children's consumption of whole grain foods. For example, a USDA study found that the ratio of whole grain to total grain consumption in children's total diets nearly doubled from SY 2003–2004 to SY 2013–2014. This study suggested an association between school meal standards and higher whole grain consumption by school children, and noted that repeated exposure to a food, such as through school meals, increases an individual's preference for it. In the case of whole grains, the study suggested repeated exposure in school may encourage children's whole grain consumption outside of school and in later years.[51] Additionally, USDA research found that in SY 2014–2015, the Healthy Eating Index (HEI) component score for whole grains was 95 percent of the maximum score at breakfast and at lunch. This represents a significant increase compared to SY 2009–2010, when the average score at breakfast was 38 percent and the average score at lunch was 25 percent of the maximum score.[52]

Although the 80 percent whole grain-rich standard does not fully meet the *Dietary Guidelines* recommendation that at least half of total grains should be whole grains, it does encourage increased consumption of whole grain-rich foods while allowing menu planners some flexibility to provide regional and cultural favorites that are not whole grain-rich. This limited flexibility responds to public comments and points made during USDA's listening sessions with child nutrition program stakeholders, who emphasized the importance of ensuring that school meal standards meet cultural preferences. For example, white rice and non-whole grain-rich tortillas were cited as foods that schools would like to continue to occasionally serve as part of school lunch. The 80 percent threshold is a minimum standard, not a maximum; schools that are able to offer all grains as whole grain-rich are encouraged to exceed the proposed standard. USDA encourages schools to incorporate more whole grain-rich products in the breakfast and lunch menus in a way that children will enjoy.

Many corn-based products commonly served in schools (including certain breakfast cereals, tortillas, and grits) are whole grain-rich and count towards the whole grain-rich requirements in the school meal programs. For example, ingredients labeled hominy, corn masa, and masa harina are considered whole grain-rich. For more information about crediting these foods and other products made from cornmeal, corn flour, etc. in the school meal programs, please see the policy memorandum *Crediting Coconut, Hominy, Corn Masa and Masa Harina in the Child Nutrition Programs.*[53] Additionally, all fortified, ready-to-eat breakfast cereal, including corn-based cereal, can contribute to school meal requirements if the ingredient statement of a corn-based, ready-to-eat breakfast–s the total grains component, in the amount of up to 20 percent of the weekly grains requirement in this proposed rule. All ready-to-eat breakfast cereals with at least 50 percent whole grain ingredients (whole grain as the primary grain ingredient) contribute to the whole grain-rich requirements.

Product Availability

USDA recognizes that many stakeholders are concerned about product availability, particularly in relation to recent supply chain challenges. The past several years have been incredibly difficult for school food service professionals, and USDA acknowledges that some of these challenges will continue for some time. However, USDA also appreciates the importance of maintaining strong nutrition standards for the long term and encouraging schools to provide children with the most nutritious meals possible.

As noted, manufacturers are working to increase whole grain-rich options. In public comments submitted on the transitional standards rule, food industry respondents emphasized progress made toward expanding whole grain-rich offerings. For example, one respondent described recent efforts to enhance its K–12 portfolio to provide whole grain-rich items that are good sources of protein and low in sodium. Another described a significant initiative in the early 2000s to increase the whole grain content in its products based on dietary recommendations, as well as further innovations following USDA's 2012 school nutrition rule. Industry respondents also described success in developing whole grain-rich products that children enjoy. USDA encourages other food manufacturers to expand their whole grain-rich offerings and invites public comment regarding any specific challenges in this area. Additionally, USDA reminds stakeholders that a variety of whole-grain rich products are available through the USDA Foods program. In SY 2022–2023, the following whole grain-rich products were available through USDA Foods: cereal, flour, oats,

[48] U.S. Department of Agriculture. *Grains.* Available at: *https://www.myplate.gov/eat-healthy/grains.*

[49] Harvard T.H. Chan School of Public Health, *The Nutrition Source—Whole Grains.* Available at: *https://www.hsph.harvard.edu/nutritionsource/what-should-you-eat/whole-grains/.* See footnote 7: Mellen PB, Walsh TF, Herrington DM. *Whole grain intake and cardiovascular disease: a meta-analysis.* Nutr Metab Cardiovasc Dis. 2008;18:283–90.

[50] Harvard T.H. Chan School of Public Health, *The Nutrition Source—Whole Grains.* Available at: *https://www.hsph.harvard.edu/nutritionsource/what-should-you-eat/whole-grains/.* See footnote 9: de Munter JS, Hu FB, Spiegelman D, Franz M, van Dam RM. *Whole grain, bran, and germ intake and risk of type 2 diabetes: a prospective cohort study and systematic review.* PLoS Med. 2007;4:e261.

[51] U.S. Department of Agriculture. *Schoolchildren Consumed More Whole Grains Following Change in School Meal Standards.* February 3, 2020. Available at: *https://www.ers.usda.gov/amber-waves/2020/february/schoolchildren-consumed-more-whole-grains-following-change-in-school-meal-standards/.* Drawn from: ''Dietary Guidance and New School Meal Standards: Schoolchildren's Whole Grain Consumption Over 1994–2014,'' by Biing-Hwan Lin, Joanne F. Guthrie, and Travis A. Smith, American Journal of Preventive Medicine, (doi:10.1016/j.amepre.2019.01.010), January 2019.

[52] In SY 2014–2015, all grains offered in the NSLP and SBP were required to be whole grain-rich; however school food authorities that demonstrated a hardship in meeting this requirement could seek an exemption that allowed for meeting a relaxed requirement that at least 50 percent of all grains must be whole grain-rich. See Figure ES.14. And Figure ES.17. *School Nutrition and Meal Cost Study, Final Report Volume 2: Nutritional Characteristics of School Meals* by Elizabeth Gearan, Mary Kay Fox, Katherine Niland, Dallas Dotter, Liana Washburn, Patricia Connor, Lauren Olsho, and Tara Wommak. Project Officer: John Endahl. Alexandria, VA: April 2019. Available at: *https://www.fns.usda.gov/school-nutrition-and-meal-cost-study.* (OMB Control Number 0584–0596, expiration date 07/31/2017.)

[53] U.S. Department of Agriculture. *Crediting Coconut, Hominy, Corn Masa and Masa Harina in the Child Nutrition Programs.* August 22, 2019. Available at: *https://www.fns.usda.gov/cn/crediting-coconut-hominy-corn-masa-and-masa-harina-child-nutrition-programs.*

pancakes, pasta (including macaroni, penne, rotini, and spaghetti), rice, and tortillas. USDA Foods also provided fish with whole grain-rich breading.[54]

Public Comments Requested

For the final rule, USDA is considering two different options and invites comments on both:

- Maintaining the current requirement that at least 80 percent of the weekly grains offered are whole grain-rich, based on ounce equivalents of grains offered; or
- Requiring that all grains offered must meet the whole grain-rich requirement, except that one day each school week, schools may offer enriched grains.

USDA will consider the following questions when developing the final rule and may incorporate changes to the whole grains proposal based on public input. USDA invites public input on both these options in general, and requests specific input on the following questions:

- Which option would be simplest for menu planners to implement, and why?
- Which option would be simplest to monitor, and why?

Section 5: Sodium

Current Requirement

Current regulations at 7 CFR 210.10(f)(3) and 220.8(f) require schools to meet Sodium Target 1 for school lunch and breakfast, effective SY 2022–2023. For school lunch only, schools are required to meet Sodium Target 1A beginning in SY 2023–2024. These standards are shown in the tables below:

NATIONAL SCHOOL LUNCH PROGRAM TRANSITIONAL SODIUM LIMITS

Age/grade group	Target 1: effective July 1, 2022	Interim Target 1A: effective July 1, 2023
Grades K–5	≤1,230 mg	≤1,110 mg.
Grades 6–8	≤1,360 mg	≤1,225 mg.
Grades 9–12	≤1,420 mg	≤1,280 mg.

SCHOOL BREAKFAST PROGRAM TRANSITIONAL SODIUM LIMITS

Age/grade group	Target 1: effective July 1, 2022
Grades K–5	≤540 mg.
Grades 6–8	≤600 mg.
Grades 9–12	≤640 mg.

The current sodium limits apply to the average lunch and breakfast offered during the school week; they do not apply per day, per meal, or per menu item. This means that specific products are not held to specific sodium limits, but rather, meals must fit in to the overall weekly limit. Menu planners may occasionally offer higher sodium meals, menu items, or products if they are balanced out with lower sodium meals, menu items, or products throughout the school week.

For comparison, the 2012 final rule [55] included three transitional targets (Target 1, Target 2, and the Final Target) to reduce sodium intake over a 10-year period. However, successive legislative and administrative action prevented implementation of sodium targets beyond Target 1 from occurring.[56] Prior to the COVID–19 pandemic, in SY 2019–2020, schools were required to meet Sodium Target 1. According to a USDA study, in SY 2014–2015, on average, 72 percent of weekly lunch menus met Sodium Target 1 and another 13 percent were within 10 percent of the target. For breakfast, 67 percent of weekly menus met Sodium Target 1, and another 10 percent of weekly menus were within 10 percent of the target.[57]

USDA is applying lessons learned from implementation of the 2012 sodium standards to this rulemaking. The transitional standards rule removed Sodium Target 2 and the Final Target from the regulations and noted that this forthcoming proposed rule would address longer-term sodium standards. USDA has determined that a more gradual approach to sodium reduction, when compared to the original schedule outlined in the 2012 rule, is more likely to be achieved and thus would better meet the needs of schools and students. Studies have noted that implementation of sodium reductions take time and effort. For example, one study noted several considerations, such as environmental context, potential barriers to implementation, the importance of technical assistance, and the need for buy-in from partners to successfully reduce sodium.[58] Another study focused on community-wide sodium reduction efforts recommended designing programs ''to reduce sodium gradually to take into account consumer preferences and taste transitions.'' [59] As detailed in the following *Stakeholder Engagement* section, USDA acknowledges that some stakeholders would prefer a more rapid approach to sodium reduction in schools, including a return to the 2012 sodium standards. USDA appreciates the strong commitment these individuals and organizations have to children's dietary health. However, as explained under *Proposed Standard,* USDA expects this proposed approach to be a more viable option, based in part on its alignment with FDA's voluntary sodium reduction targets. USDA expects further sodium reductions in school meals to be achievable as even more new and reformulated food products that align with FDA's voluntary targets become available over time. USDA expects that FDA's voluntary sodium reduction goals will support children's acceptance of school lunches and breakfasts with less sodium, as the incremental school meal reductions will occur alongside sodium

[54] U.S. Department of Agriculture. *USDA Foods Available List for SY 2023.* Available at: *https://www.fns.usda.gov/usda-fis/usda-foods-available.*

[55] *Nutrition Standards in the National School Lunch and School Breakfast Programs* (77 FR 4088, January 26, 2012). Available at: *https://www.federalregister.gov/documents/2012/01/26/2012-1010/nutrition-standards-in-the-national-school-lunch-and-school-breakfast-programs.*

[56] See page 6997 of *Child Nutrition Programs: Transitional Standards for Milk, Whole Grains, and Sodium* (87 FR 6984, February 7, 2022). Available at: *https://www.federalregister.gov/documents/2022/02/07/2022-02327/child-nutrition-programs-transitional-standards-for-milk-whole-grains-and-sodium#footnote-29-p6991.*

[57] See Table C.14 and Table E.14. *School Nutrition and Meal Cost Study, Final Report Volume 2: Nutritional Characteristics of School Meals* by Elizabeth Gearan, Mary Kay Fox, Katherine Niland, Dallas Dotter, Liana Washburn, Patricia Connor, Lauren Olsho, and Tara Wommak. Project Officer: John Endahl. Alexandria, VA: April 2019. Available at: *https://www.fns.usda.gov/school-nutrition-and-meal-cost-study.* (OMB Control Number 0584–0596, expiration date 07/31/2017.)

[58] Cummings PL, Kuo T, Gase LN, Mugavero K. *Integrating sodium reduction strategies in the procurement process and contracting of food venues in the County of Los Angeles government, 2010–2012.* J Public Health Manag Pract. 2014 Jan–Feb;20(1 Suppl 1):S16–22. doi: 10.1097/PHH.0b013e31829d7f63. PMID: 24322811; PMCID: PMC4450096. Available at: *https://pubmed.ncbi.nlm.nih.gov/24322811/.*

[59] Kane H, Strazza K, Losby JL, Lane R, Mugavero K, Anater AS, Frost C, Margolis M, Hersey J. *Lessons learned from community-based approaches to sodium reduction.* Am J Health Promot. 2015 Mar–Apr;29(4):255–8. doi: 10.4278/ajhp.121012–ARB–501. Epub 2014 Feb 27. PMID: 24575726; PMCID: PMC5379176. Available at: *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5379176/.*

reductions in the broader U.S. food supply. As explained below, the average American's sodium daily intake is about 48 percent higher than the daily recommended limit for those 14 years and older. Taken together, efforts by FDA and USDA support a broad, government-wide effort to improve dietary patterns and reduce average sodium intake across the U.S. population, including among school children.

Stakeholder Engagement on Sodium Standards: Public Comments and Listening Sessions

USDA received extensive stakeholder input on the sodium standards through public comments and listening sessions held in spring and summer 2022. This section provides an overview of input received through public comments, followed by input shared during the listening sessions.

Public comments on the transitional standards rule provided feedback on the transitional sodium standards, and in many cases, provided USDA with suggestions to develop the standards proposed in this rulemaking. Several respondents noted the importance of reducing sodium in school meals to limit children's risk of chronic disease. An advocacy organization focused on public health noted that most Americans—including 9 out of 10 children—consume sodium at levels far above the recommended limits, putting them at increased risk for developing elevated blood pressure at an early age. An advocacy organization focused on nutrition and science agreed, noting that studies show a link between high blood pressure in childhood and high blood pressure in adulthood. They also asserted that high blood pressure in childhood is linked to early development of heart disease and risk for premature death. One respondent who identified as a pediatric cardiologist underscored these concerns and suggested limiting sodium would benefit children's health.

An advocacy organization representing food and nutrition professionals supported the transitional sodium standards and urged USDA to continue reducing sodium in its future rulemaking. This organization recognized the challenges of further reductions but emphasized the importance of limiting sodium to reduce children's risk of chronic disease. Another advocacy organization focused on public health agreed that USDA made important progress with the transitional sodium standards but must go further with its long-term standards.

Several respondents commented on the sodium targets from the 2012 rule. A few advocacy organizations recommended that USDA reestablish Sodium Target 2 and the Final Target, and some respondents suggested USDA establish an additional target below the Final Target. Conversely, a school food service respondent expressed uncertainty about schools' ability to further reduce sodium, arguing that levels below Target 1A would result in ''bland'' food and reduced student participation. An industry respondent suggested that USDA extend the transition to Target 2 for several years and advised against returning to the Final Target. A school nutrition director opposed sodium reductions in school meals, noting that schools struggle to meet the current standard and claiming that further reductions would negatively impact the taste of the meals. Another opponent suggested that sodium reductions are not needed and would decrease student acceptance.

Respondents also acknowledged the importance of product reformulation, taste testing, and recipe adjustments in achieving sodium reductions. Several respondents suggested that successful product reformulation is the most significant challenge to sodium reduction in school meals. A trade association asserted that it takes over a year to develop or reformulate products, and that some companies do not have the resources for research and development; other respondents also mentioned the cost of reformulation. An industry respondent asserted that many companies view USDA's sodium limits as ''overly restrictive''; they claimed that further reductions would result in manufacturers leaving the school market. Some industry respondents, however, supported gradual sodium reductions in school meals. For example, one respondent stated its commitment to reducing sodium while maintaining quality and taste. Another industry respondent suggested that all products in their K–12 portfolio could be included in school meals within the weekly sodium standards; this respondent intends to further reduce sodium in their products.

A few respondents commented on the timeframe for future sodium reductions. One advocacy organization recognized that schools would experience challenges achieving the sodium standards for multiple reasons and suggested that USDA create a reasonable, practical timeline to implement sodium standards. They stated that the timeline should allow schools to plan, source, and test meals that are nutritious and palatable. An industry respondent asserted that sodium reductions should be phased in slowly over 15 years or more.

Listening session participants raised many similar themes. Many participants, including State agencies and schools, acknowledged that sodium reductions are a challenge, with some suggesting that they are a greater challenge at lunch. Participants generally supported maintaining weekly sodium limits, as opposed to transitioning to a different sort of limit (such as per-product limits) because weekly limits allow for more flexibility with menu planning. Listening session participants also generally emphasized that gradual decreases are preferable, as they allow children's taste preferences to adapt to lower-sodium foods over time. However, listening session participants representing the food industry emphasized the importance of knowing what end point they are working towards, as this helps with product reformulation efforts. Others, including participants representing schools, also noted the importance of clear expectations for the long term, so that they have adequate time to prepare for sodium reductions.

Proposed Standard

USDA proposes to establish weekly sodium limits, informed by FDA's voluntary sodium reduction goals, with further reductions to support closer alignment with the goals of the *Dietary Guidelines.* For school lunch, this proposed rule would set forth three reductions, to be phased in as follows and as shown in the chart below:

- *SY 2025–2026:* Schools will implement a 10 percent reduction from SY 2024–2025 school lunch sodium limits.
- *SY 2027–2028:* Schools will implement a 10 percent reduction from SY 2026–2027 school lunch sodium limits.
- *SY 2029–2030:* Schools will implement a 10 percent reduction from SY 2028–2029 school lunch sodium limits.

PROPOSED NATIONAL SCHOOL LUNCH PROGRAM SODIUM LIMITS

Age/grade group	Sodium limit: effective July 1, 2025	Sodium limit: effective July 1, 2027	Sodium limit: effective July 1, 2029
Grades K–5	≤1000 mg	≤900 mg	≤810 mg.
Grades 6–8	≤1105 mg	≤990 mg	≤895 mg.
Grades 9–12	≤1150 mg	≤1035 mg	≤935 mg.

Because school breakfasts are closer to meeting dietary recommendations for sodium than school lunches, this proposed rule would set forth two reductions for school breakfasts, to be phased in as follows and as shown in the chart below:

- SY 2025–2026: Schools will implement a 10 percent reduction from SY 2024–2025 school breakfast sodium limits.
- SY 2027–2028: Schools will implement a 10 percent reduction from SY 2026–2027 school breakfast sodium limits.

PROPOSED SCHOOL BREAKFAST PROGRAM SODIUM LIMITS

Age/grade group	Sodium limit: effective July 1, 2025	Sodium limit: effective July 1, 2027
Grades K–5	≤485 mg	≤435 mg.
Grades 6–8	≤540 mg	≤485 mg.
Grades 9–12	≤575 mg	≤520 mg.

As a best practice, USDA will also recommend sodium limits for certain products, such as condiments and sandwiches, which are top contributors of sodium in school lunch.[60] This will support schools' efforts to procure lower sodium products and meet the weekly limits. USDA expects that FDA's voluntary sodium reduction targets will be helpful in developing these best practice limits. USDA also invites input from the public on which products it should develop best practice sodium limits for, including what specific limits would be achievable for schools and industry while still making a difference for children. Meeting these best practice limits would be recommended, but not required.

USDA expects that the implementation timeframes and the gradual approach to sodium reductions outlined above will support manufacturers' efforts to develop and reformulate food products, making implementation more achievable for schools. It will also give schools time to plan menus that gradually reduce sodium and maintain palatability. In the years between now and SY 2025–2026, USDA encourages schools to work towards lower sodium meals, and if possible, to meet the proposed limits early. USDA invites public input on the sodium proposals for school lunch and breakfast and is specifically interested in input on the frequency of sodium reductions and the proposed schedule for those reductions.

USDA recognizes that sodium reduction is challenging for schools and that it involves many stakeholders, including nutrition and health experts, the food industry, and other Federal partners. Successful implementation of sodium reduction in school meals will require commitment and support from each of these partners. USDA will evaluate progress towards reducing sodium in school meals, as well as in the broader marketplace, on an ongoing basis. USDA is also committed to providing technical assistance and support to schools working to implement the sodium reductions proposed in this rulemaking.

When determining the sodium limits for school lunch and breakfast, it is important to remember that the limits established by USDA apply to the meals as offered, and children's actual sodium intake is dependent on the meals as consumed. When accounting for children's consumption of meals, these proposed sodium reductions either approach or meet dietary recommendations for sodium intake among school-aged children. Most schools participate in offer versus serve, which allows students to decline some components of a reimbursable meal as a way of providing choice and reducing waste. Offer versus serve is mandatory at lunch and optional at breakfast for high schools. For elementary and middle schools, offer versus serve is optional in both programs. During SY 2014–2015 over 80 percent of all elementary and middle schools used offer versus serve at lunch.[61] This means that most students participating in the school lunch program have the option to decline some food components and will therefore consume less sodium compared to the complete lunch as menued. However, USDA also appreciates the importance of gradually reducing the amount of sodium offered in meals to support reducing children's sodium consumption over time; this proposed rule works towards that goal. (See the Regulatory Impact Analysis in *Section 18: Procedural Matters,* for more information.)

USDA seeks comment on this proposed change, found in 7 CFR 210.10(c) and (f)(3) and 7 CFR 220.8(c) and (f)(3) of the proposed regulatory text. Respondents are encouraged to comment on the limits proposed, as well as the implementation timeframe.

In developing this proposal, USDA considered several important factors, outlined below.

[60] According to the *School Nutrition and Meal Cost Study,* in SY 2014–2015 in the NSLP, ''Overall, the top contributor of sodium was condiments and toppings, followed by sandwiches with plain meat, poultry, or fish; flavored fat-free milk; sandwiches with breaded meat, poultry, or fish; and salad dressings.'' *School Nutrition and Meal Cost Study, Final Report Volume 2: Nutritional Characteristics of School Meals* by Elizabeth Gearan, Mary Kay Fox, Katherine Niland, Dallas Dotter, Liana Washburn, Patricia Connor, Lauren Olsho, and Tara Wommak. Project Officer: John Endahl. Alexandria, VA: April 2019. Available at: *https://www.fns.usda.gov/school-nutrition-and-meal-cost-study.* (OMB Control Number 0584–0596, expiration date 07/31/2017.)

[61] See page 127 (A.25). U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, *School Nutrition and Meal Cost Study, Final Report Volume 1: School Meal Program Operations and School Nutrition Environments,* by Sarah Forrestal, Charlotte Cabili, Dallas Dotter, Christopher W. Logan, Patricia Connor, Maria Boyle, Ayseha Enver, and Hiren Nissar. Project Officer: John Endahl. Alexandria, VA: April 2019. Available at: *https://www.fns.usda.gov/school-nutrition-and-meal-cost-study.* (OMB Control Number 0584–0596, expiration date 07/31/2017.)

Impact of Sodium on Children's Health

The *Dietary Guidelines* recommend limiting foods and beverages high in sodium, noting that ''there is very little room for food choices that are high in sodium'' at most ages.[62] However, average intakes of sodium are currently high compared to recommendations. For example, a USDA study found that during SY 2014–2015, over 80 percent of school-aged children consumed more sodium than recommended.[63] Another study using 2011–2016 National Health and Nutrition Examination Survey data found that most children (94 percent) had usual sodium intakes that exceeded recommended intakes; this study found that there were no differences based on participation in the school meal programs.[64] Overall, average U.S. sodium intake is 3,400 mg per day. For comparison, the *Dietary Guidelines* recommend adults and children 14 years and older limit sodium intake to less than 2,300 mg per day; the recommendations for children 13 years and younger are even lower.[65] When comparing the average American's sodium intake to recommendations, the average American's daily intake is about 48 percent higher than the recommended level.

According to the American Heart Association,[66] excess sodium intake is associated with higher blood pressure in children, and children with high-sodium diets are almost 40 percent more likely to have elevated blood pressure compared to children with lower-sodium diets. About one in six children ages 8–17 years has raised blood pressure.[67] Further, high blood pressure in childhood is linked to early development of heart disease. Conversely, lowering sodium intake during childhood can reduce the risk for high blood pressure in adulthood. High blood pressure is currently all too common in adults: more than 4 in 10 adults in the U.S. have high blood pressure and that number increases to almost 6 in 10 for non-Hispanic Black adults.[68] As noted in a study published in 2015, ''available data are sufficiently strong to recommend a lower sodium intake beginning early in life,'' including through sodium reductions in school meals. This study also noted that eating patterns, including preferences for foods higher in sodium, are developed at a young age, concluding that ''the most appropriate approach to halt [the hypertension] epidemic should include prevention strategies that target children.'' [69] Given the potential long-term impact on children's health, as demonstrated through numerous scientific studies, it is critical to reduce sodium levels in school meals.

Food and Drug Administration Voluntary Sodium Reduction Goals

In October 2021, FDA issued short-term (2.5-year) voluntary sodium reduction for 163 categories of processed, packaged, and prepared foods. FDA's targets take into consideration the many functions of sodium in food, including taste, texture, microbial safety, and stability; the targets are intended to support increased food choice for consumers seeking a diverse diet that is consistent with recommendations of the *Dietary Guidelines* by encouraging food reformulation and new product development for Americans. The targets in FDA's guidance seek to support decreasing average U.S. population sodium intake from approximately 3,400 mg to 3,000 mg per day, about a 12 percent reduction by encouraging food manufacturers, restaurants, and food service operations to gradually reduce sodium in foods over time. FDA's voluntary sodium reduction goals are expected to support school efforts to procure lower-sodium products for use in school meals.

The sodium limits in this proposed rule are informed by FDA's voluntary sodium reduction goals. FDA's goals are not intended to focus on foods (*e.g.,* milk) that contain only naturally occurring sodium, and were developed to reflect reformulation in targeted foods, where an actionable reduction could occur, while still allowing for naturally occurring sodium in items such as milk, fresh fruit, and fresh vegetables. To develop the proposed school meal sodium limits, USDA used the average short-term FDA targets for foods commonly served in school lunch and breakfast to calculate a baseline menu goal for weekly sodium limits for each meal; this calculation resulted in an initial 10 percent reduction from the transitional sodium limits. However, USDA recognized that further incremental sodium reductions are needed to support children's long-term health, particularly at lunch. USDA also recognized that FDA expects to issue revised subsequent targets in the next few years to facilitate a gradual, iterative process to reduce sodium intake.[70] Therefore, in addition to the initial 10 percent reduction to the weekly sodium limits in SY 2025–2026, this rulemaking proposes a second 10 percent reduction in SY 2027–2028 for both programs. For school lunch only, this rulemaking proposes another 10 percent reduction for SY 2029–2030. When accounting for children's consumption of meals, these proposed limits either approach or meet dietary recommendations for sodium intake among school-aged children. (See the Regulatory Impact Analysis in *Section 18: Procedural Matters,* for more information). Further, USDA expects that this gradual approach to sodium reduction would set schools and students up for success, as research indicates gradual sodium reductions are less noticeable to consumers.[71] While the limits proposed in this rulemaking represent significant progress towards reducing children's sodium intake, USDA is committed to continually evaluating the sodium limits and how they compare to dietary recommendations.

Taken together, efforts by FDA and USDA support a broad, government-wide effort to improve dietary patterns and reduce average sodium intake

[62] U.S. Department of Agriculture and U.S. Department of Health and Human Services. *2020–2025 Dietary Guidelines for Americans. 9th Edition.* December 2020. Available at: *https://www.dietaryguidelines.gov/.*

[63] See Table I.43. U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, *School Nutrition and Meal Cost Study Volume 4: Student Participation, Satisfaction, Plate Waste, and Dietary Intakes Appendix I–P.* Available at: *https://www.fns.usda.gov/school-nutrition-and-meal-cost-study.* (OMB Control Number 0584–0596, expiration date 07/31/2017.)

[64] Gleason, S., Hansen, D., Kline, N., Zvavitch, P., & Wakar, B. (2022). *Indicators of diet quality, nutrition, and health for Americans by program participation status, 2011–2016: NSLP final report.* Prepared by Insight Policy Research. U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support. Available at: *https://www.fns.usda.gov/cn/diet-health-indicators-program-participation-status-2011-2016.*

[65] See page 46. U.S. Department of Agriculture and U.S. Department of Health and Human Services. *2020–2025 Dietary Guidelines for Americans. 9th Edition.* December 2020. Available at: *https://www.dietaryguidelines.gov/.*

[66] American Heart Association, *Sodium and Kids.* Available at: *https://www.heart.org/en/healthy-living/healthy-eating/eat-smart/sodium/sodium-and-kids.*

[67] The Centers for Disease Control and Prevention, *Reducing Sodium in Children's Diets.* Available at: *https://www.cdc.gov/vitalsigns/children-sodium/index.html.*

[68] Ostchega Y, Fryar CD, Nwankwo T, Nguyen DT. *Hypertension prevalence among adults aged 18 and over: United States, 2017–2018.* NCHS Data Brief, no 364. Hyattsville, MD: National Center for Health Statistics. 2020. Available at: *https://pubmed.ncbi.nlm.nih.gov/32487290/.*

[69] Appel, L.J., Lichtenstein, A.H., Callahan, E.A., Sinaiko, A., Van Horn, L., & Whitsel, L. (2015). *Reducing Sodium Intake in Children: A Public Health Investment.* Journal of clinical hypertension (Greenwich, Conn.), 17(9), 657–662. Available at: *https://doi.org/10.1111/jch.12615.*

[70] U.S. Food and Drug Administration. *Sodium Reduction.* Available at:*www.fda.gov/SodiumReduction.*

[71] Institute of Medicine 2010. *Strategies to Reduce Sodium Intake in the United States.* Washington, DC: The National Academies Press. *https://doi.org/10.17226/12818.*

across the U.S. population, including among school children. USDA expects further sodium reductions to be achievable as even more new and reformulated food products that align with FDA's voluntary targets become available. Aligning school meal sodium limits with FDA's voluntary sodium reduction goals may help support children's acceptance of school lunches and breakfasts with less sodium, as the school meal reductions will occur alongside sodium reductions in the broader U.S. food supply.

Public Comments Requested

USDA will consider the following questions when developing the final rule and may incorporate changes to the sodium proposal based on public input. USDA invites public input on this proposal in general, and requests specific input on the following questions:

- USDA plans to recommend (but not require) sodium limits for certain products, such as condiments and sandwiches, to further support schools' efforts to procure lower sodium products and meet the weekly limits.
  - For which products should USDA develop best practice sodium limits?
  - What limits would be achievable for schools and industry, while still supporting lower-sodium meals for children?
- Does the proposed implementation timeframe provide appropriate lead time for manufacturers and schools to successfully implement the new sodium limits?
- Do commenters agree with USDA's proposed schedule for incremental sodium reductions, including both the number and level of sodium reductions and the timeline, or suggest an alternative? Why?

Section 6: Menu Planning Options for American Indian and Alaska Native Students

Current Requirement

Current regulations at 7 CFR 210.10(m)(3) encourage schools to ''consider ethnic and religious preferences when planning and preparing meals.'' The meal pattern standards allow a wide variety of foods to be served to meet the meal component requirements, including foods traditional to Native American and Alaska Native communities (See *Section 7: Traditional Foods*). However, any efforts to meet student preferences must follow the meal pattern standards outlined in regulation. At the same time, USDA currently allows schools in American Samoa, Puerto Rico, and the U.S. Virgin Islands to serve vegetables such as yams, plantains, or sweet potatoes to meet the grains component. The option is intended to accommodate cultural food preferences and to address product availability and cost concerns in these areas.

On February 10, 2022, USDA released its Equity Action Plan,[72] which details action the Department will take to advance equity, including a focus on increasing Tribal trust. The Equity Action Plan highlights the importance of considering policy design and implementation to ensure Tribal communities have equitable access to Federal programs and services, including incorporating indigenous values and perspectives in program design and delivery. In this plan, USDA also committed to reviewing ''current statutory authorities, regulations, and policies that can be used to promote tribal sovereignty and self-determination throughout USDA, with an eye towards expansion.''

Stakeholder Engagement: Public Comments and Listening Sessions

Several comments on the transitional standards rule addressed the importance of meeting dietary needs and preferences of students, including those of American Indian and Alaska Native students. For example, several respondents submitted written comments noting that the *Dietary Guidelines*[73] recognize the importance of personal, cultural, and traditional dietary preferences, and these respondents suggested that USDA's meal patterns do the same. One advocacy organization emphasized that all children should be able to consume a school meal that supports their culture and health needs. Another advocacy organization encouraged USDA to obtain feedback from schools that serve a high proportion of students of color or indigenous students when developing the proposed rule. This organization suggested that USDA elevate strategies to meet nutritional goals, develop meal patterns that celebrate students' cultural heritage, and encourage culturally relevant foods. Similarly, an industry association suggested that the school meal programs need to do more to promote equity and expand culturally appropriate meal options for children.

Oral comments were submitted in listening sessions that USDA conducted with Tribal stakeholders in spring 2022. During these sessions, participants suggested that USDA provide some latitude so that schools can offer meals that better align with student's food traditions. For example, many participants expressed concern about milk requirements, considering the high percentage of children with lactose intolerance in indigenous communities. Many Tribal stakeholders, including indigenous nutritionists, expressed concern about the grains requirements as a poor nutritional match for indigenous children and a contributory factor to the high diabetes rates in indigenous communities. These stakeholders requested indigenous starchy vegetables be allowed as a grain substitute, and for USDA to invest in more research into how the *Dietary Guidelines* work or do not work for indigenous communities.

Proposed Standard

USDA proposes to add tribally operated schools, schools operated by the Bureau of Indian Education, and schools serving primarily American Indian or Alaska Native children to the list of schools[74] that may serve vegetables to meet the grains requirement, and requests public input on additional menu planning options that would improve the child nutrition programs for American Indian and Alaska Native children. USDA also proposes to revise the current regulatory text at 7 CFR 210.10(c)(3) and 220.8(c)(3) to clarify that this provision also allows the substitution of traditional vegetables such as prairie turnips. While the proposed list of specific vegetables is not exclusive, USDA welcomes public input on any other vegetables that should be listed in the regulatory text. This proposal is also extended to the CACFP and SFSP: USDA proposes to revise 7 CFR 225.16(f)(3) and 226.20(f) to allow institutions and facilities, or sponsors, as applicable, that serve primarily American Indian or Alaska Native children to substitute vegetables for grains or breads. Additionally, USDA proposes to include schools in Guam and Hawaii in this provision for all programs, to reflect cultural food preferences. Schools, institutions,

[72] U.S. Department of Agriculture, *USDA Equity Action Plan in Support of Executive Order (E.O.) 13985 Advancing Racial Equity and Support for Underserved Communities through the Federal Government,* February 10, 2022. Available at: *https://www.usda.gov/equity/action-plan.*

[73] The *Dietary Guidelines* are described as a framework that may be customized to fit cultural traditions. See page 27. U.S. Department of Agriculture and U.S. Department of Health and Human Services. *2020–2025 Dietary Guidelines for Americans. 9th Edition.* December 2020. Available at: *https://www.dietaryguidelines.gov/.*

[74] As noted above, USDA currently allows schools in American Samoa, Puerto Rico, and the U.S. Virgin Islands to serve vegetables such as yams, plantains, or sweet potatoes to meet the grains component. See 7 CFR 210.10(c)(3) and 220.8(c)(3).

facilities, and sponsors would not be required to submit a request for approval to use this option; it would be automatically available to any qualifying school, institution, facility, or sponsor.

For the NSLP and SBP, the school food authority would be responsible for maintaining documentation to demonstrate that the schools using this option are tribally operated, are operated by the Bureau of Indian Education, or serve primarily American Indian or Alaska Native students. This documentation would be maintained for program reviews. For example, this documentation could be a certifying statement indicating that the school is tribally operated or operated by the Bureau of Indian Education. By ''schools serving primarily American Indian or Alaska Native children,'' USDA intends to include schools where American Indian or Alaska Native children represent the largest demographic group of enrolled children. This could be based on participant self-reporting, school data, or census data; to meet the documentation requirement, these schools could, for example, maintain aggregate data regarding their student demographics.

For the CACFP and SFSP, the institution, facility, or sponsor would also be required to maintain documentation demonstrating that the site qualifies for this menu planning option. For CACFP and SFSP, the determination that an institution, facility, or sponsor serves primarily American Indian or Alaska Native children would be made in one of two ways:

- For enrolled sites, the institution, facility, or sponsor determines, based on participant self-reporting, that American Indian or Alaska Native children represent the largest demographic group of enrolled children.
- For non-enrolled sites, the institution, facility, or sponsor determines that American Indian or Alaska Native children represent the largest demographic group of children served by the site, based on school or census data.

This action builds on the commitment USDA made in its Equity Action Plan [75] to adapt its programs to include Tribal values and indigenous perspectives, including supporting traditional food ways. At the same time, USDA acknowledges that for decades, the United States government actively sought to eliminate traditional American Indian and Alaska Native ways of life—for example, by forcing indigenous families to send their children to boarding schools. This separated indigenous children from their families and heritage, and disrupted access to traditional foods, altering indigenous children's relationship to food.[76]

USDA recognizes that this rulemaking is just one small step in a larger effort towards improving the child nutrition programs for American Indian and Alaska Native children and encourages input on other steps the Department can take to improve the programs for American Indian and Alaska Native children. For example, USDA is interested in other specific areas of the school meal pattern that present challenges to serving culturally appropriate meals, specifically regarding any regulatory requirements in 7 CFR 210.10 and 220.8. This could include, for example, meal component requirements that present barriers to serving culturally appropriate meals. Individuals and organizations are encouraged to provide feedback on specific regulatory requirements outlined at:

- 7 CFR 210.10(c), (d), (e), and (f)
- 7 CFR 220.8(c), (d), (e), and (f)

Based on public input, in the final rule, USDA may incorporate additional menu planning options for schools that are tribally operated, are operated by the Bureau of Indian Education, or serve primarily American Indian or Alaska Native students. Alternatively, USDA may also consider finalizing a process by which these schools could request, on a case-by-case basis, menu planning options for USDA approval, provided the requests reasonably align with meal pattern requirements. If finalized, either of these options would be in addition to the proposal included in this rulemaking. These potential options, if finalized, would not relax the nutrition standards, but instead would allow schools to use an alternative approach to achieve the goal of providing healthy meals for their students. USDA greatly appreciates public input on this topic, particularly from members of American Indian or Alaska Native communities.

These proposed changes are found in 7 CFR 210.10(c)(3), 220.8(c)(3), 225.16(f)(3), and 226.20(f) of the proposed regulatory text.

Public Comments Requested

USDA will consider the following questions when developing the final rule and may incorporate changes to this proposal based on public input. Additionally, in the final rule, USDA may consider additional menu planning options for schools that are tribally operated, are operated by the Bureau of Indian Education, or serve primarily American Indian or Alaska Native children, based on public input. USDA invites public input on this proposal and the alternatives in general, and requests specific input on the following question:

- USDA requests public input on additional menu planning options that would improve the school meal programs for American Indian and Alaska Native children. Are there other specific areas of the school meal pattern that present challenges to serving culturally appropriate meals for American Indian and Alaska Native children, specifically regarding any regulatory requirements in 7 CFR 210.10 and 220.8?

Section 7: Traditional Foods

Current Requirement

Information about crediting foods in the school meal programs is primarily communicated through USDA guidance, rather than regulation. As such, while traditional foods are not explicitly mentioned in the school lunch and breakfast program regulations, they may be served in reimbursable school meals in accordance with USDA guidance.

USDA does not define the term ''traditional foods;'' however, the Agriculture Improvement Act of 2014, as amended (25 U.S.C. 1685(b)(5)) defines traditional food as ''food that has traditionally been prepared and consumed by an [American] Indian tribe'' and includes the following foods in its definition: wild game meat; fish; seafood; marine mammals; plants; and berries. USDA acknowledges that there are 574 federally recognized tribes in the United States and appreciates the importance of recognizing the diversity of American Indian and Alaska Native cultures and traditions, including food traditions.

The *Food Buying Guide* [77] is the USDA's main resource for determining how specific foods credit towards the meal pattern requirements. While the *Food Buying Guide* provides a broad list of products commonly served in the child nutrition programs, it does not

[75] U.S. Department of Agriculture, *USDA Equity Action Plan in Support of Executive Order (E.O.) 13985 Advancing Racial Equity and Support for Underserved Communities through the Federal Government,* February 10, 2022. Available at: *https://www.usda.gov/equity/action-plan.*

[76] National Museum of the American Indian, *Struggling with Cultural Repression, Chapter 3: Boarding Schools.* Available at: *https://americanindian.si.edu/nk360/code-talkers/boarding-schools/*.

[77] U.S. Department of Agriculture, *Food Buying Guide for Child Nutrition Programs.* Available at: *https://www.fns.usda.gov/tn/food-buying-guide-for-child-nutrition-programs.*

provide yield information on every possible food served in a reimbursable meal; for example, some traditional foods are not listed in the *Food Buying Guide.*

In 2015, USDA issued policy guidance [78] about serving traditional foods in the child nutrition programs. In this guidance, USDA explained that if a food is served as part of a reimbursable meal, but not listed in the *Food Buying Guide,* the yield information of a similar food or in-house yield [79] may be used to determine the contribution towards the meal pattern requirements. The 2015 guidance also explained how to credit certain traditional foods, such as wild rice, blue cornmeal, and ground buffalo. Other resources, such as USDA's fact sheet *Bringing Tribal Foods and Traditions Into Cafeterias, Classrooms, and Gardens,*[80] encourage schools to incorporate traditional foods onto their menus. USDA will work to incorporate the 2015 policy guidance into the *Food Buying Guide* and will work on a multi-year initiative with tribes to identify more traditional foods to provide yield information and incorporate into the guide.

Stakeholder Engagement: Public Comments and Listening Sessions

Although the transitional standards rule did not include a traditional foods provision, a handful of written comments and dozens of oral comments provided by Tribal stakeholders addressed this topic. For example, one advocacy organization asserted that many Tribal communities would like to serve traditional foods in the school meal programs and suggested that promoting the service of such foods is an important part of an equitable school meal program.

During USDA's listening sessions with Tribal stakeholders, participants highlighted the importance of serving traditional foods in the school meal programs, as well as local and traditional fruits, starchy vegetables, meats, and fish. Participants also discussed the financial and regulatory challenges of fuller incorporation of such traditional foods into school meals and expressed their position that traditional foods are nutritionally a better match for indigenous children. Tribal stakeholders emphasized that what constitutes ''traditional foods'' varies by Tribal community.

Proposed Change

USDA proposes to explicitly state in regulation that traditional foods may be served in reimbursable school meals. The intent of this change is to emphasize USDA's support for integrating traditional foods into the school meal programs. While many traditional foods may already be served in the programs under existing USDA regulations and guidance, USDA expects that this regulatory change to explicitly mention traditional foods will help to address the perception that traditional foods are not creditable, draw attention to the option to serve traditional foods, and support local efforts to incorporate traditional foods into school meals. Within its authority, USDA will work with State agencies and schools to overcome any food safety, crediting, or other barriers to serving traditional foods in school meals to fully realize the intent of the change.

As noted, USDA does not define the term ''traditional food.'' By ''traditional food,'' USDA means the definition included in the Agriculture Improvement Act of 2014, as amended (25 U.S.C. 1685(b)(5)), which defines traditional food as ''food that has traditionally been prepared and consumed by an [American] Indian tribe,'' including wild game meat; fish; seafood; marine mammals; plants; and berries. USDA intends for this term to be used broadly, to cover the diversity of food traditions among American Indian and Alaska Native communities. However, as noted below, USDA welcomes stakeholder input on use of this term, and may adjust the term in the final rule based on this input.

This proposed change is found in 7 CFR 210.10(c)(7) and 220.8(c)(4) of the proposed regulatory text.

Public Comments Requested

USDA recognizes that this change is just one part of a larger effort to support the service of traditional foods in school meals. USDA will consider the following questions when developing the final rule and may incorporate changes to the traditional foods proposal based on public input. USDA invites public input on this proposal in general, and requests specific input on the following questions:

- USDA has provided guidance [81] on crediting certain traditional foods. Are there any other traditional foods that schools would like to serve, but are having difficulty serving? If so, what specific challenges are preventing schools from serving these foods?
- Which traditional foods should USDA provide yield information for and incorporate into the *Food Buying Guide*?
- Is ''traditional foods,'' as described in the Agriculture Improvement Act of 2014, as amended (25 U.S.C. 1685(b)(5)), an appropriate term to use, or do stakeholders recommend a different term?

USDA greatly appreciates public input on this topic, particularly from members of American Indian or Alaska Native communities.

Section 8: Afterschool Snacks

Current Requirement

According to the National School Lunch Act (NSLA, 42 U.S.C. 1766a(d)), the nutritional requirements for snacks served through the CACFP [82] also apply to afterschool snacks served by schools. USDA updated the CACFP meal pattern standards in 2017 but did not make corresponding updates to the standards in 7 CFR part 210 for afterschool snacks served to school-aged children, which are also referred to as ''meal supplements.'' As such, current regulations at 7 CFR 210.10(o)(2) outlining the standards for afterschool snacks served under 7 CFR part 210 for school-aged children are outdated and do not reflect statutory requirements. As outlined at 7 CFR 210.10(o)(3), afterschool snacks served to preschool-aged children already follow the CACFP meal pattern standards. To avoid confusion with afterschool snacks served through the CACFP, the remainder of this preamble will refer to afterschool snacks served by schools under 7 CFR part 210 as ''NSLP snacks.''

Proposed Standard

USDA proposes to align NSLP snack standards for school-aged children at 7 CFR 210.10(o) with the CACFP snack requirements, as required by statute. The existing requirements for NSLP snacks served to preschool-aged children and infants will remain in effect.

Under the proposed NSLP snack requirements for school-aged children, reimbursable snacks would include two of the following five components, as is currently required for CACFP snacks:

- Milk
- Vegetables

[78] U.S. Department of Agriculture, *Child Nutrition Programs and Traditional Foods,* July 15, 2015. Available at: *https://www.fns.usda.gov/cn/child-nutrition-programs-and-traditional-foods.*

[79] Information on calculating in-house yield data may be found on page I–5 of the *Food Buying Guide.*

[80] U.S. Department of Agriculture, *Bringing Tribal Foods and Traditions Into Cafeterias, Classrooms, and Gardens,* August 2017. Available at: *https://www.fns.usda.gov/cfs/bringing-tribal-foods-and-traditions-cafeterias-classrooms-and-gardens.*

[81] U.S. Department of Agriculture, *Child Nutrition Programs and Traditional Foods,* July 15, 2015. Available at: *https://www.fns.usda.gov/cn/child-nutrition-programs-and-traditional-foods.*

[82] The nutrition standards for snacks served through the CACFP are found at 7 CFR 226.20(c)(3).

- Fruits
- Grains
- Meats/meat alternates (or ''protein sources,'' as proposed; see *Section 15: Miscellaneous Changes*)

USDA also proposes applying the following CACFP snack requirements to NSLP snacks served to school-aged children:

- Only one of the two components served at snack may be a beverage.
- Milk must be unflavored or flavored fat-free (skim) or low-fat (1 percent fat or less) milk for children 6 years old and older.
- At least one serving of grains per day, across all eating occasions, must be whole grain-rich.
- Grain-based desserts do not count towards meeting the grains requirement.
- As proposed in *Section 2: Added Sugars,* breakfast cereals must contain no more than 6 grams of added sugars per dry ounce.
- As proposed in *Section 2: Added Sugars,* yogurt must contain no more than 12 grams of added sugars per 6 ounces.

For simplicity, USDA proposes to create one NSLP snack meal pattern chart in 7 CFR 210.10(o) by adding a column for children ages 6 and over to the existing meal pattern chart for NSLP snacks served to preschoolers. Additionally, USDA proposes to change all regulatory references in 7 CFR part 210 from ''meal supplements'' to ''afterschool snacks.''

USDA seeks comment on this proposed change, found in 7 CFR 210.10(o) of the proposed regulatory text.

Section 9: Substituting Vegetables for Fruits at Breakfast

Current Requirement

Current regulations at 7 CFR 220.8(c) and (c)(2)(ii) allow schools to substitute vegetables for fruits at breakfast, provided that the first two cups per week are from the dark green, red/orange, beans and peas (legumes) or other vegetable subgroups. However, in recent years, through Federal appropriations, Congress has provided school food authorities the option to substitute any vegetable—including starchy vegetables—for fruits at breakfast, with no vegetable subgroup requirements.

USDA recognizes that it is confusing for State agencies and schools to have a requirement in regulation and policy that is repeatedly changed through Congressional action. As noted in *Section 1: Background,* child nutrition stakeholders have requested stability in program requirements. To better meet these expectations and support schools, USDA intends to establish a durable standard that continues to encourage vegetable variety at breakfast.

Proposed Change

USDA proposes to continue to allow schools to substitute vegetables for fruits at breakfast, but changes the vegetable variety requirement. Under this proposal, schools that substitute vegetables for fruits at breakfast more than one day per school week would be required to offer a variety of vegetable subgroups. In other words, schools that substitute vegetables more than one day per school week would be required to offer vegetables from at least two subgroups.

According to the *Dietary Guidelines,* healthy dietary patterns include a variety of vegetables from all five vegetable subgroups. The *Dietary Guidelines* also note that for most individuals, following a healthy eating pattern will require an increase in total vegetable intake and an increase from all vegetable subgroups.[83] While the *Dietary Guidelines* recommend increasing consumption of vegetables in general, they note that starchy vegetables are more frequently consumed by children and adolescents than the red and orange; dark green; or beans, peas, and lentils vegetable subgroups, underscoring the need for variety. This proposal continues to encourage schools opting to serve vegetables at breakfast to offer a variety of subgroups, but in a way that is less restrictive compared to the current regulatory standard.

Under this proposal, schools choosing to offer vegetables at breakfast one day per school week would have the option to offer any vegetable, including a starchy vegetable. The requirement to offer a second vegetable subgroup would apply in cases where schools choose to substitute vegetables for fruits at breakfast more than one day per school week. For example, a school could substitute a starchy vegetable for fruit at breakfast on Monday, then substitute a dark green vegetable for fruit at breakfast on Tuesday. The rest of the week the school could choose to substitute any vegetable, including a starchy vegetable, for fruit at breakfast, since it would have met the variety requirement by Tuesday. Consistent with current regulations, schools are not required to offer vegetables at breakfast, and may choose to offer only fruits at breakfast to meet this component requirement.

USDA seeks comment on this proposed change, found in 7 CFR 220.8(c)(2)(ii) of the proposed regulatory text.

Section 10: Nuts and Seeds

Current Requirement

Current regulations allow nuts and seeds and nut and seed butters to be served as a meat/meat alternate in the child nutrition programs. In all child nutrition programs, nut and seed butters may credit for the full meat/meat alternate requirement. However, there is some variation for crediting of actual nuts and seeds in the programs. Lunch and supper regulations limit nut and seed crediting to 50 percent of the meat/meat alternate component (7 CFR 210.10(c)(2)(i)(B), 225.16(d)(2), 225.16(e)(5), and 226.20(a)(5)(ii)). SBP regulations include the same limit (7 CFR 220.8(c)(2)(i)(B)). CACFP regulations for breakfast do not explicitly include the 50 percent limit for nuts and seeds, but refer to USDA guidance, which includes the 50 percent limit (7 CFR 226.20(a)(5)(ii)). Snack regulations and USDA guidance on snacks do not include the 50 percent limit; nuts and seeds may credit for the full meat/meat alternate component when offered as part of a snack (7 CFR 210.10(o)(2)(ii)(B), 7 CFR 225.16(e)(5), and 226.20(a)(5)(ii)). For programs where nut and seed crediting is limited to 50 percent of the meat/meat alternate component, program operators choosing to serve nuts and seeds must serve them alongside another meat/meat alternate in order to meet the component requirement.

Stakeholder Engagement: Public Comments

Although the transitional standards rule did not address nuts and seeds, one respondent commented on nuts and seeds crediting. An advocacy organization acknowledged the discrepancy between nut and seed butter crediting compared to nut and seed crediting. They asserted that the nutritional content of nuts and seeds does not change when these foods are blended or pureed into butter form and stated that nuts and seeds and their butters are nutritionally comparable to meat or other meat alternates based on available nutritional data. This advocacy organization supported allowing nuts and seeds to meet the full meat/meat alternate component requirement.

[83] See ''Vegetables,'' page 31. U.S. Department of Agriculture and U.S. Department of Health and Human Services. *2020–2025 Dietary Guidelines for Americans. 9th Edition.* December 2020. Available at: *https://www.dietaryguidelines.gov/.*

Proposed Change

USDA proposes to allow nuts and seeds to credit for the full meat/meat alternate (or protein source) component in all child nutrition programs and meals. This proposal would remove the 50 percent crediting limit for nuts and seeds at breakfast, lunch, and supper. This change is intended to reduce complexity in the requirements by making the requirements consistent across programs and by removing the discrepancy between nut and seed crediting and nut and seed butter crediting. It also provides more menu planning flexibility for program operators. As noted in *Section 15: Miscellaneous Changes,* in this rulemaking, USDA is also proposing to change the name of the meat/meat alternate meal component in the NSLP, SBP, and CACFP regulations to ''protein sources.'' However, current guidance for all programs still uses the term ''meat/meat alternate.'' USDA is using both the current and proposed component name in this section.

USDA expects that nuts and seeds will most often continue to be offered in snacks, or in small amounts at breakfast, lunch, or supper alongside other meat/meat alternates (or protein sources). However, USDA is aware that nuts and seeds may also be used in larger quantities in plant-based meals. For example, walnuts may be used as a substitute for ground beef in tacos, and a variety of nuts may be used as a meat replacement in burgers. While USDA does not necessarily think these menu items will be common due to cost constraints, the Department does not want to limit operators' ability to serve them.

There are several considerations program operators should keep in mind when choosing to serve nuts and seeds. Nuts and seeds are generally not recommended to be served to children ages 1–3 since they present a choking hazard. If served to very young children, nuts and seeds should be finely minced. As always, program operators should also be aware of food allergies among their participants and take the necessary steps to prevent exposure. Finally, USDA encourages program operators to serve nuts in their most nutrient-dense form, without added sugars and salt. Program operators are also encouraged to choose nutrient-dense nut and seed butters, and schools must consider the contribution of these foods to the weekly limits for calories, saturated fat, and sodium.

USDA seeks comment on this proposed change, found in 7 CFR 210.10(c)(2)(i)(B), 220.8(c)(2)(i)(B), 225.16(d)(2), 225.16(e)(5), 226.20(a)(5)(ii), and 226.20(c)(2) of the proposed regulatory text.

Section 11: Competitive Foods—Hummus Exemption

Current Requirement

The Child Nutrition Act, 42 U.S.C. 1778(b), requires USDA to establish science-based nutrition standards for all foods sold in schools outside of the school meal programs. Current regulations at 7 CFR 210.11 establish the competitive foods, or ''Smart Snack'' standards. These standards help to promote healthy food choices and are important to providing children with nutritious food options throughout the school day.

To qualify as a Smart Snack, foods must meet nutrient standards for calories, sodium, fats, and total sugars. The standards for total fat and saturated fat are included at 7 CFR 210.11(f) and are as follows:

- The total fat content of a competitive food must be not more than 35 percent of total calories from fat per item as packaged or served.
- The saturated fat content of a competitive food must be less than 10 percent of total calories per item as packaged or served.

At 7 CFR 210.11(f)(3), USDA has established exemptions to the total fat and saturated fat standards for the following foods:

- Reduced fat cheese and part skim mozzarella cheese,
- Nuts and seeds and nut and seed butters,
- Products that consist only of dried fruit with nuts and/or seeds with no added nutritive sweeteners, and
- Whole eggs with no added fat.

Additionally, according to 7 CFR 210.11(f)(2), seafood with no added fat is exempt from the total fat standard, but subject to the saturated fat standard. Other foods must meet the total fat and saturated fat standards described at 7 CFR 210.11(f) to be sold as a Smart Snack.

Stakeholder Engagement: Public Comments

Although the transitional standards rule did not address the total fat and saturated fat standards for Smart Snacks, one food industry respondent commented on this topic. This respondent stated that hummus, which currently does not meet the fat standards, is primarily made with wholesome ingredients recommended in the *Dietary Guidelines.* They also suggested that hummus helps to promote the consumption of other nutrient dense foods, like vegetables and whole grains. This respondent suggested that USDA remove the total fat requirement from Smart Snack regulations, but also provided some alternative suggestions to allow hummus to be sold as a Smart Snack.

Proposed Change

USDA proposes to add hummus to the list of foods exempt from the total fat standard in the competitive food, or Smart Snack, regulations. Hummus would continue to be subject to the saturated fat standard for Smart Snacks. This change would allow hummus, which is already permitted as part of a reimbursable school meal, to also be sold as a Smart Snack. It also aligns with other proposals in this rulemaking by expanding schools' ability to provide vegetarian and culturally appropriate foods to children. This narrow approach allows schools to provide hummus, a nutrient-dense food option, for sale to children while still maintaining the overall Smart Snack standards. These standards are important to ensuring the food and beverage options available to children during the school day support healthy eating.

Currently, there is no standard of identity for hummus. Therefore, as part of this change, USDA will add the following definition for hummus to the Smart Snack regulations: *Hummus means, for the purpose of competitive food standards implementation, a spread made from ground pulses (beans, peas, and lentils), and ground nut/seed butter (such as tahini [ground sesame], peanut butter, etc.) mixed with a vegetable oil (such as olive oil, canola oil, soybean oil, etc.), seasoning (such as salt, citric acid, etc.), vegetables and juice for flavor (such as olives, roasted pepper, garlic, lemon juice, etc.). Manufactured hummus may also contain certain ingredients necessary as preservatives and/or to maintain freshness.*

This change would apply to hummus as a standalone product; it would not apply to combination products that include hummus, such as hummus packaged for sale with pretzels, pita, or other snack-type foods. Applying this exemption only to hummus would ensure that the other foods children consume alongside hummus would still be subject to the total fat standard. Children would have the option to purchase the standalone hummus and a second standalone product that also meets the Smart Snack standards, such as fresh carrots or whole grain-rich pita bread.

USDA seeks comment on this proposed change, found in 7 CFR

210.11(a)(7) and 210.11(f)(2) of the proposed regulatory text.

Section 12: Professional Standards

Current Requirement

The Child Nutrition Act (42 U.S.C. 1776 (g)(1)(A)) requires the Secretary to establish a program of education, training, and certification for all school food service directors responsible for the management of a school food authority, including minimum educational requirements. In March 2015, USDA published a final rule implementing this requirement, *Professional Standards for State and Local School Nutrition Programs Personnel as Required by the Healthy, Hunger-Free Kids Act of 2010.*[84] Then, in March 2019, USDA published *Hiring Flexibility Under Professional Standards,*[85] a final rule that provided flexibility to the hiring standards for new school nutrition program directors in small local educational agencies. Current regulations at 7 CFR 210.30(b)(1) outline the hiring standards for school nutrition program directors; the standards vary for directors in small, medium, and large local educational agencies.

This rulemaking is focused on the hiring standards for school nutrition program directors in medium (2,500 to 9,999 students) and large (10,000 or more students) local educational agencies. Currently, the hiring requirements for school nutrition program directors in medium or large local educational agencies are as follows:

- According to 7 CFR 210.30(b)(1)(ii), school nutrition program directors with local educational agency enrollment of 2,500 to 9,999 students must have:
  - A bachelor's degree, or equivalent educational experience, with an academic major or concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field;
  - A bachelor's degree, or equivalent educational experience, with any academic major or area of concentration, and a State-recognized certificate for school nutrition directors;
  - A bachelor's degree in any academic major and at least two years of relevant experience in school nutrition programs; or
  - An associate's degree, or equivalent educational experience, with an academic major or area of concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field and at least two years of relevant school nutrition program experience.
- According to 7 CFR 210.30(b)(1)(iii), school nutrition program directors with local educational agency enrollment of 10,000 or more students must have:
  - A bachelor's degree, or equivalent educational experience, with an academic major or area of concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field;
  - A bachelor's degree, or equivalent educational experience, with any academic major or area of concentration, and a State-recognized certificate for school nutrition directors; or
  - A bachelor's degree in any major and at least five years of experience in management of school nutrition programs.

The professional standards are intended to ensure that school nutrition professionals who manage and operate the school meal programs have adequate knowledge and training to meet program requirements. Requiring set qualifications to operate the programs ensures individuals have the knowledge and skills necessary to successfully operate the programs, including serving meals that meet the food component requirements and dietary specifications. The current education requirements are one important way of ensuring school nutrition program directors are prepared to manage the programs; however, USDA also recognizes the value of direct experience working on the programs. USDA understands that some individuals who may be well-positioned to manage the programs based on extensive firsthand experience may not currently qualify for the director position in their local educational agency due to the education requirements.

Proposed Change

USDA proposes to allow State agency discretion to approve the hiring of an individual to serve as a school nutrition program director in a medium or large local educational agency, for individuals who have 10 years or more of school nutrition program experience but who do not hold a bachelor's or associate's degree. Directors would still need to have a high school diploma or GED. USDA expects this change would ease hiring challenges which USDA understands have been experienced by some medium and large local educational agencies. In addition, this proposal would allow highly experienced individuals to advance their careers in school food service. Directors hired under this provision would be encouraged, but not required, to work towards a degree in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field.

As noted below, USDA is requesting public input on whether it is reasonable for medium and large local educational agencies to substitute 10 years of school nutrition program experience for a bachelor's or associate's degree. Based on public input, USDA may adjust the number of years of school nutrition program experience required to substitute for a degree. For example, USDA may reduce the number of years of school nutrition program experience required for candidates to qualify for this exception.

Additionally, USDA proposes to clarify in regulation that State agencies may determine what counts as ''equivalent educational experience'' for the hiring standards. For example, if a candidate for a director position in a medium local educational agency does not have an associate's degree, but has over 60 college credits in a relevant field, the State agency would have the discretion to approve the hiring of that candidate. Similarly, if a candidate for a director position in a large local educational agency does not have a bachelor's degree, but has an associate's degree, has a School Nutrition Specialist certification from the School Nutrition Association, and is an NDTR[86] certified

[84] *Professional Standards for State and Local School Nutrition Programs Personnel as Required by the Healthy, Hunger-Free Kids Act of 2010* (80 FR 11077, March 2, 2015). Available at: *https://www.federalregister.gov/documents/2015/03/02/2015-04234/professional-standards-for-state-and-local-school-nutrition-programs-personnel-as-required-by-the.*

[85] To address hiring challenges faced by small local educational agencies, this rule required relevant food service experience rather than school nutrition program experience for new school nutrition program directors. It also provided State agencies with discretion to consider documented volunteer or unpaid work as relevant experience for new school nutrition program directors in small local educational agencies. Finally, it gave State agencies discretion to accept less than the required years of food service experience when an applicant for a new director position in a local educational agency with fewer than 500 students has the minimum required education. See: *Hiring Flexibility Under Professional Standards* (84 FR 6953, March 1, 2019). Available at: *https://www.federalregister.gov/documents/2019/03/01/2019-03524/hiring-flexibility-under-professional-standards.*

[86] Nutrition and dietetics technicians, registered (NDTRs) are educated and trained at the technical level of nutrition and dietetics practice for the delivery of safe, culturally competent, quality food and nutrition services. See: Academy of Nutrition and Dietetics, *What is a Nutrition and Dietetics Technician Registered?* Available at: *https://*

by the Academy of Nutrition and Dietetics, the State agency would have the discretion to approve the hiring of that candidate. These are just two examples; in general, this proposal would clarify in regulation that the State agency has discretion to determine if other substantial education, school nutrition training, credentialing, and/or certifications, would qualify as equivalent educational experience and to approve hiring of candidates with that experience.

As part of this rulemaking, USDA proposes to remove the existing table at 7 CFR 210.30(b)(2). Due to the amount of information in the table, USDA has determined that instead of updating the table to include the proposed exception, a better approach would be to provide a more user-friendly table (or tables) summarizing the hiring standards on the FNS public website. Because the existing table at 7 CFR 210.30(b)(2) restates requirements that are included in 7 CFR 210.30(b)(1), this change is not substantive.

USDA seeks comments on this proposal, found at 7 CFR 210.30(b)(1) of the proposed rule.

Public Comments Requested

USDA will consider the following questions when developing the final rule and may incorporate changes to the professional standards proposals based on public input. USDA invites public input on these proposals in general, and requests specific input on the following questions:

- Is it reasonable to allow medium and large local educational agencies to substitute 10 years of school nutrition program experience for a bachelor's or associate's degree when hiring a school nutrition program director? USDA requests that commenters explain their response. Based on public input, USDA may adjust the number of years of school nutrition program experience required to substitute for a degree.
- Should USDA also consider allowing medium and large local educational agencies to substitute other types of experience, such as experience in other food service sectors, for a bachelor's or associate's degree when hiring a school nutrition program director? USDA requests that commenters explain their response. Based on public input, USDA may adjust the type of experience allowed to substitute for a degree.
- How often do State agencies and schools anticipate using the hiring flexibility proposed in this rulemaking?
- What strategies do local educational agencies currently use to recruit qualified school nutrition program directors? USDA requests input on successes and challenges local educational agencies of any size have experienced in their recruitment efforts.

Section 13: Buy American

13A: Limited Exceptions to the Buy American Requirement

Current Requirement

The National School Lunch Act (NSLA, 42 U.S.C. 1760(n)) and program regulations at 7 CFR 210.21(d)(2)(i) and 220.16(d)(2)(i), require school food authorities to purchase domestic commodities or products ''to the maximum extent practicable.'' This provision, known as the Buy American provision, supports the mission of the child nutrition programs, which is to serve children nutritious meals and support American agriculture. The Buy American provision is applicable to school food authorities located in the 48 contiguous United States. Although Alaska, Hawaii, and the U.S. territories are exempt from the Buy American provision, school food authorities in Hawaii are required to purchase food products produced in Hawaii in sufficient quantities and school food authorities in Puerto Rico are required to purchase food products produced in Puerto Rico in sufficient quantities. USDA provided guidance [87] on limited circumstances in which the purchase of domestic foods is not practicable and therefore excepted to the Buy American provision:

- The product is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality; or
- Competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product.

USDA has not established a dollar amount or a percentage threshold to permit a school food authority to use the ''significantly higher'' exception to the Buy American provision during procurement. Under current requirements, a school food authority is responsible for determining the dollar amount or percentage which constitutes a significantly higher cost for a domestic product, thus permitting the use of an exception.

The FNS Year 3 Program Operations Study (not yet published) found that 26 percent of school food authorities reported using an exception to the Buy American provision during SY 2017–2018. Among these school food authorities, the reasons cited for using an exception included: limited supply of the commodity or product (88 percent), increased costs of domestic commodities or products (43 percent), and quality issues with available domestic commodities or products (21 percent).

The study also revealed that nearly all school food authorities that used an exception (or exceptions) to the Buy American provision during SY 2017–2018 used an exception to purchase non-domestic fruits, while approximately half used an exception to purchase non-domestic vegetables. On average, products purchased under exceptions made up 8.5 percent of total food purchase expenditures among school food authorities that used an exception to the Buy American provision in SY 2017–2018.

Proposed Change

This proposed rule seeks to strengthen the Buy American requirement while recognizing that purchasing domestic food products is not always practicable for schools. This rulemaking proposes to strengthen the Buy American requirements, by maintaining the current limited exemptions and adding a limit to the resources that can be used for non-domestic purchases. This new limit is lower than the reported expenditures that are currently used for non-domestic products; therefore, this cap will encourage schools that utilize an exemption to reduce the amount of non-domestic purchases currently made by substituting domestic product in situations where the school may be purchasing non-domestic items. To do this, USDA proposes to codify the circumstances described by guidance which are excepted from the Buy American provision as well as create a new threshold limit for school food authorities that use these exceptions. The two exceptions USDA proposes to codify will continue to apply when:

- The product is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality; or
- Competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product.

In order to strengthen the Buy American provision and in line with

www.eatrightpro.org/about-us/what-is-an-rdn-and-dtr/what-is-a-nutrition-and-dietetics-technician-registered.

[87] U.S. Department of Agriculture, *Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program,* June 30, 2017. Available at: *https://www.fns.usda.gov/nslp/compliance-enforcement-buy-american.*

priorities outlined in *Executive Order 14005, Ensuring the Future Is Made in All of America by All of America's Workers,* USDA also proposes to institute a 5 percent ceiling on the non-domestic commercial foods a school food authority may purchase per school year. This cap is based on a USDA study which found that on average, among school food authorities that used one of the limited exceptions to the Buy American provision in SY 2017–2018, products purchased under exceptions made up 8.5 percent of their total food purchase expenditures. In this study only 26 percent of school food authorities used an exception which means a majority of school food authorities are able to fully make domestic purchases and therefore do not need to utilize either of the limited exception. Since the purchase of domestic products are practicable for the majority of school food authorities and to support the intent of *Executive Order 14005,* USDA intends to limit the use of exceptions to this 5 percent threshold. By instituting a 5 percent cap, USDA is balancing the intent of the Buy American provision to support American farmers and ranchers while also recognizing that there are times when purchasing domestic foods is not practicable for schools. Finally, consistent with current USDA guidance, this proposed rule would clarify in regulation that it is the responsibility of the school food authority to determine whether an exception applies.

USDA seeks comments on this proposal, found at 7 CFR 210.21(d)(5) and 220.16(d)(5) of the proposed rule.

Public Comments Requested

USDA's intention is to ensure that the Buy American provision continues to support the mission of the child nutrition programs, which is to serve children nutritious meals and support American agriculture, through school food authority purchases of domestic commodities or products ''to the maximum extent practicable.'' Using available data, USDA proposes to set a 5 percent limit on non-domestic foods that can be purchased.

USDA will consider the following questions when developing the final rule and may incorporate changes to the proposal based on public input. USDA invites public input on this proposal in general, and requests specific input on the following questions:

- Is the proposed 5 percent ceiling on the non-domestic commercial foods a school food authority may purchase per school year a reasonable ceiling, or should a different percentage be used? Would the 5 percent cap encourage those school food authorities using exceptions to reduce the amount of non-domestic products they purchase? USDA requests that respondents include justification and reasons behind their response.
- How feasible would tracking and documenting the total amount of non-domestic food purchases be? Would purchasing and record keeping processes need to be altered? Does the documentation of total non-domestic purchases alleviate burden associated with documenting each limited exception that is used? And any additional information about how school food authorities would document the total amount of non-domestic food purchases versus total annual food purchases.

13B: Exception Documentation and Reporting Requirements

Current Requirement

Currently, the primary mechanism for collecting information on the Buy American provision is via the Child Nutrition Operations (CN–OPS) study. The CN–OPS study is a multi-year study that provides USDA with current information on various aspects of the operation of the school meal programs. USDA uses results from this study to help inform the agency about program management practices and for policy development purposes.

School food authorities document each use of an exception to the Buy American requirement.[88] However there is no requirement to request a waiver from the State agency or USDA in order to purchase a non-domestic product.

Proposed Change

USDA proposes to require school food authorities to maintain documentation supporting utilization of one of the two limited exceptions and that no more than 5 percent of their total annual commercial food costs were for non-domestic foods. To supplement this documentation, USDA would continue to collect information and data on the Buy American provision and school food authority procurement through the annual CN–OPS study.

USDA seeks comments on this proposal, found at 7 CFR 210.21(d)(5)(iii) and 220.16(d)(5)(iii) of the proposed rule.

[88] U.S. Department of Agriculture, *Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program,* June 30, 2017. Available at: *https://www.fns.usda.gov/nslp/compliance-enforcement-buy-american.*

Public Comments Requested

Since school food authorities will only maintain documentation showing that no more than 5 percent of their total annual commercial food costs were for non-domestic food purchases using one of the two limited exceptions, rather than documenting each use of an exception and given that school food authorities will have flexibility in how they maintain documentation, USDA invites public input on this proposal in general, and requests specific input on the following question. USDA will consider this question when developing the final rule and may incorporate changes to the proposals based on public input:

- Is the proposal to require school food authorities to maintain documentation showing that no more than 5 percent of their total annual commercial food costs were for non-domestic foods feasible and is the regulatory language clear enough for school food authorities and State agencies to implement and follow?
- For oversight purposes, USDA is considering requiring school food authorities maintain an attestation statement to attest that any nondomestic food item purchased under the 5 percent cap met one of the two limited exceptions. Would this approach assist school food authorities with the burden associated with documentation requirements? Does it help ensure that any non-domestic food purchase under the 5 percent cap was only a result of utilizing one of the current limited exceptions that USDA proposes to codify through this rulemaking?

13C: Procurement Procedures

Current Requirement

School lunch and breakfast program regulations do not currently require school food authorities to include any Buy American provisions in required documented procurement procedures,[89] solicitations, or contracts. However, USDA guidance has strongly advised school food authorities to include safeguards in solicitation and contract language to ensure Buy American requirements are followed.[90] Additionally, school food authorities are required to monitor solicitation and contract language to ensure that

[89] School food authorities are required to have documented procurement procedures, as per 2 CFR 200.318(a).

[90] U.S. Department of Agriculture, *Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program,* June 30, 2017. Available at: *https://www.fns.usda.gov/nslp/compliance-enforcement-buy-american.*

contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders (2 CFR 200.318(b)).[91]

Proposed Change

This proposed rule would require school food authorities to include the Buy American provision in documented procurement procedures, solicitations, and contracts for foods and food products procured using informal and formal procurement methods, and in awarded contracts. State agencies would verify the inclusion of this language when conducting reviews. USDA expects that this proposal would ensure vendors are aware of expectations at all stages of the procurement process, in addition to providing contractual protection for school food authorities if vendors fail to meet Buy American obligations.

USDA seeks comments on this proposal, found at 7 CFR 210.21(d)(3) and 220.16(d)(3) of the proposed rule.

13D: Definition of ''Substantially''

Current Requirement

The National School Lunch Act (NSLA, 42 U.S.C. 1760(n)(1)(B)) defines a domestic product as ''[a] food product that is processed in the United States substantially using agricultural commodities that are produced in the United States.'' The current regulatory language at 7 CFR 210.21(d)(1) and 220.16(d)(1) is identical to the statutory language. To satisfy the statutory and regulatory requirements, it is clear that the food product must be processed in the United States.[92] However, USDA understands that the meaning of the term ''substantially'' is less clear.

Congressional report language accompanying the original legislation noted that ''substantially means over 51% from American products.'' [93] Accordingly, USDA has stated in guidance that ''substantially'' means over 51 percent of the final processed product (by weight or volume) consists of agriculture commodities that were grown domestically, as determined by the school food authority.[94] The guidance also states that products ''from Guam, American Samoa, Virgin Islands, Puerto Rico, and the Northern Mariana Islands are considered domestic products under this provision as these products are from the territories of the U.S.''

Proposed Change

This proposed rule would codify a definition of the statutory phrase ''substantially using agriculture commodities.'' The definition, which USDA proposes to codify at 7 CFR 210.21(d)(1)(ii) and 220.16(d)(1)(ii), would read as follows: is: *Substantially using agriculture commodities that are produced in the United States means over 51 percent of a food product must consist of agricultural commodities that were grown domestically.* This proposed definition reflects the Congressional report language cited above and existing USDA guidance.

USDA expects that codifying the existing definition of ''substantially using agriculture commodities that are produced in the United States'' in regulation would provide clarity and improve awareness of program requirements.

USDA seeks comments on this proposal, found at 7 CFR 210.21(d)(1)(ii) and 220.16(d)(1)(ii) of the proposed rule.

Public Comments Requested

USDA will consider the following question when developing the final rule and may incorporate changes to the proposal based on public input. USDA invites public input on this proposal in general, and requests specific input on the following question:

- Does the proposed definition of ''substantially using agriculture commodities that are produced in the United States'' meet the intent of the Buy American requirements? If not, what other suggestions do stakeholders have for the definition?

13E: Clarification of Requirements for Harvested Farmed and Wild Caught Fish

Current Requirement

Current regulations do not include language regarding the applicability of Buy American to fish or fish products. However, in 2019, Section 4207 of the Agriculture Improvement Act of 2018 (Pub. L. 115–334) clarified the Buy American provision applies to fish harvested ''within the Exclusive Economic Zone of the United States, as described in Presidential Proclamation 5030 (48 FR 10605; March 10, 1983), or . . . by a United States flagged vessel.'' USDA published *Buy American and the Agricultural Improvement Act of 2018* [95] and explained how to treat harvested fish under the Buy American requirement. The guidance stated that, ''[i]n order to be compliant:

- Farmed fish must be harvested within the United States or any territory or possession of the United States.
- Wild caught fish must be harvested within the Exclusive Economic Zone of the United States or by a United States flagged vessel.''

Prior to the publication of the 2019 guidance, the Buy American provision applied to fish as it would to any other food.

Proposed Change

USDA proposes adding language to the regulations to codify how Buy American applies to fish and fish products in the school lunch and breakfast programs. The proposed change would be consistent with current statutory requirements and existing USDA policy guidance. USDA expects that codifying these existing requirements in regulation will improve awareness of program requirements.

USDA seeks comments on this proposal, found at 7 CFR 210.21(d)(6) and 220.16(d)(6) of the proposed rule.

Section 14: Geographic Preference Expansion

Current Requirement

Section 4302 of the Food, Conservation, and Energy Act of 2008 (P.L. 110–246) [96] amended the National School Lunch Act to direct that the Secretary of Agriculture encourage institutions operating child nutrition

[91] ''Monitoring is also accomplished by reviewing products and delivery invoices or receipts to ensure the domestic food that was solicited and awarded is the food that is received. SFAs also need to conduct a periodic review of storage facilities, freezers, refrigerators, dry storage, and warehouses to ensure the products received are the ones solicited, and awarded, and comply with the Buy American provision.'' U.S. Department of Agriculture, *Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program,* June 30, 2017. Available at: *https://www.fns.usda.gov/nslp/compliance-enforcement-buy-american.*

[92] See also Section 4207(b) of the Agriculture Improvement Act of 2018, Public Law 115–334 (42 U.S.C. 1760).

[93] U.S. House of Representatives. *Child Nutrition and WIC Reauthorization Amendments of 1998—House Report 105–633.* July 20, 1998. Available at: *https://www.govinfo.gov/content/pkg/CRPT-105hrpt633/html/CRPT-105hrpt633.htm.*

[94] U.S. Department of Agriculture, *Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program,* June 30, 2017. Available at: *https://www.fns.usda.gov/nslp/compliance-enforcement-buy-american.*

[95] U.S. Department of Agriculture. *Buy American and the Agriculture Improvement Act of 2018.* August 15, 2019. Available at: *https://www.fns.usda.gov/cn/buy-american-and-agriculture-improvement-act.*

[96] *The Food, Conservation, and Energy Act of 2008* (P.L. 110–246). June 18, 2008. Available at: *https://www.congress.gov/110/plaws/publ246/PLAW-110publ246.pdf.*

programs to purchase unprocessed locally grown and locally raised agricultural products. Effective October 1, 2008, institutions receiving funds through the child nutrition programs could apply an optional geographic preference in the procurement of unprocessed locally grown or locally raised agricultural products. This provision applies to institutions in all of the child nutrition programs, including the NSLP, SBP, Fresh Fruit and Vegetable Program, SMP, CACFP, and SFSP, as well as to purchases made for these programs by the USDA Department of Defense Fresh Fruit and Vegetable Program. The provision also applies to State agencies making purchases on behalf of any of the aforementioned child nutrition programs.

The *Geographic Preference Option for the Procurement of Unprocessed Agricultural Products in Child Nutrition Programs* final rule (75 FR 20316, April 4, 2011) [97] went into effect on May 23, 2011, in order to incorporate this procurement option in the programs' regulations and to define the term ''unprocessed locally grown or locally raised agricultural products'' to facilitate implementation by institutions operating the child nutrition programs. Language included in the final rule indicates that local cannot be used as a specification (a written description of the product or service that the vendor must meet to be considered responsive and responsible).[97]

Currently, Federal regulations do not prescribe the precise way that geographic preference should be applied, or how much preference can be given to local products. Bidders located in a specified geographic area can be provided additional points or credit calculated during the evaluation of the proposals or bids received in response to a solicitation.[98]

Proposed Standard

USDA is proposing a change in this rulemaking to expand geographic preference options by allowing locally grown, raised, or caught as procurement specifications (a written description of the product or service that the vendor must meet to be considered responsive and responsible) for unprocessed or minimally processed food items in the child nutrition programs, in order to increase the procurement of local foods and ease procurement challenges for operators interested in sourcing food from local producers.

Local purchasing power not only supports increasing economic opportunities for local farmers, but also helps schools and other institutions incorporate wholesome local foods into program meals and encourages children to make healthy food choices. State agencies and schools have reported challenges to USDA related to the current points or credit systems, as they often are not weighted enough to make the local product the winning bid. Smaller-scale producers have also reported that they may be deterred from bidding, as they assume they will not be selected.

Results from the USDA 2019 Farm to School Census [99] found that the 8,393 responding school food authorities participating in farm to school activities in SY 2018–2019 reported spending a total of $1.26 billion on local foods, excluding foods purchased through the USDA Foods in Schools Program (USDA Foods) and the USDA Department of Defense Fresh Fruit and Vegetable Program (USDA DoD Fresh). This local spending accounted for one-fifth of their total food purchases on average. Of these respondents, only 25 percent reported purchasing directly from producers, while 43 percent purchased local through USDA DoD Fresh and distributors.

Feedback from participating institutions indicates that removing the specification barrier, thus allowing locally grown, raised, or caught as procurement specifications for unprocessed or minimally processed food items in the child nutrition program, could increase and streamline local food procurement and maintain fair and open competition. Expanding the geographic preference option to allow local as a specification, making locally grown, raised, or caught a requirement for bidding, will broaden opportunities for school food authorities to connect directly with local farmers, reinforcing the fundamental and critical relationship between producers and consumers. After more than a decade of experience in promoting the procurement and use of local foods in child nutrition program meals, USDA believes an expanded capability to apply geographic preference as a specification can be accomplished without unduly limiting free and open competition [100] and will better meet Congressional intent to explicitly allow geographic preference as a means to connecting local producers to the child nutrition program market.

Public Comments Requested

USDA is proposing to expand geographic preference to allow locally grown, raised, or caught as procurement specifications for unprocessed or minimally processed food items. USDA will consider the following questions when developing the final rule and may incorporate changes to the geographic preference proposal based on public input. USDA invites public input on this proposal in general, and requests specific input on the following questions:

- Do respondents agree that this approach would ease procurement challenges for child nutrition program operators interested in sourcing food from local producers?
- Do respondents agree that this approach would encourage smaller-scale producers to submit bids to sell local foods to child nutrition programs?

Section 15: Miscellaneous Changes

In addition to the major provisions of this rulemaking, USDA is proposing a variety of miscellaneous changes to the child nutrition program regulations as well as a severability clause for changes to the meal pattern standards made by this rulemaking. In the event any changes made by this rulemaking to the meal pattern standard regulatory sections were to be held invalid or unenforceable, USDA intends that the other changes would remain. USDA has further proposed to specify what standard would replace the invalidated change. The proposals for miscellaneous changes update language used in the regulations, remove outdated information, and correct cross references. These changes are reflected in the proposed amendatory language.

As noted in *Section 17: Proposals from Prior USDA Rulemaking,* USDA also intends to finalize the technical corrections from the 2020 rule [101] in the forthcoming final rule. Because those

[97] *Geographic Preference Option for the Procurement of Unprocessed Agricultural Products in Child Nutrition Programs* (75 FR 20316, April 4, 2011). Available at: *https://www.federalregister.gov/documents/2011/04/22/2011-9843/geographic-preference-option-for-the-procurement-of-unprocessed-agricultural-products-in-child.*

[98] U.S. Department of Agriculture. *Procurement Geographic Preference Q&As.* February 1, 2011. Available at: *https://www.fns.usda.gov/cn/procurement-geographic-preference-qas.*

[99] U.S. Department of Agriculture. *2019 Farm to School Census Report.* Abt Associates, July 2021. Available at: *https://www.fns.usda.gov/cfs/farm-school-census-and-comprehensive-review.*

[100] Procurement must comply with applicable requirements at 7 CFR 210.21 (NSLP), 220.16 (SBP), 226.22 (CACFP), 215.14a (SMP), 225.17 (SFSP), and 2 CFR parts 200, 400 and 415.

[101] See page 4110 of *Simplifying Meal Service and Monitoring Requirements in the National School Lunch and School Breakfast Programs,* (85 FR 4094, January 23, 2020). Available at: *https://www.federalregister.gov/documents/2020/01/23/2020-00926/simplifying-meal-service-and-monitoring-requirements-in-the-national-school-lunch-and-school.*

changes were already proposed and available for public comment, they are not described again here, and are not included in the proposed amendatory language.

Terminology Change: Protein Sources Component

Current child nutrition program regulations use the term ''meat/meat alternate'' for the meal component that includes dry beans and peas, whole eggs, tofu, tempeh, meat, poultry, fish, cheese, yogurt, soy yogurt, peanut butter and other nut or seed butters, and nuts and seeds. USDA proposes to change the name of the meat/meat alternate meal component in the NSLP, SBP, and CACFP regulations to ''protein sources.'' Under this proposal, all references in 7 CFR parts 210, 220, and 226 to ''meats/meat alternates'' would change to ''protein sources''. The foods within this meal component would remain unchanged. This change better reflects the variety of foods that may be credited under this meal component. As a point of clarification, the proposed terminology change would not change current guidelines regarding foods that may be credited under this component.[102] The guidelines regarding creditable food being recognizable or served alongside a recognizable protein source would also remain in place.[103]

USDA is not including SFSP regulations (7 CFR part 225) with this change. USDA recognizes that using a different component name in the SFSP could cause confusion for State and local program operators. For example, schools operating both the school meal programs and the SFSP would need to be familiar with the term ''protein sources'' for school meals, as well as the term ''meat/meat alternate'' for the SFSP. SFSP. However, there are other inconsistencies between the meal component terms in the SFSP and other child nutrition programs. For example, the SFSP has a ''bread and bread alternatives'' component instead of a ''grains'' component, and has a single ''vegetable and fruits'' component instead of separate ''vegetable'' and ''fruit'' components. USDA intends to comprehensively address the SFSP meal pattern in a future rulemaking, which may include updating the terminology used for the SFSP meal components.

USDA invites public input on this terminology change for NSLP, SBP, and CACFP. Commenters are invited to provide feedback on the proposed change in general and to share their ideas for alternative options for USDA to consider.

Terminology Change: Beans, Peas, and Lentils

The *Dietary Guidelines, 2020–2025,* changed the terminology for the ''legumes (beans and peas)'' vegetable subgroup to ''beans, peas, and lentils.''[104] The foods within this vegetable subgroup did not change. USDA proposes to change the name of the ''legumes (beans and peas)'' vegetable subgroup in the school meal pattern regulations to align with the *Dietary Guidelines*. Under this proposal, all references in 7 CFR parts 210 and 220 to ''legumes (beans and peas)'' would change to ''beans, peas, and lentils'' for consistency with the terminology used in the *Dietary Guidelines*. The foods within this subgroup would remain unchanged. USDA is also proposing to change references to ''dry beans and peas (legumes)'' in 7 CFR part 226 to ''beans, peas, and lentils''.)''

Meal Pattern Table Revisions

USDA also proposes several changes to the child nutrition program meal pattern tables:

- Add minimum creditable amounts to all meal components in the school lunch and breakfast meal pattern tables.
- Change references to ''food components'' to ''meal components''.
- Revise table footnotes so that related footnotes are grouped together.
- Change references from ''grains'' to ''grain items'' in footnotes to meal pattern tables.
- Update protein sources rows in CACFP meal pattern tables, to use ounce equivalents and refer to protein sources generally, instead of listing specific foods within this category.

These changes are not substantive but are intended to make USDA regulations more user-friendly and easier to understand. Regarding the last point, USDA reminds State agencies and program operators that crediting information for the protein sources component and all other meal components may be found in the Food Buying Guide. Please note that current program guidance uses the term ''meats/meat alternates'' for the proposed protein sources component.[105]

Technical Corrections

USDA proposes several technical corrections to the regulations, which are outlined by regulatory section below. These proposed technical corrections would not make substantive changes to the child nutrition programs. Instead, the proposed corrections, which are reflected in the proposed amendatory language, generally fall into the following categories:

- Removing outdated terminology or updating terminology and definitions for consistency across regulations.
- Removing outdated implementation dates.
- Removing requirements that are no longer in effect.
- Correcting erroneous cross-references.

7 CFR part 210: National School Lunch Program

7 CFR 210.2 Definitions.

- Remove definition of *CND,* which is no longer in use.
- Remove the definition of *Food component* and instead add the definition of *Meal component.*
- Redesignate paragraphs to use numbers instead of letters (*e.g.,* (1) and (2) instead of (a) and (b)) in the definitions of *Reduced price lunch, School, State agency,* and *State educational agency*.
- Remove outdated language in the definition of *Residential child care institution*.
- Revise the definition of *Yogurt* to reflect changes to the standard of identity of yogurt.

7 CFR 210.3 Administration.

- 7 CFR 210.3(a): Remove sentence referring to ''the CND,'' a term no longer in use.

7 CFR 210.4 Cash and donated food assistance to States.

- 7 CFR 210.4(b)(3): Remove incorrect cross-reference afterschool snacks section of regulations (§ 210.10(n)) and add the correct cross-reference (§ 210.10(o)).

[102] For information on crediting the meat/meat alternate component, see the *Food Buying Guide for Child Nutrition Programs,* available at: *https://www.fns.usda.gov/tn/food-buying-guide-for-child-nutrition-programs*.

[103] Exceptions include certain smoothie ingredients and pasta products made from vegetable flours. See Question 104: U.S. Department of Agriculture, *Meal Requirements Under the NSLP & SBP: Q&A for Program Operators Updated to Support the Transitional Standards Effective July 1, 2022,* March 2, 2022. Available at: *https://www.fns.usda.gov/cn/sp052022-questions-answers-program-operators*.

[104] See ''About Beans, Peas, and Lentils,'' page 31. U.S. Department of Agriculture and U.S. Department of Health and Human Services. *2020–2025 Dietary Guidelines for Americans. 9th Edition.* December 2020. Available at: *https://www.dietaryguidelines.gov/*.

[105] U.S Department of Agriculture. *Food Buying Guide for Child Nutrition Programs*. Available at: *https://www.fns.usda.gov/tn/food-buying-guide-for-child-nutrition-programs*.

7 CFR 210.7 Reimbursement for school food authorities.

- 7 CFR 210.7(d)(1)(iii) and (e): Remove erroneous cross-references to § 220.23, which is no longer in effect.
- 7 CFR 210.7(d)(1)(iv) and (vii) and 7 CFR 210.7(d)(2): Remove outdated requirements.
- 7 CFR 210.7(e): Correct erroneous cross-reference afterschool snacks section of regulation (from § 210.10(n)(1) to § 210.10(o)(1)).

7 CFR 210.9 Agreement with State agency.

- 7 CFR 210.9(b)(21): Remove outdated implementation date.
- 7 CFR 210.9(c): Remove incorrect cross-reference afterschool snacks section of regulations (§ 210.10(n)(1)) and add the correct cross-reference (§ 210.10(o)(1)).

7 CFR 210.10 Meal requirements for lunches and requirements for afterschool snacks.

- Change all references from ''food components'' to ''meal components''.
- 7 CFR 210.10(c): Add minimum creditable amount for all meal components in meal pattern table endnotes.
- In meal pattern tables, add or make revisions to titles for clarity.
- In meal pattern tables, change endnotes to use numbers instead of letters and combine related footnotes to improve readability.

7 CFR 210.11 Competitive food service and standards.

- 7 CFR 210.11(m): Combine fluid milk and milk alternatives sub-paragraphs and cross-reference § 210.10(d)(1) and (2) instead of repeating milk standards in § 210.11.
- 7 CFR 210.11(m): Make adjustments to punctuation to improve readability.
- 7 CFR 210.11(i) and (n): Remove outdated implementation dates.

7 CFR 210.12 Student, parent, and community involvement.

- 7 CFR 210.12(e): Correct erroneous cross-reference to local school wellness policies by replacing § 210.30(d) with § 210.31(d).

7 CFR 210.14 Resource management.

- 7 CFR 210.14(e): Remove outdated implementation date.
- 7 CFR 210.14(e)(5)(ii)(D): Remove outdated implementation date.
- 7 CFR 210.14(e)(6)(iii): Remove outdated language.
- 7 CFR 210.14(f): Remove outdated implementation date.

7 CFR 210.15 Reporting and recordkeeping.

- 7 CFR 210.15(b)(9): Correct erroneous cross-reference to local school wellness policies by replacing § 210.30(f) with § 210.31(f).

7 CFR 210.18 Administrative reviews.

- 7 CFR 210.18(h)(2)(x): Correct erroneous cross-reference to local school wellness policies by replacing § 210.30 with § 210.31.

7 CFR 210.19 Additional responsibilities.

- 7 CFR 210.19(f): Remove outdated implementation date.

7 CFR 210.20 Reporting and recordkeeping.

- 7 CFR 210.20(a)(6) and (7): Remove requirements that are no longer in effect.
- 7 CFR 210.20(b)(10): Remove requirement that is no longer in effect.

7 CFR 210.29 Management evaluations.

- 7 CFR 210.29(d)(3): Remove incorrect physical address for the Food and Nutrition Service.

7 CFR part 220: School Breakfast Program

7 CFR 220.2 Definitions.

- Remove erroneous cross-references to § 220.23, which is no longer in effect.
- Remove definitions of *CND, OA,* and *OI,* which are no longer in use.
- Revise definitions of *Department, Distributing agency, Fiscal year, FNS, FNSRO, Free breakfast, Reduced price breakfast, Reimbursement, School Food Authority,* and *State agency* for consistency with definitions in 7 CFR 210.2.
- Remove the definition of *Food component* and instead add the definition of *Meal component.*
- Remove the definitions of *Menu item* and *Nutrient Standard Menu Planning/Assisted Nutrient Standard Menu Planning,* which are no longer in use under food based menu planning.
- Remove the second definition of *Non-profit,* which is duplicative and outdated.
- Remove outdated language in the definition of *Residential child care institution.*
- Revise the definition of *Yogurt* to reflect changes to the standard of identity of yogurt.

7 CFR 220.3 Administration.

- 7 CFR 220.3(a): Remove sentence referring to ''the CND,'' a term no longer in use.

7 CFR 220.7 Requirements for participation.

- 7 CFR 220.7(e)(2), (4), (5), (9), and (13): Revise language for clarity and remove outdated references.
- 7 CFR 220.7(h): Correct erroneous cross-reference to local school wellness policies by replacing § 210.30 with § 210.31.

7 CFR 220.8 Meal requirements for breakfasts.

- Change all references from ''food components'' to ''meal components''.
- 7 CFR 220.8(a)(2): Change reference from ''reimbursable lunch'' to ''reimbursable breakfast.''
- 7 CFR 210.10(c): Add minimum creditable amount for all meal components in meal pattern table endnotes.
- In meal pattern tables, add or make revisions to titles for clarity.
- In meal pattern tables, change endnotes to use numbers instead of letters and combine related footnotes to improve readability.
- 7 CFR 210.10(c)(2)(i)(A): Remove reference to crediting enriched macaroni at lunch.
- 7 CFR 210.10(c)(2)(v): Add fluid milk at a listed meal component in paragraph (c)(2).

7 CFR 220.13 Special responsibilities of State agencies.

- 7 CFR 220.13(b)(3): Remove requirements that are no longer in effect.
- 7 CFR 220.13(c): Remove outdated references to ''OI''.
- 7 CFR 220.13(f)(3): Remove erroneous cross-reference to § 220.23, which is no longer in effect.
- 7 CFR 220.13(l): Remove requirement that is no longer in effect.

7 CFR 220.14 Claims against school food authorities.

- Remove references to the term *CND,* which is no longer in use.

7 CFR part 225: Summer Food Service Program

7 CFR 225.16 Meal service requirements.

- Change all references from ''food components'' to ''meal components''.

7 CFR part 226: Child and Adult Care Food Program

7 CFR 226.20 Requirements for meals.

- Change all references from ''food components'' to ''meal components''.
- 7 CFR 226.20(a)(5)(i)(E): Remove ''Peanut butter'' from paragraph (i), as peanut butter is covered by paragraph (ii).

• In meal pattern tables, revise certain endnotes for clarity and combine related footnotes to improve readability.

Severability

USDA is proposing a severability clause for changes to the meal pattern standards made by this rulemaking. In the event any changes made by this rulemaking to the meal pattern standard regulatory sections were to be held invalid or unenforceable, USDA intends the remainder of the changes to survive. USDA's proposal further specifics what standard would replace the invalidated change. USDA proposes adding a new paragraph (r) to 7 CFR 210.10 (NSLP meal pattern standards) providing that if any provision of such section finalized through this rulemaking is held to be invalid or unenforceable by its terms, or as applied to any person or circumstances, it shall be severable from that section and not affect the remainder thereof. In the event of such holding of invalidity or unenforceability of a provision, the meal pattern standard covered by that provision would revert to the version that immediately preceded the changes promulgated through this rulemaking. USDA proposes to add similar paragraphs to 7 CFR 220.8 (SBP meal pattern standards) and 7 CFR 226.20 (CACFP meal pattern standards).

Section 16: Summary of Changes

This section briefly summarizes the provisions included in this proposed rule and the specific public comments requested throughout the preamble. Individuals and organizations may choose to use this summary section as an outline for submitting their public comments. When submitting comments, individuals and organizations may choose to respond to all questions or select the questions that are relevant to them. Individuals and organizations may provide additional input on any provisions of this rulemaking, if desired.

USDA also welcomes public input on the proposed implementation dates, including if delayed implementation is warranted for any provisions where it is not already specified. Additionally, in prior rulemakings, USDA has included an effective date, as well as a delayed compliance date, for certain provisions. This approach allows State agencies and local operators to focus on technical assistance, rather than on compliance, during the initial implementation period. USDA welcomes public input on whether a similar approach should be used for this rulemaking.

Section 2: Added Sugars

This rulemaking proposes the following added sugars limits in the school lunch and breakfast programs:

• *Product-based limits:* Beginning in SY 2025–2026, this rulemaking proposes to implement quantitative limits for leading sources of added sugars in school meals, including grain-based desserts, breakfast cereals, yogurts, and flavored milks.

• *Weekly dietary limit:* Beginning in SY 2027–2028, this rulemaking proposes to implement a dietary specification limiting added sugars to less than 10 percent of calories per week in the school lunch and breakfast programs; this weekly limit would be in addition to the product-based limits described above.

Specific public input requested, in addition to any other comments on the proposals:

• USDA is proposing product-specific limits on the following foods to improve the nutritional quality of meals served to children: grain-based desserts, breakfast cereals, yogurt, and flavored milk. Do stakeholders have input on the products and specific limits included in this proposal?

• Do the proposed implementation timeframes provide appropriate lead time for food manufacturers and schools to successfully implement the new added sugars standards? Why or why not?

• What impact will the proposed added sugars standards have on school meal menu planning and the foods schools serve at breakfast and lunch, including the overall nutrition of meals served to children?

Section 3: Milk

For the final rule, USDA is considering two different milk proposals and invites comments on both. These two proposals are included in the regulatory text as Alternative A and Alternative B:

• Alternative A: Proposes to allow flavored milk (fat-free and low-fat) at school lunch and breakfast for high school children only, effective SY 2025–2026. Under this alternative, USDA is proposing that children in grades K–8 would be limited to a variety of unflavored milk. The proposed regulatory text for Alternative A would allow flavored milk for high school children only (grades 9–12). USDA also requests public input on whether to allow flavored milk for children in grades 6–8 as well as high school children (grades 9–12). Children in grades K–5 would again be limited to a variety of unflavored milk. Under both Alternative A scenarios, flavored milk would be subject to the new proposed added sugars limit.

• Alternative B: Proposes to maintain the current standard allowing all schools to offer fat-free and low-fat milk, flavored and unflavored, with the new proposed added sugars limit for flavored milk.

Specific public input requested, in addition to any other comments on the proposals:

• The *Dietary Guidelines* state that ''consuming beverages with no added sugars is particularly important for young children.'' As discussed above, one of the two proposals USDA is considering would limit milk choices in elementary and middle schools (grades K–8) to unflavored milk varieties only at school lunch and breakfast. To reduce young children's exposure to added sugars and promote the more nutrient-dense choice of unflavored milk, should USDA finalize this proposal? Why or why not?

○ Respondents that support Alternative A are encouraged to provide specific input on whether USDA should limit flavored milk to high schools only (grades 9–12) or to middle schools and high schools only (grades 6–12).

• If Alternative A is finalized with restrictions on flavored milk for grades K–8 or K–5 in NSLP and SBP, should USDA also pursue a similar change in SMP and CACFP? Are there any special considerations USDA should keep in mind for SMP and CACFP operators, given the differences in these programs compared to school meal program operators?

• What feedback do stakeholders have about the current fluid milk substitute process? USDA is especially interested in feedback from parents and guardians and program operators with firsthand experience requesting and processing a fluid milk substitute request.

Section 4: Whole Grains

For the final rule, USDA will consider two options:

• Proposed option: Maintaining the current requirement that at least 80 percent of the weekly grains offered are whole grain-rich, based on ounce equivalents of grains offered.

• Alternative option: Requiring that all grains offered must meet the whole grain-rich requirement, except that one day each school week, schools may offer enriched grains.

Specific public input requested, in addition to any other comments on the options:

• Which option would be simplest for menu planners to implement, and why?

• Which option would be simplest to monitor, and why?

Section 5: Sodium

This rulemaking proposes gradually phasing sodium reductions at lunch and breakfast as follows:

• SY 2025–2026: Schools will implement a 10 percent reduction from SY 2024–2025 school lunch and school breakfast sodium limits.

• SY 2027–2028: Schools will implement a 10 percent reduction from SY 2026–2027 school lunch and school breakfast sodium limits.

• SY 2029–2030: Schools will implement a 10 percent reduction from SY 2028–2029 school lunch sodium limits. School breakfast sodium limits would not be reduced in SY 2029–2030.

Specific public input requested, in addition to any other comments on the proposal:

• USDA plans to recommend (but not require) sodium limits for certain products, such as condiments and sandwiches, to further support schools' efforts to procure lower sodium products and meet the weekly limits.

○ For which products should USDA develop best practice sodium limits?

○ What limits would be achievable for schools and industry, while still supporting lower-sodium meals for children?

• Does the proposed implementation timeframe provide appropriate lead time for manufacturers and schools to successfully implement the new sodium limits?

• Do commenters agree with USDA's proposed schedule for incremental sodium reductions, including both the number and level of sodium reductions and the timeline, or suggest an alternative? Why?

Section 6: Menu Planning Options for American Indian and Alaska Native Students

USDA proposes to add tribally operated schools, schools operated by the Bureau of Indian Education, and schools serving primarily American Indian or Alaska Native children to the list of schools that may serve vegetables to meet the grains requirement. Additionally, in the final rule, USDA may consider additional menu planning options for schools that are tribally operated, are operated by the Bureau of Indian Education, or serve primarily American Indian or Alaska Native children, based on public input.

Specific public input requested, in addition to any other comments on the proposal:

• USDA requests public input on additional menu planning options that would improve the school meal programs for American Indian and Alaska Native children. Are there other specific areas of the school meal patterns that present challenges to serving culturally appropriate meals for American Indian and Alaska Native children, specifically regarding any regulatory requirements in 7 CFR 210.10 and 220.8?

Section 7: Traditional Foods

This rulemaking proposes to explicitly state in regulation that traditional foods may be served in reimbursable school meals. By ''traditional food,'' USDA means the definition included in the Agriculture Improvement Act of 2014, as amended (25 U.S.C. 1685(b)(5)), which defines traditional food as ''food that has traditionally been prepared and consumed by an [American] Indian tribe,'' including wild game meat; fish; seafood; marine mammals; plants; and berries.

Specific public input requested, in addition to any other comments on the proposal:

• USDA has provided guidance [106] on crediting certain traditional foods. Are there any other traditional foods that schools would like to serve, but are having difficulty serving? If so, what specific challenges are preventing schools from serving these foods?

• Which traditional foods should USDA provide yield information for and incorporate into the *Food Buying Guide*?

• Is ''traditional foods,'' as described in the Agriculture Improvement Act of 2014, as amended (25 U.S.C. 1685(b)(5)), an appropriate term to use, or do stakeholders recommend a different term?

Section 8: Afterschool Snacks

This rulemaking proposes to align NSLP snack standards for school-aged children at 7 CFR 210.10(o) with the CACFP snack requirements, as required by statute. The existing requirements for NSLP snacks served to preschool-aged children and infants will remain in effect.

USDA invites public input on this proposal in general but is not including any specific questions for commenter consideration.

Section 9: Substituting Vegetables for Fruits at Breakfast

This rulemaking proposes to continue to allow schools to substitute vegetables for fruits at breakfast, but to change the vegetable variety requirement. Under this proposal, schools that substitute vegetables for fruits at breakfast more than one day per school week would be required to offer a variety of vegetable subgroups.

USDA invites public input on this proposal in general but is not including any specific questions for commenter consideration.

Section 10: Nuts and Seeds

This rulemaking proposes to allow nuts and seeds to credit for the full meat/meat alternate (or protein source) component in all child nutrition programs and meals. This proposal would remove the 50 percent crediting limit for nuts and seeds at breakfast, lunch, and supper.

USDA invites public input on this proposal in general but is not including any specific questions for commenter consideration.

Section 11: Competitive Foods—Hummus Exemption

This rulemaking proposes to add hummus to the list of foods exempt from the total fat standard in the competitive food, or Smart Snack, regulations. This change would allow hummus, which is already permitted as part of a reimbursable school meal, to also be sold as a Smart Snack.

USDA invites public input on this proposal in general but is not including any specific questions for commenter consideration.

Section 12: Professional Standards

This rulemaking proposes to allow State agency discretion to approve the hiring of an individual to serve as a school nutrition program director in a medium or large local educational agency, for individuals who have 10 years or more of school nutrition program experience but who do not hold a bachelor's or associate's degree.

Specific public input requested, in addition to any other comments on the proposal:

• Is it reasonable to allow medium and large local educational agencies to substitute 10 years of school nutrition program experience for a bachelor's or associate's degree when hiring a school nutrition program director? USDA requests that commenters explain their response. Based on public input, USDA may adjust the number of years of school nutrition program experience required to substitute for a degree.

• Should USDA also consider allowing medium and large local educational agencies to substitute other types of experience, such as experience in other food service sectors, for a

[106] U.S. Department of Agriculture, *Child Nutrition Programs and Traditional Foods,* July 15, 2015. Available at: *https://www.fns.usda.gov/cn/child-nutrition-programs-and-traditional-foods.*

bachelor's or associate's degree when hiring a school nutrition program director? USDA requests that commenters explain their response. Based on public input, USDA may adjust the type of experience allowed to substitute for a degree.

- How often do State agencies and schools anticipate using the hiring flexibility proposed in this rulemaking?
- What strategies do local educational agencies currently use to recruit qualified school nutrition program directors? USDA requests input on successes and challenges local educational agencies of any size have experienced in their recruitment efforts.

Section 13: Buy American

13A: Limited Exceptions to the Buy American Requirement

This rulemaking proposes to set a 5 percent limit on non-domestic food purchases.

Specific public input requested, in addition to any other comments on the proposal:

- Is the proposed 5 percent ceiling on the non-domestic commercial foods a school food authority may purchase per school year a reasonable ceiling, or should a different percentage be used? Would the 5 percent cap encourage those school food authorities using exceptions to reduce the amount of non-domestic products they purchase? USDA requests that respondents include justification and reasons behind their response.
- How feasible would tracking and documenting the total amount of non-domestic food purchases be? Would purchasing and record keeping processes need to be altered? Does the documentation of total non-domestic purchases alleviate burden associated with documenting each limited exception that is used? And any additional information about how school food authorities would document the total amount of non-domestic food purchases versus total annual food purchases.

13B: Exception Documentation and Reporting Requirements

This rulemaking proposes to require school food authorities to maintain documentation showing that no more than 5 percent of their total annual commercial food costs were for non-domestic foods.

Specific public input requested, in addition to any other comments on the proposal:

- Is the proposal to require school food authorities to maintain documentation showing that no more than 5 percent of their total annual commercial food costs were for non-domestic foods feasible and is the regulatory language clear enough for school food authorities and States to implement and follow?
- For oversight purposes, USDA is considering requiring school food authorities maintain an attestation statement to attest that any nondomestic food item purchased under the 5 percent cap met one of the two limited exceptions. Would this approach assist school food authorities with the burden associated with documentation requirements? Does it help ensure that any non-domestic food purchase under the 5 percent cap was only a result of utilizing one of the current limited exceptions that USDA proposes to codify through this rulemaking?

13C: Procurement Procedures

This rulemaking proposes to require school food authorities to include the Buy American provision in documented procurement procedures, solicitations, and contracts for foods and food products procured using informal and formal procurement methods, and in awarded contracts.

USDA invites public input on this proposal in general but is not including any specific questions for commenter consideration.

13D: Definition of ''Substantially''

This rulemaking proposes to codify a definition of the term ''substantially using agriculture commodities.'' The definition would read as follows: *Substantially using agriculture commodities that are produced in the United States means over 51 percent of a food product must consist of agricultural commodities that were grown domestically.*

Specific public input requested, in addition to any other comments on the proposal:

- Does the proposed definition of ''substantially using agriculture commodities that are produced in the United States'' meet the intent of the Buy American requirements? If not, what other suggestions do stakeholders have for the definition?

13E: Clarification of Requirements for Harvested Farmed and Wild Caught Fish

This rulemaking proposes to add language to the regulations to specifically explain how Buy American applies to fish and fish products in the school lunch and breakfast programs. The proposed change would be consistent with current statutory requirements and existing USDA policy guidance.

USDA invites public input on this proposal in general but is not including any specific questions for commenter consideration.

Section 14: Geographic Preference

Currently, Federal regulations do not prescribe the precise way that geographic preference should be applied, or how much preference can be given to local products. This rulemaking proposes to expand geographic preference options by allowing locally grown, raised, or caught as procurement specifications (criteria the product or service must meet for the vendor's bid to be considered responsive and responsible) for unprocessed or minimally processed food items in the child nutrition programs, in order to increase the procurement of local foods and ease procurement challenges for operators interested in sourcing food from local producers.

Specific public input requested, in addition to any other comments on the proposal:

- Do respondents agree that this approach would ease procurement challenges for child nutrition program operators interested in sourcing food from local producers?
- Do respondents agree that this approach would encourage smaller-scale producers to submit bids to sell local foods to child nutrition programs?

Section 15: Miscellaneous Changes

This rulemaking proposes a variety of miscellaneous changes, including proposing to change the name of the meat/meat alternate meal component in NSLP, SBP, and CACFP regulations to the protein source component.

Specific public input requested, in addition to any other comments on the proposals:

- USDA invites public input on this terminology change for NSLP, SBP, and CACFP. Commenters are invited to provide feedback on the proposed change and to share their ideas for alternative options.

Section 17: Proposals From Prior USDA Rulemaking

In January 2020, USDA published a proposed rule, *Simplifying Meal Service and Monitoring Requirements in the National School Lunch and School Breakfast Programs.*[107] The rulemaking

[107] *Simplifying Meal Service and Monitoring Requirements in the National School Lunch and School Breakfast Programs,* (85 FR 4094, January 23, 2020). Available at: *https://www.federalregister.gov/documents/2020/01/23/*

Continued

has not been finalized; however, USDA intends to finalize the following provisions from the 2020 rule in the forthcoming final rule. For ease of reference, USDA has used the headings from the 2020 rule in this list. However, please note that the terminology changes described elsewhere in this rulemaking would also apply to these provisions (see *Section 15: Miscellaneous Changes*):

- Increase flexibility to offer meats/meat alternates at breakfast
- Allow legumes offered as a meat alternate to count toward weekly legume vegetable requirement
- Update meal modifications for disability and non-disability reasons
- Expand potable water requirement to include calorie-free, noncarbonated, naturally flavored water
- Change vitamin A and vitamin D units for fluid milk substitutions
- Remove Synthetic Trans Fat Limit as a Dietary Specification
- Change the performance-based reimbursement quarterly report to an annual report
- Correct NSLP afterschool snack erroneous citations and definition

In 2020, USDA received public comment on these proposals and intends to incorporate public input when finalizing these provisions, and therefore is not requesting public input on these provisions but is rather providing the public with a status update on that separate rulemaking.

Some of these provisions are expected to support implementation of the proposals in this rulemaking, or to address other stakeholder priorities. For example, allowing meat/meat alternates (or protein sources) to be served at breakfast, without a minimum grains requirement, is expected to support schools' efforts to reduce added sugars at breakfast. In addition, allowing beans offered as a meat alternate (or protein source) to count toward weekly beans, peas, and lentils vegetable requirement may encourage schools to offer more vegetarian or vegan entrées.

Because these provisions were proposed in the 2020 rule, they are not included in the amendatory language of this rulemaking.

Section 18: Procedural Matters

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been determined to be economically significant and has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Impact Analysis

As required for all rules that have been designated as Significant by the Office of Management and Budget, a Regulatory Impact Analysis (RIA) was developed for this proposed rule. It follows this rulemaking as an Appendix. The following summarizes the conclusions of the Regulatory Impact Analysis:

Need for Action: The proposed rule is meant to layout standards that align school meals with the goals of the *Dietary Guidelines for Americans, 2020–2025,* and that support the continued provision of nutritious school meals. To develop this proposed rule, USDA considered broad stakeholder input, including written comments received in response to the 2022 transitional standards rule, oral comments submitted during listening sessions, and a comprehensive review of the *Dietary Guidelines for Americans, 2020–2025*. The transitional standards rule included updated standards and allowed operators to reset school meals after several years of Congressional, regulatory, and administrative interventions, followed by two years of meal pattern flexibilities provided in response to the COVID–19 public health emergency. The proposed rule represents the next stage of the rulemaking process to permanently update and improve school meal pattern requirements. As with the transitional standards rule, this proposed rule includes a focus on sodium, whole grains, and milk; however, this proposed rule also includes a new focus on added sugars. Further, in addition to addressing these and other nutrition standards, this rulemaking proposes measures to strengthen the Buy American provision in the school meal programs and proposes a variety of other changes to school meal requirements. Updates for the Child and Adult Care Food Program (CACFP) and Summer Food Service Program (SFSP) are also detailed within certain provisions of this proposed rule.

Benefits: This proposed rule builds on the progress schools have already made in improving school meals to support healthy diets for school children. Proposals in this rulemaking include gradual reduction of sodium and added sugars content in school meals over several school years. Added sugars proposed regulations include product-specific limits and an overall added sugars limit of 10 percent of calories per week at school lunch and breakfast. This rulemaking proposes two alternatives for milk. Alternative A would allow flavored milk at school lunch and breakfast for high school children only, effective SY 2025–2026, and Alternative B would maintain the milk standard from the transitional standards rule, allowing all schools to serve flavored or unflavored milks. USDA proposes to maintain required whole grain-rich offerings at 80 percent of total grain offerings. Minor shifts have also been proposed in other provisions, and USDA has also proposed several technical corrections, such as updating definitions and terminology in the regulations. The Regulatory Impact Analysis details potential health benefits for students if this proposed rule is finalized, as well as information regarding the methodology for selecting specific limits for added sugars, sodium, and whole grains.

Costs: USDA estimates this proposed rule would cost schools between $0.03 and $0.04 per breakfast and lunch served or between $220 and $274 million annually including both the SBP and NSLP starting in SY 2024–2025, accounting for the fact that standards are going to be implemented gradually and adjusting for annual inflation.[108] The costs to schools are mainly due to a shift in purchasing patterns to products with reduced levels of added sugars and sodium, as well as increases in labor costs for continued sodium reduction over time. The two proposed milk alternatives include a no-cost option and an option with expected cost increases due to a shift in purchasing patterns for elementary and middle schools. Updating afterschool snack standards to reflect the proposed added sugars standards would result in some savings due to a reduction of grain-based desserts being served. Simplifying vegetable variety requirements for schools opting to substitute vegetables for fruits at breakfast also results in some savings, because on average, vegetables are less expensive than fruits, per serving. An increase in cost due to the Buy American provision is a result

2020-00926/simplifying-meal-service-and-monitoring-requirements-in-the-national-school-lunch-and-school.

[108] In 2022 dollars.

of additional labor and food costs. The changes proposed in this rulemaking are gradual, achievable, and realistic for schools and recognize the need for strong nutrition standards in school meals.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities.

This rulemaking has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). This rulemaking will have a significant economic impact on a substantial number of small entities.

The requirements established by this proposed rule will apply to school districts, which meet the definitions of ''small governmental jurisdiction'' and ''small entity'' in the Regulatory Flexibility Act. Under the National School Lunch Act (NSLA, 42 U.S.C. 1758(f)), schools participating in the school lunch or school breakfast program are required to serve lunches and breakfasts that are consistent with the goals of the most recent *Dietary Guidelines* and that consider the nutrient needs of children who may be at risk for inadequate food intake and food insecurity. This proposed rule amends 7 CFR parts 210 and 220 that govern school lunch and breakfast program requirements, including the nutrition standards that school districts are required to meet to receive reimbursement for program meals. The changes proposed in this rulemaking would further align school nutrition requirements with the goals of the *Dietary Guidelines for Americans, 2020–2025,* consistent with statute. USDA recognizes that small school food authorities, like all school food authorities, will face increased costs and potential challenges in implementing the proposed rule. These costs are not significantly greater for small school food authorities than for larger ones, as implementation costs are driven primarily by factors other than school food authority size. Nevertheless, USDA does not discount the special challenges that some smaller school food authorities may face. As a group, small school food authorities may have less flexibility to adjust resources in response to immediate budgetary needs. The time between publication of the proposed and final rules, as well as the phased-in implementation period, would provide these school food authorities opportunity for advance planning.

Significant Alternatives

As discussed in *Section 3: Milk* and *Section 4: Whole Grains,* USDA is considering two proposals for the milk provision and a proposal and alternative for the whole grains provision.

For milk, this rulemaking proposes two alternatives:

- *Alternative A:* Proposes to allow flavored milk (fat-free and low-fat) at school lunch and breakfast for high school children only, effective SY 2025–2026. Under this alternative, USDA is proposing that children in grades K–8 would be limited to a variety of unflavored milk. The proposed regulatory text for Alternative A would allow flavored milk for high school children only (grades 9–12). USDA also requests public input on whether to allow flavored milk for children in grades 6–8 as well as high school children (grades 9–12). Children in grades K–5 would again be limited to a variety of unflavored milk. Under both Alternative A scenarios, flavored milk would be subject to the new proposed added sugars limit.
- *Alternative B:* Proposes to maintain the current standard allowing all schools to offer fat-free and low-fat milk, flavored and unflavored, with the new proposed added sugars limit for flavored milk.

For whole grains, the rulemaking:

- Proposes to maintain the current requirement that at least 80 percent of the weekly grains offered are whole grain-rich, based on ounce equivalents of grains served in the school lunch and breakfast programs.
- Requests public input on an alternative that would require that all grains offered in the school lunch and breakfast programs must meet the whole grain-rich requirement, except that one day each school week, schools may offer enriched grains.

USDA is encouraging public input on all aspects of this proposed rule, including the alternatives provided for these provisions. Though USDA is not aware of any evidentiary basis to distinguish groups of schools that may find it more difficult to meet one alternative over the other for either of these provisions, USDA welcomes public input on this topic. As discussed throughout the preamble, this rulemaking is based on a comprehensive review of the *Dietary Guidelines,* robust stakeholder input on school nutrition standards, and lessons learned from prior rulemakings. USDA's intent is to integrate each of these factors in a way that prioritizes children's health while also ensuring that the nutrition standards are achievable for all schools.

In particular, when developing the milk proposals, USDA considered the importance of reducing young children's exposure to added sugars and promoting nutrient-dense choices, while also encouraging children's consumption of dairy foods, which provide potassium, calcium, and vitamin D. When developing the whole grains proposal and alternative, USDA considered the importance of encouraging children's consumption of whole grains, which are an important source of dietary fiber, and considered the availability of products that children enjoy. For both provisions, USDA considered stakeholder input provided through listening sessions and in public comments, such as requests for USDA to ensure that nutrition standards meet cultural preferences. For example, during USDA listening sessions, stakeholders noted that schools would like to have the option to serve non-whole grain-rich tortillas and rice on occasion as part of their school lunch menu. USDA encourages further input on the milk and whole grains provision, and the proposed rule in its entirety, through public comments.

More detailed information about the costs associated with the milk and whole grains alternatives, as well as other provisions of the rulemaking, may be found in the Regulatory Impact Analysis in *Section 18: Procedural Matters.*

Unfunded Mandates Reform Act

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA) established requirements for Federal agencies to assess the effects of their regulatory actions on State, local and Tribal governments, and the private sector. Under Section 202 of UMRA, USDA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments in the aggregate, or to the private sector, of $146 million or more (when adjusted for inflation; GDP deflator source: Table 1.1.9 at *http://www.bea.gov/iTable*) in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires USDA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rulemaking. The Regulatory Impact Analysis conducted by USDA in connection with this proposed rule includes a cost/benefit analysis and

explains the options considered to update the school meal patterns based on the *Dietary Guidelines for Americans, 2020–2025* (See the *Regulatory Impact Analysis,* within *Section 18: Procedural Matters*).

Executive Order 12372

The NSLP, SMP, SBP, SFSP, and CACFP are listed in the Catalog of Federal Domestic Assistance under NSLP No. 10.555, SMP No. 10.556, SBP No. 10.553, SFSP No. 10.559, and CACFP No. 10.558, respectively, and are subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (see 2 CFR chapter IV). Since the child nutrition programs are State-administered, USDA's FNS Regional Offices have formal and informal discussions with State and local officials, including representatives of Indian Tribal Organizations, on an ongoing basis regarding program requirements and operations. This provides USDA with the opportunity to receive regular input from program administrators and contributes to the development of feasible program requirements.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

Prior Consultation With State Officials

Prior to drafting this proposed rule, USDA received input from various stakeholders through listening sessions and public comments. For example, USDA held listening sessions with stakeholder groups that represent national, State, and local interests, including the Academy of Nutrition and Dietetics, American Beverage Association, American Commodity Distribution Association, American Heart Association, Center for Science in the Public Interest, Education Trust, FoodCorps, Friends of the Earth, International Dairy Foods Association, National Congress of American Indians, National Indian Education Association, School Nutrition Association, State agencies, Urban School Food Alliance, Whole Grains Council members, and local school districts, including tribally-run schools, and others. As described in detail in *Section 1: Background,* USDA also received over 8,000 public comments on the transitional standards final rule. These comments, from State agencies, advocacy organizations, local school districts, and other stakeholders, helped to inform this proposed rule.

Nature of Concerns and the Need To Issue This Rule

As noted in *Section 1: Background,* listening session participants and public comments cited concerns about the financial viability of the school meal programs, particularly following unprecedented challenges related to the COVID–19 pandemic and associated supply chain issues, as well as transitioning from certain nationwide child nutrition program waivers. While USDA is aware of these concerns and recognizes that they present immediate challenges for schools, USDA also appreciates the importance of looking to the future and prioritizing children's health in the long-term. Further, according to the National School Lunch Act (NSLA, 42 U.S.C. 1758(f)), schools participating in the school lunch or school breakfast program are required to serve lunches and breakfasts that are consistent with the goals of the most recent *Dietary Guidelines* and that consider the nutrient needs of children who may be at risk for inadequate food intake and food insecurity. The proposed rule also advances the mission of USDA, which includes a focus on providing effective, science-based public policy leadership in food and nutrition.[109]

Extent To Which We Meet Those Concerns

Through this rulemaking, USDA intends to update the school meals in a practical and durable manner for the long-term. USDA has considered the impact of this proposed rule on State agencies and schools and has attempted to develop a proposal that would update the school meal standards to align with the goals of the *Dietary Guidelines for Americans, 2020–2025* in the most effective and least burdensome manner. This rulemaking also includes proposals that would simplify program operations, for example, by easing restrictions around substituting vegetables for fruits at breakfast; aligning crediting for nuts and seeds, and nut and seed butters, across child nutrition programs; making nutrition standards consistent for afterschool snack programs; and providing an additional exception to the professional standards hiring requirements for medium and large local educational agencies. This rulemaking would also retain other existing regulatory provisions to the extent possible.

Executive Order 12988, Civil Justice Reform

This rulemaking has been reviewed under Executive Order 12988, Civil Justice Reform. This rulemaking is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. As proposed, the rulemaking would permit State or local agencies operating the school lunch or breakfast programs to establish more rigorous nutrition requirements or additional requirements for school meals that are not inconsistent with the nutritional provisions of the rulemaking. Such additional requirements would be permissible as part of an effort by a State or local agency to enhance school meals or the school nutrition environment. To illustrate, State or local agencies would be permitted to establish more restrictive sodium limits. The sodium limits are stated as maximums (*e.g.,* ≤) and could not be exceeded; however, lesser amounts than the maximum could be served. Likewise, State or local agencies could accelerate implementation of the dietary specification for added sugars stated in this proposed rule in an effort to reduce added sugars in school meals at an earlier date. However, State or local agencies would not, for example, be permitted to allow schools to exceed the added sugars limits in this rulemaking as that would be inconsistent with the rulemaking's provisions. This rulemaking is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this rulemaking or the application of its provisions, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed the proposed rule, in accordance with Departmental Regulation 4300–004, ''Civil Rights Impact Analysis,'' to identify and address any major civil rights impacts the proposed rule might have on participants on the basis of age, race, color, national origin, sex, or disability.

[109] USDA's mission is: ''To serve all Americans by providing effective, innovative, science-based public policy leadership in agriculture, food and nutrition, natural resource protection and management, rural development, and related issues with a commitment to deliverable equitable and climate-smart opportunities that inspire and help America thrive.'' See: U.S. Department of Agriculture. *Strategic Plan Fiscal Years 2022–2026.* Available at: *https://www.usda.gov/sites/default/files/documents/usda-fy-2022-2026-strategic-plan.pdf.*

Due to the unavailability of data, FNS is unable to determine whether this proposed rule will have an adverse or disproportionate impact on protected classes among entities that administer and participate in Child Nutrition Programs. However, the FNS Civil Rights Division finds that the current mitigation and outreach strategies outlined in the regulations and this Civil Rights Impact Analysis (CRIA) provide ample consideration to applicants' and participants' ability to participate in the NSLP, SBP, SMP, and CACFP. The promulgation of this proposed rule will impact school food authorities and CACFP institutions and facilities by updating the school nutrition standards. Participants in the NSLP, SBP, SMP, and CACFP may be impacted if the standards under the proposed rule are implemented by school food authorities and CACFP institutions and facilities. The changes are expected to provide participants in NSLP, SBP, SMP, and CACFP wholesome and appealing meals that reflect the goals of the *Dietary Guidelines* and meet their needs and preferences.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments, or proposed legislation, other policy statements or actions that have substantial direct effects on one or more Indian Tribes, the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This regulation has Tribal implications. FNS has held listening sessions related to this topic already and taken that feedback into account in this rulemaking; however, FNS will have consultation(s) before the final rule. If a tribe requests additional consultation in the future, FNS will work with the Office of Tribal Relations to ensure meaningful consultation is provided.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR 1320) requires that the Office of Management and Budget (OMB) approve all collection of information requirements by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current, valid OMB Control Number.

In accordance with the Paperwork Reduction Act of 1995, this proposed rule contains information collection requirements, which are subject to review and approval by OMB. This rulemaking proposes new reporting and recordkeeping requirements for State agencies and school food authorities administering the National School Lunch Program and School Breakfast Program. This rulemaking also proposes one recordkeeping requirement on Child and Adult Care Food Program and Summer Food Service Program operators. The proposed rule contains existing information collections in the form of recordkeeping requirements that have been approved by OMB under OMB Control Number 0584–0006 7 CFR part 210 National School Lunch Program (expiration date July 31, 2023) and OMB Control Number 0584–0012 7 CFR part 220 School Breakfast Program (expiration date August 31, 2025); however, the proposals in this rulemaking do not impact these requirements or their associated burden. Therefore, they are not included in the discussion concerning the burden impact resulting from the proposals in this rulemaking. FNS is requesting a new OMB Control Number for only the new information collections proposed via this document in an effort to separate and clearly depict the new information collection requirements introduced in this proposed rule and their associated burden. This rulemaking does not impact existing and approved information collection requirements.

FNS is submitting for public comment the information collection burden that will result from adoption of the new recordkeeping and reporting requirements proposed in the rulemaking. The establishment of the proposed collection of information requirements are contingent upon OMB approval. After OMB has approved the information collection requirements submitted in conjunction with the final rule, FNS will merge the requirements and their burden into the existing program information collection requests to which they pertain: OMB Control Number 0584–0006 7 CFR part 210 National School Lunch Program (expiration date July 31, 2023), OMB Control Number 0584–0055 Child and Adult Care Food Program (expiration date August 31, 2025), and OMB Control Number 0584–0280 7 CFR part 225, Summer Food Service Program (expiration date September 30, 2025).

Comments on this proposed rule and changes in the information collection burden must be received by April 10, 2023.

Comments may be sent to: Tina Namian, Director, School Meals Policy Division—4th floor, Child Nutrition Programs, Food and Nutrition Service, 1320 Braddock Place, Alexandria, VA 22314. Comments will also be accepted through the Federal eRulemaking Portal. Go to *https://www.regulations.gov*, and follow the online instructions for submitting comments electronically.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Title: Child Nutrition Programs: Revisions to Meal Patterns Consistent with the 2020 Dietary Guidelines for Americans.

OMB Control Number: 0584–NEW.

Expiration Date: N/A.

Type of Request: New collection.

Abstract: This is a new information collection. The proposed rule introduces new information collection requirements. Below is summary of the changes proposed by the rulemaking and the accompanying reporting and recordkeeping requirements.

Buy American

The National School Lunch Act (NSLA, 42 U.S.C. 1760(n)) and program regulations at 7 CFR 210.21(d)(2)(i) and 220.16(d)(2)(i), require school food authorities to purchase domestic commodities or products ''to the maximum extent practicable.'' This provision, known as the Buy American provision, was initially implemented in 1998 and supports the mission of the child nutrition programs, which is to serve children nutritious meals and support American agriculture. There are two limited exceptions to the Buy American provision that school food authorities may implement when purchasing domestic foods is not feasible. The exceptions apply when a

product is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality, or when competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product.

The rulemaking proposes to maintain the current two limited exceptions to the Buy American provision and clarify in regulation that it is the responsibility of the school food authority to determine whether an exception applies. In addition, USDA is proposing to institute a 5 percent ceiling on the non-domestic commercial foods a school food authority may purchase per school year. For oversight purposes, the proposed rule would codify a new recordkeeping requirement for school food authorities to maintain documentation to demonstrate that their non-domestic food purchases do not exceed the 5 percent annual threshold. This recordkeeping requirement would codify a requirement to maintain documentation for use of exceptions to the Buy American provision. While school food authorities may already maintain documentation to demonstrate compliance with the Buy American provision in accordance with guidance made available by FNS, there is not a legally binding recordkeeping requirement for respondents to maintain documentation specifically for the use of exceptions to the Buy American provision. Therefore, the proposal to codify recordkeeping requirements to document compliance with the Buy American provision, including the use of exceptions to the provision, and their associated burden are addressed as new in the information collection request for the proposed rule.

Lastly, the proposed rule would require school food authorities to include the Buy American provision in procurement procedures, solicitations, and contracts for foods and food products procured using informal and formal procurement methods, and in awarded contracts. These new recordkeeping requirements are being added to the new information collection associated with the proposed rule.

FNS estimates the proposed recordkeeping requirement for school food authorities to maintain documentation to demonstrate that their non-domestic food purchases do not exceed the proposed 5 percent annual threshold will impact approximately 19,019 school food authorities, or respondents. FNS estimates these 19,019 respondents will develop and maintain 10 records each year, and that it takes approximately 15 minutes (.25 hours) each month to complete the recordkeeping requirement for each record. The proposed recordkeeping requirement adds a total of 47,547.5 annual burden hours and 190,190 responses into the new information collection request.

In addition, FNS estimates the proposed recordkeeping requirement to include the Buy American provision in procurement procedures, solicitations, and contracts would impact approximately 19,019 school food authorities. FNS estimates these 19,019 respondents will revise their procurement procedures, solicitations, and contracts and maintain these records, and estimates respondents would spend approximately 20 hours each year meeting this recordkeeping requirement. This recordkeeping requirement would add a total of 380,380 annual burden hours and 19,019 responses into the new information collection request.

Menu Planning Options for American Indian and Alaska Native Students

The rulemaking proposes to allow menu planning options for American Indian and Alaska Native students by adding tribally operated schools, schools operated by the Bureau of Indian Education, and schools serving primarily American Indian or Alaska Native children to the list of schools that may serve vegetables to meet the grains requirement. In addition, the rulemaking proposes to extend this menu planning option to institutions and sponsors participating in the Child and Adult Care Food Program and Summer Food Service Program that serve primarily American Indian or Alaska Native children. The menu planning option aims to improve the child nutrition programs for American Indian and Alaska Native children and build on USDA's commitment to support traditional food ways.

Alongside the proposed provision is a requirement for school food authorities participating in the National School Lunch Program or School Breakfast Program to maintain documentation to demonstrate that the schools using this option are tribally operated, are operated by the Bureau of Indian Education, or serve primarily American Indian or Alaska Native students. This documentation would be maintained for program reviews. This proposed recordkeeping requirement would establish a collection of information for school food authorities that participate in the school meals programs and elect to implement the operational flexibility to serve vegetables in place of grains for American Indian and Alaska Native children. FNS estimates 315 school food authorities operating the National School Lunch Program and School Breakfast Program would maintain documentation each year to demonstrate schools using the menu planning option meet the criteria, and that it would take approximately 1 hour to collect and maintain such documentation annually. This recordkeeping for school food authorities would add an estimated 315 annual burden hours and 315 responses into the information collection request associated with the proposed rule.

This provision would also establish a recordkeeping requirement for Child and Adult Care Food Program and Summer Food Service Program operators serving primarily American Indian or Alaska Native participants and electing to implement this menu planning option. Child and Adult Care Food Program and Summer Food Service Program operators electing to serve vegetables to meet the grains requirement under this provision would also be required to maintain documentation demonstrating that the site qualifies for the menu planning option. FNS estimates the proposed recordkeeping requirement would require approximately 610 Child and Adult Care Food Program and 20 Summer Food Service Program operators to collect and maintain documentation each year to demonstrate that the site serves primarily American Indian or Alaska Native children, and that it takes approximately 1 hour to collect and maintain such documentation. FNS estimates this collection of information would add an estimated 610 annual burden hours and 610 responses for Child and Adult Care Food Program operators and 20 annual burden hours and 20 responses for Summer Food Service Program operators into the information collection request associated with the proposed provision.

Professional Standards

This rulemaking introduces a proposed hiring exception to allow State agencies to approve the hiring of an individual to serve as a school nutrition program director in medium (2,500 to 9,999 students) or large (10,000 or more students) local educational agencies, for individuals who have 10 years or more of school nutrition program experience but who do not hold a bachelor's or associate's degree. School food authorities would be required to submit requests to their State agency to implement the hiring flexibility; State agencies and school food authorities would also maintain records of requests for oversight purposes.

The proposed hiring exception to allow State agency discretion to approve the hiring of an individual who has 10 years or more of school nutrition program experience but who does not hold a bachelor's or associate's degree to serve as a school nutrition program director will introduce a local level reporting requirement for school food authorities. With respect to the proposed hiring exception, FNS estimates 951 school food authorities would submit 1 request to their respective State agencies to hire an individual to serve as the school nutrition program director in medium or large local educational agencies each year, and that the proposed reporting requirement to develop and submit a request would take each respondent approximately 30 minutes (.5 hours). The proposed hiring flexibility would add an estimated 475.5 burden hours and 951 responses into the new information collection request for the proposed rule.

The proposed hiring exception will also introduce a reporting requirement for State agencies, who would be required to review and respond to each request submitted on behalf of school food authorities. FNS estimates 56 State agencies would review and either approve or deny each request received, and that it takes approximately 30 minutes (.5 hours) to review and respond to each request. The proposed State level reporting requirement would add an estimated 475.5 burden hours and 951 responses into the new information collection request associated with the proposed rule.

Lastly, in addition to the reporting requirements associated with the hiring exception to allow State agencies to approve the hiring of individuals who do not meet the educational criteria but have 10 years or more of school nutrition program experience to serve as the school nutrition program director, State agencies and school food authorities would be required to maintain documentation. State agencies and school food authorities would maintain and document information regarding requests that were developed at the school food authority level and submitted to State agencies. The proposed recordkeeping would impact an estimated 56 State agencies and 951 school food authorities. FNS estimates it takes both State agencies and school food authorities 15 minutes (.25 hours) to maintain each record annually. The State agency level burden for the maintenance of records regarding requests to hire individuals who do not meet professional standards educational criteria adds an estimated 237.5 burden hours and 951 responses into the new information collection associated with the proposed rule. The school food authority level burden for the maintenance of records regarding requests to hire individuals adds an estimated 237.5 burden hours and 951 responses into the collection.

Nutrition Standards

This rulemaking proposes a variety of changes to school meal nutrition requirements, including to implement quantitative limits for leading sources of added sugars in food items served as part of school meals, including grain-based desserts, breakfast cereals, yogurts, and flavored milks. The rulemaking also proposes to implement a dietary specification limiting added sugars to less than 10 percent of calories per week in the school lunch and breakfast programs. FNS acknowledges these proposed changes would be reflected in schools' production and menu records that show how meals offered at school contribute to the required food components and food quantities for each age/grade group every day. Longstanding recordkeeping requirements established at 7 CFR 210.10(a)(3) and 7 CFR 220.8(a)(3) require schools to develop and maintain menu records for the meals produced and served in schools participating in the National School Lunch Program and School Breakfast Program. Because these recordkeeping requirements are accounted for and approved under OMB Control Number 0584–0006 7 CFR part 210 National School Lunch Program and OMB Control Number 0584–0012 7 CFR part 220 School Breakfast Program, USDA does not expect the proposals to limit sugars in the National School Lunch Program and School Breakfast Program or any other school meal nutrition standard proposals included in this rulemaking to impact the burden associated with the collection of information. OMB has already approved 6,270,883.2 burden hours under the currently approved information collection requests for the National School Lunch Program and School Breakfast Program to cover the requirement for schools to develop and keep production and menu records for meals served.

Summary

As a result of the proposals outlined in this rulemaking, FNS estimates that this new information collection will have 19,705 respondents, 213,958 responses, and 430,299 burden hours. The average burden per response and the annual burden hours are explained below and summarized in the charts which follow. Once the ICR for the final rule is approved and the requirements and associated burden for this new information collection are merged into their existing collections, FNS estimates that the burden for OMB Control Number 0584–0006 will increase by 213,328 responses and 429,669 burden hours, OMB Control Number 0584–0055 will increase by 610 responses and 610 burden hours, and OMB Control Number 0584–0280 will increase by 20 responses and 20 burden hours.

Respondents (Affected Public): State Agencies (State governments), School Food Authorities (local governments), and Child and Adult Care Food Program and Summer Food Service Program operators (businesses).

Reporting

Estimated Number of Respondents: 1,007.

Estimated Number of Responses per Respondent: 1.89.

Estimated Total Annual Responses: 1,902.

Estimated Time per Response: 30 minutes (.50 hours).

Estimate Total Annual Burden on Respondents: 951 hours.

Recordkeeping

Estimated Number of Respondents: 19,705.

Estimated Number of Responses per Respondent: 10.76.

Estimated Total Annual Responses: 212,056.

Estimated Time per Response: Approximately 2 hours and 1.5 minutes (2.025 hours).

Estimate Total Annual Burden on Respondents: 429,348.

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Reporting							
Description of Activities	**Regulation Citation**	**Estimated # of Respondents**	**Frequency of Response**	**Total Annual Responses**	**Average Burden Hours per Response**	**Estimated Total Annual Burden Hours**	**Estimated Change in Burden Hours Due to Rulemaking**
State agencies review and approve/deny each request to hire a school nutrition program director in a medium or large local educational agency who does not meet professional standards educational criteria	210.30(b)(1)(iv)	56	16.98	951	.5	475.5	475.5
Total State Agency Reporting		**56**		**951**		**475.5**	**475.5**
School food authorities develop and submit requests to hire a school nutrition program director in a medium or large local educational agency who does not meet professional standards educational criteria	210.30(b)(1)(iv)	951	1	951	.5	475.5	475.5
Total School Food Authority Reporting		**951**		**951**		**475.5**	**475.5**
Total Reporting		**1,007**		**1,902**		**951**	**951**

Recordkeeping							
Description of Activities	**Regulation Citation**	**Estimated # of Respondents**	**Frequency of Response**	**Total Annual Responses**	**Average Burden Hours per Response**	**Estimated Total Annual Burden Hours**	**Estimated Change in Burden Hours Due to Rulemaking**
State agencies maintain school food authorities requests to hire individuals in medium or large local educational agencies who do not meet professional standards educational criteria	210.30(b)(1)(iv)	56	16.98	951	.25	237.75	237.75
Total State Agency Recordkeeping		**56**		**951**		**237.75**	**237.75**
School food authorities maintain documentation demonstrating compliance with the Buy American provision	210.21(d)(5) and 220.16(d)	19,019	10	190,190	.25	47,547.5	47,547.5
School food authorities include language requiring Buy American in all procurement procedures, solicitations, and contracts and maintain such documentation	210.21(d)(3) and 220.16(d)(3)	19,019	1	19,019	20	380,380	380,380
School food authorities maintain documentation of requests to hire individuals in medium or large local educational agencies who do not meet professional standards educational criteria	210.30(b)(1)(iv)	951	1	951	.25	237.75	237.75
School food authorities maintain records to	210.10(c)(3) and 220.8(c)(3)	315	1	315	1	315	315

demonstrate that schools are tribally operated, are operated by the Bureau of Indian Education, or serve primarily American Indian or Alaska Native students							
Total School Food Authority Recordkeeping		**19,019**		**210,475**		**428,480.25**	**428,480.25**
Child and Adult Care Food Program facilities and institutions maintain documentation demonstrating that service sites qualify for the menu planning option to serve vegetables to meet the grains requirement by serving primarily American Indian and Alaska Native children	226.20(f)	610	1	610	1	610	610
Total Child and Adult Care Food Program Operators (business level) Recordkeeping		**610**		**610**		**610**	**610**
Summer Food Service Program sponsors maintain documentation demonstrating that service sites qualify for the menu planning option to serve vegetables to meet the bread requirement by serving primarily American Indian and Alaska Native children	225.16(f)(3)	20	1	20	1	20	20
Total Summer Food Service Program Operators (business level) Recordkeeping		**20**		**20**		**20**	**20**
Total Recordkeeping		**19,705**		**212,056**		**429,348**	**429,348**

TOTAL NO. RESPONDENTS	19,705
AVERAGE NO. RESPONSES PER RESPONDENT	10.858
TOTAL ANNUAL RESPONSES	213,958
AVERAGE HOURS PER RESPONSE	2.011
TOTAL BURDEN HOURS	430,299

BILLING CODE 3410–30–C

E-Government Act Compliance

The Department is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects

7 CFR Part 210

Grant programs-education, Grant programs—health, Infants and children, Nutrition, Penalties, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

7 CFR Part 215

Food assistance programs, Grant programs—education, Grant program—health, Infants and children, Milk, Reporting and recordkeeping requirements.

7 CFR Part 220

Grant programs-education, Grant programs—health, Infants and children, Nutrition, Reporting and recordkeeping requirements, School breakfast and lunch programs.

7 CFR 225

Food assistance programs, Grant programs—health, Infants and children, Labeling, Reporting and recordkeeping requirements.

7 CFR Part 226

Accounting, Aged, Day care, Food assistance programs, Grant programs, Grant programs—health, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR parts 210, 215, 220, 225, and 226 are proposed to be amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

■ 2. In § 210.2:
■ a. Remove the definitions of ''CND'' and ''Food component'';
■ b. In the definition of ''Food item'', remove the words ''food component'' and add in its place the words ''meal component'';
■ c. Add in alphabetical order a definition for ''Meal component'';
■ d. In the definition of ''Reduced price lunch'', redesignate paragraphs (a), (b), and (c) as paragraphs (1), (2), and (3), respectively;
■ e. In the definition of ''School'', redesignate paragraphs (a), (b), and (c) as paragraphs (1), (2), and (3), respectively, and remove the last two sentences in newly redesignated paragraph (3);
■ f. In the definition of ''State agency'', redesignate paragraphs (a), (b), and (c) as paragraphs (1), (2), and (3), respectively;
■ g. In the definition of ''State educational agency'', redesignate paragraphs (a) and (b) as paragraphs (1) and (2), respectively;
■ h. In the definition of ''Tofu'', remove the term ''meats/meat alternates'' and add in its place the words ''protein sources'';
■ i. Add in alphabetical order a definition for ''Whole grain-rich'';
■ j. In the definition of ''Whole grains'', remove the last sentence; and
■ k. Revise the definition of ''Yogurt''.

The additions and revision read as follows:

§ 210.2 Definitions.

* * * * *

Meal component means one of the food groups which comprise reimbursable meals. The meal components are: protein sources, grains, vegetables, fruits, and fluid milk.

* * * * *

Whole grain-rich is the term designated by FNS to indicate that the grain content of a product is between 50 and 100 percent whole grain with any remaining grains being enriched.

* * * * *

Yogurt means commercially prepared coagulated milk products obtained by the fermentation of specific bacteria, that meet milk fat or milk solid requirements and to which flavoring foods or ingredients may be added. These products are covered by the Food and Drug Administration's Definition and Standard of Identity for yogurt, 21 CFR 131.200, and low-fat yogurt and non-fat yogurt covered as a standardized food under 21 CFR 130.10.

§ 210.3 [Amended]

■ 3. In § 210.3, paragraph (a), remove the last sentence.

§ 210.4 [Amended]

■ 4. In § 210.4:
■ a. In the first sentence of paragraph (a), remove the words ''meal supplements'' and add in their place the words ''afterschool snacks'';
■ b. In paragraph (b)(3) introductory text, remove ''§ 210.10(n)(1)'' and add in its place ''§ 210.10(o)(1)''; and
■ c. In paragraphs (b)(3) and (4), wherever they appear, remove the words ''meal supplements'' and add in their place the words ''afterschool snacks'';

§ 210.7 [Amended]

■ 5. In § 210.7:
■ a. In paragraphs (a), (c) introductory text, (c)(1) introductory text, and (c)(1)(i) and (ii), wherever they appear, remove the words ''meal supplements'' and add in their place the words ''afterschool snacks'';
■ b. In paragraph (c)(1)(iv), remove the word ''supplement'' and add in its place the words ''afterschool snack'';
■ c. In paragraph (c)(1)(v), remove the words ''meal supplement'' and add in their place the words ''afterschool snack'';
■ d. In paragraphs (d) introductory text and (d)(1)(ii), remove ''or § 220.23'';
■ e. In paragraph (d)(1)(iii) introductory text, remove ''§ 210.10, § 220.8, or § 220.23'' and add in its place ''§§ 210.10 and 220.8'';

■ f. In paragraph (d)(1)(iii)(A), remove the term ''meat/meat alternates'' and add in its place the words ''protein sources'';
■ g. Remove paragraphs (d)(1)(iv) and (vii), and redesignate paragraphs (d)(1)(v) and (vi) as paragraphs (d)(1)(iv) and (v), respectively;
■ h. At the end of newly redesignated paragraph (d)(1)(iv), add the word ''and'';
■ i. At the end of newly redesignated paragraph (d)(1)(v), remove ''; and'' and add a period in its place;
■ j. In paragraph (d)(2), remove the fourth sentence; and
■ k. In paragraph (e), remove the words ''meal supplements'' and add in their place the words ''afterschool snacks'' and remove ''§ 210.10(n)(1)'' and add in its place ''§ 210.10(o)(1)''.

§ 210.8 [Amended]

■ 6. In § 210.8, in paragraphs (c) and (d), wherever they appear, remove the words ''meal supplements'' and add in their place the words ''afterschool snacks''.

§ 210.9 [Amended]

■ 7. In § 210.9:
■ a. In the first sentence of paragraph (b)(21), remove the phrase ''March 1, 1997, and no later than December 31 of each year thereafter'' and add in its place the phrase ''December 31 of each year''; and
■ b. In paragraph (c) introductory text, remove ''§ 210.10(n)(1)'' and add in its place ''§ 210.10(o)(1)'' and remove the words ''meal supplements'' and add in their place the words ''afterschool snacks'' and remove the words ''meal supplement'' and add in their place the word ''afterschool snack''.
■ 8. In § 210.10:
■ a. In paragraphs (a)(3) and (b)(1)(i) and (iii), remove the words ''food components'' and add in their place the words ''meal components'';
■ b. Revise paragraphs (b)(2) and (c) through (f);
■ c. In paragraph (g), remove the phrase ''calorie, saturated fat, sodium, and *trans* fat'' and add in its place the word ''dietary'';
■ d. Revise paragraph (h)(1);
■ e. In paragraphs (i)(1), (i)(3)(ii), and (i)(4), remove the words ''saturated fat'' and add in their place the phrase ''saturated fat, added sugars'';
■ f. In paragraph (j), remove the phrase ''dietary specifications for calories, saturated fat, sodium and *trans* fat'' and add in its place the words ''the dietary specifications'';
■ g. In paragraph (k)(2), remove the words ''food components'' and add in their place the words ''meal components'';
■ h. Remove paragraphs (m)(2)(i) through (iii);
■ i. Revise paragraphs (o), (p), and (q); and
■ j. Add paragraph (r).

The revisions and addition read as follows:

§ 210.10 [Amended]

* * * * *

(b) * * *

(2) Over a 5-day school week:

(i) Average calorie content of meals offered to each age/grade group must be within the minimum and maximum calorie levels specified in paragraph (f) of this section;

(ii) Average saturated fat content of the meals offered to each age/grade group must be less than 10 percent of total calories;

(iii) Effective SY 2027–2028, average added sugars content of the meals offered to each age/grade group must be less than 10 percent of total calories; and

(iv) Average sodium content of the meals offered to each age/grade group must not exceed the maximum level specified in paragraph (f) of this section.

(c) *Meal pattern for school lunches.* Schools must offer the meal components and quantities required in the lunch meal pattern established in the following table:

TABLE 1 TO PARAGRAPH (C) INTRODUCTORY TEXT—NATIONAL SCHOOL LUNCH PROGRAM MEAL PATTERN

Meal components	Grades K–5	Grades 6–8	Grades 9–12
			Amount of food [1] per week (minimum per day)
Fruits (cups) [2]	2½ (½)	2½ (½)	5 (1)
Vegetables (cups) [2]	3¾ (¾)	3¾ (¾)	5 (1)
Dark Green Subgroup [3]	½	½	½
Red/Orange Subgroup [3]	¾	¾	1¾
Beans, Peas, and Lentils Subgroup [3]	½	½	½
Starchy Subgroup [3]	½	½	½
Other Vegetables Subgroup [3 4]	½	½	¾
Additional Vegetables from Any Subgroup to Reach Total	1	1	1½
Grains (oz. eq.) [5]	8–9 (1)	8–10 (1)	10–12 (2)
Protein Sources (oz. eq.) [6]	8–10 (1)	9–10 (1)	10–12 (2)
Fluid Milk (cups) [7]	5 (1)	5 (1)	5 (1)
Dietary Specifications: Daily Amount Based on the Average for a 5-Day Week [8]			
Minimum-Maximum Calories (kcal)	550–650	600–700	750–850
Saturated Fat (% of total calories)	<10	<10	<10
Added Sugars (% of total calories)	<10	<10	<10
Sodium Limit: Effective July 1, 2025 (mg)	≤1,000	≤1,105	≤1,150
Sodium Limit: Effective July 1, 2027 (mg)	≤900	≤990	≤1,035
Sodium Limit: Effective July 1, 2029 (mg)	≤810	≤895	≤935
Trans Fat	Nutrition label or manufacturer specifications must indicate zero grams of *trans* fat per serving.		

[1] Food items included in each group and subgroup and amount equivalents.
[2] Minimum creditable serving is ⅛ cup. One quarter-cup of dried fruit counts as ½ cup of fruit; 1 cup of leafy greens counts as ½ cup of vegetables. No more than half of the fruit or vegetable offerings may be in the form of juice. All juice must be 100 percent full-strength.
[3] Larger amounts of these vegetables may be served.
[4] This subgroup consists of ''Other vegetables'' as defined in paragraph (c)(2)(iii)(E) of this section. For the purposes of the NSLP, the ''Other vegetables'' requirement may be met with any additional amounts from the dark green, red/orange, and bean, peas, and lentils vegetable subgroups as defined in paragraph (c)(2)(iii) of this section.

[5] Minimum creditable serving is 0.25 oz. eq. At least 80 percent of grains offered weekly (by ounce equivalents) must meet the whole grain-rich criteria specified in FNS guidance, and the remaining grain items offered must be enriched.
[6] Minimum creditable serving is 0.25 oz. eq.
[7] Minimum creditable serving is 8 fluid ounces. All fluid milk must be fat-free (skim) or low-fat (1 percent fat or less) and must meet the requirements in paragraph (d) of this section.
[8] Effective SY 2027–2028, schools must meet the dietary specification for added sugars. Schools must meet the sodium limits by the dates specified in this chart. Discretionary sources of calories may be added to the meal pattern if within the dietary specifications.

(1) *Age/grade groups.* Schools must plan menus for students using the following age/grade groups: Grades K–5 (ages 5–10), grades 6–8 (ages 11–13), and grades 9–12 (ages 14–18). If an unusual grade configuration in a school prevents the use of these established age/grade groups, students in grades K–5 and grades 6–8 may be offered the same food quantities at lunch provided that the calorie and sodium standards for each age/grade group are met. No customization of the established age/grade groups is allowed.

(2) *Meal components.* Schools must offer students in each age/grade group the meal components specified in paragraph (c) of this section.

(i) *Protein sources component.* Schools must offer protein sources daily as part of the lunch meal pattern. The quantity of the protein source must be the edible portion as served. This component must be served in a main dish or in a main dish and only one other food item. Schools without daily choices in this component should not serve any one protein source or form of protein source (for example, ground, diced, pieces) more than three times in the same week. If a portion size of this component does not meet the daily requirement for a particular age/grade group, schools may supplement it with another protein source to meet the full requirement. Schools may adjust the daily quantities of this component provided that a minimum of one ounce is offered daily to students in grades K–8 and a minimum of two ounces is offered daily to students in grades 9–12, and the total weekly requirement is met over a 5-day period.

(A) *Enriched macaroni.* Enriched macaroni with fortified protein as defined in appendix A to this part may be used to meet part of the protein sources requirement when used as specified in appendix A to this part. An enriched macaroni product with fortified protein as defined in appendix A to this part may be used to meet part of the protein sources component or the grains component but may not meet both food components in the same lunch.

(B) *Nuts and seeds.* Nuts and seeds and their butters are allowed as a protein source in accordance with FNS guidance. Acorns, chestnuts, and coconuts may not be used because of their low protein and iron content. Nut and seed meals or flours may be used only if they meet the requirements for Alternate Protein Products established in appendix A to this part.

(C) *Yogurt.* Yogurt may be used to meet all or part of the protein sources component. Yogurt may be plain or flavored, unsweetened or sweetened. Yogurt must contain no more than 12 grams of added sugars per 6 ounces (2 grams of added sugars per ounce). Noncommercial and/or non-standardized yogurt products, such as frozen yogurt, drinkable yogurt products, homemade yogurt, yogurt flavored products, yogurt bars, yogurt covered fruits and/or nuts or similar products are not creditable. Four ounces (weight) or ½ cup (volume) of yogurt equals one ounce of the protein sources requirement.

(D) *Tofu and soy products.* Commercial tofu and soy products may be used to meet all or part of the protein sources component in accordance with FNS guidance. Noncommercial and/or non-standardized tofu and soy products are not creditable.

(E) *Beans, peas, and lentils.* Cooked dry beans, peas, and lentils may be used to meet all or part of the protein sources component. Beans, peas, and lentils are identified in this section and include foods such as black beans, garbanzo beans, lentils, kidney beans, mature lima beans, navy beans, pinto beans, and split peas.

(F) *Other protein sources.* Other protein sources, such as cheese and eggs, may be used to meet all or part of the protein sources component in accordance with FNS guidance.

(ii) *Fruits component.* Schools must offer fruits daily as part of the lunch menu. Fruits that are fresh; frozen without added sugar; canned in light syrup, water or fruit juice; or dried may be offered to meet the requirements of this paragraph. All fruits are credited based on their volume as served, except that ¼ cup of dried fruit counts as ½ cup of fruit. Only pasteurized, full-strength fruit juice may be used, and may be credited to meet no more than one-half of the fruits component.

(iii) *Vegetables component.* Schools must offer vegetables daily as part of the lunch menu. Fresh, frozen, or canned vegetables and dry beans, peas, and lentils may be offered to meet this requirement. All vegetables are credited based on their volume as served, except that 1 cup of leafy greens counts as ½ cup of vegetables and tomato paste and puree are credited based on calculated volume of the whole food equivalency. Pasteurized, full-strength vegetable juice may be used to meet no more than one-half of the vegetables component. Cooked dry beans, peas, and lentils may be counted as either a vegetable or as a protein source but not as both in the same meal. Vegetable offerings at lunch over the course of the week must include the following vegetable subgroups, as defined in this section in the quantities specified in the meal pattern in paragraph (c) of this section:

(A) *Dark green vegetables subgroup.* This subgroup includes vegetables such as bok choy, broccoli, collard greens, dark green leafy lettuce, kale, mesclun, mustard greens, romaine lettuce, spinach, turnip greens, and watercress;

(B) *Red/orange vegetables subgroup.* This subgroup includes vegetables such as acorn squash, butternut squash, carrots, pumpkin, tomatoes, tomato juice, and sweet potatoes;

(C) *Beans, peas, and lentils vegetable subgroup.* This subgroup includes vegetables such as black beans, black-eyed peas (mature, dry), garbanzo beans (chickpeas), kidney beans, lentils, navy beans pinto beans, soy beans, split peas, and white beans;

(D) *Starchy vegetables subgroup.* This subgroup includes vegetables such as black-eyed peas (not dry), corn, cassava, green bananas, green peas, green lima beans, plantains, taro, water chestnuts, and white potatoes; and

(E) *Other vegetables subgroup.* This subgroup includes all other fresh, frozen, and canned vegetables, cooked or raw, such as artichokes, asparagus, avocado, bean sprouts, beets, Brussels sprouts, cabbage, cauliflower, celery, cucumbers, eggplant, green beans, green peppers, iceberg lettuce, mushrooms, okra, onions, parsnips, turnips, wax beans, and zucchini.

(iv) *Grains component.* Schools must offer grains daily as part of the lunch menu.

(A) *Whole grain-rich requirement.* Whole grain-rich is the term designated by FNS to indicate that the grain content of a product is between 50 and 100 percent whole grain with any remaining grains being enriched. At least 80

percent of grains offered at lunch weekly must meet the whole grain-rich criteria specified in FNS guidance, and the remaining grain items offered must be enriched.

(B) *Daily and weekly servings.* The grains component is based on minimum daily servings plus total servings over a 5-day school week. Schools serving lunch 6 or 7 days per week must increase the weekly grains quantity by approximately 20 percent (⅕) for each additional day. When schools operate less than 5 days per week, they may decrease the weekly quantity by approximately 20 percent (⅕) for each day less than 5. The servings for biscuits, rolls, muffins, and other grain/bread varieties are specified in FNS guidance.

(C) *Desserts.* Schools may count up to two grain-based desserts per week towards meeting the grains requirement at lunch as specified in FNS guidance.

(D) *Breakfast cereals.* Effective SY 2025–2026, breakfast cereals must contain no more than 6 grams of added sugars per dry ounce.

(v) *Fluid milk component.* Fluid milk must be offered daily in accordance with paragraph (d) of this section.

(3) *Grain substitutions.* Schools in American Samoa, Guam, Hawaii, Puerto Rico, and the U.S. Virgin Islands, and tribally operated schools, schools operated by the Bureau of Indian Education, and schools serving primarily American Indian or Alaska Native children, may serve vegetables such as breadfruit, prairie turnips, plantains, sweet potatoes, and yams to meet the grains component.

(4) *Adjustments to the school menus.* Schools must adjust future menu cycles to reflect production and how often the food items are offered. Schools may need to change the foods offerings given students' selections and may need to modify recipes and other specifications to make sure that meal requirements are met.

(5) *Standardized recipes.* All schools must develop and follow standardized recipes. A standardized recipe is a recipe that was tested to provide an established yield and quantity using the same ingredients for both measurement and preparation methods. Standardized recipes developed by USDA/FNS are in the Child Nutrition Database. If a school has its own recipes, they may seek assistance from the State agency or school food authority to standardize the recipes. Schools must add any local recipes to their local database as outlined in FNS guidance.

(6) *Processed foods.* The Child Nutrition Database includes a number of processed foods. Schools may use purchased processed foods that are not in the Child Nutrition Database. Schools or the State agency must add any locally purchased processed foods to their local database as outlined in FNS guidance. The State agencies must obtain the levels of calories, saturated fat, added sugars, and sodium in the processed foods.

(7) *Traditional foods.* Traditional foods may credit towards the required meal components in accordance with FNS guidance. Schools are encouraged to serve traditional foods as part of their lunch and afterschool snack service. Per the Agriculture Improvement Act of 2014, as amended (25 U.S.C. 1685(b)(5)) traditional foods means ''food that has traditionally been prepared and consumed by an [American] Indian tribe,'' including wild game meat; fish; seafood; marine mammals; plants; and berries.

(d) *Fluid milk requirements*—(1) *Types of fluid milk.* (i) Schools must offer students a variety (at least two different options) of fluid milk. All milk must be fat-free (skim) or low-fat (1 percent fat or less). Milk with higher fat content is not allowed. Low-fat or fat-free lactose-free and reduced-lactose fluid milk may also be offered.

(ii) All fluid milk served in the Program must be pasteurized fluid milk which meets State and local standards for such milk. All fluid milk must have vitamins A and D at levels specified by the Food and Drug Administration and must be consistent with State and local standards for such milk.

Alternative A for Paragraph (d)(1)(iii)

(iii) For grades K–8, milk varieties must be unflavored, effective SY 2025–2026. For grades 9–12, milk varieties may be unflavored or flavored, provided that unflavored milk is offered at each meal service. Effective SY 2025–2026, flavored milk must contain no more than 10 grams of added sugars per 8 fluid ounces, or for flavored milk sold as competitive food for high schools, 15 grams of added sugars per 12 fluid ounces.

Alternative B for Paragraph (d)(1)(iii)

(iii) Milk varieties may be unflavored or flavored, provided that unflavored milk is offered at each meal service. Effective SY 2025–2026, flavored milk must contain no more than 10 grams of added sugars per 8 fluid ounces, or for flavored milk sold as competitive food for middle and high schools, 15 grams of added sugars per 12 fluid ounces.

(2) *Fluid milk substitutes in non-disability situations.* Schools may make substitutions for fluid milk for students who cannot consume fluid milk due to a medical or other special dietary need that is not a disability. A school that selects this option may offer the non-dairy beverage(s) of its choice, provided the beverage(s) meet the nutritional standards established in paragraph (d)(2)(ii) of this section. For disability-related meal modifications, see paragraph (m) of this section.

(i) Prior to providing a fluid milk substitute for a non-disability reason, a school must obtain a written request from the student's parent or guardian, or from a medical authority, identifying the reason for the substitution. A school food authority must inform the State agency if any schools choose to offer fluid milk substitutes for non-disability reasons.

(ii) If a school chooses to offer one or more fluid milk substitutes for non-disability reasons, the non-dairy beverage(s) must provide the nutrients listed in the following table. Fluid milk substitutes must be fortified in accordance with fortification guidelines issued by the Food and Drug Administration. A school need only offer the non-dairy beverage(s) that it has identified as allowable fluid milk substitutes according to the following chart.

TABLE 2 TO PARAGRAPH (d)(2)(ii)—NUTRIENT REQUIREMENTS FOR FLUID MILK SUBSTITUTES

Nutrient	Per cup (8 fl. oz.)
Calcium	276 mg.
Protein	8 g.
Vitamin A	500 IU.
Vitamin D	100 IU.
Magnesium	24 mg.
Phosphorus	222 mg.
Potassium	349 mg.
Riboflavin	0.44 mg.
Vitamin B–12	1.1 mcg.

(iii) Any expenses that exceed program reimbursements incurred when providing fluid milk substitutes must be paid by the school food authority.

(iv) The fluid milk substitute approval must remain in effect until the student's parent or guardian, or medical authority, revokes the request in writing, or until the school changes its fluid milk substitute policy.

(3) *Inadequate fluid milk supply.* If a school cannot get a supply of fluid milk, it can still participate in the Program under the following conditions:

(i) If emergency conditions temporarily prevent a school that normally has a supply of fluid milk from obtaining delivery of such milk, the State agency may allow the school to serve meals during the emergency

period with an alternate form of fluid milk or without fluid milk.

(ii) If a school is unable to obtain a supply of any type of fluid milk on a continuing basis, the State agency may approve the service of meals without fluid milk if the school uses an equivalent amount of canned milk or dry milk in the preparation of the meals. In Alaska, American Samoa, Guam, Hawaii, Puerto Rico, and the U.S. Virgin Islands, if a sufficient supply of fluid milk cannot be obtained, ''fluid milk'' includes reconstituted or recombined fluid milk, or as otherwise allowed by FNS through a written exception.

(4) *Restrictions on the sale of fluid milk.* A school participating in the Program, or a person approved by a school participating in the Program, must not directly or indirectly restrict the sale or marketing of fluid milk (as identified in paragraph (d)(1) of this section) at any time or in any place on school premises or at any school-sponsored event.

(e) *Offer versus serve for grades K through 12.* School lunches must offer daily the five meal components specified in the meal pattern in paragraph (c) of this section. Under offer versus serve, students must be allowed to decline two components at lunch, *except that* the students must select at least ½ cup of either the fruit or vegetable component. Senior high schools (as defined by the State educational agency) must participate in offer versus serve. Schools below the senior high level may participate in offer versus serve at the discretion of the school food authority.

(f) *Dietary specifications*—(1) *Calories.* School lunches offered to each age/grade group must meet, on average over the school week, the minimum and maximum calorie levels specified in the following table:

TABLE 3 TO PARAGRAPH (f)(1)—NATIONAL SCHOOL LUNCH PROGRAM CALORIE RANGES

	Grades K–5	Grades 6–8	Grades 9–12
Minimum-Maximum Calories (kcal) [1]	550–650	600–700	750–850

[1] The average daily amount for a 5-day school week must fall within the minimum and maximum levels. Discretionary sources of calories may be added to the meal pattern if within the dietary specifications.

(2) *Saturated fat.* School lunches offered to all age/grade groups must, on average over the school week, provide less than 10 percent of total calories from saturated fat.

(3) *Added sugars.* Effective SY 2027–2028, school lunches offered to all age/grade groups must, on average over the school week, provide less than 10 percent of total calories from added sugars.

(4) *Sodium.* School lunches offered to each age/grade group must meet, on average over the school week, the levels of sodium specified in the following table within the established deadlines:

TABLE 4 TO PARAGRAPH (f)(4)—NATIONAL SCHOOL LUNCH PROGRAM SODIUM LIMITS

Age/grade group	Sodium limit: effective July 1, 2025 (mg)	Sodium limit: effective July 1, 2027 (mg)	Sodium limit: effective July 1, 2029 (mg)
Grades K–5	≤1,000	≤900	≤810
Grades 6–8	≤1,105	≤990	≤895
Grades 9–12	≤1,150	≤1,035	≤935

(5) *Trans fat.* Food products and ingredients used to prepare school meals must contain zero grams of *trans* fat (less than 0.5 grams) per serving. Schools must add the *trans* fat specification and request the required documentation (nutrition label or manufacturer specifications) in their procurement contracts. Documentation for food products and food ingredients must indicate zero grams of trans fat per serving. Meats that contain a minimal amount of naturally occurring *trans* fats are allowed in the school meal programs.

* * * * *

(h) * * *

(1) *Calories, saturated fat, added sugars, and sodium.* When required by the administrative review process set forth in § 210.18, the State agency must conduct a weighted nutrient analysis to evaluate the average levels of calories, saturated fat, added sugars, and sodium of the lunches offered to students in grades K–12 during one week of the review period. The nutrient analysis must be conducted in accordance with the procedures established in paragraph (i)(3) of this section. If the results of the nutrient analysis indicate that the school lunches are not meeting the specifications for calories, saturated fat, added sugars, and sodium specified in paragraph (f) of this section, the State agency or school food authority must provide technical assistance and require the reviewed school to take corrective action to meet the requirements.

* * * * *

(o) *Afterschool snacks.* Eligible schools operating afterschool care programs may be reimbursed for one afterschool snack served to a child (as defined in § 210.2) per day.

(1) *Eligible schools* means schools that:

(i) Operate the National School Lunch Program; and

(ii) Sponsor afterschool care programs as defined in § 210.2.

(2) *Afterschool snack requirements for preschool and school-aged children.* Schools serving afterschool snacks to preschool and school-aged children must offer the meal components and quantities required in the snack meal pattern established for the Child and Adult Care Food Program for preschool or school-aged children, as applicable, under § 226.20(a), (c)(3), and (d) of this chapter. In addition, schools serving afterschool snacks must comply with the requirements set forth in paragraphs (a), (c)(3), (4), and (7), (d)(2) through (4), (g), and (m) of this section.

TABLE 5 TO PARAGRAPH (o)(2)—AFTERSCHOOL SNACK MEAL PATTERN FOR PRESCHOOL AND SCHOOL-AGED CHILDREN

[Select two of the five components for a reimbursable snack]

Meal components and food items [1]	Minimum quantities			
	Ages 1–2	Ages 3–5	Ages 6–12	Ages 13–18 [2]
Fluid milk	4 fluid ounces [3]	4 fluid ounces [4]	8 fluid ounces [5]	8 fluid ounces.[5]
Protein sources [6]	½ ounce equivalent	½ ounce equivalent	1 ounce equivalent	1 ounce equivalent.
Vegetables [7]	½ cup	½ cup	¾ cup	¾ cup.
Fruits [7]	½ cup	½ cup	¾ cup	¾ cup.
Grains [8]	½ ounce equivalent	½ ounce equivalent	1 ounce equivalent	1 ounce equivalent.

[1] Must serve two of the five components for a reimbursable afterschool snack. Milk and juice may not be served as the only two items in a reimbursable snack.
[2] May need to serve larger portions to children ages 13 through 18 to meet their nutritional needs.
[3] Must serve unflavored whole milk to children age 1.
[4] Must serve unflavored milk to children ages 5 and younger. The label on the milk must be fat-free, skim, low-fat, or 1 percent or less.
[5] May serve unflavored or flavored milk to children ages 6 and older. The label on the milk must be fat-free, skim, low-fat, or 1 percent or less.
[6] Alternate protein products must meet the requirements in Appendix A to Part 226 of this Chapter. Yogurt must contain no more than 12 grams of added sugars per 6 ounces (2 grams of added sugars per ounce). Refer to FNS guidance for crediting different types of protein source items.
[7] Juice must be pasteurized. Full-strength juice may only be used to meet the vegetable or fruit requirement at one meal or snack, per day.
[8] Must serve at least one whole grain-rich serving, across all eating occasions, per day. Grain-based desserts may not be used to meet the grains requirement. Breakfast cereal must have no more than 6 grams of added sugars per dry ounce. Refer to FNS guidance for crediting different types of grain items.

(3) *Afterschool snack requirements for infants*—(i) *Afterschool snacks served to infants.* Schools serving afterschool snacks to infants ages birth through 11 months must serve the meal components and quantities required in the snack meal pattern established for the Child and Adult Care Food Program, under § 226.20(a), (b), and (d) of this chapter. In addition, schools serving afterschool snacks to infants must comply with the requirements set forth in paragraphs (a), (c)(3), (4), and (7), (g), and (m) of this section.

(ii) *Infant afterschool snack meal pattern table.* The minimum amounts of meal components to be served at snack are as follows:

TABLE 6 TO PARAGRAPH (o)(3)(ii)—INFANT AFTERSCHOOL SNACK MEAL PATTERN

Birth through 5 months	6 through 11 months
4–6 fluid ounces of breastmilk [1] or formula [2]	2–4 fluid ounces breastmilk [1] or formula; [2] and 0–½ ounce equivalent bread; [3 4] or 0–¼ ounce equivalent crackers; [3 4] or 0–½ ounce equivalent infant cereal; [2 4] or 0–¼ ounce equivalent ready-to-eat breakfast cereal; [3 4 5 6] and 0–2 tablespoons vegetable or fruit, or a combination of both.[6 7]

[1] Breastmilk or formula, or portions of both, must be served; however, it is recommended that breastmilk be served in place of formula from birth through 11 months. For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered, with additional breastmilk offered at a later time if the infant will consume more.
[2] Infant formula and dry infant cereal must be iron-fortified.
[3] A serving of grains must be whole grain-rich, enriched meal, or enriched flour.
[4] Refer to FNS guidance for additional information on crediting different types of grain items.
[5] Breakfast cereals must contain no more than 6 grams of added sugars per dry ounce.
[6] A serving of this component is required when the infant is developmentally ready to accept it.
[7] Fruit and vegetable juices must not be served.

(4) *Monitoring afterschool snacks.* Compliance with the requirements of this paragraph is monitored by the State agency as part of the administrative review conducted under § 210.18. If the snacks offered do not meet the requirements of this paragraph, the State agency or school food authority must provide technical assistance and require corrective action. In addition, the State agency must take fiscal action, as authorized in §§ 210.18(l) and 210.19(c).

(p) *Lunch requirements for preschoolers*—(1) *Lunches served to preschoolers.* Schools serving lunches to children ages 1 through 4 under the National School Lunch Program must serve the meal components and quantities required in the lunch meal pattern established for the Child and Adult Care Food Program, under § 226.20(a), (c)(2), and (d) of this chapter. In addition, schools serving lunches to this age group must comply with the requirements set forth in paragraphs (a), (c)(3), (4), and (7), (d)(2) through (4), (g), (k), (l), and (m) of this section.

(2) *Preschooler lunch meal pattern table.* The minimum amounts of meal components to be served at lunch are as follows:

TABLE 7 TO PARAGRAPH (p)(2)—PRESCHOOL LUNCH MEAL PATTERN

[Select the appropriate components for a reimbursable meal]

Meal components and food items [1]	Minimum quantities	
	Ages 1–2	Ages 3–5
Fluid milk	4 fluid ounces [2]	6 fluid ounces.[3]
Protein sources [4]	1 ounce equivalent	1½ ounce equivalents.
Vegetables [5]	⅛ cup	¼ cup.
Fruits [5]	⅛ cup	¼ cup.
Grains [6]	½ ounce equivalent	½ ounce equivalent.

[1] Must serve all five components for a reimbursable meal. Offer versus serve is an option for at-risk afterschool care centers.
[2] Must serve unflavored whole milk to children age 1.
[3] Must serve unflavored milk to children ages 5 and younger. The label on the milk must be fat-free, skim, low-fat, or 1 percent or less.
[4] Alternate protein products must meet the requirements in Appendix A to Part 226 of this Chapter. Yogurt must contain no more than 12 grams of added sugars per 6 ounces (2 grams of added sugars per ounce). Refer to FNS guidance for crediting different types of protein source items.
[5] Juice must be pasteurized. Full-strength juice may only be used to meet the vegetable or fruit requirement at one meal or snack, per day. A vegetable may be used to meet the entire fruit requirement. When two vegetables are served at lunch or supper, two different kinds of vegetables must be served.
[6] Must serve at least one whole grain-rich serving, across all eating occasions, per day. Grain-based desserts may not be used to meet the grains requirement. Breakfast cereal must have no more than 6 grams of added sugars per dry ounce. Refer to FNS guidance for crediting different types of grain items.

(q) *Lunch requirements for infants*—(1) *Lunches served to infants.* Schools serving lunches to infants ages birth through 11 months under the National School Lunch Program must serve the meal components and quantities required in the lunch meal pattern established for the Child and Adult Care Food Program, under § 226.20(a), (b), and (d) of this chapter. In addition, schools serving lunches to infants must comply with the requirements set forth in paragraphs (a), (c)(3), (4), and (7), (g), (l), and (m) of this section.

(2) *Infant lunch meal pattern table.* The minimum amounts of meal components to be served at lunch are as follows:

TABLE 8 TO PARAGRAPH (q)(2)—INFANT LUNCH MEAL PATTERN

Birth through 5 months	6 through 11 months
4–6 fluid ounces breastmilk [1] or formula [2]	6–8 fluid ounces breastmilk [1] or formula; [2] and 0–½ ounce equivalent infant cereal; [2 3] or 0–4 tablespoons meat, fish, poultry, whole egg, cooked dry beans, or cooked dry peas; or 0–2 ounces of cheese; or 0–4 ounces (volume) of cottage cheese; or 0–4 ounces or ½ cup of yogurt; [4] or a combination of the above; [5] and 0–2 tablespoons vegetable or fruit, or a combination of both.[5 6]

[1] Breastmilk or formula, or portions of both, must be served; however, it is recommended that breastmilk be served in place of formula from birth through 11 months. For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered, with additional breastmilk offered at a later time if the infant will consume more.
[2] Infant formula and dry infant cereal must be iron-fortified.
[3] Refer to FNS guidance for additional information on crediting different types of grain items.
[4] Yogurt must contain no more than 12 grams of added sugars per 6 ounces (2 grams of added sugars per ounce).
[5] A serving of this component is required when the infant is developmentally ready to accept it.
[6] Fruit and vegetable juices must not be served.

(r) *Severability.* If any provision of this section promulgated through the final rule, ''Child Nutrition Programs: Revisions to Meal Patterns Consistent with the 2020 Dietary Guidelines for Americans'' (FNS–2020–0038; RIN 0584–AE88) is held to be invalid or unenforceable by its terms, or as applied to any person or circumstances, it shall be severable from this section and not affect the remainder thereof. In the event of such holding of invalidity or unenforceability of a provision, the meal pattern standard covered by that provision reverts to the version that immediately preceded the changes promulgated through the aforementioned final rule.

■ 9. In § 210.11:
■ a. Revise paragraph (a)(3);
■ b. Add paragraph (a)(7);
■ c. Revise paragraph (f)(2)
■ d. In paragraph (i), remove the phrase ''Effective July 1, 2016, these'' and add in its place the word ''These'';
■ e. Revise paragraph (m); and
d. Remove paragraph (n).

The revisions and addition read as follows:

§ 210.11 Competitive food service and standards.

(a) * * *

(3) *Entrée item* means an item that is intended as the main dish in a reimbursable meal and is either:

(i) A combination food of a protein source and a grain;

(ii) A combination food of a vegetable or fruit and a protein source; or

(iii) A protein source alone with the exception of yogurt, low-fat or reduced fat cheese, nuts, seeds and nut or seed butters, and meat snacks (such as dried beef jerky); or

(iv) A grain only entrée that is served as the main dish in a school breakfast.

* * * * *

(7) *Hummus* means, for the purpose of competitive food standards implementation, a spread made from ground pulses (beans, peas, and lentils), and ground nut/seed butter (such as tahini [ground sesame], peanut butter,

etc.) mixed with a vegetable oil (such as olive oil, canola oil, soybean oil, etc.), seasoning (such as salt, citric acid, etc.), and vegetables and juice for flavor (such as olives, roasted pepper, garlic, lemon juice, etc.). Manufactured hummus may also contain certain ingredients necessary as preservatives and/or to maintain freshness.

* * * * *

(f) * * *

(2) *Exemptions to the total fat requirement.* (i) Seafood with no added fat is exempt from the total fat requirement, but subject to the saturated fat, *trans* fat, sugar, calorie, and sodium standards.

(ii) Hummus (as defined in paragraph (a)(7) of this section), is exempt from the total fat standard, but subject to the saturated fat, *trans* fat, sugar, calorie, and sodium standards. This exemption does not apply to combination products that contain hummus with other ingredients such as crackers, pretzels, pita, manufactured, snack-type vegetable and/or fruit sticks, etc.

* * * * *

(m) *Beverages*—(1) *Elementary schools.* Allowable beverages for elementary school-aged students are limited to:

(i) Plain water or plain carbonated water (no size limit);

(ii) Milk and fluid milk substitutes that meet the standards outlined in § 210.10(d)(1) and (2) (no more than 8 fluid ounces); and

(iii) One hundred (100) percent fruit/vegetable juice, and 100 percent fruit and/or vegetable juice diluted with water, with or without carbonation and with no added sweeteners (no more than 8 fluid ounces).

(2) *Middle schools.* Allowable beverages for middle school-aged students are limited to:

(i) Plain water or plain carbonated water (no size limit);

(ii) Milk and fluid milk substitutes that meet the standards outlined in § 210.10(d)(1) and (2) (no more than 12 fluid ounces); and

(iii) One hundred (100) percent fruit/vegetable juice, and 100 percent fruit and/or vegetable juice diluted with water, with or without carbonation and with no added sweeteners (no more than 12 fluid ounces).

(3) *High schools.* Allowable beverages for high school-aged students are limited to:

(i) Plain water or plain carbonated water (no size limit);

(ii) Milk and fluid milk substitutes that meet the standards outlined in § 210.10(d)(1) and (2) (no more than 12 fluid ounces);

(iii) One hundred (100) percent fruit/vegetable juice, and 100 percent fruit and/or vegetable juice diluted with water, with or without carbonation and with no added sweeteners (no more than 12 fluid ounces);

(iv) Calorie-free, flavored water, with or without carbonation (no more than 20 fluid ounces);

(v) Other beverages that are labeled to contain less than 5 calories per 8 fluid ounces, or less than or equal to 10 calories per 20 fluid ounces (no more than 20 fluid ounces); and

(vi) Other beverages that are labeled to contain no more than 40 calories per 8 fluid ounces or 60 calories per 12 fluid ounces (no more than 12 fluid ounces).

§ 210.12 [Amended]

■ 10. In 210.12, paragraph (e), remove ''§ 210.30(d)'' and add in its place ''§ 210.31(d)''.

§ 210.14 [Amended]

■ 11. In § 210.14:

■ a. In paragraph (e) introductory text, remove the phrase ''beginning July 1, 2011'';

■ b. In paragraph (e)(5)(ii)(D), remove the phrase ''after July 1, 2011'';

■ c. Remove paragraph (e)(6)(iii); and

■ d. In paragraph (f) introductory text, remove the phrase ''Beginning July 1, 2011, school'' and add in its place the word ''School''.

§ 210.15 [Amended]

■ 12. In 210.15, in paragraph (b)(9), remove ''§ 210.30(f)'' and add in its place ''§ 210.31(f)''.

§ 210.18 [Amended]

■ 13. In § 210.18:

■ a. In the paragraph (g)(2)(i) heading, remove the words ''Food components'' and add in their place the words ''Meal components'';

■ b. In paragraph (g)(2)(i)(A)(*1*), remove the term ''meat/meat alternates'' and add in its place the words ''protein sources'';

■ c. In paragraph (g)(2)(i)(B)(*1*), remove the term ''food components/items'' and add in its place the term ''meal components/items'';

■ d. In paragraphs (g)(2)(i)(B)(*2*), remove the words ''food components'' and add in their place the words ''meal components'';

■ e. In paragraph (h)(2)(x), remove ''§ 210.30'' and add in its place ''§ 210.31''; and

■ f. In paragraph (l)(2)(iv) introductory text, remove the phrase ''calorie, saturated fat, sodium, and trans fat'' and add in its place the word ''the''.

§ 210.19 [Amended]

■ 14. In § 210.19:

■ a. In paragraph (c)(4), remove the word ''leter'' and add in its place the word ''letter''; and

■ b. In paragraph (f), remove the phrase ''The first list shall be provided by March 15, 1997; subsequent lists shall'' and add in its place the phrase ''The lists must'' and remove the word ''shall'' each time it appears and add in its place the word ''must''.

§ 210.20 [Amended]

■ 15. In § 210.20:

■ a. Remove paragraphs (a)(6) and (7) and redesignate paragraphs (a)(8) and (9) as paragraphs (a)(6) and (7), respectively; and

■ b. Remove paragraph (b)(10) and redesignate paragraphs (b)(11) through (14) as paragraphs (b)(10) through (13), respectively.

■ 16. In § 210.21, revise paragraphs (d) and (g)(1) to read as follows:

§ 210.21 Procurement.

* * * * *

(d) *Buy American*—(1) *Definitions.* For the purpose of this paragraph:

(i) ''Domestic commodity or product'' means:

(A) An agricultural commodity that is produced in the United States; and

(B) A food product that is processed in the United States substantially using agricultural commodities that are produced in the United States.

(ii) ''Substantially using agriculture commodities that are produced in the United States'' means over 51 percent of a food product must consist of agricultural commodities that were grown domestically.

(2) *In general.* Subject to paragraph (d)(4) of this section, a school food authority must purchase, to the maximum extent practicable, domestic commodities or products.

(3) *Required language.* School food authorities must include language requiring the purchase of foods that meet the Buy American requirements in paragraph (d)(1) of this section in all procurement procedures, solicitations, and contracts.

(4) *Limitations.* Paragraphs (d)(2) and (3) of this section shall apply only to:

(i) A school food authority located in the contiguous United States; and

(ii) A purchase of domestic commodity or product for the school lunch program under this part.

(5) *Exceptions.* The purchase of foods not meeting the definition of paragraph (d)(1) of this section is only permissible when the following criteria are met:

(i) The school food authority determines that one of the following limited exceptions is met:

(A) The product is not produced or manufactured in the United States in

sufficient and reasonably available quantities of a satisfactory quality; or

(B) Competitive bids reveal the costs of a United States product is significantly higher than the non-domestic product.

(ii) Food purchases not meeting the definition of paragraph (d)(1) of this section do not exceed a 5 percent annual threshold of total commercial food purchases a school food authority purchases per school year, when use of domestic foods is truly not practicable.

(iii) School food authorities maintain documentation to demonstrate that when utilizing an exception under (d)(5)(i) of this section their non-domestic food purchases do not exceed the 5 percent annual threshold.

(6) *Harvested fish.* To meet the definition of a domestic commodity or product, harvested fish must meet the following requirements:

(i) Farmed fish must be harvested within the United States or any territory or possession of the United States; and

(ii) Wild caught fish must be harvested within the Exclusive Economic Zone of the United States or by a United States flagged vessel.

(7) *Applicability to Hawaii.* Paragraph (d)(2) of this section applies to a school food authority in Hawaii with respect to domestic commodities or products that are produced in Hawaii in sufficient quantities to meet the needs of meals provided under the school lunch program under this part.

* * * * *

(g) * * *

(1) A school food authority participating in the Program, as well as State agencies making purchases on behalf of such school food authorities, may apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products, including the use of ''locally grown'', ''raised'', or ''caught'' as procurement specifications or selection criteria for unprocessed or minimally processed food items. When utilizing the geographic preference to procure such products, the school food authority making the purchase or the State agency making purchases on behalf of such school food authorities have the discretion to determine the local area to which the geographic preference option will be applied, so long as there are an appropriate number of qualified firms able to compete;

* * * * *

§ 210.23 [Amended]

■ 17. In § 210.23, in paragraph (a), wherever it appears, remove the words ''meal supplements'' and add in their place the words ''afterschool snacks''.

■ 18. In § 210.29, revise paragraph (d)(3) introductory text to read as follows:

§ 210.29 Management evaluations.

* * * * *

(d)* * *

(3) *School food authority appeal of FNS findings.* When administrative or follow-up review activity conducted by FNS in accordance with the provisions of paragraph (d)(2) of this section results in the denial of all or part of a Claim for Reimbursement or withholding of payment, a school food authority may appeal the FNS findings by filing a written request with the Food and Nutrition Service in accordance with the appeal procedures specified in this paragraph:

* * * * *

■ 19. In § 210.30:

■ a. In paragraphs (b)(1)(i)(A) through (C), (b)(1)(ii)(A), (B), and (D) and (b)(1)(iii)(A) and (B), add the phrase ''as determined by the State agency,'' after the phrase ''or equivalent educational experience,'';

■ b. Remove paragraph (b)(1)(i)(E);

■ c. Revise paragraph (b)(1)(iv);

■ d. Remove paragraph (b)(2), redesignate paragraph (b)(3) as paragraph (b)(2), and revise newly redesignated paragraph (b)(2); and

■ e. Revise paragraphs (c) introductory text, (d) introductory text, and (e).

The revisions read as follows:

§ 210.30 School nutrition program professional standards.

* * * * *

(b)* * *

(1)* * *

(iv) *Exceptions to the hiring standards.* (A) For a local educational agency with less than 500 students, the State agency may approve the hire of a director who meets one of the educational criteria in paragraphs (b)(1)(i)(B) through (D) of this section but has less than the required years of relevant food service experience.

(B) For a local educational agency with 2,500 to 10,000 students, the State agency may approve the hire of a director who does not meet the educational criteria in paragraphs (b)(1)(ii)(A) through (D) or paragraphs (b)(1)(iii)(A) through (C) of this section, as applicable, but who has at least 10 years of school nutrition program experience.

(C) Acting school nutrition program directors are not required to meet the hiring standards established in paragraph (b)(1) of this section; however, the State agency may require acting school nutrition program directors expected to serve for more than 30 business days to meet the hiring standards established in established in paragraph (b)(1).

* * * * *

(2) *Continuing education/training standards for all school nutrition program directors.* Each school year, the school food authority must ensure that all school nutrition program directors, (including acting directors, at the discretion of the State agency) complete 12 hours of annual continuing education/training. The annual training must include, but is not limited to, administrative practices (including training in application, certification, verification, meal counting, and meal claiming procedures), as applicable, and any other specific topics identified by FNS, as needed, to address Program integrity or other critical issues. Continuing education/training required under this paragraph is in addition to the food safety training required in the first year of employment under paragraph (b)(1)(v) of this section.

(c) *Continuing education/training standards for all school nutrition program managers.* Each school year, the school food authority must ensure that all school nutrition program managers have completed 10 hours of annual continuing education/training. The annual training must include, but is not limited to, the following topics, as applicable:

* * * * *

(d) *Continuing education/training standards for all staff with responsibility for school nutrition programs.* Each school year, the school food authority must ensure that all staff with responsibility for school nutrition programs that work an average of at least 20 hours per week, other than school nutrition program directors and managers, completes 6 hours of annual training in areas applicable to their job. Part-time staff working an average of less than 20 hours per week must complete 4 hours of annual training. The annual training must include, but is not limited to, the following topics, as applicable to their position and responsibilities:

* * * * *

(e) *Summary of required minimum continued education/training standards and flexibilities.* Program managers, directors, and staff hired on or after January 1 of each school year must complete half of their required annual training hours before the end of the school year. At the discretion of the State agency:

(1) Acting and temporary staff, substitutes, and volunteers must complete training in one or more of the topics listed in paragraph (d) of this

section, as applicable, within 30 calendar days of their start date; and

(2) School nutrition program personnel may carry over excess annual training hours to an immediately previous or subsequent school year and demonstrate compliance with the training requirements over a period of two school years, provided that some training hours are completed each school year.

TABLE 1 TO PARAGRAPH (e): SUMMARY OF REQUIRED ANNUAL TRAINING

School Nutrition Program Directors	Each year, at least 12 hours of annual education/training. Includes topics such as: • Administrative practices (including training in application, certification, verification, meal counting, and meal claiming procedures). • Any specific topics required by FNS, as needed, to address Program integrity and other critical issues. This required continuing education/training is in addition to the food safety training required in the first year of employment, or for all school nutrition program directors if determined by the State agency.
School Nutrition Program Managers	Each year, at least 10 hours of annual education/training. Includes topics such as: • Administrative practices (including training in application, certification, verification, meal counting, and meal claiming procedures). • The identification of reimbursable meals at the point of service. • Nutrition, health, and safety standards. • Any specific topics required by FNS, as needed, to address Program integrity or other critical issues.
School Nutrition Program Staff	Each year, at least 6 hours of annual education/training. Includes topics such as: • Free and reduced price eligibility. • Application, certification, and verification procedures. • The identification of reimbursable meals at the point of service. • Nutrition, health, and safety standards. • Any specific topics required by FNS, as needed, to address Program integrity or other critical issues. This requirement applies to staff, other than directors and managers, who work at least 20 hours per week.

* * * * *

PART 215—SPECIAL MILK PROGRAM FOR CHILDREN

■ 20. The authority citation for part 215 continues to read as follows:

Authority: 42 U.S.C. 1772 and 1779.

■ 21. In § 215.14a, revise paragraph (e) to read as follows:

§ 215.14a Procurement standards.

* * * * *

(e) *Geographic preference.* A school food authority participating in the Program may apply a geographic preference when procuring milk, including the use of ''locally grown'', ''raised'', or ''caught'' as procurement specifications or selection criteria for unprocessed or minimally processed food items. When utilizing the geographic preference to procure milk, the school food authority making the purchase has the discretion to determine the local area to which the geographic preference option will be applied, so long as there are an appropriate number of qualified firms able to compete.

PART 220—SCHOOL BREAKFAST PROGRAM

■ 22. The authority citation for part 220 continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

■ 23. In § 220.2:

■ a. In the definition of ''Breakfast'', remove ''§§ 220.8 and 220.23,'' and add in its place ''§ 220.8'';

■ b. Remove the definition of ''CND'';

■ c. In the definition of ''Department'', remove ''U.S.'' and add in its place ''United States'';

■ d. Revise the definitions of ''Distributing agency'' and ''Fiscal year'';

■ e. In the definition of ''FNS'', remove the phrase ''Service of the Department'' and add in its place ''Service, United States Department of Agriculture'';

■ f. In the definition of ''FNSRO'', remove the phrase ''appropriate Food and Nutrition Service'' and add in its place ''appropriate'';

■ g. Add in alphabetical order a definition for ''Food item'';

■ h. Revise the definition of ''Free breakfast'';

■ i. Add in alphabetical order a definition for ''Meal component'';

■ j. Remove the definitions of ''Menu item'';

■ k. Remove the second definition of ''Nonprofit'';

■ l. Remove the definitions of ''Nutrient Standard Menu Planning/Assisted Nutrient Standard Menu Planning'', ''OA'', and ''OI'';

■ m. Revise the definitions of ''Reduced price breakfast'' and ''Reimbursement'';

■ n. In the definition of ''School'', remove the last two sentences in paragraph (3);

■ o. Revise the definition of ''School Food Authority'' and designate it in proper alphabetical order;

■ p. In the definition of ''School week'' remove ''and § 220.23'';

■ q. Revise the definition of ''State agency'';

■ r. In the definition of ''Tofu'', remove the term ''meats/meat alternates'' and add in its place words ''protein sources'';

■ s. Add in alphabetical order a definition for ''Whole grain-rich'';

■ t. In the definition of ''Whole grains'', remove the last sentence; and

■ u. Revise the definition of ''Yogurt''.

The additions and revisions read as follows:

§ 220.2 Definitions.

* * * * *

Distributing Agency means a State agency which enters into an agreement with the Department for the distribution to schools of donated foods pursuant to part 250 of this chapter.

Fiscal year means a period of 12 calendar months beginning on October

1 of any year and ending September 30 of the following year.

* * * * *

Food item means a specific food offered within a meal component.

Free breakfast means a breakfast served under the Program to a child from a household eligible for such benefits under 7 CFR part 245 and for which neither the child nor any member of the household pays or is required to work.

* * * * *

Meal component means one of the food groups which comprise reimbursable meals. The meal components are: protein sources, grains, vegetables, fruits, and fluid milk.

* * * * *

Reduced price breakfast means a breakfast served under the Program:

(1) To a child from a household eligible for such benefits under 7 CFR part 245

(2) For which the price is less than the school food authority designated full price of the breakfast and which does not exceed the maximum allowable reduced price specified under 7 CFR part 245; and

(3) For which neither the child nor any member of the household is required to work.

Reimbursement means Federal cash assistance including advances paid or payable to participating schools for breakfasts meeting the requirements of § 220.8 served to eligible children.

* * * * *

School food authority means the governing body which is responsible for the administration of one or more schools; and has legal authority to operate the Program therein *or* be otherwise approved by FNS to operate the Program.

* * * * *

State agency means:

(1) The State educational agency;

(2) Such other agency of the State as has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer the Program in schools as specified in § 210.3(b); or

(3) The FNSRO, where the FNSRO administers the Program as specified in § 210.3(c).

* * * * *

Whole grain-rich is the term designated by FNS to indicate that the grain content of a product is between 50 and 100 percent whole grain with any remaining grains being enriched.

* * * * *

Yogurt means commercially prepared coagulated milk products obtained by the fermentation of specific bacteria, that meet milk fat or milk solid requirements and to which flavoring foods or ingredients may be added. These products are covered by the Food and Drug Administration's Definition and Standard of Identity for yogurt, 21 CFR 131.200, and low-fat yogurt and non-fat yogurt covered as a standardized food under 21 CFR 130.10.

§ 220.3 [Amended]

■ 24. In § 220.3, in paragraph (a), remove the last sentence.

■ 25. In § 220.7:

■ a. In paragraph (d)(3)(iii), remove the words ''food component'' and add in their place the words ''meal component'';

■ b. In paragraph (e)(1)(iii), remove the word ''contruct'' and add in its place the word ''construct'';

■ c. In paragraph (e)(2), remove the phrase '', during a period designated as the breakfast period by the school'';

■ d. Revise paragraph (e)(4);

■ e. In paragraph (e)(5), remove the word ''his'' and add in its place the words ''the child's'' and remove the word ''of'' and add in its place the word ''for'';

■ f. In paragraph (e)(9) remove the phrase '', or the CFPDO, where applicable'';

■ g. In paragraph (e)(13), remove the phrase '', to FNS and to OA'' and add in its place the words ''and to FNS''; and

■ h. In paragraph (h), remove ''§ 210.30'' and add in its place ''§ 210.31''.

The revision reads as follows:

§ 220.7 Requirements for participation.

* * * * *

(e) * * *

(4) Serve breakfast free or at a reduced price to all children who are determined by the local education agency to be eligible for such meals under part 245 of this section;

* * * * *

■ 26. In § 220.8:

■ a. In paragraph (a)(2), remove the word ''lunch'' and add in its place the word ''breakfast'';

■ b. In paragraphs (a)(3) and (b)(1)(i) and (iii), remove the words ''food components'' and add in their place the words ''meal components'';

■ c. Revise paragraphs (b)(2) and (c) through (f);

■ d. In paragraph (g), remove the phrase ''for calorie, saturated fat, sodium, and *trans* fat'';

■ e. In paragraphs (h)(1), (i), and (j), wherever it appears, remove the term ''saturated fat,'' and add in its place the phrase ''saturated fat, added sugars,'';

■ f. Revise paragraphs (o) and (p); and

■ g. Add paragraph (q).

The revisions and addition read as follows:

§ 220.8 Meal requirements for breakfasts.

* * * * *

(b) * * *

(2) Over a 5-day school week:

(i) Average calorie content of the meals offered to each age/grade group must be within the minimum and maximum calorie levels specified in paragraph (f) of this section;

(ii) Average saturated fat content of the meals offered to each age/grade group must be less than 10 percent of total calories as specified in paragraph (f) of this section;

(iii) Average added sugars content of the meals offered to each age/grade group must be less than 10 percent of total calories as specified in paragraph (f) of this section; and

(iv) Average sodium content of the meals offered to each age/grade group must not exceed the maximum level specified in paragraph (f) of this section.

(c) *Meal pattern for school breakfasts for grades K through 12.* A school must offer the meal components and quantities required in the breakfast meal pattern established in the following table:

TABLE 1 TO PARAGRAPH (c) INTRODUCTORY TEXT: SCHOOL BREAKFAST PROGRAM MEAL PATTERN

Meal components	Grades K–5	Grades 6–8	Grades 9–12
			Amount of food [1] per week (minimum per day)
Fruits (cups) [2]	5 (1)	5 (1)	5 (1)
Vegetables (cups) [2]	0	0	0

TABLE 1 TO PARAGRAPH (c) INTRODUCTORY TEXT: SCHOOL BREAKFAST PROGRAM MEAL PATTERN—Continued

Meal components	Grades K–5	Grades 6–8	Grades 9–12
			Amount of food [1] per week (minimum per day)
Dark Green Subgroup	0	0	0
Red/Orange Subgroup	0	0	0
Beans, Peas, and Lentils Subgroup	0	0	0
Starchy Subgroup	0	0	0
Other Vegetables Subgroup	0	0	0
Grains (oz. eq) [3]	7–10 (1)	8–10 (1)	9–10 (1)
Protein Sources (oz. eq) [4]	0	0	0
Fluid Milk (cups) [5]	5 (1)	5 (1)	5 (1)
Dietary Specifications: Daily Amount Based on the Average for a 5-Day Week [6]			
Minimum-Maximum Calories (kcal)	350–500	400–550	450–600
Saturated Fat (% of total calories)	<10	<10	<10
Added Sugars (% of total calories)	<10	<10	<10
Sodium Limit: Effective July 1, 2025 (mg)	≤485	≤540	≤575
Sodium Limit: Effective July 1, 2027 (mg)	≤435	≤485	≤520
Trans Fat	Nutrition label or manufacturer specifications must indicate zero grams of trans fat per serving.		

[1] Food items included in each group and subgroup and amount equivalents.

[2] Minimum creditable serving is ⅛ cup. Schools must offer 1 cup of fruit daily and 5 cups of fruit weekly. Schools may substitute vegetables for fruit at breakfast. Schools that substitute vegetables for fruits at breakfast more than one day per school week must offer vegetables from a variety of subgroups. One quarter cup of dried fruit counts as ½ cup of fruit; 1 cup of leafy greens counts as ½ cup of vegetables. No more than half of the fruit or vegetable offerings may be in the form of juice. All juice must be 100 percent full-strength.

[3] Minimum creditable serving is 0.25 oz. eq. At least 80 percent of grains offered weekly must meet the whole grain-rich criteria specified in FNS guidance, and the remaining grain items offered must be enriched.

[4] Minimum creditable serving is 0.25 oz. eq. There is no protein sources requirement; however, schools may substitute 1 oz. eq. of protein sources for 1 oz. eq. of grains after the minimum daily grains requirement is met.

[5] Minimum creditable serving is 8 fluid ounces. All fluid milk must be fat-free (skim) or low-fat (1 percent fat or less) and must meet the requirements in paragraph (d) of this section.

[6] Effective SY 2027–2028, schools must meet the dietary specification for added sugars. Schools must meet the sodium limits by the dates specified in this chart. Discretionary sources of calories may be added to the meal pattern if within the dietary specifications.

(1) *Age/grade groups.* Schools must plan menus for students using the following age/grade groups: Grades K–5 (ages 5–10), grades 6–8 (ages 11–13), and grades 9–12 (ages 14–18). If an unusual grade configuration in a school prevents the use of the established age/grade groups, students in grades K–5 and grades 6–8 may be offered the same food quantities at breakfast provided that the calorie and sodium standards for each age/grade group are met. No customization of the established age/grade groups is allowed.

(2) *Meal components.* Schools must offer students in each age/grade group the meal components specified in meal pattern in paragraph (c). Meal component descriptions in § 210.10 of this chapter apply to this Program.

(i) *Protein sources component.* Schools are not required to offer protein sources as part of the breakfast menu. Schools may substitute protein sources for grains, after the daily grains requirement is met, to meet the weekly grains requirement. One ounce equivalent of protein sources is equivalent to one ounce equivalent of grains.

(A) *Enriched macaroni.* Enriched macaroni with fortified protein as defined in appendix A to part 210 of this chapter may be used to meet part of the protein sources requirement when used as specified in appendix A to part 210.

(B) *Nuts and seeds.* Nuts and seeds and their butters are allowed as protein sources in accordance with program guidance. Acorns, chestnuts, and coconuts may not be used because of their low protein and iron content. Nut and seed meals or flours may be used only if they meet the requirements for Alternate Protein Products established in appendix A to this part.

(C) *Yogurt.* Yogurt may be used to meet all or part of the protein sources component. Yogurt may be plain or flavored, unsweetened or sweetened. Yogurt must contain no more than 12 grams of added sugars per 6 ounces (2 grams of added sugars per ounce). Noncommercial and/or non-standardized yogurt products, such as frozen yogurt, drinkable yogurt products, homemade yogurt, yogurt flavored products, yogurt bars, yogurt covered fruits and/or nuts or similar products are not creditable. Four ounces (weight) or ½ cup (volume) of yogurt equals one ounce of the protein sources requirement.

(D) *Tofu and soy products.* Commercial tofu and soy products may be used to meet all or part of the protein sources component in accordance with FNS guidance. Noncommercial and/or non-standardized tofu and products are not creditable.

(E) *Beans, peas, and lentils.* Cooked dry beans, peas, and lentils may be used to meet all or part of the protein sources component. Beans, peas, and lentils are identified in this section and include foods such as black beans, garbanzo beans, lentils, kidney beans, mature lima beans, navy beans, pinto beans, and split peas.

(F) *Other protein sources.* Other protein sources, such as cheese and eggs, may be used to meet all or part of the protein sources component in accordance with FNS guidance.

(ii) *Fruits component.* Schools must offer daily the fruit quantities specified in the breakfast meal pattern in paragraph (c) of this section. Fruits that are fresh; frozen without added sugar; canned in light syrup, water or fruit juice; or dried may be offered to meet

the fruits component requirements. Vegetables may be offered in place of all or part of the required fruits at breakfast. Schools that substitute vegetables for fruits at breakfast more than one day per school week must offer vegetables from a variety of subgroups. All fruits are credited based on their volume as served, except that ¼ cup of dried fruit counts as ½ cup of fruit. Only pasteurized, full-strength fruit juice may be used, and may be credited to meet no more than one-half of the fruit component.

(iii) *Vegetables component.* Schools are not required to offer vegetables as part of the breakfast menu but may offer vegetables to meet part or all of the fruit requirement. Schools that substitute vegetables for fruits at breakfast more than one day per school week must offer vegetables from a variety of subgroups. Fresh, frozen, or canned vegetables and dry beans, peas, or lentils may be offered to meet the fruit requirement. All vegetables are credited based on their volume as served, except that 1 cup of leafy greens counts as ½ cup of vegetables and tomato paste and tomato puree are credited based on calculated volume of the whole food equivalency. Pasteurized, full-strength vegetable juice may be used to meet no more than one-half of the vegetable component. Cooked dry beans, peas, or lentils may be counted as either a vegetable or as a protein source but not as both in the same meal.

(iv) *Grains component.* Schools are required to offer grains daily as part of the breakfast menu.

(A) *Whole grain-rich requirement.* Whole grain-rich is the term designated by FNS to indicate that the grain content of a product is between 50 and 100 percent whole grain with any remaining grains being enriched. At least 80 percent of grains offered at lunch weekly must meet the whole grain-rich criteria specified in FNS guidance, and the remaining grain items offered must be enriched.

(B) *Daily and weekly servings.* The grains component is based on minimum daily servings plus total servings over a 5-day school week. Schools serving breakfast 6 or 7 days per week must increase the weekly grains quantity by approximately 20 percent (⅕) for each additional day. When schools operate less than 5 days per week, they may decrease the weekly quantity by approximately 20 percent (⅕) for each day less than 5. The servings for biscuits, rolls, muffins, and other grain/bread varieties are specified in FNS guidance.

(C) *Desserts.* Schools may count up two grain-based desserts per week towards meeting the grains requirement at breakfast as specified in FNS guidance.

(D) *Breakfast cereals.* Effective SY 2025–2026, breakfast cereals must contain no more than 6 grams of added sugars per dry ounce.

(E) *Substituting protein sources for grains at breakfast.* Schools may substitute protein sources for grains, after the daily grains requirement is met, to meet the weekly grains requirement. One ounce equivalent of a protein source is equivalent to one ounce equivalent of grains.

(v) *Fluid milk component.* Fluid milk must be offered daily in accordance with paragraph (d) of this section.

(3) *Grain substitutions.* Schools in American Samoa, Guam, Hawaii, Puerto Rico, and the U.S. Virgin Islands, and tribally operated schools, schools operated by the Bureau of Indian Education, and schools serving primarily American Indian or Alaska Native children, may serve vegetables such as breadfruit, prairie turnips, plantains, sweet potatoes, and yams to meet the grains component.

(4) *Traditional foods.* Traditional foods may credit towards the required meal components in accordance with FNS guidance. Schools are encouraged to serve traditional foods as part of their breakfast service. Per the Agriculture Improvement Act of 2014, as amended (25 U.S.C. 1685(b)(5)) traditional foods means ''food that has traditionally been prepared and consumed by an [American] Indian tribe,'' including wild game meat; fish; seafood; marine mammals; plants; and berries.

Alternative A for Paragraph (d)

(d) *Fluid milk requirements.* Breakfast must include a serving of fluid milk as a beverage or on cereal or used in part for each purpose. Schools must offer students a variety (at least two different options) of fluid milk. All fluid milk must be fat-free (skim) or low-fat (1 percent fat or less). Milk with higher fat content is not allowed. Low-fat or fat-free lactose-free and reduced-lactose fluid milk may also be offered. For grades K–8, milk varieties must be unflavored, effective SY 2025–2026. For grades 9–12, milk varieties may be unflavored or flavored, provided that unflavored milk is offered at each meal service. Effective SY 2025–2026, flavored milk must contain no more than 10 grams of added sugars per 8 fluid ounces, or for flavored milk sold as competitive food for high schools, 15 grams of added sugars per 12 fluid ounces. Schools must also comply with other applicable fluid milk requirements in § 210.10(d) of this chapter.

Alternative B for Paragraph (d)

(d) *Fluid milk requirements.* Breakfast must include a serving of fluid milk as a beverage or on cereal or used in part for each purpose. Schools must offer students a variety (at least two different options) of fluid milk. All fluid milk must be fat-free (skim) or low-fat (1 percent fat or less). Milk with higher fat content is not allowed. Low-fat or fat-free lactose-free and reduced-lactose fluid milk may also be offered. Milk may be flavored or unflavored, provided that unflavored milk is offered at each meal service. Effective SY 2025–2026, flavored milk must contain no more than 10 grams of added sugars per 8 fluid ounces, or for flavored milk sold as competitive food for middle and high schools, 15 grams of added sugars per 12 fluid ounces. Schools must also comply with other applicable fluid milk requirements in § 210.10(d) of this chapter.

(e) *Offer versus serve for grades K through 12.* School breakfast must offer daily at least the three meal components required in the meal pattern in paragraph (c) of this section. To exercise the offer versus serve option at breakfast, a school food authority or school must offer a minimum of four food items daily as part of the required components. Under offer versus serve, students are allowed to decline one of the four food items, provided that students select at least ½ cup of the fruit component for a reimbursable meal. If only three food items are offered at breakfast, school food authorities or schools may not exercise the offer versus serve option.

(f) *Dietary specifications*—(1) *Calories.* School breakfasts offered to each age/grade group must meet, on average over the school week, the minimum and maximum calorie levels specified in the following table:

TABLE 2 TO PARAGRAPH (f)(1)—SCHOOL BREAKFAST PROGRAM CALORIE RANGES

	Grades K–5	Grades 6–8	Grades 9–12
Minimum-Maximum Calories (kcal) [1]	350–500	400–550	450–600

[1] The average daily amount for a 5-day school week must fall within the minimum and maximum levels. Discretionary sources of calories may be added to the meal pattern if within the dietary specifications.

(2) *Saturated fat.* School breakfast offered to all age/grade groups must, on average over the school week, provide less than 10 percent of total calories from saturated fat.

(3) *Added sugars.* Effective SY 2027–2028, school breakfasts offered to all age/grade groups must, on average over the school week, provide less than 10 percent of total calories from added sugars.

(4) *Sodium.* School breakfasts offered to each age/grade group must meet, on average over the school week, the levels of sodium specified in the following table within the established deadlines:

TABLE 3 TO PARAGRAPH (f)(4)—SCHOOL BREAKFAST PROGRAM SODIUM LIMITS

Age/grade group	Sodium limit: effective July 1, 2025 (mg)	Sodium limit: effective July 1, 2027 (mg)
Grades K–5	≤485	≤435
Grades 6–8	≤540	≤485
Grades 9–12	≤575	≤520

(5) *Trans fat.* Food products and ingredients used to prepare school meals must contain zero grams of *trans* fat (less than 0.5 grams) per serving. Schools must add the *trans* fat specification and request the required documentation (nutrition label or manufacturer specifications) in their procurement contracts. Documentation for food products and food ingredients must indicate zero grams of trans fat per serving. Meats that contain a minimal amount of naturally-occurring *trans* fats are allowed in the school meal programs.

* * * * *

(o) *Breakfast requirements for preschoolers*—(1) *Breakfasts served to preschoolers.* Schools serving breakfast to children ages 1 through 4 under the School Breakfast Program must serve the meal components and quantities required in the breakfast meal pattern established for the Child and Adult Care Food Program under § 226.20(a), (c)(1), and (d) of this chapter. In addition, schools serving breakfasts to this age group must comply with the requirements set forth in paragraphs (a), (c)(3), (g), (k), (l), and (m) of this section as applicable.

(2) *Preschooler breakfast meal pattern table.* The minimum amounts of meal components to be served at breakfast are as follows:

TABLE 4 TO PARAGRAPH (o)(2)—PRESCHOOL BREAKFAST MEAL PATTERN

[Select the appropriate components for a reimbursable meal]

Meal components and food items [1]	Minimum quantities	
	Ages 1–2	Ages 3–5
Fluid Milk [2]	4 fluid ounces	6 fluid ounces
Vegetables, Fruits, or portions of both [3]	¼ cup	½ cup
Grains (oz. eq.) [4]	½ ounce equivalent	½ ounce equivalent

[1] Must serve all three components for a reimbursable meal.

[2] Must be unflavored whole milk for children age one. Must be unflavored low-fat (1 percent) or unflavored fat-free (skim) milk for children two through five years old.

[3] Pasteurized full-strength juice may only be used to meet the vegetable or fruit requirement at one meal, including snack, per day.

[4] At least one serving per day, across all eating occasions, must be whole grain-rich. Grain-based desserts do not count towards meeting the grains requirement. Protein sources may take the place of the entire grains requirement, up to 3 times per week at breakfast. One ounce equivalent of a protein source is equal to one ounce equivalent of grains. A serving of breakfast cereal must have no more than 6 grams of added sugars per dry ounce. Refer to FNS guidance for additional information on crediting different types of grain items and different types of protein source items.

(p) *Breakfast requirements for infants*—(1) *Breakfasts served to infants.* Schools serving breakfasts to infants ages birth through 11 months under the School Breakfast Program must serve the meal components and quantities required in the breakfast meal pattern established for the Child and Adult Care Food Program, under § 226.20(a), (b), and (d) of this chapter. In addition, schools serving breakfasts to infants must comply with the requirements set forth in paragraphs (a), (c)(3), (g), (k), (l), and (m) of this section as applicable.

(2) *Infant breakfast meal pattern table.* The minimum amounts of meal components to be served at breakfast are as follows:

TABLE 5 TO PARAGRAPH (p)(2)—INFANT BREAKFAST MEAL PATTERN

Birth through 5 months	6 through 11 months
4–6 fluid ounces breastmilk[1] or formula[2]	6–8 fluid ounces breastmilk[1] or formula;[2] and
	0–½ ounce equivalent infant cereal;[2 3] or
	0–4 tablespoons meat, fish, poultry, whole egg, cooked dry beans, or cooked dry peas; or
	0–2 ounces of cheese; or
	0–4 ounces (volume) of cottage cheese; or
	0–4 ounces or ½ cup of yogurt;[4] or a combination of the above;[5] and
	0–2 tablespoons vegetable or fruit, or a combination of both.[5 6]

[1] Breastmilk or formula, or portions of both, must be served; however, it is recommended that breastmilk be served in place of formula from birth through 11 months. For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered, with additional breastmilk offered at a later time if the infant will consume more.
[2] Infant formula and dry infant cereal must be iron-fortified.
[3] Refer to FNS guidance for additional information on crediting different types of grain items.
[4] Yogurt must contain no more than 12 grams of added sugars per 6 ounces (2 grams of added sugars per ounce).
[5] A serving of this component is required when the infant is developmentally ready to accept it.
[6] Fruit and vegetable juices must not be served.

(q) *Severability.* If any provision of this section promulgated through the final rule, ''Child Nutrition Programs: Revisions to Meal Patterns Consistent with the 2020 Dietary Guidelines for Americans'' (FNS–2020–0038; RIN 0584–AE88) is held to be invalid or unenforceable by its terms, or as applied to any person or circumstances, it shall be severable from this section and not affect the remainder thereof. In the event of such holding of invalidity or unenforceability of a provision, the meal pattern standard covered by that provision reverts to the version immediately preceding the changes promulgated through the aforementioned final rule.

■ 27. In § 220.13:

■ a. Revise paragraph (b)(3);

■ b. In paragraph (c), remove ''or OI'';

■ c. In paragraph (f)(3), remove ''§§ 220.8 and 220.23'' and add in its place ''§ 220.8''; and

■ d. Remove paragraph (l) and redesignate paragraph (m) as paragraph (l).

The revision reads as follows:

§ 220.13 Special responsibilities of State agencies.

* * * * *

(b) * * *

(3) Each State agency must keep the records supplied by school food authorities showing the number of food safety inspections obtained by schools for the current and three most recent school years.

* * * * *

§ 220.14 [Amended]

■ 28. In § 220.14:

■ a. In paragraph (c), remove the phrase ''CND through the FNSRO'' and add in its place the term ''FNS''; and

■ b. In paragraph (e), remove the term ''CND'' wherever it appears and add in its place the term ''FNS''.

■ 29. In § 220.16, revise paragraphs (d) and (f) to read as follows:

§ 220.16 Procurement standards.

* * * * *

(d) *Buy American*—(1) *Definitions.* For the purpose of this paragraph:

(i) *Domestic commodity or product* means:

(A) An agricultural commodity that is produced in the United States; and

(B) A food product that is processed in the United States substantially using agricultural commodities that are produced in the United States.

(ii) *Substantially using agriculture commodities that are produced in the United States* means over 51 percent of a food product must consist of agricultural commodities that were grown domestically.

(2) *In general.* Subject to paragraph (d)(4) of this section, a school food authority must purchase, to the maximum extent practicable, domestic commodities or products.

(3) *Required language.* School food authorities must include language requiring the purchase of foods that meet the Buy American requirements in paragraph (d)(1) of this section in all procurement procedures, solicitations, and contracts.

(4) *Limitations.* Paragraphs (d)(2) and (3) of this section shall apply only to:

(i) A school food authority located in the contiguous United States; and

(ii) A purchase of domestic commodity or product for the school breakfast program under this part.

(5) *Exceptions.* The purchase of foods not meeting the definition of paragraph (d)(1) of this section is only permissible when the following criteria are met:

(i) The school food authority determines that one of the following limited exceptions are met:

(A) The product is not produced or manufactured in the United States in sufficient and reasonably available quantities of a satisfactory quality; or

(B) Competitive bids reveal the costs of a United States product is significantly higher than the non-domestic product.

(ii) Food purchases not meeting the definition of paragraph (d)(1) of this section do not exceed a 5 percent annual threshold of total commercial food purchases a school food authority purchases per school year, when use of domestic foods is truly not practicable;

(iii) School food authorities maintain documentation to demonstrate that when utilizing an exception under (d)(5)(i) of this section their non-domestic food purchases do not exceed the 5 percent annual threshold.

(6) *Harvested fish.* To meet the definition of a domestic commodity or product, harvested fish must meet the following requirements:

(i) Farmed fish must be harvested within the United States or any territory or possession of the United States; and

(ii) Wild caught fish must be harvested within the Exclusive Economic Zone of the United States or by a United States flagged vessel.

(7) *Applicability to Hawaii.* Paragraph (d)(2) of this section applies to a school food authority in Hawaii with respect to domestic commodities or products that are produced in Hawaii in sufficient quantities to meet the needs of meals provided under the school breakfast program under this part.

* * * * *

(f) *Geographic preference.* (1) School food authorities participating in the Program, as well as State agencies making purchases on behalf of such school food authorities, may apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products, including the use of ''locally grown'', ''raised'', or ''caught'' as procurement specifications

or selection criteria for unprocessed or minimally processed food items. When utilizing the geographic preference to procure such products, the school food authority making the purchase or the State agency making purchases on behalf of such school food authorities have the discretion to determine the local area to which the geographic preference option will be applied, so long as there are an appropriate number of qualified firms able to compete;

PART 225—SUMMER FOOD SERVICE PROGRAM

■ 30. The authority citation for part 225 continues to read as follows:

Authority: Secs. 9, 13 and 14, Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1758, 1761 and 1762a).

■ 31. In § 225.16, revise paragraphs (d)(2), (e)(5), and (f)(3) to read as follows:

§ 225.16 Meal service requirements.

* * * * *

(d) * * *

(2) *Lunch or supper.* The minimum amounts of meal components to be served as lunch or supper are as follows:

TABLE 2 TO PARAGRAPH (d)(2)—LUNCH OR SUPPER MEAL PATTERN

Meal components	Minimum amount
Meats and Meat Alternates	
Lean meat or poultry or fish or	2 ounces.
Alternate protein products [1] or	2 ounces.
Cheese or	2 ounces.
Egg (large) or	1.
Cooked dry beans or peas or	½ cup.[2]
Peanut butter or soynut butter or other nut or seed butters or	4 tablespoons.
Peanuts or soynuts or tree nuts or seeds [3] or	2 ounces.
Yogurt, plain or flavored, unsweetened or sweetened or an equivalent quantity of any combination of the above meat/meat alternates.	8 ounces or 1 cup.
Vegetables and Fruits	
Vegetables and/or fruits [4]	¾ cup total.
Bread and Bread Alternatives [5]	
Bread or	1 slice.
Cornbread, biscuits, rolls, muffins, etc. or	1 serving.[6]
Cooked pasta or noodle products or	½ cup.
Cooked cereal grains or an equivalent quantity of any combination of bread or bread alternate.	½ cup.
Milk	
Milk, fluid, served as a beverage	1 cup (½ pint, 8 fluid ounces).

[1] Must meet the requirements of appendix A of this part.
[2] For the purposes of the requirement outlined in this table, a cup means a standard measuring cup.
[3] Tree nuts and seeds that may be used as meat alternate are listed in program guidance.
[4] Serve 2 or more kinds of vegetable(s) and/or fruits or a combination of both. Full strength vegetable or fruit juice may be counted to meet not more than one-half of this requirement.
[5] Bread, pasta or noodle products, and cereal grains (such as rice, bulgur, or corn grits) shall be whole-grain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole-grain or enriched meal or flour; cereal shall be whole-grain, enriched or fortified.
[6] Serving sizes and equivalents will be in guidance materials to be distributed by FNS to State agencies.

* * * * *

(e) * * *

(5) *Nuts and seeds.* Nuts and seeds and their butters are allowed as meat alternates in accordance with FNS guidance. Acorns, chestnuts, and coconuts may not be used as meat alternates due to their low protein content. Nut and seed meals or flours may be used only if they meet the requirements for alternate protein products established in appendix A of this part.

(f) * * *

(3) *Bread and bread alternative substitutions.* In American Samoa, Guam, Hawaii, Puerto Rico, and the U.S. Virgin Islands, and for sponsors in any State that serve primarily American Indian or Alaska Native children, vegetables such as breadfruit, prairie turnips, plantains, sweet potatoes, and yams may be served to meet the bread and bread alternatives requirement.

* * * * *

■ 32. In § 225.17, revise paragraph (e)(1) to read as follows:

§ 225.17 Procurement standards.

* * * * *

(e) * * *

(1) Sponsors participating in the Program may apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products, including the use of ''locally grown'', ''raised'', or ''caught'' as procurement specifications or selection criteria for unprocessed or minimally processed food items. When utilizing the geographic preference to procure such products, the sponsor making the purchase has the discretion to determine the local area to which the geographic preference option will be applied, so long as there are an appropriate number of qualified firms able to compete;

* * * * *

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

■ 33. The authority citation for part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

■ 34. In § 226.2, add in alphabetical order a definition for ''Whole grain-rich'' to read as follows:

§ 226.2 Definitions.

* * * * *

Whole grain-rich is the term designated by FNS to indicate that the grain content of a product is between 50 and 100 percent whole grain with any remaining grains being enriched.

* * * * *

■ 35. In § 226.20:

■ a. Revise paragraphs (a), (c), and (f);

■ b. In paragraph (o)(1)(i)(A), remove the words ''meat or meat alternates'' and add in their place the words ''protein sources'';

■ c. In paragraphs (o)(1)(i)(B) and (C) and (o)(1)(ii) remove the words ''food components'' and add in their place the words ''meal components'' and remove the words ''meat or meat alternate'' and add in their place the words ''protein sources''; and

■ d. Add paragraph (q).

The revisions and addition read as follows:

§ 226.20 Requirements for meals.

(a) *Meal components.* Except as otherwise provided in this section, each meal served in the Program must contain, at a minimum, the indicated components:

(1) *Fluid milk.* Fluid milk must be served as a beverage or on cereal, or a combination of both, as follows:

(i) *Children 1 year old.* Unflavored whole milk must be served.

(ii) *Children 2 through 5 years old.* Unflavored low-fat (1 percent) or unflavored fat-free (skim) milk must be served.

(iii) *Children 6 years old and older.* Low-fat (1 percent fat or less) or fat-free (skim) milk must be served. Milk may be unflavored or flavored.

(iv) *Adults.* Low-fat (1 percent fat or less) or fat-free (skim) milk must be served. Milk may be unflavored or flavored. Six ounces (weight) or ¾ cup (volume) of yogurt may be used to fulfill the equivalent of 8 ounces of fluid milk once per day. Yogurt may be counted as either a fluid milk substitute or as a protein source, but not as both in the same meal.

(2) *Vegetables.* A serving may contain fresh, frozen, or canned vegetables; dry beans, peas, or lentils; or vegetable juice. All vegetables are credited based on their volume as served, except that 1 cup of leafy greens counts as ½ cup of vegetables.

(i) Pasteurized, full-strength vegetable juice may be used to fulfill the entire requirement. Vegetable juice or fruit juice may only be served at one meal, including snack, per day.

(ii) Cooked dry beans, peas, or lentils may be counted as either a vegetable or as a protein source, but not as both in the same meal.

(3) *Fruits.* A serving may contain fresh, frozen, canned, dried fruits, or fruit juice. All fruits are based on their volume as served, except that ¼ cup of dried fruit counts as ½ cup of fruit.

(i) Pasteurized, full-strength fruit juice may be used to fulfill the entire requirement. Fruit juice or vegetable juice may only be served at one meal, including snack, per day.

(ii) A vegetable may be used to meet the entire fruit requirement at lunch and supper. When two vegetables are served at lunch or supper, two different kinds of vegetables must be served.

(4) *Grains*—(i) *Enriched and whole grains.* All grains must be made with enriched or whole grain meal or flour.

(A) At least one serving per day, across all eating occasions of bread, cereals, and grains, must be whole grain-rich, as specified in FNS guidance. Whole grain-rich is the term designated by FNS to indicate that the grain content of a product is between 50 and 100 percent whole grain with any remaining grains being enriched.

(B) A serving may contain whole grain-rich or enriched bread, cornbread, biscuits, rolls, muffins, and other bread products; or whole grain-rich, enriched, or fortified cereal grain, cooked pasta or noodle products, or breakfast cereal; or any combination of these foods.

(ii) *Breakfast cereals.* Breakfast cereals are those as defined by the Food and Drug Administration in 21 CFR 170.3(n)(4) for ready-to-eat and instant and regular hot cereals. Breakfast cereals must contain no more than 6 grams of added sugars per dry ounce.

(iii) *Desserts.* Grain-based desserts do not count towards meeting the grains requirement.

(5) *Protein sources.* (i) Protein sources must be served in a main dish, or in a main dish and one other menu item. The creditable quantity of protein sources must be the edible portion as served of:

(A) Lean meat, poultry, or fish;

(B) Alternate protein products;

(C) Cheese;

(D) Egg;

(E) Cooked dry beans, peas, or lentils; or

(F) Any combination of these foods.

(ii) *Nuts and seeds.* Nuts and seeds and their butters are allowed as protein sources in accordance with FNS guidance.

(A) Nut and seed meals or flours may be used only if they meet the requirements for alternate protein products established in appendix A of this part.

(B) Acorns, chestnuts, and coconuts cannot be used as protein sources because of their low protein and iron content.

(iii) *Yogurt.* Four ounces (weight) or ½ cup (volume) of yogurt equals one ounce of the protein sources component. Yogurt may be used to meet all or part of the protein sources component as follows:

(A) Yogurt may be plain or flavored, unsweetened, or sweetened;

(B) Yogurt must contain no more than 12 grams of added sugars per 6 ounces (2 grams of added sugars per ounce);

(C) Noncommercial or commercial standardized yogurt products, such as frozen yogurt, drinkable yogurt products, homemade yogurt, yogurt flavored products, yogurt bars, yogurt covered fruits or nuts, or similar products are not creditable; and

(D) For adults, yogurt may only be used as a protein source when it is not also being used as a fluid milk substitute in the same meal.

(iv) *Tofu and soy products.* Commercial tofu and soy products may be used to meet all or part of the protein sources component in accordance with FNS guidance and appendix A of this part. Non-commercial and non-standardized tofu and soy products cannot be used.

(v) *Beans, peas, and lentils.* Cooked dry beans, peas, and lentils may be used to meet all or part of the protein sources component. Beans, peas, and lentils include black beans, garbanzo beans, lentils, kidney beans, mature lima beans, navy beans, pinto beans, and split peas. Beans, peas, and lentils may be counted as either a protein source or as a vegetable, but not as both in the same meal.

(vi) *Other protein sources.* Other protein sources, such as cheese, eggs, and nut butters may be used to meet all or part of the protein sources component.

* * * * *

(c) *Meal patterns for children age 1 through 18 and adult participants.* Institutions and facilities must serve the meal components and quantities specified in the following meal patterns for children and adult participants in order to qualify for reimbursement.

(1) *Breakfast.* Fluid milk, vegetables or fruit, or portions of both, and grains are required components of the breakfast meal. Protein sources may be used to meet the entire grains requirement a maximum of three times per week. The minimum amounts of meal components to be served at breakfast are as follows:

TABLE 2 TO PARAGRAPH (c)(1)—CHILD AND ADULT CARE FOOD PROGRAM BREAKFAST

[Select the appropriate components for a reimbursable meal]

Meal components and food items [1]	Minimum quantities				
	Ages 1–2	Ages 3–5	Ages 6–12	Ages 13–18 [2]	Adult participants
Fluid Milk	4 fluid ounces [3]	6 fluid ounces [4]	8 fluid ounces [5]	8 fluid ounces [5]	8 fluid ounces.[6]
Vegetables, fruits, or portions of both [7].	¼ cup	½ cup	½ cup	½ cup	½ cup.
Grains [8]	½ ounce equivalent	½ ounce equivalent	1 ounce equivalent	1 ounce equivalent	2 ounce equivalents.

[1] Must serve all three components for a reimbursable meal. Offer versus serve is an option for at-risk afterschool care and adult day care centers.
[2] May need to serve larger portions to children ages 13 through 18 to meet their nutritional needs.
[3] Must serve unflavored whole milk to children age 1.
[4] Must serve unflavored milk to children ages 5 and younger. The label on the milk must be fat-free, skim, low-fat, or 1 percent or less.
[5] May serve unflavored or flavored milk to children ages 6 and older. The label on the milk must be fat-free, skim, low-fat, or 1 percent or less.
[6] May serve unflavored or flavored milk to adults. The label on the milk must be fat-free, skim, low-fat, or 1 percent or less. Yogurt may take the place of milk once per day for adults. Yogurt may count as either a fluid milk substitute or as a protein source, but not both, in the same meal. Six ounces (by weight) or ¾ cup (by volume) of yogurt is the equivalent of 8 ounces of fluid milk. Yogurt must contain no more than 12 grams of added sugars per 6 ounces (2 grams of added sugars per ounce).
[7] Juice must be pasteurized. Full-strength juice may only be used to meet the vegetable or fruit requirement at one meal or snack, per day.
[8] Must serve at least one whole grain-rich serving, across all eating occasions, per day. Grain-based desserts may not be used to meet the grains requirement. Protein sources may take the place of the entire grains requirement, up to 3 times per week at breakfast. One ounce equivalent of protein sources is equal to one ounce equivalent of grains. Yogurt must contain no more than 12 grams of added sugars per 6 ounces (2 grams of added sugars per ounce). A serving of breakfast cereal must have no more than 6 grams of added sugars per dry ounce. Refer to FNS guidance for crediting different types of grain items and different types of protein source items.

(2) *Lunch and supper.* Fluid milk, protein sources, vegetables, fruits, and grains are required components in the lunch and supper meals. The minimum amounts of meal components to be served at lunch and supper are as follows:

TABLE 3 TO PARAGRAPH (c)(2)—CHILD AND ADULT CARE FOOD PROGRAM LUNCH AND SUPPER

[Select the appropriate components for a reimbursable meal]

Meal components and food items [1]	Minimum quantities				
	Ages 1–2	Ages 3–5	Ages 6–12	Ages 13–18 [2]	Adult participants
Fluid milk	4 fluid ounces [3]	6 fluid ounces [4]	8 fluid ounces [5]	8 fluid ounces [5]	8 fluid ounces.[6]
Protein sources [7]	1 ounce equivalent	1½ ounce equivalents.	2 ounce equivalents	2 ounce equivalents	2 ounce equivalents.
Vegetables [8]	⅛ cup	¼ cup	½ cup	½ cup	½ cup.
Fruits [8]	⅛ cup	¼ cup	¼ cup	¼ cup	½ cup.
Grains [9]	½ ounce equivalent	½ ounce equivalent	1 ounce equivalent	1 ounce equivalent	2 ounce equivalents.

[1] Must serve all five components for a reimbursable meal. Offer versus serve is an option for at-risk afterschool care and adult day care centers.
[2] May need to serve larger portions to children ages 13 through 18 to meet their nutritional needs.
[3] Must serve unflavored whole milk to children age 1.
[4] Must serve unflavored milk to children ages 5 and younger. The label on the milk must be fat-free, skim, low-fat, or 1 percent or less.
[5] May serve unflavored or flavored milk to children ages 6 and older. The label on the milk must be fat-free, skim, low-fat, or 1 percent or less.
[6] May serve unflavored or flavored milk to adults. The label on the milk must be fat-free, skim, low-fat, or 1 percent or less. Yogurt may take the place of milk once per day for adults. Yogurt may count as either a fluid milk substitute or as a protein source, but not both, in the same meal. Six ounces (by weight) or ¾ cup (by volume) of yogurt is the equivalent of 8 ounces of fluid milk. A serving of fluid milk is optional for suppers served to adult participants.
[7] Alternate protein products must meet the requirements in Appendix A to Part 226 of this Chapter. Yogurt must contain no more than 12 grams of added sugars per 6 ounces (2 grams of added sugars per ounce). Refer to FNS guidance for crediting different types of protein source items.
[8] Juice must be pasteurized. Full-strength juice may only be used to meet the vegetable or fruit requirement at one meal or snack, per day. A vegetable may be used to meet the entire fruit requirement. When two vegetables are served at lunch or supper, two different kinds of vegetables must be served.
[9] Must serve at least one whole grain-rich serving, across all eating occasions, per day. Grain-based desserts may not be used to meet the grains requirement. Breakfast cereal must have no more than 6 grams of added sugars per dry ounce. Refer to FNS guidance for crediting different types of grain items.

(3) *Snack.* Serve two of the following five components: Fluid milk, protein sources, vegetables, fruits, and grains. Fruit juice, vegetable juice, and milk may comprise only one component of the snack. The minimum amounts of meal components to be served at snacks are as follows:

TABLE 4 TO PARAGRAPH (c)(3)—CHILD AND ADULT CARE FOOD PROGRAM SNACK

[Select two of the five components for a reimbursable snack]

Meal components and food items [1]	Minimum quantities				
	Ages 1–2	Ages 3–5	Ages 6–12	Ages 13–18 [2]	Adult participants
Fluid milk	4 fluid ounces [3]	4 fluid ounces [4]	8 fluid ounces [5]	8 fluid ounces [5]	8 fluid ounces.[6]
Protein sources [7]	½ ounce equivalent	½ ounce equivalent	1 ounce equivalent	1 ounce equivalent	1 ounce equivalent.
Vegetables [8]	½ cup	½ cup	¾ cup	¾ cup	½ cup.
Fruits [8]	½ cup	½ cup	¾ cup	¾ cup	½ cup.
Grains [9]	½ ounce equivalent	½ ounce equivalent	1 ounce equivalent	1 ounce equivalent	1 ounce equivalent.

[1] Must serve two of the five components for a reimbursable snack. Milk and juice may not be served as the only two items in a reimbursable snack.

[2] May need to serve larger portions to children ages 13 through 18 to meet their nutritional needs.

[3] Must serve unflavored whole milk to children age 1.

[4] Must serve unflavored milk to children ages 5 and younger. The label on the milk must be fat-free, skim, low-fat, or 1 percent or less.

[5] May serve unflavored or flavored milk to children ages 6 and older. The label on the milk must be fat-free, skim, low-fat, or 1 percent or less.

[6] May serve unflavored or flavored milk to adults. The label on the milk must be fat-free, skim, low-fat, or 1 percent or less. Yogurt may take the place of milk, once per day for adults. Yogurt may count as either a fluid milk substitute or as a protein source, but not both, in the same meal. Six ounces (by weight) or ¾ cup (by volume) of yogurt is the equivalent of 8 ounces of fluid milk.

[7] Alternate protein products must meet the requirements in Appendix A to Part 226 of this Chapter. Yogurt must contain no more than 12 grams of added sugars per 6 ounces (2 grams of added sugars per ounce). Refer to FNS guidance for crediting different types of protein source items.

[8] Juice must be pasteurized. Full-strength juice may only be used to meet the vegetable or fruit requirement at one meal or snack, per day.

[9] Must serve at least one whole grain-rich serving, across all eating occasions, per day. Grain-based desserts may not be used to meet the grains requirement. Breakfast cereal must have no more than 6 grams of added sugar per dry ounce. Refer to FNS guidance for crediting different types of grain items.

* * * * *

(f) *Grain substitutions.* In American Samoa, Guam, Hawaii, Puerto Rico, and the U.S. Virgin Islands, and in institutions or facilities in any State that serve primarily American Indian or Alaska Native children, vegetables such as breadfruit, prairie turnips, plantains, sweet potatoes, and yams may be served to meet the grains requirement.

* * * * *

(q) *Severability.* If any provision of this section promulgated through the final rule, ''Child Nutrition Programs: Revisions to Meal Patterns Consistent with the 2020 Dietary Guidelines for Americans'' (FNS–2020–0038; RIN 0584–AE88) is held to be invalid or unenforceable by its terms, or as applied to any person or circumstances, it shall be severable from this section and not affect the remainder thereof. In the event of such holding of invalidity or unenforceability of a provision, the meal pattern standard covered by that provision reverts to the version that immediately preceded the changes promulgated through the aforementioned final rule.

■ 36. In § 226.22, revise paragraph (n)(1) to read as follows:

§ 226.22 Procurement.

* * * * *

(n) * * *

(1) Institutions participating in the Program may apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products, including the use of ''locally grown'', ''raised'', or ''caught'' as procurement specifications or selection criteria for unprocessed or minimally processed food items. When utilizing the geographic preference to procure such products, the institution making the purchase has the discretion to determine the local area to which the geographic preference option will be applied so long as there are an appropriate number of qualified firms able to compete;

* * * * *

Cynthia Long,

Administrator, Food and Nutrition Service.

Appendix

Note: This appendix will not appear in the Code of Regulations.

Regulatory Impact Analysis

Statement of Need

On February 7, 2022, the United States Department of Agriculture (USDA) published *Child Nutrition Programs: Transitional Standards for Milk, Whole Grains, and Sodium* (referred to here as the transitional standards rule) [110] to support schools in their programs after over two years of serving meals during the COVID–19 pandemic. In the absence of the transitional standards rule, schools would have been expected to immediately meet standards established in the 2012 final rule, *Nutrition Standards in the National School Lunch and School Breakfast Programs.*[111] Those standards would have been difficult, if not impossible, for many schools to meet given the pandemic's impacts on the supply chain and the disruption to normal school food service operations. The transitional standards rule was meant to set interim, achievable nutrition standards until new standards could be implemented beginning in school year (SY) 2024–2025. This proposed rule is meant to align with the *Dietary Guidelines for Americans, 2020–2025,* [112] and as a result will continue to improve the health of meals and snacks served in child nutrition programs in the coming years. To develop the proposed rule, *Child Nutrition Programs: Revisions to Meal Patterns Consistent with the 2020 Dietary Guidelines for Americans,* USDA considered broad stakeholder input, including written comments received in response to the transitional standards rule and oral comments submitted during listening sessions, and a comprehensive review of the latest *Dietary Guidelines.* The proposed rule represents the next stage of the rulemaking process to permanently update and improve school meal pattern requirements. As with the transitional standards rule, this proposed rule includes a focus on sodium, whole grains, and milk; however, this proposed rule also includes a new focus on added sugars. Further, in addition to addressing these and other nutrition standards, this rulemaking proposes measures to strengthen the Buy American provision in the school meal programs and proposes a variety of other changes to school meal requirements. Updates for the Child and Adult Care Food Program (CACFP) and Summer Food Service Program (SFSP) are

[110] *Child Nutrition Programs: Transitional Standards for Milk, Whole Grains, and Sodium* (87 FR 6984, February 7, 2022). Available at: *https://www.federalregister.gov/.*

[111] *Nutrition Standards in the National School Lunch and School Breakfast Programs* (77 FR 4088, January 26, 2012). Available at: *https://www.federalregister.gov/documents/2012/01/26/2012-1010/nutrition-standards-in-the-national-school-lunch-and-school-breakfast-programs.*

[112] U.S. Department of Agriculture and U.S. Department of Health and Human Services. Dietary Guidelines for Americans, 2020–2025. 9th Edition. December 2020. Available at *DietaryGuidelines.gov.*

also detailed within certain provisions of this proposed rule.

Background

The National School Lunch Program (NSLP) and School Breakfast Program (SBP) were established in 1946 and 1966, respectively. Both programs provide nutritionally balanced, and both affordable and no-cost meals to children in schools each day. From January 2019 through December 2019, prior to the pandemic, almost 5 billion lunches and 2.5 billion breakfasts were served through the NSLP and SBP.[113] The transitional standards rule, published in early 2022, finalized the *Restoration of Milk, Whole Grains, and Sodium Flexibilities Proposed Rule* that was published in late 2020. USDA also published an interim final rule and a final rule related to the milk, whole grains, and sodium standards in 2017 [114] and 2018,[115] respectively. Prior to these rules, school nutrition standards had not been updated since 2012 with the *Nutrition Standards in the National School Lunch and School Breakfast Programs Final Rule*. The 2012 rule focused on increasing fruit, vegetable, and whole grain offerings while reducing sodium, total calories, saturated fat, and trans-fat in school meals. Many components of the 2012 rule were successfully implemented; however, full implementation of the 2012 meal pattern requirements for milk, whole grains, and sodium was delayed due to legislative and administrative actions, including meal pattern waivers that were in place due to the COVID–19 pandemic.[116] The transitional standards rule, which took effect in SY 2022–2023, provided a middle ground between the 2012 standards for milk, whole grains, and sodium, and the meal pattern waivers that many schools relied on during the pandemic. This proposed rule builds on USDA's prior rulemaking to further align school meal nutrition standards with the goals of the *Dietary Guidelines, 2020–2025.*

Comments

USDA received approximately 30 comments on the economic summary from the transitional standards rule. Comments were centered around two topics:

- The challenges of sustaining a revenue-neutral program due to food and labor costs rising higher than is typical the last 2+ years, and
- The additional costs for manufacturers in product reformulation; respondents were particularly concerned about reformulation costs associated with meeting the transitional sodium standards.

Comments: Respondents noted the challenges of maintaining a revenue-neutral program while providing both healthy and tasty meals for school children during the COVID–19 pandemic and beyond. Multiple comments expressed concern regarding inflation and the rising costs of food, labor, and equipment. Respondents supported use of the higher Summer Food Service Program meal reimbursement rate during COVID–19 operations in SY 2021–2022. They argued the increased reimbursement rates at that time made it easier to provide healthy meals; however, respondents also expressed concern about returning to normal operations post-COVID.

USDA Response: USDA recognizes the challenges schools are facing and is proposing to phase in updated standards that USDA expects to be achievable in the current food environment. This proposed rule contains multiple standards that would be implemented incrementally over time, rather than implementing broader changes during SY 2024–2025. For instance, USDA is proposing to implement the third NSLP sodium limit in SY 2029–2030, five years after the anticipated effective date of the final rule.

Comments: Three comments discussed the need for recipe and product reformulation as a result of the transitional standards rule and future rules. These respondents assert that changes to school meal standards would potentially be costly for food service operators and manufacturers that produce foods and products to meet both USDA sodium limits and Food and Drug Administration (FDA) voluntary sodium reduction targets.

USDA Response: Data from the School Nutrition Meal Cost Study (SNMCS) suggest that, on average, in SY 2014–2015 schools at all grade levels were less than 50 mg away (per meal) from meeting the transitional standards rule sodium limits, including Target 1A (effective in SY 2023–2024) for the NSLP, and Target 1 (effective SY 2022–2023 and SY 2023–2024) for the SBP.[117] Product reformulation that occurred between 2015 and 2019 may have resulted in additional reduction of sodium content in school meals prior to the pandemic. USDA recognizes that in order to meet the sodium limits proposed in this rulemaking, additional recipe and product reformulation will need to occur over time. To that end, this rulemaking proposes alignment with the current short-term FDA voluntary sodium targets. Similar to the incremental approach taken by FDA, this rulemaking proposes a series of gradual sodium reductions of 10 percent each in school breakfasts and lunches from the weekly average sodium limits established in the transitional standards rule.[118] While the FDA guidance is designed to support a decrease of average daily sodium intake of 12 percent across almost all food groups, [119] it should be noted that there are some differences in the food categories addressed in FDA's voluntary sodium reduction goals and foods served in the school meal programs. Some foods served in school meal programs including milk, fruits, and fresh vegetables are not targeted by FDA for sodium reduction, but condiments/accompaniments and combination entrees are highly targeted. As a result of only certain foods being targeted that are served in school meals, a total reduction of 10 percent of menu sodium content is observed when applying the FDA goals to school menus. When simulating a reduction in sodium content for individual food items offered according to FDA's voluntary sodium reduction goals, the reduction overall from the previous sodium targets was 10 percent. The proposed weekly average sodium targets would allow time and space for a variety of sodium reduction practices including product reformulation, facility upgrades to increase scratch cooking, menu adjustments, changing the frequency of offering higher sodium foods, and recipe alterations. This rulemaking also proposes incremental sodium reduction over a period of five school years (from the proposed implementation date of the rule), giving time for these changes to be made by manufacturers and food service operations.

Summary of Impacts

The estimated impacts of this rulemaking reflect shifts in food purchases and labor resources incurred by schools for school meal production, as well as accounting for inflation. The analyses for this rulemaking provide the cost of moving from the 2022 transitional standards rule to this proposed rule that will likely begin to go into effect in SY 2024–2025, as well as the longer-term costs of moving to the standards in this rulemaking from current operations. USDA estimates this proposed rule would cost [120] schools between $0.03 and $0.04 per breakfast and lunch served [121] or between $220 and $274 million [122] annually including both the SBP and NSLP starting in SY 2024–2025, accounting for the fact that standards are going to be implemented gradually and

[113] USDA—Food and Nutrition Service, National Data Bank—Publicly available data.

[114] *Interim Final Rule: Child Nutrition Program Flexibilities for Milk, Whole Grains, and Sodium Requirements* (82 FR 56703, November 30, 2017). Available at: *https://www.federalregister.gov/documents/2017/11/30/2017-25799/child-nutrition-programs-flexibilities-for-milk-whole-grains-and-sodium-requirements.*

[115] *Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements* (83 FR 63775, December 12, 2018). Available at: *https://www.federalregister.gov/documents/2018/12/12/2018-26762/child-nutrition-programs-flexibilities-for-milk-whole-grains-and-sodium-requirements.*

[116] See page 6986 of the transitional standards rule for an overview of legislative and administrative actions that prevented full implementation of the 2012 milk, whole grains, and sodium standards. *Child Nutrition Programs: Transitional Standards for Milk, Whole Grains, and Sodium* (87 FR 6984, February 7, 2022). Available at: *https://www.federalregister.gov/*

[117] *https://www.fns.usda.gov/school-nutrition-and-meal-cost-study.*

[118] The sodium standards from the transitional standards rule are detailed in the 'Sodium' subsection of the 'Impacts' section below.

[119] *https://www.fda.gov/food/cfsan-constituent-updates/fda-issues-sodium-reduction-final-guidance.*

[120] Except where noted in the participation impacts, the terms ''costs'' and ''savings'' are used in this analysis to describe the school level shifts in food purchases and labor associated with school meal production.

[121] According to the School Nutrition Meal Cost Study (SNMCS) Report—Volume 3, the average SFA had a reported cost of $3.81 per NSLP lunch and $2.72 per SBP breakfast—*https://fns-prod.azureedge.us/sites/default/files/resource-files/SNMCS-Volume3.pdf.*

[122] There are multiple proposed alternatives for milk regulations, so there is a range of costs including both alternative A and B.

adjusting for annual inflation.[123] The costs to schools are mainly due to a shift in purchasing patterns to products with reduced levels of added sugars and sodium, administrative costs, as well as increases in labor costs for continued sodium reduction over time. Updating afterschool snack standards to reflect the proposed added sugars standards would result in some savings due to a reduction of grain-based desserts being served. Simplifying vegetable variety requirements for schools opting to substitute vegetables for fruits at breakfast also results in some savings, because on average in school meals, vegetables are cheaper than fruits, per serving.[124] An increase in cost due to the Buy American provision is a result of additional labor costs and food costs necessary to reach the updated threshold. The changes proposed in this document are achievable and realistic for schools and recognize the need for strong nutrition standards in school meals. This analysis provides seven-year cost streams to project potential impacts over each impacted fiscal year (FY), though FY 2024 and FY 2030 are shown as half year costs to account for the fact that this proposed rule spans six total school years (Table 1). This same data is presented in Table A in the 'Appendix' section by school year.

TABLE 1: STREAM OF QUANTIFIABLE COSTS TO SCHOOLS DURING THE 7 YEARS OF IMPLEMENTATION, IN 2022 DOLLARS[125,126]

	FISCAL YEAR ($ MILLIONS)							
	2024[127]	2025[128]	2026	2027	2028	2029	2030[129]	Total[130]
ALTERNATIVE A: Proposes to limit milk choices in elementary and middle schools (K-8) to unflavored milks only								
NOMINAL COST STREAM[131]								
ADMINISTRATIVE COSTS	$21	$42	$21	$21	$21	$21	$21	$169
ADDED SUGARS	$0	$42	$83	$83	$83	$83	$42	$415
MILK	$0	$28	$55	$55	$55	$55	$28	$275
SODIUM	$0	$45	$90	$117	$144	$144	$72	$614
AFTERSCHOOL SNACKS	-$5	-$10	-$10	-$10	-$10	-$10	-$5	-$62
SUBSTITUTE VEGETABLES FOR FRUITS AT BREAKFAST	-$2	-$4	-$4	-$4	-$4	-$4	-$2	-$24
BUY AMERICAN	$3	$7	$7	$7	$7	$7	$3	$39
TOTAL	**$17**	**$149**	**$242**	**$269**	**$296**	**$296**	**$158**	**$1,426**
% COST OF BASELINE[132]	**0.1%**	**0.6%**	**0.9%**	**1.0%**	**1.0%**	**1.0%**	**1.0%**	**0.8%**
DISCOUNTED COST STREAM								
3 PERCENT	$17	$144	$228	$246	$263	$255	$133	$1,286
7 PERCENT	$17	$139	$211	$219	$226	$211	$1106	$1,129
ALTERNATIVE B: Proposes to maintain the current standard allowing all schools to offer flavored and unflavored milks								
NOMINAL COST STREAM								

[123] Using 2022 dollars and not adjusting for annual inflation results in costs between $1.2 and $1.4 billion dollars over six school years (over seven fiscal years) or $192 to $238 million annually ($0.03 per meal), see Appendix.

[124] According to USDA special tabulations utilizing SNMCS data from SY 2014–2015.

[125] No adjustment for inflation was done for this table aside for inflation from the time-period of data collection up to 2022.

[126] For data presented by school years instead of fiscal years, see Table A in the 'Appendix' section. Totals are the same as Table 1 and the breakdown of costs is shown across the six school years.

[127] Presenting half a year of costs from SY 2024–2025 (first half of the school year)

[128] Including costs from the second half of SY 2024–2025 and the first half of SY 2025–2026; this style is also true of FY 2026, 2027, 2028, and 2029.

[129] Presenting half a year of costs from SY 2029–2030 (second half of the school year).

[130] This is six full fiscal years, including 5 full fiscal years and two half years.

[131] The nominal cost stream values are based upon 2019 participation levels and assumes participation holds steady through FY 2030.

[132] The percentage of baseline is calculated as total costs of the proposed changes divided by the total expected costs of the NSLP, SBP, and CACFP programs in each fiscal year. Expected costs for NSLP, SBP and CACFP are inflated from FY 2019 based on actual and forecasted food price inflation.

ADMINISTRATIVE COSTS	$21	$42	$21	$21	$21	$21	$21	$169
ADDED SUGARS	$0	$42	$83	$83	$83	$83	$42	$415
MILK	$0	$0	$0	$0	$0	$0	$0	$0
SODIUM	$0	$45	$90	$117	$144	$144	$72	$614
AFTERSCHOOL SNACKS	-$5	-$10	-$10	-$10	-$10	-$10	-$5	-$62
SUBSTITUTE VEGETABLES FOR FRUITS AT BREAKFAST	-$2	-$4	-$4	-$4	-$4	-$4	-$2	-$24
BUY AMERICAN	$3	$7	$7	$7	$7	$7	$3	$39
TOTAL	**$17**	**$121**	**$187**	**$214**	**$241**	**$241**	**$131**	**$1,151**
% COST OF BASELINE	**0.1%**	**0.5%**	**0.7%**	**0.8%**	**0.8%**	**0.8%**	**0.9%**	**0.7%**
DISCOUNTED COST STREAM								
3 PERCENT	$17	$118	$176	$196	$214	$208	$110	$1,037
7 PERCENT	$17	$113	$163	$174	$184	$172	$87	$910

As required by OMB Circular A–4, in Table 2 below, the Department has prepared an accounting statement showing the annualized estimates of benefits, costs, and transfers associated with the provisions of this proposed rule. The next section provides an impact analysis for each change.

TABLE 2: ACCOUNTING STATEMENT

Benefits	Range	Estimate	Year Dollar	Discount Rate	Period Covered
Qualitative: Proposes achievable standards that will improve the nutritional content of meals served through USDA child nutrition programs. These proposed standards include an introduction of added sugars standards and changes to sodium standards in order to transition from the transitional standards rule of operations. Additional provisions were provided for milk, as well as menu planning options for American Indian and Alaska Native students, traditional foods, afterschool snacks, substitution of vegetables for fruit at breakfast, nuts and seeds, hummus exemption, professional standards, and Buy American.					
Annualized Monetized ($millions/year)		n.a.	n.a.	n.a.	n.a.	FY 2024-2030
Costs Incurred by Schools	**Range**	**Estimate**	**Year Dollar**	**Discount Rate**	**Period Covered**
Quantitative: This proposed rule would implement standards for added sugars and make changes to sodium requirements for schools. Additional provisions were provided for milk, as well as menu planning options for American Indian and Alaska Native students, traditional foods, nuts and seeds, hummus exemption, professional standards, and Buy American. The changes in this rulemaking are achievable standards as schools move from the transitional standards rule after the COVID-19 pandemic to traditional operations. The estimated potential impacts are provided to quantify the changes in purchasing patterns and labor hours to meet these requirements.					
Proposed Milk Alternative A Annualized Monetized ($millions/year)	Total	$183	2022	7 percent	FY 2024-2030
		$195	2022	3 percent	
Proposed Milk Alternative B Annualized Monetized ($millions/year)	Total	$148	2022	7 percent	FY 2024-2030
		$157	2022	3 percent	
Federal Costs	**Range**	**Estimate**	**Year Dollar**	**Discount Rate**	**Period Covered**
Qualitative and Quantitative: There are no estimated changes in Federal reimbursement levels associated with this rulemaking. It is assumed participation will not measurably change from the baseline approximated by the status quo.					
Annualized Monetized ($millions/year)	n.a.	n.a.	n.a.	n.a.	FY 2024-2030

Section by Section Analysis

This document proposes standards for added sugars, milk, whole grains, and sodium. It also includes proposals related to menu planning options for American Indian and Alaska Native children, traditional foods, afterschool snacks, substituting vegetables for fruits at breakfast, nuts and seeds, hummus, professional standards, the Buy American Provision, and geographic preference. Since the transitional standards rule was released in early 2022, USDA worked closely with program stakeholders to gather input for this proposed rule. In addition, the public was also able to make comments on the transitional standards rule and the accompanying Regulatory Impact Analysis. Analyses below detail the financial impacts of each element of this rulemaking from the implementation of the transitional standards rule onward.

Key Assumptions

Impacts in this analysis are based on data collected during SY 2014–2015 for the School Nutrition and Meal Cost Study (SNMCS).[133] Distribution of the types and quantities of foods school districts purchase may have shifted since that time due to the implementation of the 2022 standards, pandemic supply chain challenges, COVID–19 flexibilities provided to schools, and industry changes. Utilizing a 10-year average of the Consumer Prices Indexes (CPI) of all food (including food consumed away from home and at home) from 2014 to the predicted 2022 and 2023 years, cost data were inflated three percent annually for the analyses detailed below.[134] The analyses in this rulemaking assume that the significant progress schools made towards serving healthier meals after 2012 rule was implemented will continue.

These analyses assume that school meal participation (average daily participation and meal counts) will normalize to be consistent with the service levels in FY 2019, as that is the most recent year of typical program operations. USDA acknowledges that the proposed standards could impact student participation. These potential impacts are detailed in this Regulatory Impact Analysis under Participation Impacts in the 'Uncertainties/Limitations' section as a sensitivity analysis. Additional students may participate as a result of being introduced to the program with the free meals served during the pandemic, and it is possible fewer students may participate if there are certain foods they miss as a result of the standards proposed in this document (*i.e.* foods higher in added sugars or sodium no longer being served). The analyses in this Regulatory Impact Analysis, assume participation returns to more typical, pre-pandemic levels and projects participation will hold steady each school year during the time period between SY 2024–2025 and SY 2029–2030.

Impacts on diet quality of the proposed changes are based on the SNMCS and prior data from SNDA IV.[135] Between SY 2009–2010 and SY 2014–2015, ''Healthy Eating

[133] *https://www.fns.usda.gov/school-nutrition-and-meal-cost-study.*

[134] *https://www.ers.usda.gov/data-products/food-price-outlook/.*

[135] *https://www.fns.usda.gov/school-nutrition-dietary-assessment-study-iv.*

Index-2010'' (HEI–2010) scores [136] of diet quality for NSLP and SBP meals increased significantly. The Healthy Eating Index is a ''measure of diet quality that can be used to assess how well a set of foods aligns with key recommendations of the *Dietary Guidelines*.'' [137] At the time of data collection in the SNMCS, the HEI–2010 score was used for evaluation so that there could be a direct comparison in diet quality between SY 2009–2010 and SY 2014–2015. Over this period, the overall mean HEI–2010 score for NSLP lunches served increased from 57.9 to 81.5 out of a possible 100 points, and the mean HEI–2010 score for SBP breakfasts increased from 49.6 to 71.3 out of a possible 100 points. USDA assumes these improvements were due to the 2012 rule. This impact analysis assumes that the dietary content of served school meals continued to improve until 2019 and potentially even during the pandemic for some schools because of the 2012 rule. However, USDA acknowledges that there may have been changes to meals as a result of the 2018 rule (providing flexibilities for milk, whole grains, and sodium requirements) and the COVID meal pattern waivers.

With regards to added sugars, USDA assumes that schools will use a variety of menu changes to reduce added sugars to 10 percent or less of the weekly calorie content at school lunch and breakfast. Because added sugars are new on food labels and have not been part of school meal regulations in the past, there may be a learning curve for School Food Authorities (SFAs) to adjust as the product specific and weekly average limits are implemented. Analyses on milk product data were completed with the assumption that some products that meet the proposed flavored milk added sugars limit of 10 grams per 8 fluid ounces are available. At the time data were collected for SNMCS in SY 2014–2015, no products met a 10-gram added sugars limit. However, data collected by USDA[138] in 2022 from a limited number of K–12 school and food service catalogs suggest that there has been a shift in the added sugars content of milk products available to schools in the last 7 years. More information on the findings of the data collected are in the 'Added Sugars' subsection of the 'Impacts' section below.

The proposed changes to limit added sugars in flavored milk[139]—which is the leading source of added sugars in school meals—creates some overlap in the impact analyses of added sugars and milk proposed changes. In one proposed milk alternative, Alternative A, USDA proposes to limit milk choices in elementary and middle schools to unflavored milks only. In the other proposed milk alternative, Alternative B, USDA proposes to maintain the current standard allowing all schools to offer flavored and unflavored milks. For Alternative A, there may be some cost overlap with the proposed added sugars provisions but for this analysis, it is assumed that the proposed change in milk regulations for elementary and middle schools would be an additional cost to the changes in added sugars milk regulations.

Analyses completed to evaluate the impacts of proposed whole grain standards assume that the majority of grains offered in the school meal programs are whole grain-rich. On average, in SY 2014–2015, 70 percent of the weekly menus offered at least 80 percent of the grain items as whole grain-rich for both breakfast and lunch.[140] The transitional standards rule requires that schools offer at least 80 percent of their weekly grains as whole grain-rich starting in SY 2022–2023. This analysis assumes that schools participating in the NSLP and SBP will fully meet this requirement by the time this proposed rule is finalized and subsequently implemented in SY 2024–2025.

For the analysis of the sodium provision of this proposed rule, a few assumptions were made. Sodium content of school meals has been trending downwards since the 2012 rule implementation began, demonstrated by an almost 270 percent increase in HEI–2010 sodium component scores from SY 2009–2010 to SY 2014–2015 (10 to 27 percent of the maximum score). An assumption made for this analysis was that the sodium content of school meals continued to decrease until pandemic waivers allowed flexibility to the meal standards, including sodium, in 2020 due to the COVID–19 pandemic disruptions to school meal operations. Additionally, USDA assumes sodium reductions in school meals will take place in a variety of ways and that there are a multitude of strategies schools can use to reduce sodium content of meals served. As a result, a variety of meal pattern component combinations were utilized and then averaged in this impact analysis to account for the various ways that sodium can be reduced.

For the impact analyses of the additional sections of this proposed rule, including menu planning options for American Indian and Alaska Native children, traditional foods, afterschool snacks, substituting vegetables for fruits at breakfast, nuts and seeds, and the Buy American provision, a few assumptions had to be made. It was assumed that the proportion offered of the food items or food groups related to these elements of the proposed rule would be similar to offered proportions from SY 2014–2015. This assumption gave a baseline to work from in order to simulate the impact of the proposed updates to meal patterns. For instance, USDA assumed the proportion of offered food components in afterschool snacks would be comparable to the proportion of food components offered in school in the current school year (SY 2022–2023). Another example of an assumption is that the proportion of foods purchased under an exemption in the Buy American provision would be comparable to current purchasing patterns.

For all analyses, the baseline for meals served was the number of breakfasts, lunches, and afterschool snacks served in 2019 (Table 3). There were approximately 5 billion lunches served in the NSLP, 2.5 billion breakfasts served in the SBP, and almost 200 million snacks served through NSLP afterschool snacks. As stated above, it is assumed that service will return to a 2019 level during school year by the time the proposed changes in this rulemaking are implemented. An annual inflation factor of three percent was used to inflate meal costs data from SY 2014–2015 up to SY 2024–2025 when the proposed rule is expected to be finalized and implemented. This inflation factor was determined by taking a 10-year average of the Consumer Prices Indexes (CPI) of all food (including food consumed away from home and at home) from 2014 to the predicted 2022 and 2023 years.

TABLE 3. TOTAL MEALS SERVED IN 2019 - VALUES USED FOR IMPACT CALCULATIONS

MEALS	N
BREAKFASTS	2,451,114,809
LUNCHES	4,866,712,429
SNACKS	194,382,037

[136] The Healthy Eating Index is a measure of diet quality used to assess how well a set of foods aligns with key recommendations of the *Dietary Guidelines for Americans* that is periodically updated with each edition of the Guidelines. HEI–2010 and HEI–2015 scores are cited/calculated in this impact analysis. At this time, no HEI–2020 score version has been released.

[137] *https://www.fns.usda.gov/healthy-eating-index-hei.*

[138] This was not an exhaustive data collection of milk products across the marketplace, simply a fact-finding search. See 'Added Sugars' subsection of the 'Impacts' section below.

[139] Added Sugars in School Meals and Competitive Foods.

[140] Based on an internal USDA analysis using data from: U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 2: Nutritional Characteristics of School Meals, by Elizabeth Gearan et.al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

Impacts

Baseline

The goal of this proposed rule and the eventual final rule is to align school meal nutrition standards more closely with recommendations in the *Dietary Guidelines for Americans, 2020–2025.* This proposed rule was also designed to update and carry forward school meal related regulations that were detailed in the transitional standards rule published in February 2022. It is assumed that the costs detailed in the regulatory impact analysis for the transitional standards rule will carry forward from SY 2022–2023 through SY 2023–2024. For this Regulatory Impact Analysis, SY 2022–2023—the first year in which the transitional standards rule was implemented in the school meal programs—provides inputs used for characterizing the baseline for measuring changes schools would need to make in order to meet the newly proposed standards. Since USDA expects that the final rule associated with this proposed rule would be implemented beginning in SY 2024–2025, this is the starting point for annual costs.

However, it must be noted that in the Regulatory Impact Analysis for the transitional standards rule, data from SY 2009–2010 were utilized for analyses involving milk and whole grain-rich foods. Analyses in this proposed rule have been updated with more recent cost data from SY 2014–2015.[141] Therefore, the estimates in this analysis are not directly comparable to the estimates from the previous analysis. Further discussion of this issue is included in the 'Uncertainties/Limitations' section.

Based on the total costs of the NSLP, SBP, and CACFP programs from FY 2019, costs have been forecasted to the time-period between FY 2024 and FY 2030. There would be an overall baseline program cost of approximately $169 billion over the seven fiscal years, five full fiscal years and two half fiscal years. As a result, the total cost estimates to implement this proposed rule of $1.2 to $1.4 billion make up 0.7 percent to 0.8 percent[142] of the baseline cost of the three largest child nutrition programs (Table 1). Throughout the 'Impacts' section, annual cost estimates are presented for SY 2024–2025, meaning that they are based on data that has been inflated to SY 2024–2025 from the time of data collection.

Administrative Costs

In order to implement this proposed rule between SY 2024–2025 and SY 2029–2030, it is expected that there will be some regulatory familiarization costs, including state administrative costs and training at the local level, as well as local staff adjusting purchasing patterns and menus. While USDA has not collected data on this element of rule implementation in the past, there are measures that are comparable that were used in the 2012 final rule. For that rule, the Federal Government provided $50 million per year for two years (FY 2013 and 2014) for state administrative costs, as well as 'increasing federal reimbursements for schools by 6 cents for all lunches in schools that serve both breakfasts and lunches that meet meal pattern regulations and nutrition standards.'[143] Since this proposed rule includes more gradual and smaller shifts than the 2012 rule, USDA expects these state administrative costs to amount to $25 million annually during the four school years of proposed rule implementation in which new changes are being implemented, SY 2024–2025, SY 2025–2026, SY 2027–2028, SY 2029–2030 for a total of $100 million. It should be noted that there are no current plans for the Federal Government to contribute to these costs, but rather these are costs that SFAs must account for within their operations. The same is true of the local costs detailed in the following paragraph.

For familiarization costs at the local level, USDA based the estimates on the additional reimbursement rate (from the 2012 final rule) of $0.06 per school lunch and about half of other non-production labor costs, which make up 19.8% of total SFA labor. The proportion of cost breakdown used in the transitional standards rule was 45% labor, 45% food, and 10% other. Non-production labor costs include familiarization costs, likely at about half the total amount used for nutrition education and promotion, including administration of school meal programs and other non-production activities to support school meals.[144] Therefore, we assume that 45% of the $0.06 addition reimbursement represents labor costs, and 10% of this amount, or $0.003 ($0.004 after adjusting for inflation up to 2022) per lunch meal, was the expected cost associated with becoming familiar with the proposed rule and making necessary adjustments. This would then cost $18 million annually at the local level during the four school years of proposed rule implementation with new changes being implemented, $73 million overall. In total with state and local costs, this would be $173 million dollars over the course of the proposed rule that would be incurred by SFAs during rule implementation, or $43 million annually (Table 4).

TABLE 4: ESTIMATED ADMINISTRATIVE COSTS (MILLIONS), ADJUSTED FOR ESTIMATED INFLATION TO SY 2024-2025

CATEGORY	Estimated Annual Cost	Estimated Four Year Cost[145]
STATE	$25	$100
LOCAL	$18	$73
TOTAL	**$43**	**$173**

Added Sugars

In this rulemaking, USDA proposes both product-based limits for added sugars and a weekly dietary limit for added sugars that would begin two years after the product-based limits begin. With added sugars now included on the updated product nutrition facts label and the recommendation in the *Dietary Guidelines for Americans, 2020–2025* to limit intake of added sugars to less than 10 percent of calories per day, added sugars limits in school meals would help students to achieve a healthy dietary pattern without restricting naturally occurring sugars. For school lunch and breakfast, this document proposes product specific standards for grain-based desserts, breakfast cereals, yogurt, and flavored milk. For consistency, USDA also proposes to apply the product-based added sugars limits for breakfast cereals and yogurts to the CACFP; the added sugars limits would replace the current total sugar limits for breakfast cereal and yogurt in CACFP. This would create alignment between the two programs to simplify any necessary product reformulation. Grain-based desserts would be limited to no more than 2-ounce equivalents per week in school breakfast to mirror the current limit for school lunch. Grain-based desserts include, for example, sweet crackers, cookies, doughnuts, cereal bars, sweet rolls, and toaster pastries. Grain-based desserts do not include pancakes, waffles, French toast, or muffins. Breakfast cereals would be limited to no more than 6 grams of added sugars per dry ounce, yogurt would be limited to no more than 12 grams of added sugars per 6 ounces, and flavored milk would be limited to no more than 10 grams of added sugars per 8 fluid ounces. The weekly dietary limit proposed for school lunch and breakfast aligns with the *Dietary Guidelines* recommendation to limit added sugars to less than 10 percent of calories.

While the SBP and NSLP have not had total sugar or added sugars limits in the past, CACFP has had product specific total sugar

[141] School Nutrition Meal Cost Study data.

[142] These costs are SFA costs as a percentage of reimbursement baselines at this time (not Federal costs).

[143] *https://www.cbo.gov/sites/default/files/111th-congress-2009-2010/costestimate/healthyhungerfreekidsact0.pdf.*

[144] SNMCS Study Report Volume 3: Table 2.6.

[145] Four school years with proposed implemented new changes: SY2024–2025, SY2025–2026, SY2027–2028, SY2029–2030.

limits since 2017 for breakfast cereals (≤6 g total sugar/1 dry oz)[146] and yogurt (≤23 g total sugar/6 oz).[147] As noted, this rulemaking proposes to apply the product-based added sugars limits for breakfast cereals and yogurts to the CACFP for consistency. The product specific limits in this proposed rule for breakfast cereals and yogurts were supported by food label data collected by USDA in May 2022.[148] This data was used to estimate the proportion of recently available products that could meet the newly proposed added sugars limits and demonstrated a shift in the proportion of products currently meeting the current CACFP total sugar limits. SNMCS data shows that in SY 2014–2015 only nine percent of served yogurt products met the current CACFP total sugar yogurt limit and 35 percent of hot and cold cereal products met the CACFP total sugar cereal limit. Based on recent food label data about 90 percent of yogurt products and 44 percent of hot and cold cereal products available during SY 2021–2022 met the current CACFP total sugar standards.[149] This indicates that in the last 5 years manufacturers were able to make considerable changes in the sugar content of both yogurt and cereal products. Currently, the CACFP does not have any flavored milk total sugar limits. This analysis compares the cost of products meeting the proposed added sugars limits to those that did not during SNMCS data collection. Since there is now wider market availability of products with a lower sugar content than there were during SY 2014–2015, it is possible that the actual cost of these changes may be even lower than estimated due to a higher number of product options.

Grain Based Desserts

Schools are required to offer 1 ounce equivalent of grains daily per school breakfast and must also meet weekly grain amounts that vary by age/grade group, 8 ounce equivalents weekly, on average.[150] In SY 2014–2015, at least 28 percent of SBP menus included grain-based desserts such as pastries, granola bars or breakfast bars.[151] This would equate to at least 1.1 billion ounce equivalents of grain-based desserts and 2.8 billion of non-grain-based desserts offered annually. Under the proposed maximum of 2-ounce equivalents weekly, approximately 25 percent of offered grains could be grain-based desserts. This could lead to at least 987 million offered ounces of grain-based desserts and 3 billion ounces offered of non-grain-based desserts annually. On average, grain-based desserts cost $0.35 per ounce equivalent and non-grain-based desserts cost $0.19 per ounce equivalent, about a $0.22 difference after adjusting for inflation. As a result, limiting servings of grain-based desserts to two-ounce equivalents per week would lead to a savings of at least $24 million annually (Table 5). This may in part be due to the varying serving sizes for grain ounce equivalents according to the Food Buying Guide,[152] in which items such as toaster pastries and strudels have a higher ounce equivalent gram amount (up to 69 grams) than toast (28 grams) or pancakes (34 grams), for example.

TABLE 5. ANNUAL COST COMPARISON OF IMPLEMENTING GRAIN BASED DESSERT LIMIT TO SY 2014-2015 MENUS (MILLIONS), ADJUSTED FOR ESTIMATED INFLATION TO SY 2024-2025

	Totals with 2 oz. eq of grain-based desserts offered weekly		Totals with grain-based desserts making up 28% of grains offered		Difference in cost
GRAINS	# of offered oz eq (millions)	Cost	# of offered oz eq (millions)	Cost	
GRAIN-BASED DESSERTS	987	$462	1,105	$517	-$55
NON- GRAIN-BASED DESSERTS	2,960	$774	2,841	$743	$31
TOTAL GRAINS OFFERED	3,946	$1,236	3,946	$1,260	-$24

Cereal

For breakfast only, the estimated cost of sweetened and unsweetened cold cereals was the same per dry ounce regardless of added sugars content. All hot cereal products met the proposed added sugars limit in SY 2014–2015. While hot cereal is about half the price of cold cereal per dry ounce, it is not widely served; only five percent of menus included hot cereal and an even lower proportion of students consumed hot cereal. The cost of hot cereal per dry ounce also does not account for potentially costly toppings, such as nuts, seeds, or dried fruit. Toppings for hot cereal such as brown sugar or chocolate chips would also contain additional added sugars that have not been accounted for in SNMCS data. Because it is unknown whether the proportion of schools serving hot cereal would increase and because there is no cost difference among cold cereals based on added sugars content, we expect no change in annual cost for cereals despite the introduction of the added sugars limit. Of those hot and cold cereal products available during data collection in 2022,[153] 50 percent of products currently available would meet the proposed added sugars limit of ≤6 g added sugars per ounce.

Yogurt

Of the yogurt products available during SY 2021–2022,[154] 57 percent of yogurts met the proposed added sugars limit. When data were collected in SY 2014–2015, low-fat and fat free yogurt products meeting the proposed yogurt added sugars limit cost $0.05 more than those products not meeting the proposed limit. On average, yogurt products with more than 12 grams of added sugars per 6-ounce container cost $0.42 and those with 12 grams or less of added sugars cost $0.47. About 1.1 billion portions of yogurt are served annually at breakfast and lunch combined. Estimating that 57 percent of products served currently meet the proposed added sugars limit would mean that approximately 627 million portions of yogurt served currently meet the proposed limit. During SY 2014–2015, almost all yogurt products exceeded the proposed 12 grams of added sugars limit per 6 ounces, so for this analysis the 57 percent proportion was used to more accurately reflect currently available products. The recent nutrition label data collection indicates that manufacturers have already made significant changes to yogurt products since the implementation of CACFP total sugar standards in 2017, but also indicates that there is room for product

[146] *https://www.fns.usda.gov/tn/calculating-sugar-limits-breakfast-cereals-cacfp.*

[147] *https://www.fns.usda.gov/tn/calculating-sugar-limits-yogurt-cacfp.*

[148] USDA Food and Nutrition Service, Office of Policy Support data collection of nutrition label information from major cereal and yogurt manufacturer K–12 and food service catalogs.

[149] USDA Food and Nutrition Service, Office of Policy Support internal analysis using collected nutrition label data. Data were collected on 110 total yogurt products and 191 total cereal products.

[150] *https://www.fns.usda.gov/sbp/meal-pattern-chart.*

[151] SNMCS Report Volume 2.

[152] *https://foodbuyingguide.fns.usda.gov/Appendix/DownLoadFBG.*

[153] USDA Food and Nutrition Service, Office of Policy Support data collection of nutrition label information from major cereal and yogurt manufacturer K–12 and food service catalogs. Data were collected on 191 total cereal products.

[154] USDA Food and Nutrition Service, Office of Policy Support data collection of nutrition label information from major cereal and yogurt manufacturer K–12 and food service catalogs. Data were collected on 110 total yogurt products.

reformulation in at least 43 percent of currently available products if manufacturers would like those products to meet the proposed limit. If the proposed limit were to be met in every meal that includes yogurt, it would cost $32 million assuming the calculation is based on yogurts that meet the proposed limit (which cost $0.05 more per meal compared to those that do not, or about $0.07 after adjusting for inflation) (Table 6).

TABLE 6. ANNUAL COST OF IMPLEMENTING PROPOSED YOGURT ADDED SUGARS LIMIT (MILLIONS), ADJUSTED FOR ESTIMATED INFLATION TO SY 2024-2025

	100% of yogurt products offered meeting limit			57% of yogurt products meeting limit (based on 2022 data)			Difference in Cost
	# of servings meeting limit (millions)	# of servings not meeting limit	Cost	# of servings offered meeting limit (millions)	# of servings not meeting limit	Cost	
SBP	613	NA	$387	349	263	$369	$18
NSLP	487	NA	$307	277	209	$293	$14
TOTAL	1,100	NA	$694	627	473	$663	$32

Milk

In SY 2014–2015 there were no flavored milk products that meet the proposed added sugars limit (≤10 g added sugars/8 fluid ounces); therefore, USDA could not compare the cost of flavored milk products that did and did not meet the proposed limit. Instead, cost analyses are based on the difference in cost of unflavored and flavored milk. Utilizing the SY 2014–2015 data, it was found, on average, that low-fat, flavored milk cost $0.01 more than low-fat, unflavored milk per carton (8 fluid ounces). It was also found that fat-free, flavored milk cost $0.01 less than fat free unflavored milk per carton. The cost of milk varied by fat content, but not consistently. In other words, 8 ounces of low-fat, flavored milk cost $0.25 and 8 ounces of low-fat, unflavored milk cost $0.24. Eight ounces of fat-free, flavored milk cost $0.24 and 8 ounces of fat-free, unflavored milk cost $0.25. Low-fat, flavored milk was the least offered milk variety based on the SNMCS report (Table 7). Low-fat, unflavored milk and fat-free, flavored milk were offered on a majority of menus at both breakfast and lunch, whereas fat-free, unflavored milk was offered on about half of menus for both breakfast and lunch. By comparing the cost of milk based on the proportions of fat-free and low-fat milk, flavored and unflavored, served in SY 2014–2015 to only unflavored milk varieties being served, there would be a cost increase of approximately $81 million annually (Table 8).

TABLE 7. PERCENTAGE OF MILK PRODUCTS OFFERED ON DAILY SBP AND NSLP MENUS IN SY 2014-2015[155]

	SBP	NSLP
LOW-FAT, FLAVORED	6%	7%
LOW-FAT, UNFLAVORED	91%	91%
FAT FREE, FLAVORED	76%	91%
FAT FREE, UNFLAVORED	51%	50%

[155] SNMCS Report—Volume 2.

TABLE 8. ANNUAL COST OF IMPLEMENTING PROPOSED MILK ADDED SUGARS LIMIT (MILLIONS), ADJUSTED FOR ESTIMATED INFLATION TO SY 2024-2025

	100% unflavored milk (proxy for milk with ≤10 grams added sugars per 8 fluid ounces)		Based on SY 2014-2015 menu proportions		Difference in cost
	# of servings of milk	Cost	# of servings of milk	Cost	
SBP					
LOW-FAT, FLAVORED	NA	NA	145	$49	-$49
LOW-FAT, UNFLAVORED	2,373	$779	2,228	$732	$47
FAT FREE, FLAVORED	NA	NA	1,862	$601	-$601
FAT FREE, UNFLAVORED	3,103	$1,043	1,240	$417	$626
NSLP					
LOW-FAT, FLAVORED	NA	NA	350	$118	-$118
LOW-FAT, UNFLAVORED	4,784	$1,571	4,434	$1,456	$115
FAT FREE, FLAVORED	NA	NA	4,429	$1,429	-$1,429
FAT FREE, UNFLAVORED	6,862	$2,306	2,433	$818	$1,488
TOTAL	17,121	$5,698	17,121	$5,618	$81

It is possible that prices of milk types have aligned since SY 2014–2015 and that the annual cost changes from milks served will be minimal. These are the best estimates with the most recent SFA-representative data available. The reason that a switch to unflavored milk would have an associated cost of $81 million is because there is a much higher proportion of fat-free, flavored milk served compared to low-fat flavored milk. During SY 2014–2015, flavored milk products had a mean added sugars content of 12.2 grams (minimum: 10.4 grams, maximum:17.8 grams). Public comment on the 2022 transitional standards rule [156] from the International Dairy Foods Association and National Milk Producers Federation indicates that the average added sugar content of flavored milk has declined from 16.7 to 7.1 grams in an eight ounce serving of flavored school milk between SY 2006–2007 and SY 2019–2020. Despite the fact that no flavored milk products served in SY 2014–2015 met the proposed added sugars limit, an internally conducted search of recent K–12 and food service product catalogs containing milk products indicated that there are some flavored milks now available to schools that meet the 10 grams of added sugar per eight fluid ounces limit.[157] It was found that at least four manufacturers had at least one flavored milk product with under 10 grams of added sugars per eight fluid ounce serving and in fact, three of them had products with six grams of added sugars per eight fluid ounce serving. A total of 10 flavored milk products from four companies were below the 10-gram proposed limit. The catalogs used for data collection generally showed that there were lower sugar and higher sugar versions of flavored milk available. However, it is likely that additional product reformulation will be necessary for those manufacturers that have yet to reduce added sugar content of their flavored milk products.

Product Limit Total Impact

In total, across all four product categories, we estimate the total cost to meet the proposed added sugars limits would be around $88 million per year. This value reflects the savings of limiting breakfasts served in the SBP to only 2-ounce equivalents of grain-based desserts per week, the no-cost change of the cereal added sugars limit (at breakfast only), and the costs of the yogurt and flavored milk added sugar limits that affect both the SBP and the NSLP. These estimated annual costs, adjusted for inflation, are shown in Table 9.

TABLE 9: ESTIMATED COST OF PRODUCT-SPECIFIC ADDED SUGAR LIMITS (MILLIONS), ADJUSTED FOR ESTIMATED INFLATION TO SY 2024-2025

PRODUCT TYPE	Estimated Annual Cost
GRAIN-BASED DESSERTS (SBP ONLY)	-$24
BREAKFAST CEREALS (SBP ONLY)	$0
YOGURT	$32
FLAVORED MILK	$81
TOTAL	**$88**

[156] *https://www.regulations.gov/comment/FNS-2020-0038-4702.*

[157] This was not an exhaustive data collection of milk products across the marketplace, simply a fact-finding search.

Weekly Limit

This rulemaking also proposes a weekly limit of less than 10 percent of calories per week from added sugars in the school lunch and breakfast programs, effective SY 2027–2028. Considerable menu changes would be required to meet the weekly limit at breakfast. This analysis finds that in SY 2014–2015 approximately 11 percent of calories offered at lunch and 17 percent at breakfast were from added sugars, and these values match the analysis completed for a USDA report on added sugars in school meals for Congress in May 2022.[158] Since there are so many approaches to reduce added sugars across menus, there is not an accurate way to estimate the cost change of reducing all breakfast menus to containing less than 10 percent of calories per week from added sugars. In school breakfasts during SY 2014–2015, fat-free, flavored milk contributed 30 percent of added sugars content, with sweetened cold cereals contributing 13 percent, grain-based desserts contributing 12 percent, and condiments/toppings contributing 12 percent.[159] Schools may find that replacing flavored with unflavored milk is an effective way to begin to approach the weekly limits. If all flavored milk products were replaced with unflavored milk products, the percentage of calories from added sugars drops to six percent at lunch and to 13 percent at breakfast.[160] Although this approach is not required in this proposed rule, it would be a simple and effective way to initiate a decrease in added sugars content of menus. SFAs may also choose to reduce or eliminate grain-based desserts, sweetened cold cereals, and/or some condiments. In making menu changes, SFAs will likely choose to balance making the best economic decision for their operations with the need to minimize impacts on student participation/acceptance of new foods. The phased-in approach of this proposed rule first with the product specific limits and then with a weekly average limit of added sugars will help to temper some of these potential participation changes.

Health Benefits

A major source of added sugars, sugar-sweetened beverages (SSBs), has been studied widely as it relates to health outcomes. The World Health Organization defines SSBs as all beverages containing free sugars, including carbonated or non-carbonated soft drinks, liquid and power concentrates, flavored water, energy and sports drinks, ready-to-drink tea, ready-to-drink coffee, and flavored milk drinks.[161] Flavored milk is the top source of added sugar in school meals, and other SSBs may be served as competitive foods to students.[162] Consumption of SSBs is related to weight gain, obesity, and risk of both type 2 diabetes (T2D) [163] and CVD,[164] [165] as well as chronic kidney disease.[166] Tooth decay and cavities are also associated with increased SSB consumption.[167] Other top sources of added sugars in school meals include sweetened cold cereal and grain-based desserts which is why these categories of foods are being targeted in particular for added sugars content reduction. Gradual reduction in added sugar content to 10 percent of calories per week at school lunch and breakfast, will align with the *Dietary Guidelines* and will promote improved lifestyle habits and health outcomes during childhood that can track into adulthood.[168]

Milk

This rulemaking proposes two alternatives for the milk standard:

- Alternative A: Proposes to allow flavored milk (fat-free and low-fat) at school lunch and breakfast for high school children only, effective SY 2025–2026. Under this alternative, USDA is proposing that children in grades K–8 would be limited to a variety of unflavored milk. The proposed regulatory text for Alternative A would allow flavored milk for high school children only (grades 9–12). USDA also requests public input on whether to allow flavored milk for children in grades 6–8 as well as high school children (grades 9–12). Children in grades K–5 would again be limited to a variety of unflavored milk. Under both Alternative A scenarios, flavored milk would be subject to the new proposed added sugars limit.
- Alternative B: Proposes to maintain the current standard allowing all schools to offer fat-free and low-fat milk, flavored and unflavored, with the new proposed added sugars limit for flavored milk.

Alternative A does carry some associated costs. Meals served to elementary school students make up a majority of school meals served, including 54 percent of school lunches and 59 percent of school breakfasts. Meals served to middle school students make up a smaller proportion of school meals served, including 22 percent of school lunches and 18 percent of school breakfasts. In the NSLP, around 90 percent of elementary menus contain fat-free, flavored milk and seven percent contain low-fat, flavored milk. In the SBP, around 71 percent of elementary menus contain fat-free, flavored milk and six percent contain low-fat, flavored milk (Table 10). In the NSLP, around 92 percent of middle school menus contain fat-free, flavored milk and seven percent contain low-fat, flavored milk. In the SBP, around 83 percent of middle school menus contain fat-free, flavored milk and six percent contain low-fat, flavored milk (Table 10).[169] Using these proportions, USDA estimates an annual cost of $58 million when adjusted for inflation, to limit elementary and middle schools to unflavored milks only (Table 11).[170]

There are several limitations to this analysis. First, multiple unflavored milk options would need to be served in elementary and middle schools under this proposal which could change the cost. Additionally, USDA does not know the current cost of milk for schools; costs are based on SY 2014–2015 cost data. It should be noted that if utilizing SY 2009–2010 cost data, consistent with the transitional standards rule, this proposal would actually be a cost savings. The 'Uncertainties/Limitations' section below includes an updated impact analysis for the transitional standards rule utilizing newer cost data from SY 2014–2015.[171]

[158] Added Sugars in School Meals and Competitive Foods.

[159] Fox MK, Gearan EC, Schwartz C. Added Sugars in School Meals and the Diets of School-Age Children. *Nutrients.* 2021;13(2):471. Published 2021 Jan 30. doi:10.3390/nu13020471.

[160] Based on an internal USDA analysis.

[161] World Health Organization Taxes on Sugary Drinks: Why Do It? World Health Organization. 2017 Available online: *https://apps.who.int/iris/handle/10665/260253.*

[162] Fox MK, Gearan EC, Schwartz C. Added Sugars in School Meals and the Diets of School-Age Children. *Nutrients.* 2021;13(2):471. Published 2021 Jan 30. doi:10.3390/nu13020471.

[163] Warshaw H, Edelman SV. Practical Strategies to Help Reduce Added Sugars Consumption to Support Glycemic and Weight Management Goals. *Clin Diabetes.* 2021;39(1):45–56. doi:10.2337/cd20–0034.

[164] Malik VS, Hu FB. Sugar-Sweetened Beverages and Cardiometabolic Health: An Update of the Evidence. *Nutrients.* 2019;11(8):1840. Published 2019 Aug 8. doi:10.3390/nu11081840.

[165] O'Connor L, Imamura F, Brage S, Griffin SJ, Wareham NJ, Forouhi NG. Intakes and sources of dietary sugars and their association with metabolic and inflammatory markers. *Clin Nutr.* 2018;37(4):1313–1322. doi:10.1016/j.clnu.2017.05.030.

[166] Bomback AS, Derebail VK, Shoham DA, et al. Sugar-sweetened soda consumption, hyperuricemia, and kidney disease. *Kidney Int.* 2010;77(7):609–616. doi:10.1038/ki.2009.500.

[167] Valenzuela MJ, Waterhouse B, Aggarwal VR, Bloor K, Doran T. Effect of sugar-sweetened beverages on oral health: a systematic review and meta-analysis. *Eur J Public Health.* 2021;31(1):122–129. doi:10.1093/eurpub/ckaa147.

[168] Lioret S, Campbell KJ, McNaughton SA, et al. Lifestyle Patterns Begin in Early Childhood, Persist and Are Socioeconomically Patterned, Confirming the Importance of Early Life Interventions. *Nutrients.* 2020;12(3):724. Published 2020 Mar 9. doi:10.3390/nu12030724.

[169] School Nutrition and Meal Cost Study Final Report Volume 2: Nutritional Characteristics of School Meals, by Elizabeth Gearan et.al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[170] The alternate group that USDA is requesting public comment on for Alternative A is the elementary age group (K–5). The estimated annual cost of limiting elementary schools only to unflavored milk is $42 million, adjusted for inflation to SY 2024–2025. See Table 11.

[171] SNMCS data.

TABLE 10. PERCENTAGE OF ELEMENTARY AND MIDDLE SCHOOL MENUS WITH FLAVORED MILK PRODUCTS OFFERED IN SBP AND NSLP IN SY 2014-2015[172]

	ELEMENTARY	
	SBP	NSLP
LOW-FAT, FLAVORED	6%	7%
FAT FREE, FLAVORED	71%	90%
	MIDDLE	
LOW-FAT, FLAVORED	6%	7%
FAT FREE, FLAVORED	83%	92%

TABLE 11. ANNUAL COST OF IMPLEMENTING PROPOSED MILK PLAN – ALTERNATIVE A (MILLIONS), ADJUSTED FOR ESTIMATED INFLATION TO SY 2024-2025

	SBP		NSLP		Total
# OF ELEMENTARY MEALS	1,436		2,613		4,045
# OF MIDDLE SCHOOL MEALS	451		1,046		1,497
	# of servings of milk to be replaced	Cost	# of servings of milk to be replaced	Cost	Cost
LOW-FAT, FLAVORED (K-5)	86	-$1	183	-$2	-$4
FAT FREE, FLAVORED (K-5)	1,020	$14	2,352	$32	$45
ELEMENTARY TOTAL	1,106	$13	2,535	$29	$42
LOW-FAT, FLAVORED (6-8)	28	-$0.4	72	-$1	-$1
FAT FREE, FLAVORED (6-8)	375	$5	967	$13	$18
MIDDLE TOTAL	403	$5	1,039	$12	$17
GRAND TOTAL	1,509	$17	3,574	$41	$58

Alternative B would maintain the milk standard from the transitional standards rule, which allows schools to offer fat-free and low-fat milk, flavored and unflavored, in reimbursable school lunches and breakfasts, and for sale as a competitive beverage. For Alternative B, no annual change in the cost of milk is expected due to maintaining the transitional milk standards.

Several additional proposals would apply under either milk alternative. The proposed added sugars standard for flavored milk, which would limit flavored milks to 10 grams of added sugars per 8 fluid ounces, effective SY 2025–2026, would apply to milk served in reimbursable school lunches and breakfasts, and for sale as a competitive beverage.[173] Consistent with current requirements, this rulemaking would require that unflavored milk be offered at each school meal service. This documet also proposes to continue to allow fat-free and low-fat milk, flavored and unflavored, to be offered to participants ages 6 and older in the SMP and CACFP.

[172] School Nutrition and Meal Cost Study Final Report Volume 2: Nutritional Characteristics of School Meals, by Elizabeth Gearan et.al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis*.

[173] USDA is proposing a higher added sugars limit for flavored milk sold as a competitive food in middle and high schools due to the larger serving size. The serving size for milk offered as part of a reimbursable meal is 8 fluid ounces. Milks sold to middle and high school students as a competitive food may be up to 12 fluid ounces. One alternative proposed by USDA in Section 3: Milk would allow flavored milk (fat-free and low-fat) at school lunch and breakfast for older children only, effective SY 2025–2026. Under this alternative, USDA is proposing to allow flavored milk only for high schools (grades 9–12) and younger children (grades K–8) would be limited to unflavored milk varieties only. Although the proposed regulatory text for Alternative A would allow flavored milk only for high schools (grades 9–12), USDA also requests public input on whether it would be preferable to instead allow flavored milk only for middle schools and high schools (grades 6–12) where younger children (grades K–5) would be limited to unflavored milk varieties only. If in the final rule, based on public input, USDA finalizes the option allowing flavored milk only for high schools (grades 9–12), flavored milk would only be allowed as a competitive food in high schools.

Health Benefits

In the transitional standards rule, the decision to allow flavored low-fat milk reflected concerns about declining milk consumption and the importance of the key nutrients provided by milk for school-aged children.[174] However, USDA recognizes that flavored milk is the highest source of added sugars in school meals, which is why the product-specific added sugars limit has been proposed of no more than 10 grams per 8 fluid ounces of milk. The proposal to limit milk choices in elementary and middle schools to unflavored milks only (Alternative A) would further reduce added sugars and promote the more nutrient-dense choice of unflavored milk in young children when their tastes are being formed. This proposal would allow flavored milk only for high schools (grades 9–12); however, regarding this alternative, USDA also requests public input on whether to allow flavored milk for children in grades 6–8 as well as high school children (grades 9–12). USDA aims to balance the importance of reducing young children's exposure to added sugars with the importance of providing older children the autonomy to choose among a greater variety of milk beverages that they enjoy; in public comments, respondents are encouraged to provide input on how to balance these important priorities when considering the two milk proposals as well as the specific age/grade groups to which Alternative A should apply.

Both flavored milk and unflavored milk contain protein, calcium, potassium, vitamin A, vitamin D, and many more essential nutrients.[175] A recent systematic review conducted to support the *Dietary Guidelines for Americans, 2020–2025* concluded that dietary patterns consumed by children that were lower in fruits, vegetables, whole grains, and low-fat dairy but higher in added sugars, refined grains, fried potatoes and processed meats, were associated with higher fat-mass index and body mass index later in adolescence.[176] Low-fat dairy was also shown in some evidence to be part of a healthy dietary pattern in children that was associated with lower blood pressure and improved blood lipid levels later in life.[177] These potential health benefits combined with the fact that milk is a nutrient-dense beverage support the continued serving of both fat-free and low-fat flavored and unflavored milk, but also support serving unflavored milk to young children in order to reduce the added sugars content of meals.

Whole Grains

This section of the proposed rule centers on operational and definition clarifications. This rulemaking proposes to maintain the current requirement that at least 80 percent of the weekly grains offered are whole grain-rich, based on ounce equivalents of grains served in the school lunch and breakfast programs. The proposed definition of whole grain-rich would read as follows: *Whole grain-rich is the term designated by FNS to indicate that the grain content of a product is between 50 and 100 percent whole grain with any remaining grains being enriched.* This proposed definition would not change the meaning of whole grain-rich, which has previously been communicated in USDA guidance, but is simply a clarification for SFAs. The current whole grain-rich criteria, which was first introduced as a school meal program requirement with the 2012 final rule, describes whole grain-rich products as those that contain at least 50 percent whole grains and the remaining grains in the product must be enriched. The proposed definition would be included in NSLP, SBP, and CACFP regulations. There is no cost change expected as a result of these proposals because the requirement for 80 percent of weekly grains offered being whole grain-rich is carried forward from the 2022 transitional standards rule. However, an updated impact analysis from the transitional standards rule utilizing newer cost data from SY 2014–2015 [178] is detailed in the 'Uncertainties/Limitations' section below.

Health Benefits

The 2022 transitional standards rule requires that 80 percent of grains served be whole grain-rich, which was an increase from the 2018 rule which called for 50 percent of grains served be whole grain-rich, in light of the challenges schools were facing in meeting the 2012 rule requirements. Despite these challenges, schools have made considerable progress offering whole grain-rich products. On average, in SY 2014–2015, 70 percent of the weekly menus offered at least 80 percent of the grain items as whole grain-rich for both breakfast and lunch.[179] This proposed rule continues to emphasize the importance of consuming a dietary pattern with grains that are whole grain-rich, but also carries forward manageable, achievable goals.

Prepared lunches in the NSLP in SY 2014–2015 scored 95 percent of the maximum HEI–2010 whole grains component score, on average, and prepared breakfasts in the SBP scored 92 percent of the maximum [180] Participants of the NSLP scored a maximum HEI–2010 whole grains component score, for lunches consumed, on average in SY 2014–2015 and nonparticipants of the NSLP scored only 63 percent of a maximum score, a significant difference. Participants of the SBP scored 98 percent of the maximum HEI–2010 whole grain component score on breakfasts consumed, whereas, nonparticipants scored 68 percent of the maximum score.[181] A maximum whole grain component score in the HEI–2010 is achieved with at least 1.5 ounces equivalent of whole grains per 1000 kilocalories of intake, a measure of nutrient density. In SY 2014–2015, school meal programs were matching recommendations from the *Dietary Guidelines* at a high level, with regards to whole grains.

A recent systematic review conducted to support the Dietary Guidelines for Americans, 2020–2025 concluded that dietary patterns consumed by children that were lower in fruits, vegetables, whole grains, and low-fat dairy but higher in added sugars, refined grains, fried potatoes and processed meats, were associated with higher fat-mass index and body mass index later in adolescence.[182] Whole grains were also shown in some evidence to be part of a healthy dietary pattern in children that was associated with lower blood pressure and improved blood lipid levels later in life.[183] Throughout the lifespan, consumption of whole grains has also been shown to reduce the risk of type 2 diabetes.[184] Factors that contribute to increased consumption of whole grains in children include providing a variety of whole grain options, serving whole grains in school programs, and improving appearance of package and product marketing.[185] The documented health benefits of the consumption of whole grain-

[174] *https://www.gpo.gov/fdsys/pkg/FR-2017-11-30/pdf/2017-25799.pdf.*

[175] Nutrition Requirements for Fluid Milk and Fluid Milk Substitutions in the Child and Adult Care Food Program, Questions and Answers.

[176] Bouchey C, Ard J, Bazzano L, Heymsfield S, Mayer-Davis E, Sabaté J, Snetselaar L, Van Horn L, Schneeman B, English LK, Bates M, Callahan E, Butera G, Terry N, Obbagy J. Dietary Patterns and Growth, Size, Body Composition, and/or Risk of Overweight or Obesity: A Systematic Review. July 2020. U.S. Department of Agriculture, Food and Nutrition Service, Center for Nutrition Policy and Promotion, Nutrition Evidence Systematic Review. Available at: *https://doi.org/10.52570/NESR.DGAC2020.SR0101.*

[177] Bouchey C, Ard J, Bazzano L, Heymsfield S, Mayer-Davis E, Sabaté J, Snetselaar L, Van Horn L, Schneeman B, English LK, Bates M, Callahan E, Butera G, Terry N, Obbagy J. Dietary Patterns and Risk of Cardiovascular Disease: A Systematic Review. July 2020. U.S. Department of Agriculture, Food and Nutrition Service, Center for Nutrition Policy and Promotion, Nutrition Evidence Systematic Review. Available at: *https://doi.org/10.52570/NESR.DGAC2020.SR0102.*

[178] SNMCS data.

[179] Based on an internal USDA analysis using data from: U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 2: Nutritional Characteristics of School Meals, by Elizabeth Gearan et.al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[180] SNMCS Volume 2—Figures 5.2 and 5.5.

[181] SNMCS Volume 4—Figures 9.2 and 12.2.

[182] Bouchey C, Ard J, Bazzano L, Heymsfield S, Mayer-Davis E, Sabaté J, Snetselaar L, Van Horn L, Schneeman B, English LK, Bates M, Callahan E, Butera G, Terry N, Obbagy J. Dietary Patterns and Growth, Size, Body Composition, and/or Risk of Overweight or Obesity: A Systematic Review. July 2020. U.S. Department of Agriculture, Food and Nutrition Service, Center for Nutrition Policy and Promotion, Nutrition Evidence Systematic Review. Available at: *https://doi.org/10.52570/NESR.DGAC2020.SR0101.*

[183] Bouchey C, Ard J, Bazzano L, Heymsfield S, Mayer-Davis E, Sabaté J, Snetselaar L, Van Horn L, Schneeman B, English LK, Bates M, Callahan E, Butera G, Terry N, Obbagy J. Dietary Patterns and Risk of Cardiovascular Disease: A Systematic Review. July 2020. U.S. Department of Agriculture, Food and Nutrition Service, Center for Nutrition Policy and Promotion, Nutrition Evidence Systematic Review. Available at: *https://doi.org/10.52570/NESR.DGAC2020.SR0102.*

[184] Chanson-Rolle A., Meynier A., Aubin F., Lappi J., Poutanen K., Vinoy S., Braesco V. Systematic Review and Meta-Analysis of Human Studies to Support a Quantitative Recommendation for Whole Grain Intake in Relation to Type 2 Diabetes. PLoS ONE. 2015;10:e0131377. doi: 10.1371/journal.pone.0131377.

[185] Meynier A, Chanson-Rollé A, Riou E. Main Factors Influencing Whole Grain Consumption in Children and Adults—A Narrative Review. Nutrients. 2020;12(8):2217. Published 2020 Jul 25. doi:10.3390/nu12082217.

rich products and strategies to increase whole grain intake in children both support a continued whole grain requirement in school meals.

Sodium

This rulemaking proposes an updated approach to sodium reduction in school meals. Lessons learned from the 2012 rule indicate that smaller, incremental reductions in sodium content may be more achievable given the need for industry to reformulate products and for schools to modify both the products they serve and their preparation methods. As a result, smaller reductions compared to those from the 2012 rule are proposed over two-year increments. USDA proposes to establish weekly sodium limits, informed by the FDA's voluntary sodium reduction goals, with further reductions to support closer alignment with the goals of the *Dietary Guidelines*.[186] This proposed rule would set forth three 10 percent reductions for school lunch and two 10 percent reductions for school breakfast from the sodium standard in the transitional standards rule. To provide context, the previous three sodium targets from the 2012 rule and targets from the 2022 transitional standards rule are presented below (Table 12). The transitional standards rule requires schools to meet Sodium Target 1 for school lunch and breakfast, effective SY 2022–2023. For school lunch only, schools are required to meet Sodium Target 1A beginning in SY 2023–2024. The proposed targets from this rulemaking are in the subsequent table (Table 13).

TABLE 12: THREE 2012 SODIUM TARGETS AND TARGETS FROM THE TRANSITIONAL STANDARDS RULE (MG) FOR SCHOOL LUNCH AND SCHOOL BREAKFAST

	NSLP				
AGE/GRADE GROUP	2012 TARGET 1	2012 TARGET 2	2012 TARGET 3	TARGET 1 SY 2022-2023	TARGET 1A SY 2023-2024
K-5	1,230	935	640	1,230	1,110
6-8	1,360	1,035	710	1,360	1,225
9-12	1,420	1,080	740	1,420	1,280
	SBP				
	2012 TARGET 1	2012 TARGET 2	2012 TARGET 3	TARGET 1 SY 2022-2023 AND SY 2023-2024	
K-5	540	485	430	540	
6-8	600	535	470	600	
9-12	640	570	500	640	

TABLE 13: THREE NEW PROPOSED RULE SODIUM LIMITS (MG) FOR SCHOOL LUNCH AND SCHOOL BREAKFAST

NSLP			
AGE/GRADE GROUP	PROPOSED SY 2025-2026	PROPOSED SY 2027-2028	PROPOSED SY 2029-2030
K-5	1,000	900	810
6-8	1,105	990	895
9-12	1,150	1,035	935

SBP		
	PROPOSED SY 2025-2026	PROPOSED SY 2027-2028
K-5	485	435
6-8	540	485
9-12	575	520

The school lunch baseline for this analysis is the menu served sodium content from SY 2014–2015 in which elementary, middle, and high school menus had sodium content, on average, of 1135 mg, 1235 mg, and 1330 mg, respectively. The school breakfast baseline for this analysis is the menu served sodium content from SY 2014–2015 in which elementary, middle, and high school menus had sodium content, on average, of 510 mg, 570 mg, and 580 mg, respectively. This indicates that the majority of schools were

[186] The *Dietary Guidelines for Americans, 2015–2020* support the most recent Dietary Reference Intake (DRI) values for sodium. DRI upper limit values for daily intake of sodium were updated to be called Chronic Disease Risk Reduction values (CDRRs) in 2019 and proportions of these values are used as targets for parts of this analyses. Dietary Reference Intakes for Sodium and Potassium (2019).

already meeting the first sodium target for both breakfast and lunch from the 2012 rule in SY 2014–2015, and almost meeting Target 1A in the NSLP from the 2022 transitional standards rule. More specifically, 72 percent of weekly lunch menus and about 66 percent of weekly breakfast menus were meeting Sodium Target 1 in SY 2014–2015.[187]

While meeting the first proposed 10 percent reduction in sodium is possible with products already available, the additional reductions may require product reformulation and in-house scratch cooking involving a potential change in staffing and equipment. This is supported by the USDA study on Successful Approaches to Reduce Sodium in School Meals,[188] in which schools, Food Service Management Companies, and manufacturers noted similar findings with the original sodium targets from the 2012 rule. Previous studies have shown that the majority of schools have some capacity to take part in scratch-cooking, but that new/updated equipment and increased staff may be necessary to achieve additional recipe reformulation and cooking or baking from scratch.[189] Because data have not been collected since SY 2014–2015, it is possible that further product reformulation and recipe restructuring occurred prior to or during the COVID–19 pandemic. Likewise, it is unclear how much menus changed during the pandemic and what the baseline level of sodium in menus will be for SY 2022–2023. The USDA study on Successful Approaches to Reduce Sodium in School Meals also noted that reducing sodium can be challenging, especially when using pre-packaged products, which may result in schools no longer purchasing these items or could result in manufacturers eliminating certain product lines.[190] However, it is of note that the FDA voluntary sodium goals are highly targeting packaged foods, which may help to counter some of these effects.

Food and labor costs account for the majority of the cost to produce a meal in a school (about 45 percent for labor and 45 percent for food, on average). This analysis was completed using the same methodology to determine labor costs that was used for the 2022 transitional standards rule RIA, and assumes a need for increased scratch cooking, staffing changes, and time needed for manufacturer product reformulation. The USDA study on Successful Approaches to Reduce Sodium in School Meals found that school districts in the study reported serving more fresh fruits and vegetables to reduce sodium content. This may cause a reduction in food costs if items purchased to scratch cook are less expensive; however, these costs may be offset by the quantity needed or additional foods purchased to prepare meals from scratch. In order to simulate the potential increase in costs due to the newly proposed sodium limits, the analysis described above to match products served in schools to the FDA short-term voluntary sodium targets was utilized. By comparing the cost of a meal using products that either already meet or are not subject to the FDA short-term voluntary targets to a meal using products that do not meet and are being subject to the FDA short-term voluntary targets a difference in price by meal was determined. An average cost of multiple food group combinations for menus was utilized for both breakfast and lunch in order to simulate a variety of menus that might be created and used by SFAs.

In comparing menus with high sodium foods (those being targeted by FDA voluntary guidance) to menus already containing lower sodium products, it was found that high sodium foods are less expensive. Menus from SY 2014–2015 with high sodium foods were $0.09 cheaper per SBP meal and $0.05 cheaper per NSLP meal than those menus that contain lower sodium products when only considering food costs. Adjusted for inflation, this was a $0.08 difference per meal, on average, for breakfast and lunch. For the three sodium reductions we use those per meal food cost differences, adjusted for inflation, to estimate the food cost of the proposed target. We also include labor costs associated with increased scratch cooking. For the first sodium limit we only include 25 percent of labor cost estimates since products should already be available that would allow schools to meet this limit. The full labor costs were included for the two additional sodium reductions at lunch and the one additional reduction for breakfast. Factoring in food, labor costs, and inflation gave the final values in Table 14. Over 5 years, the approximate cost of implementing the series of sodium reductions is $651 million, with an annual average cost of $130 million for both breakfast and lunch. Potential equipment costs are detailed in the 'Uncertainties/Limitations' section below.

TABLE 14: ESTIMATED FIVE-YEAR COSTS OF IMPLEMENTING NEW SODIUM REDUCTION PLAN (MILLIONS) IN NSLP AND SBP INCLUDING LABOR,[191] ADJUSTED FOR ESTIMATED INFLATION TO SY 2024-2025

SODIUM LIMIT EFFECTIVE SCHOOL YEAR	SY 2025 - 2026	SY 2026-2027	SY 2027-2028	SY 2028-2029	SY 2029-2030	5-YEAR TOTAL	FIVE YEAR AVERAGE
FOOD	$77	$77	$77	$77	$77	$268	$54
LABOR	$19	$19	$77	$77	$77	$383	$77
TOTAL	$96	$96	$153	$153	$153	$651	$130

Analyses Related to Gradual Reduction

There are a variety of factors to note regarding the proposed continued gradual 10 percent reductions of sodium intake in school meals, including the recently released short-term FDA sodium voluntary targets, improved sodium component Healthy Eating Index (HEI) scores, an adjustment for actual consumption of meals by students, and palatable reduction over time. Additionally, a comparison to sodium requirements in other organizations, and a summary of health benefits occurring as a result of sodium reduction also may inform further reduction of sodium content of school meals. These points may be considered alongside the expected additional cost of these proposed sodium limits.

The FDA sodium voluntary targets are designed to support a decrease of average daily sodium intake of 12 percent by targeting products across almost all available food categories containing commercially processed, packaged, and prepared foods.[192] USDA analyses found that when foods served in school meals met the FDA voluntary sodium reduction targets that the overall sodium content of menus decreased by approximately 10 percent. It should be noted that not all food categories in the FDA voluntary food guidance are represented in school meal programs. Meal components in school meal programs such as milk, fruits, meat/meat alternates, and most vegetables are not being targeted for sodium reduction because most contain naturally occurring

[187] SNMCS Report Volume 2.

[188] Gordon, E.L., Morrissey, N., Adams, E., Wieczorek, A. Glenn, M.E., Burke, S & Connor, P. (2019). Successful Approaches to Reduce Sodium in School Meals Final Report. Prepared by 2M Research under Contract No. AG–3198–P–15–0040. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service.

[189] Standing, Kim, Joe Gasper, Jamee Riley, Laurie May, Frank Bennici, Adam Chu, and Sujata Dixit-Joshi. Special Nutrition Program Operations Study: State and School Food Authority Policies and Practices for School Meals Programs School Year 2012–13. Project Officer: John R. Endahl. Prepared by Westat for the U.S. Department of Agriculture, Food and Nutrition Service, October 2016.

[190] Gordon, E.L., Morrissey, N., Adams, E., Wieczorek, A. Glenn, M.E., Burke, S & Connor, P. (2019). Successful Approaches to Reduce Sodium in School Meals Final Report. Prepared by 2M Research under Contract No. AG–3198–P–15–0040. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service.

[191] Changes to sodium limits as a result of this proposed rule would not begin to go into effect until SY 2025–2026.

[192] *https://www.fda.gov/food/cfsan-constituent-updates/fda-issues-sodium-reduction-final-guidance.*

sodium, but condiments/accompaniments, breads/grains and combination entrees are highly targeted, leading to a total reduction of 10 percent of menu sodium content. The internal USDA analysis of products that met the FDA voluntary food guidance and those that did not, involved a thorough matching process between categories of food products shown to have been on menus in the SNMCS and the FDA food categories. For products that did not meet the FDA voluntary sodium reduction guidance, the sodium content of these products was capped at the upper bound of the short-term FDA targets to simulate reduction in those targeted food groups, resulting in the total sodium reduction of 10 percent.

This analysis also showed that there are products available already (as of SY 2014–2015) that could meet the first proposed sodium limit for both breakfast and lunch if menus are changed to include these products. At lunch, about 70 percent of accompaniments/condiments and combination entrees available were meeting the FDA voluntary sodium targets. At breakfast, 96 percent of accompaniments and 85 percent of combination entrees were meeting the FDA sodium targets already. Milk, fruit and most vegetable products served at breakfast and lunch are not targeted by FDA. The condiments and combination entrees served at lunch will require the most effort with regards to sodium reduction through scratch cooking, and menu changes and reformulation for the reductions after the initial 10 percent reduction at school lunch. It is of note that current FDA voluntary targets are short-term and equal to a 10 percent reduction when applied to the NSLP and SBP menus,[193] but this rulemaking proposes three 10 percent reductions for the NSLP and two ten percent reductions for the SBP. This document proposes to continue gradual sodium reduction consistent with the *Dietary Guidelines.*

The next point to support a 10 percent reduction in menu sodium content is an analysis of HEI component scores. While the HEI is usually utilized for daily dietary intake (ex. 24 hour recalls, food diaries), it can also be utilized to evaluate the alignment of single meals to the *Dietary Guidelines.* The maximum score for sodium is 10, indicating ≤1.1 grams of sodium per 1,000 calories, and the minimum score available is zero, indicating ≥2.0 grams of sodium per 1,000 calories.[194] A lower score indicates a higher sodium level in foods (higher sodium density), so a score of 10 is best and indicates lower levels of sodium in line with the *Dietary Guidelines.* This formula for scoring the sodium component is the same in the HEI–2010 and HEI–2015 scoring versions.[195] The SNMCS reports [196] use the HEI–2010 version, but because the sodium component score did not change in 2015, HEI scores in Tables 15 and 16 could be considered either HEI–2010 or HEI–2015. Intakes between the minimum and maximum levels of sodium are scored proportionately. Tables 15 and 16 show the HEI scores for menus that meet the sodium targets in the transitional standards rule, and as proposed in this rulemaking. The scores demonstrate improved consistency with the goals of the *Dietary Guidelines* through a decreased level of sodium density. For lunch, the proposed sodium limits correspond to an increase of 263 percent, 286 percent, and 182 percent in HEI sodium component scores over the proposed five years of implementation for elementary, middle, and high schools, respectively (Table 16).

Breakfast HEI scores are already 10 for the sodium component, even according to the data from SY 2014–2015. However, further improvement is necessary to reach sodium intake levels recommended in the 2019 sodium dietary reference intakes (DRIs),[197] which have also been recommended in the *Dietary Guidelines for Americans, 2020–2025.* As a result of the lower level of sodium already being served in the SBP, only two 10 percent reductions have been suggested compared to the three reductions in the NSLP. The proposed limits allow for small manageable changes over time, providing schools time to implement increased scratch cooking, staff changes, and menu adjustment as needed.

TABLE 15: SODIUM LEVELS AND CORRESPONDING HEI SODIUM COMPONENT SCORES AT BREAKFAST BY MAXIMUM CALORIE LEVEL

SODIUM LEVELS BY SCHOOL AGE/GRADE GROUP	SY 2022-2023 and SY 2023-2024 (transitional standards rule)	SY 2014-2015 Menu Sodium Served	Proposed SY 2025-2026 Limit	Proposed SY 2027-2028 Limit
ELEMENTARY (500 KCAL)	540	432	485	435
ELEMENTARY HEI SCORE	10	10	10	10
MIDDLE (550 KCAL)	600	447	540	485
MIDDLE HEI SCORE	10	10	10	10
HIGH (600 KCAL)	640	449	575	520
HIGH HEI SCORE	10	10	10	10

[193] Internal USDA analysis using FDA targets and SNMCS data.

[194] *https://www.fns.usda.gov/how-hei-scored.*

[195] *https://epi.grants.cancer.gov/hei/comparing.html.*

[196] *https://www.fns.usda.gov/school-nutrition-and-meal-cost-study.*

[197] *https://nap.nationalacademies.org/catalog/25353/dietary-reference-intakes-for-sodium-and-potassium.*

TABLE 16: SODIUM LEVELS AND CORRESPONDING HEI SODIUM COMPONENT SCORES AT LUNCH BY MAXIMUM CALORIE LEVEL

SODIUM LEVELS BY SCHOOL AGE/GRADE GROUP	SY 2023-2024 (transitional standards rule)	SY 2014-2015 Menu Sodium Served	Proposed SY 2025-2026 Limit	Proposed SY 2027-2028 Limit	Proposed SY 2029-2030 Limit
ELEMENTARY (650 KCAL)	1,110	1,057	1,000	900	810
ELEMENTARY HEI SCORE	3.2	4.2	5.1	6.8	8.4
MIDDLE (700 KCAL)	1,225	1,101	1,005	990	895
MIDDLE HEI SCORE	2.8	4.7	4.7	6.5	8.0
HIGH (850 KCAL)	1,280	1,236	1,150	1,035	935
HIGH HEI SCORE	5.5	6.1	7.2	8.7	10.0

These HEI scores above are all based on the menu sodium content and not based on actual school meal consumption data. Sodium component HEI scores of consumed lunches in SY 2014–2015 were 4.2 on average for NSLP participants and 4.0 on average for non-participants.[198] NSLP participants had a lunch sodium component score of 4.7, 4.6, and 3.0 for elementary, middle, and high schools, respectively. For breakfast, sodium component HEI scores in SY 2014–2015 were 8.7 on average for SBP participants and 7.9 on average for non-participants. SBP participants had a breakfast sodium component score of 9.6, 9.0, and 6.7 for elementary, middle, and high schools, respectively.[64] Since both breakfast and lunch data include consumption of competitive foods and foods brought from home, it is difficult to compare the menu sodium scores to the scores based on the consumed amount of sodium. Overall lunch HEI–2010 scores (scored out of 100) including all elements of the diet were 80.1 for all students that were NSLP participants and 65.1 for students that were not NSLP participants. Overall breakfast HEI–2010 scores were 66.1 for SBP participants and 58.9 for students that were not SBP participants.[199] While participants of school meal programs have higher meal HEI scores, indicating a higher adherence to the recommendations of the *Dietary Guidelines,*[200] there is room for improvement overall. For sodium, there is especially room for improvement in sodium in lunches in particular, at all ages, and for high school breakfasts as well. The newly proposed sodium limits would improve these scores even when accounting for foods consumed that are not part of a reimbursable meal.

Another analysis completed to determine a reasonable level of incremental sodium reduction is a consumption adjustment of the proposed limits. HEI sodium component scores are a good measure of sodium density, but Dietary Reference Intakes for sodium also provide recommendations for daily sodium intake by age group in the U.S. and Canada.[201] The latest edition of the sodium and potassium DRIs was released in 2019 and also included Chronic Disease Reduction Risk (CDRR) values that are a recommended maximum daily intake level to prevent chronic disease. For this analysis, the CDRR daily intake has been adjusted to determine the proportion of the CDRR amounts by age group as the maximum amount of sodium served at breakfast (21.5 percent) and lunch (32 percent), as shown in Table 18. These proportions were determined in the past by IOM (now NASEM) and were used in the 2012 school meals rule.[202] Various organizations, including both the USDA through the *Dietary Guidelines* and non-Federal groups [203] [204] have indicated support for usage of these CDRR proportions as the goal for sodium consumption in school meals. However, school meal sodium limits apply to the meals as offered; they do not apply to the actual amount of sodium consumed by students. As a result, an adjustment based on consumption data from the SNMCS helps to show a more accurate level of sodium intake compared to the CDRR values. USDA acknowledges that this analysis assumes a certain degree of plate waste, but also points out the difference in offered versus served foods. Offer versus Serve (OVS) is a provision in the NSLP and SBP that allows students to decline some of the food offered in order to reduce food waste [205] which would also contribute to sodium consumption being lower than the amount offered. According to the SNMCS [206] and SNDA–III,[207] consumption of sodium at breakfast is at least 10 percent lower than the amount served and consumption of sodium at lunch is 20 to 30 percent lower than the amount served.[208] Further data exploration is in progress at this time that may help to further inform the final rule that results from this proposed rule.

[198] SNMCS Report Volume 4 Appendices I to P—Tables J.1 to J.4 and Tables M.1 to M.4.

[199] SNMCS Report Volume 4.

[200] The HEI–2010 score corresponds to the *Dietary Guidelines for Americans, 2010–2015*.

[201] National Academies of Sciences, Engineering, and Medicine; Health and Medicine Division; Food and Nutrition Board; Committee to Review the Dietary Reference Intakes for Sodium and Potassium; Oria M, Harrison M, Stallings VA, editors. Dietary Reference Intakes for Sodium and Potassium. Washington (DC): National Academies Press (US); 2019 Mar 5. Available from: *https://www.ncbi.nlm.nih.gov/books/NBK538102/* doi: 10.17226/25353.

[202] **Federal Register**: *Final Rule:* Nutrition Standards in the National School Lunch and School Breakfast Programs.

[203] *https://www.cspinet.org/sites/default/files/2022-03/CSPI%20Transition%20Final%20Rule%20Comment%202022.pdf*.

[204] *https://www.heart.org/-/media/Files/About-Us/Policy-Research/Fact-Sheets/Access-to-Healthy-Food/INFOGRAPHIC-Lowering-Sodium-in-School-Foods.pdf*.

[205] Offer versus Serve 2015 memo.

[206] SNMCS Report, Volume 2.

[207] SNDA–III Report, Volume II.

[208] This is not a perfect adjustment factor because consumption data does include foods consumed that are not reimbursable, as well as foods brought from home. It is possible that the adjustment factors could be even bigger as a result.

TABLE 17. ESTIMATED SODIUM DIETARY REFERENCE INTAKES (CHRONIC DISEASE REDUCTION RISK VALUES) BY AGE/GRADE GROUP AND MEAL (MG)

	Elementary	Middle	High
BREAKFAST	340	390	500
LUNCH	510	580	740

The amount of calculated sodium consumed at school meals as a percentage of the CDRR values in Table 17 are in Tables 18 and 19. The adjusted percentages for all age/grade groups at the second reduction of sodium in the SBP ranged from 95 percent to 107 percent and at the third reduction of sodium in the NSLP ranged from 102 percent to 117 percent. These values indicate that the proposed reductions could bring student consumption to a level that meets the recommended CDRR values or is very close to meeting them. The sodium targets from 2012 did not account for consumption and the 2019 DRIs had not been published yet. This analysis takes into account both of these factors and indicates that unless sodium recommendations change significantly in future editions of the DRIs or Dietary Guidelines, the proposed limits may be able to serve students successfully for many years.

TABLE 18. MENU PERCENTAGE OF SODIUM DIETARY REFERENCE INTAKE VALUES AT BREAKFAST, ADJUSTED FOR ESTIMATED STUDENT CONSUMPTION LEVELS

	Years of Proposed Limits	10% to 20% Consumption Adjustment			
		Elementary	Middle	High	All
SY 2022-2023 AND SY 2023-2024 (TRANSITIONAL STANDARDS RULE)	SY 2022-23	127 to 143%	123 to 138%	102 to 115%	117 to 132%
PROPOSED SY 2025-2026 LIMIT	SY 2025-26	114 to 128%	111 to 125%	92 to 104%	106 to 119%
PROPOSED SY 2027-2028 LIMIT	SY 2027-28	102 to 115%	99 to 112%	83 to 94%	95 to 107%

TABLE 19. MENU PERCENTAGE OF SODIUM DIETARY REFERENCE INTAKE VALUES AT LUNCH, ADJUSTED FOR ESTIMATED STUDENT CONSUMPTION LEVELS

	Years of Proposed Limits	20% to 30% Consumption Adjustment			
		Elementary	Middle	High	All
SY 2023-2024 (TRANSITIONAL STANDARDS RULE)	SY 2023-24	152 to 174%	148 to 169%	121 to 138%	140 to 160%
PROPOSED SY 2025-2026 LIMIT	SY 2025-26	137 to 157%	133 to 152%	109 to 124%	126 to 145%
PROPOSED SY 2027-2028 LIMIT	SY 2027-28	124 to 141%	119 to 137%	98 to 112%	114 to 130%
PROPOSED SY 2029-2030 LIMIT	SY 2029-30	111 to 127%	108 to 123%	88 to 101%	102 to 117%

Another element of support for the 10 percent level of reduction falls to palatability and the ease of making changes by manufacturers. Manufacturers have found that a 10 percent reduction in sodium for individual products is manageable with regards to product reformulation and consumer approval in the past, as well as in internal discussions with USDA.[209] Various studies are in agreement with gradual intervals of reduction being manageable for consumers both at an individual and population.[210] [211] [212] Additionally, small reductions of sodium (2 to 5 percent) are generally not noticed by consumers.[213] The proposed 10 percent reductions will not affect every single food product equally, but will be spread across the breakfast and lunch menus at varying levels. For instance, some products may easily be reduced in sodium content by 20 percent, whereas only a 5 percent change may be possible in others. Manufacturers also may have existing lower sodium product lines in their portfolio that they may be able to shift to without needing to reformulate existing products. Additionally, manufacturers may already be making strides in adjusting products as a result of the short-term FDA voluntary sodium guidance that was released in October 2021, especially with additional guidance expected to come out in 2024.

USDA completed a limited search of other food service operations in the U.S. in order to compare their sodium requirements to those proposed in this document. The CDC Food Service Guidelines for Federal Facilities were designed to be used in Federal, state and local government facilities, as well as hospitals, health care facilities, colleges and universities, private worksites, stadiums, and recreation centers.[214] This set of guidelines recommends that all meals, defined as an entrée and two sides, contain ≤800 milligrams of sodium. Entrees alone should contain ≤600 mg sodium and all side items alone contain ≤230 milligrams of sodium. Though these guidelines are directed towards adults, it is of note that beverages are included in these guidelines, and the NSLP and SBP require milk as part of the school food pattern. The U.S. Army Food Program Implementation Guide for Nutrition Standards [215] and the Healthier Campus Initiative Guidelines [216] also advise that lunch and dinner meals should contain ≤800 milligrams of sodium. The National Restaurant Association's Kids Live Well program [217] advises that at least two of the children's meal options served in restaurants should contain ≤700 milligrams of sodium, including at least two different food groups (fruit, vegetable, non/low-fat dairy, meat/meat alternative, and whole grains) and at least one of the two food groups must be a fruit or vegetable. No mention is made in the Kids Live Well program materials if a beverage is to be included as part of a meal when calculating the total sodium content. An 8-ounce carton of milk contains up to 130 milligrams of sodium, indicating that the proposed lunch sodium limits of 810, 895 and 935 milligrams for elementary, middle, and high schools are not far from other organization limits when accounting for milk and the full meal pattern requirements.

Health Benefits

The most important reason for sodium reduction in school meals is the health benefits for students. Closer alignment of school meals with the goals of the *Dietary Guidelines for Americans, 2015–2020* is meant to promote a healthy lifestyle and prevent chronic disease by meeting dietary needs. During SY 2011–2012, elementary, middle, and high school age school children consumed about 3,050 mg, 3,115 mg, and 3,565 mg of sodium daily, respectively.[218] This is in excess of the recommended daily sodium DRI values [219] for school age children; 1,500 mg for age 4 to 8 years, 1,800 mg for age 9 to 13 years, and 2,300 mg for age 14 to 18 years. Sodium DRI values are presented by age group so there is some overlap when comparing to school age groups.

Reducing sodium intake has been shown to reduce blood pressure in children, birth to age 18 years. This was shown in a systematic review conducted in 2015 by the Dietary Guidelines Advisory Committee (DGAC).[220] The 2015 DGAC also conducted an update on the 2013 Institute of Medicine (IOM) (now NASEM) and National Heart, Lung, and Blood Institute (NHLBI) systematic reviews that evaluated the relationship between sodium intake and the risk of cardiovascular disease (CVD). These reviews found agreement with the NHLBI review, which concluded that ''a reduction in sodium intake by approximately 1,000 mg per day reduces CVD events by about 30 percent'' and that ''higher dietary sodium intake is associated with a greater risk for fatal and nonfatal stroke and CVD.'' The DGAC also found agreement with the IOM review that found that there is evidence to support a positive relationship between higher levels of sodium intake and risk of CVD and is consistent with blood pressure serving as a surrogate indicator of CVD risk.[64] Blood pressure tracks over the life course, meaning that reducing sodium intake and maintaining a healthy blood pressure level in childhood can benefit individuals into adulthood.[221] Evidence is strong to support the conclusion that reduction in sodium intake reduces blood pressure and in turn reduces CVD risk and CVD events. A gradual reduction in sodium content of school meals will likely contribute to an improvement of dietary habits, blood pressure, and CVD risk factors in NSLP and SBP participants that could track into adulthood; however, USDA welcomes public input on the potential health impacts of the proposed sodium reductions.

[209] Cobb LK, Appel LJ, Anderson CA. Strategies to reduce dietary sodium intake. *Curr Treat Options Cardiovasc Med.* 2012;14(4):425–434. doi:10.1007/s11936–012–0182–9.

[210] Liem DG, Miremadi F, Keast RS. Reducing sodium in foods: the effect on flavor. *Nutrients.* 2011;3(6):694–711. doi:10.3390/nu3060694.

[211] Levings JL, Cogswell ME, Gunn JP. Are reductions in population sodium intake achievable?. *Nutrients.* 2014;6(10):4354–4361. Published 2014 Oct 16. doi:10.3390/nu6104354.

[212] Dehmer SP, Cogswell ME, Ritchey MD, et al. Health and Budgetary Impact of Achieving 10-Year U.S. Sodium Reduction Targets. *Am J Prev Med.* 2020;59(2):211–218. doi:10.1016/j.amepre.2020.03.010.

[213] Drake SL, Lopetcharat K, Drake MA. Salty taste in dairy foods: can we reduce the salt? [published correction appears in J Dairy Sci. 2012 Dec;95(12):7429]. *J Dairy Sci.* 2011;94(2):636–645. doi:10.3168/jds.2010–3509.

[214] *https://www.cdc.gov/obesity/downloads/guidelines_for_federal_concessions_and_vending_operations.pdf.*

[215] *https://quartermaster.army.mil/jccoe/Operations_Directorate/QUAD/nutrition/Implementation-Guide-for-Go-for-Green-Army.pdf.*

[216] *https://www.ahealthieramerica.org/healthier-campus-initiative-20#resource_grid-292.*

[217] *https://restaurant.org/getmedia/f829f35b-917a-432d-8192-9b1c79864d0d/kids-livewell-getting-started.pdf.*

[218] Quader ZS, Gillespie C, Sliwa SA, et al. Sodium Intake among US School-Aged Children: National Health and Nutrition Examination Survey, 2011–2012. *J Acad Nutr Diet.* 2017;117(1):39–47.e5. doi:10.1016/j.jand.2016.09.010.

[219] 2019 Sodium Chronic Disease Reduction Risk (Dietary Reference Intake) values.

[220] 2015 *Dietary Guidelines* Advisory Committee and Nutrition Evidence Library. Systematic Reviews of the Cross-Cutting Topics of Public Health Importance Subcommittee. 2015 *Dietary Guidelines* Advisory Committee Project. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Center for Nutrition Policy and Promotion, March 2017. Available at: *https://nesr.usda.gov/2015-dietary-guidelines-advisory-committee-systematic-reviews.*

[221] Cheng S, Xanthakis V, Sullivan LM, Vasan RS. Blood pressure tracking over the adult life course: patterns and correlates in the Framingham heart study. *Hypertension.* 2012;60(6):1393–1399. doi:10.1161/HYPERTENSIONAHA.112.201780.

Menu Planning Options for American Indian and Alaska Native Students

This rulemaking proposes to add tribally operated schools, schools operated by the Bureau of Indian Education, and schools serving primarily American Indian or Alaska Native children to the list of schools that may serve vegetables to meet the grains requirement, and requests public input on additional menu planning options that would improve the child nutrition programs for American Indian and Alaska Native children. This change would allow these specific schools to substitute vegetables, including traditional vegetables such as breadfruit and prairie turnips, for grains in school meals. This proposal also extends to CACFP and SFSP.

Due to limited data regarding consumption of these foods in the SBP and NSLP and the cost of these specific foods to schools serving American Indian and/or Alaska Native children specifically, no cost analysis can be completed to predict how this proposal would affect these schools. Vegetables are a component of the school meal patterns and must be offered with each lunch; schools also have the option to offer vegetables at breakfast. SNMCS data from SY 2014–2015 indicates that starchy vegetables including potatoes, and red/orange vegetables including sweet potatoes cost $0.18 per portion on average and bread/grain items also cost $0.18 per portion on average. Therefore, we expect this proposal would lead to minimal, if any, cost change per meal based on this data and based on the fact that schools already serve vegetables in their school meals. Further, schools would not be required to make any changes to their menus under this proposal, and could choose to continue serving grain items to meet the grains component requirement.

Traditional Foods

This rulemaking proposes to explicitly state in regulation that traditional foods may be served in reimbursable school meals. USDA acknowledges that many traditional foods may already be served in school meal programs; the goal of this proposal is to draw attention to this option and support efforts to incorporate these foods into school meals. By ''traditional food,'' USDA means the definition included in the Agriculture Improvement Act of 2014 [222] which defines traditional food as 'food that has traditionally been prepared and consumed by an American Indian tribe', which includes wild game meat, fish, seafood, marine mammals, plants, and berries.

Due to limited data regarding consumption and cost of traditional foods in the SBP and NSLP, no cost analysis can be completed to predict how this proposal would affect child nutrition programs. Traditional foods may be served in school meals under existing guidance, and this proposal encourages rather than requires schools to serve traditional foods, so this proposal is expected to result in a non-significant cost change annually for food service operations.

Afterschool Snacks

USDA proposes to align NSLP snack standards for school-aged children with the CACFP snack requirements. NSLP requirements for snacks served to infants and preschool-aged children would remain in effect. For school-aged children, reimbursable snacks would include two of the following five components: milk, vegetables, fruits, grains, and meats/meat alternates. USDA also proposes to apply the following CACFP snack requirements to NSLP snacks served to school-aged children: only one of the two components served at snack may be a beverage, milk served to children age 6 and older must be fat-free or low-fat and may be flavored or unflavored, at least one serving of grains per day across all eating occasions must be whole grain-rich, and grain-based desserts do not count towards meeting the grains requirement. Additionally, the added sugars product limits for breakfast cereals and yogurt proposed in this rulemaking would apply to NSLP snacks. The component options for afterschool snacks are the same categories as previously, aside from fruits and vegetables now being separated.

Compared to the number of lunches served, there are only four percent as many afterschool snacks served, based on 2019 data.[223] Of those snacks served, over 80 percent of the items served were breads/grains, fruits, and milk. SNMCS data from SY 2014–2015 indicates that under half of snack items served were beverages. Milk served was already meeting the proposed requirement to be fat-free or low-fat, flavored or unflavored. Combination entrees were not considered in this analysis because they are so minimally served as snacks. Over half of grains served for snacks were whole grain-rich in SY 2014–2015, so the remaining three areas with potential updates for snacks as a result of this proposal include replacing grain-based desserts, and limiting cereals and yogurts to those that meet the proposed product-based added sugars limits. About half of grain items in snacks served were grain-based desserts, and in order to switch those over to grains/breads that are not considered to be grain-based desserts would save approximately $11 million. Since yogurt was not as widely served as a snack item, the cost to switching from yogurt products with higher added sugars content to yogurts with no more than 12 grams of added sugars per 6 ounces is under half a million dollars. Cereal costs the same per dry ounce regardless of added sugars content, so there would be no cost change. In total, the proposal to align NSLP snack standards with CACFP snack standards would save around $11 million on average (Table 20).

TABLE 20: ESTIMATED COST OF AFTERSCHOOL SNACKS RULE BY EACH AFFECTED PRODUCT (MILLIONS), ADJUSTED FOR ESTIMATED INFLATION TO SY 2024-2025

PRODUCT TYPE	Estimated Annual Cost
GRAIN-BASED DESSERTS	-$11
BREAKFAST CEREALS	$0
YOGURT	$0.3
TOTAL	-$11

Substituting Vegetables for Fruits at Breakfast

This rulemaking proposes that schools can continue to substitute vegetables for fruits at breakfasts, but changes the vegetable variety requirement. Schools that substitute vegetables more than one day per school week would be required to offer vegetables from at least two subgroups. The vegetable subgroups include starchy, red and orange, dark green, beans and peas (legumes), and lentils. Starchy vegetables are consumed at a higher rate in children and adolescents compared to the other vegetable subgroups, so this proposal would encourage consumption of additional types of vegetables at breakfast if substituted in for fruit.

SNMCS data from SY 2014–2015 showed that only about three percent of fruits were substituted for vegetables at breakfast. Of the servings of vegetables substituted for fruits in SY 2014–2015, half were starchy, and the other half were primarily red and orange vegetables. An internal USDA analysis simulated switching between 10 and 25 percent of fruit servings at breakfast to vegetables. This simulation assumed that half of the switched fruit servings would be to starchy vegetables and the other half to any of the other vegetable subgroups (red and orange, dark green, beans and peas, lentils),

[222] Agriculture Improvement Act of 2014, as amended (25 U.S.C. 1685(b)(5)).

[223] USDA—Food and Nutrition Service National Database Publicly Available Data.

similar to the data in SNMCS. In SY 2014–2015, starchy vegetables served at breakfast and lunch cost approximately $0.18 per portion, and all other vegetables served cost approximately $0.20 per portion, on average. Fruits served at breakfast were $0.21 per portion, on average. Utilizing these prices per portion and the number of breakfasts served in 2019, there would be a savings ranging from $4 million to $11 million resulting from a substitution of 10 to 25 percent of fruit servings with vegetable servings (Table 21).

TABLE 21: ESTIMATED ANNUAL COST OF SUBSTITUTING VEGETABLES FOR FRUITS AT BREAKFAST (MILLIONS), ADJUSTED FOR ESTIMATED INFLATION TO SY 2024-2025

PRODUCT TYPE	10% OF FRUIT SERVINGS SWITCHED TO VEGETABLES	25% OF FRUIT SERVINGS SWITCHED TO VEGETABLES
# OF TOTAL FRUIT SERVINGS	1,985	1,985
# OF FRUIT SERVINGS TO SWITCH	199	496
COST	-$4	-$11

USDA expects more vegetables to be utilized in breakfast meals with the proposed decrease in added sugars content of breakfasts, including a reduction in servings of grain-based desserts. This may lead to vegetables being utilized in servings of eggs or in breakfast burritos, for example. However, it is also expected that fruits will be served in the vast majority of breakfasts since they are easy to incorporate in meals and to build into menus, and fresh fruits contain no added sugars, only naturally occurring sugars. Depending on the local prices, SFAs will decide the most cost-effective menus for their operations, but this proposal continues to promote vegetable variety at breakfast.

Nuts and Seeds

This rulemaking proposes allowing nuts and seeds to credit for the full meat/meat alternate component in all child nutrition programs and meals. This would remove the 50 percent crediting limit for nuts and seeds at breakfast, lunch, and supper. USDA expects that nuts and seeds will most often continue to be offered in snacks or in small amounts at breakfast, lunch, or supper alongside other meat/meat alternate sources. Nuts and seeds are most often offered in school meals in the form of a nut butter (or nut butter alternative—soy, sunflower seed) in a sandwich.

About 17 percent of daily lunch menus in SY 2014–2015 offered 'other protein items' in the form of eggs, seeds, nuts, beans and peas.[224] Of combination entrees served in the NSLP, about six percent were peanut butter and jelly sandwiches,[225] including variations with sunflower seed butter and almond butter.[226] Of those peanut butter and jelly sandwiches served, over 85 percent were prepared using whole grain-rich bread. Less than one percent of meat and meat alternate food items offered on NSLP menus were nuts, seeds, or nut/seed butters.[227] Very few instances of serving whole nuts and seeds were found in this analysis at either breakfast or lunch. Because USDA expects that nuts and seeds will be minimally offered as the sole protein source at a meal and because this change may take shape in a variety of combinations across menus, no measurable per meal cost change is expected as a result of this proposed element of the rule. Saturated fat content of school meals must be less than ten percent of total calories per week and replacing some lean sources of meat with nuts or seeds may result in higher saturated fat content of meals. When creating menus, operators must be aware of saturated fat content of meals if using more servings of nuts and seeds.

Competitive Foods—Hummus Exemption

This rulemaking proposes to add hummus to the list of foods exempt from the total fat standard in the competitive food, or Smart Snack, regulations. Hummus would still be subject to the saturated fat standard, which limits competitive foods to less than 10 percent of calories from saturated fat per item as packaged or served and the sodium standard in which snacks must be 200 mg of sodium or less and entrees must be 480 mg of sodium or less.[228] Smart Snacks are foods that are sold to students outside of the school meal programs, such as foods sold a la carte, in school stores, in vending machines or any other venues where food is served to students during school hours. Hummus is already permitted as a part of a reimbursable school meal but with this change could also be sold as a Smart Snack. A specific definition of hummus is also given as part of this proposal.

USDA does not collect or track competitive food sales, so it is unclear the exact cost change to SFAs that will result from this proposal. A served portion of hummus was comparable in price to a served portion of regular or reduced-fat peanut butter according to SNMCS data. Peanut butter and hummus are comparable in that they are served as part of a snack alongside another food (*i.e.* pretzels, bread, vegetables, apple slices, etc.). As a result, USDA expects a minimal cost change for SFAs that choose to sell hummus as a competitive food due to this proposal. Individual schools often use competitive foods sold to complement reimbursable foods in order to maintain a revenue-neutral operation; therefore, USDA assumes that schools will opt to sell hummus as a competitive food if they determine it is beneficial cost-wise. When data were collected in SY 2014–2015, hummus was served minimally in the NSLP, but it is likely the popularity of hummus among students has increased since that time, so allowing an additional option for schools could be beneficial.

Professional Standards

USDA proposes to allow state agency discretion to approve the hiring of an individual to serve as a school nutrition program director in a medium or large local educational agency, for individuals who have 10 years or more of school nutrition program experience but who do not hold a bachelor's or associate's degree. In other words, this proposal includes an experience substitution for education in order to open a potentially wider applicant pool for school nutrition program director positions. A high school diploma or GED would still be necessary, but this shift may help with hiring challenges experienced in recent years. Instead of education being the only path to promotion, high levels of experience would be an alternative path. Directors hired under this proposed provision would be encouraged to work towards a degree related nutrition and/or business, but this would not be required. This rulemaking also proposes to clarify in regulation that State agencies themselves may determine what counts as 'additional educational experience' for the hiring standards.

It is unclear exactly how many SFAs this will affect and how many individuals have 10 years or more of experience that could be promoted to director positions. However, USDA has recently received requests and questions from State agencies that are facing challenges filling vacancies and would like to have the option to substitute school nutrition program experience for a degree. Also, in response to USDA's 2018 professional standards proposed rule,[229] UDSA received 13 comments (out of 76 total comments) that included alternatives for the education requirement. Of those, 9 specifically recommended experience as a substitute for a degree, with 10 years of experience being the most common suggestion. Data will be collected between SY 2024–2025 and SY 2029–2030 to support ongoing assessment of effects of this aspect of the rule. Around 8.3 million or 5.4 percent of U.S. workers were employed in food preparation and serving

[224] SNMCS Report Volume 2.

[225] Of these peanut butter and jelly sandwiches, over 85 percent were made with whole grain-rich bread.

[226] SNMCS Study Data, USDA internal analysis.

[227] SNMCS Study Data, USDA internal analysis.

[228] *https://fns-prod.azureedge.us/sites/default/files/resource-files/smartsnacks.pdf.*

[229] *https://www.federalregister.gov/documents/2018/03/06/2018-04233/hiring-flexibility-under-professional-standards.*

related occupations in 2017.[230] While this was prior to the pandemic, numbers are beginning to recover across this category of employment and it is predicted that this field, including food service managers, will continue to grow in the coming years.[231] Of the food service managers across the U.S. in 2018–2019, 9.2 percent had less than high school diploma, 28.5 percent had a high school diploma or equivalent, and 26.2 percent had some college but no degree.[232] Thirty-six percent of food service managers have an associate's degree or higher level of education. For SFA directors specifically, a recent USDA study indicated that 12 percent of SFA directors had advanced degrees, 29 percent had bachelor's degrees, 13 percent had associate's degrees, 20 percent had some college but no degree, and 26 percent had high school diplomas.[233] It also found that directors at larger SFAs had higher levels of educational attainment. Comparing SFA directors to food service managers across the U.S., SFA directors have a higher level of education on average, but about 46 percent of SFA directors have no degree. As a result, it is likely that a substantial percentage of operations could benefit from the ability to promote through experience rather than education level.

Buy American

This proposed rule seeks to strengthen the Buy American requirement but also acknowledge that purchasing domestic food products is not always feasible for schools. USDA proposes to maintain the current two limited exceptions to the Buy American provision and to also propose a new threshold limit for school food authorities utilizing these exceptions. The two exceptions USDA proposes to maintain will continue to apply when (1) the product is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality; or (2) competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product.

USDA proposes to institute a 5 percent ceiling on the non-domestic commercial foods a school food authority may purchase per school year. Consistent with current USDA guidance, this proposed rule would clarify in regulation that it is the responsibility of the school food authority to determine whether an exception applies. It proposes to require school food authorities to maintain documentation showing that no more than 5 percent of their total annual commercial food costs were for non-domestic foods. USDA would not require documentation for use of each individual exception used. Rather, school food authorities would be required to maintain documentation demonstrating that less than 5 percent of total commercial foods purchased per year are non-domestic. This documentation requirement would codify the requirement to maintain documentation for an exception, while decreasing the amount of required documentation compared to current practices. To supplement this documentation, USDA would continue to collect information and data on the Buy American provision and school food authority procurement. This proposed rule would require school food authorities to include the Buy American provision in documented procurement procedures, solicitations, and contracts for foods and food products procured using informal and formal procurement methods, and in awarded contracts. State agencies would verify the inclusion of this language when conducting reviews. Additionally, a definition of 'substantially' is proposed, as well as a clarification of requirements for harvested farmed and wild caught fish.

The Food and Nutrition Service (FNS) Program Operations Study[234] collected data during SY 2017–2018. This study found that products purchased under exceptions made up 8.5 percent of total food purchase expenditures among SFAs that used an exception to the Buy American provision. During SY 2017–2018, 25.7 percent of SFAs used an exception to the Buy American provision. Based on this data, it is likely that the majority of SFAs are already meeting the proposed 5 percent ceiling on the non-domestic commercial foods a school food authority may purchase per school year with around a quarter of SFAs needing to decrease their purchase of non-domestic commercial foods. Among the SFAs using an exception to the provision, the reasons cited for using an exception included: limited supply of the commodity or product (88 percent), increased costs of domestic commodities or products (43 percent), and quality issues with available domestic commodities or products (21 percent). The exceptions to the Buy American provision will help SFAs control costs of purchasing domestic food products despite the added 5 percent ceiling.

Characteristics of the SFAs by their level of participation in using exceptions is important to understand which schools will be most affected by the proposed Buy American provision. Products purchased under exceptions made up 9.5 percent of total food purchase expenditures among small SFAs (1–999 students), 8.1 percent among medium SFAs (1,000–4,999 students), 7.5 percent among large SFAs (5,000–24,999 students), and 7.5 percent among very large SFAs (≥25,000 students). For urbanicity, products purchased under exceptions made up 12.7 percent of total food purchase expenditures in SFAs that were in towns, 6.5 percent of SFAs in suburban areas, 7.9 percent of SFAs in urban/city areas, and eight percent of SFAs in rural areas. Those SFAs with a medium level of students approved for free and reduced price meals (30–59 percent) had 5.9 percent of food expenditures purchased under exceptions, but schools with a low percentage (0–29 percent) and with a high percentage (≥60 percent) of free and reduced price meal participants had 10.9 percent and 10.4 percent of total foods purchased under exceptions, respectively. SFAs that are small, that are in towns, and those that had both a low and high percentage of students approved for free and reduced-price meals are above the 8.5 percent average and schools falling in these groups may have the most challenge meeting the Buy American provision proposed in this rulemaking compared to SFAs greater in size (>999 students), those that are in suburban, city or rural environments, and those that have 30 to 59 percent of students approved for free and reduced-price meals.

For the 26 percent of SFAs that used an exception to the Buy American provision during SY 2017–2018, it is expected that some costs would exist associated with the time to reformulate menus and/or update purchasing practices to meet the five percent proposed ceiling. These costs are included in the regulatory familiarization cost totals that are detailed in the 'Administrative Costs' section above. Using SY 2009–2010 total food expenditure data from the School Food Purchase Study, an increase in food costs was estimated for all SFAs to reach the 5 percent threshold in the 26 percent of SFAs that were at 8.5 percent, on average, in SY 2017–2018. Of the 26 percent of SFAs that utilized an exception, 43 percent sought exemptions based on cost. The majority of SFAs (70 percent) used a cost threshold of 30 percent or less when determining whether a cost is significantly higher for a domestic commodity or product, warranting a use of exception. Therefore, we assume that, on average, the cost of purchasing domestic products will be 15% higher for those affected purchases. These data point to a $4 million annual food cost increase based on this provision. USDA requests public input on food costs that may result from the proposed threshold for non-domestic commercial food purchases.

Additionally, USDA estimates the proposed record keeping requirement for school food authorities to maintain documentation to demonstrate that their non-domestic food purchases do not exceed the proposed 5 percent annual threshold will impact all school authorities—approximately 19,019 school food authorities—or respondents. USDA estimates these 19,019 respondents will develop and maintain 10 records each year, and that it takes approximately 15 minutes (.25 hours)[235] to complete the record keeping requirement for each record. The proposed record keeping requirement adds a total of 47,547.5 annual burden hours into the new information collection request. When using the latest

[230] *https://www.census.gov/library/stories/2022/07/how-food-service-transportation-workers-fared-before-pandemic.html.*

[231] *https://www.bls.gov/ooh/management/food-service-managers.htm.*

[232] *https://www.bls.gov/emp/tables/educational-attainment.htm.*

[233] Urban location and low poverty level of the SFA were also correlated with higher educational attainment among SFA directors. USDA, FNS, Office of Policy Support, School Nutrition and Meal Cost Study, Final Report Volume 1: School Meal Program Operations and School Nutrition Environments, prepared by Mathematica Policy Research and Abt Associates, April 2019, pp. 34–35, *https://fns-prod.azureedge.net/sites/default/files/resource-files/SNMCSVolume1.pdf.*

[234] Child Nutrition Program Operations Study (CN–OPS–II) Report: School Year 2017–2018. *https://fns-prod.azureedge.us/sites/default/files/resource-files/CNOPS-II-SY2017-18.pdf.*

[235] As explained in the PRA (Paperwork Reduction Act program).

hourly cost of public administration in state and local government from 2022 of $54.05,[236] the total additional cost of this component of the proposed rule is about $3 million annually. In total, USDA estimates that the proposed Buy American provision would cost $7 million annually with both food costs and record keeping included (Table 22). USDA acknowledges that the estimated cost of this proposed provision would contribute to additional SFA costs, leading to potentially reduced funds for other areas of spending. However, it would be at SFA discretion how funds are shifted to meet this proposed threshold for non-domestic foods. USDA does not anticipate that this proposed provision will have any effect on the ability of SFAs to meet school meal nutrition standards.[237]

TABLE 22: ESTIMATED COST OF BUY AMERICAN PROVISION (MILLIONS), ADJUSTED FOR ESTIMATED INFLATION TO SY 2024-2025

CATEGORY	Estimated Annual Cost
FOOD COSTS	$4
RECORD KEEPING[237]	$3
TOTAL	$7

Geographic Preference

USDA is proposing a change in this rulemaking to expand geographic preference options by allowing locally grown, raised, or caught as procurement specifications (a written description of the product, or service that the vendor must meet to be considered responsive and responsible) for unprocessed or minimally processed food items in the child nutrition programs, in order to increase the procurement of local foods and ease procurement challenges for operators interested in sourcing food from local producers. Comments are requested from the public regarding this proposal on whether or not respondents agree that this approach would ease procurement challenges for child nutrition program operators or if it would encourage smaller-scale producers to submit bids to sell foods to child nutrition programs. No specific cost impact is being evaluated for this proposal since USDA does not have any applicable data, but USDA assumes that this element of the proposed rule will be used at SFA discretion as it works into individual school budgets (creating savings when needed). However, it is of note that of those SFAs participating in Farm to School, 85 percent served at least some local foods and about 20% of total food spending was on local foods,[238] so there is room for increased purchase of local foods across most SFAs at SFA discretion.

Miscellaneous Changes

This section proposes a variety of miscellaneous changes and updates to child nutrition program regulations, including terminology changes. For the 'meats/meat alternates' meal component that includes dry beans and peas, whole eggs, tofu, tempeh, meat, poultry, fish, cheese, yogurt, soy yogurt, peanut butter and other nut or seed butters, and nuts and seeds, this rulemaking proposes to change the component name to 'protein sources' for the NSLP, SBP, and CACFP. For the 'legumes (beans and peas)' vegetable subgroup, this document proposes to change the name to 'beans, peas, and lentils' to match the *Dietary Guidelines, 2020–2025*. As noted in the preamble, this rulemaking also proposes a variety of technical corrections, including correcting cross-references, updating definitions, removing outdated requirements, and making revisions to the meal pattern tables to make them more user-friendly.

Summary

As noted above, this proposed rule was developed in order to align school nutrition standards more closely with the goals of the *Dietary Guidelines* for Americans, 2020–2025 and to support the continued transition to long-term standards after the pandemic and the implementation of the transitional standards rule. Most of the impacts associated with this proposed rule are in the form of shifts in purchasing patterns and increased labor costs. Costs in this section are uncertain (and thus estimates should be considered as somewhat imprecise) but reflect the potential value of the changes proposed in this rulemaking.[239] [240] [241] [242]

[236] Using the U.S. Bureau of Labor Statistics series ID of CMU3019200000000D of total compensation cost per hour worked for state and local government workers in public administration industries (*https://data.bls.gov/cgi-bin/dsrv*).

[237] No inflation adjustment was completed for record keeping costs since they are not food costs or based on a factor of food costs.

[238] Bobronnikov, E. et al. (2021). Farm to School Grantee Report. Prepared by Abt Associates, Contract No. AG–3198–B–16–0015. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, Project Officer: Ashley Chaifetz.

[239] Values reflect annual costs from sections above with added three percent annual inflation. Costs are also shown by school year in this table. This varies from Table 1 which utilizes fiscal years and does not include expected inflation during the duration of the proposed rule.

[240] Due to rounding, numbers may not add up to rounded sum in 'total' column exactly.

[241] Only local costs (not State costs) are adjusted for inflation because they are based on a factor of food-costs.

[242] Only food costs (not record keeping) are adjusted for inflation.

TABLE 23: ESTIMATED ANNUAL COSTS IN MOVING FROM TRANSITIONAL STANDARDS RULE TO PROPOSED RULE BEGINNING BY SCHOOL YEAR (MILLIONS), ADJUSTED FOR ANNUAL INFLATION[239,240]

YEAR OF IMPLEMENTATION	SY 2024-2025	SY 2025-2026	SY 2026-2027	SY 2027-2028	SY 2028-2029	SY 2029-2030	Total	Average over six school years
ADMINISTRATIVE COSTS[241]	$43	$44	$0	$45	$0	$46	$178	$30
ADDED SUGARS	$0	$91	$94	$96	$99	$102	$482	$80
MILK (ALTERNATIVE A)	$0	$60	$62	$64	$66	$68	$319	$53
MILK (ALTERNATIVE B)	$0	$0	$0	$0	$0	$0	$0	$0
SODIUM	$0	$99	$102	$167	$172	$178	$717	$120
AFTERSCHOOL SNACKS	-$11	-$11	-$12	-$12	-$12	-$13	-$70	-$12
SUBSTITUTING VEGETABLES FOR FRUITS AT BREAKFAST	-$4	-$4	-$5	-$5	-$5	-$5	-$27	-$5
BUY AMERICAN[242]	$7	$7	$7	$7	$7	$7	$42	$7
TOTAL (ALTERNATIVE A)	$35	$285	$248	$363	$328	$383	**$1,641**	**$274**
TOTAL PER MEAL (ALTERNATIVE A)	**$0.005**	**$0.039**	**$0.034**	**$0.050**	**$0.045**	**$0.052**	NA	**$0.037**
TOTAL (ALTERNATIVE B)	$35	$224	$186	$299	$262	$316	**$1,322**	**$220**
TOTAL PER MEAL (ALTERNATIVE B)	**$0.005**	**$0.031**	**$0.025**	**$0.041**	**$0.036**	**$0.043**	NA	**$0.030**

If this proposed rule is fully implemented with proposed milk Alternative A, it would cost $274 million annually on average over six school years, or $0.037 per lunch and breakfast meal. If this proposed rule is fully implemented with proposed milk Alternative B, it would cost schools $220 million annually over six school years, or $0.03 per lunch and breakfast in food and labor costs (Table 23). Per meal costs average from $0.005 to $0.052 annually between SY 2024–2025 and SY 2029–2030 for proposed milk Alternative A and ranged from $0.005 to $0.043 annually for proposed milk Alternative B. Impacts to the market will be similar in magnitude as purchasing patterns shift to encompass more products that are lower in sodium and lower in added sugars. The cost of shifting to the product specific added sugars limits is based on switching to products already available on the market; costs to schools may vary if manufacturers alter products or create new products to meet the proposed added sugars regulations. The majority of costs associated with this rulemaking are a result of purchasing different products with less sodium and the additional labor needed to increase scratch cooking, update menus, and implement new recipes to implement the proposed gradual sodium reductions. Costs savings due to the updated standards for afterschool snacks are all related to shifts in purchasing patterns to meet the proposed product-based added sugars limits for breakfast cereal and yogurt identical to the proposed NSLP and SBP added sugar limits for these products. A shift in purchasing patterns for substituting vegetables for fruits is also due to a shift in purchasing patterns. The costs associated with Buy American are due to additional food costs as a result of a shift in purchasing patterns and additional burden hours for documentation shifts. This proposed rule provides achievable standards formed by USDA and is accompanied by a variety of analyses with the most recently available data and additional data collected to monitor recent product availability.

Uncertainties/Limitations

In order to complete this Regulatory Impact Analysis, some assumptions had to be made, and additionally some uncertainties and limitations must be acknowledged. Some general limitations are noted below, as well as limitations specific to sections, and an analysis to shed light on the uncertainty of participation levels in school meal programs going forward. Some of these uncertainties and limitations result from this proposed rule being written in a time directly after the COVID–19 pandemic, in which assumptions must be made about future participation in school meal programs, as well as future food and labor prices.

General

Due to the delay in conducting the next edition of the School Nutrition Meal Cost Study (II) as a result of the pandemic, the most recent data that could be used for cost analysis were from SY 2014–2015. It is likely that product availability and product cost has changed from SY 2014–2015 to the current school year (SY 2022–2023) and will continue to change prior to when the planned implementation date for a final version of this proposed rule is likely to occur (SY 2024–2025). Because the transitional standards rule went into effect so recently, it is unclear how well schools will adapt to the updated standards to establish a clear baseline of menus and staffing, for this proposed rule. Additionally, a lack of recent data regarding school staffing levels and an uncertainty of the levels post-pandemic make it challenging to estimate a change in staffing cost, especially as it affects changes in sodium and professional standards proposed regulations.

USDA acknowledges that the data used to evaluate cost, although the most recent available data, is relatively old and has made efforts to account for this by adjusting for inflation from SY 2014–2015 to the years of implementation prescribed in this proposed rule. However, as noted throughout this analysis it is possible that changes in product formulation, availability, and cost have occurred in the years since these data were collected. Lower sodium and lower added sugars foods will be utilized if this proposed rule is implemented, so a change in costs resulting from this change must be considered specifically. In the 'Impacts' section above, there are sections detailing the changes expected as a result of the added sugars and sodium limits specifically, but using SY 2014–2015 data to estimate the cost differential. A sensitivity analysis accounting for potential changes in cost considers if there is a shift to half the cost differential or double the cost differential in the added sugars and sodium elements of meals (Table 24). It is possible that the differentials could be higher or lower in the future, but this sensitivity analysis offers a simulated shift in costs to illustrate the potential magnitude of change. If the differential between lower sodium and higher sodium foods and between foods lower in added sugars and higher in added sugars has doubled since SY 2014–2015, then the costs of implementing this rulemaking would be considerably more expensive. However, if the market has changed already due to the CACFP total sugar limits, public desire for healthier packaged food options, and the FDA voluntary sodium goals, then it is possible that the differential has decreased.

[243] Changes to sodium limits and added sugars product-specific limits as a result of this proposed rule would not begin to go into effect until SY 2025–2026.

TABLE 24: SENSITIVITY ANALYSIS - ESTIMATED 5-YEAR COST DIFFERENTIALS OF REDUCING SODIUM AND ADDED SUGARS IN SCHOOL MEALS (MILLIONS), ADJUSTED FOR ANNUAL INFLATION[243]

SODIUM LIMIT EFFECTIVE SCHOOL YEAR	SY 2025 - 2026	SY 2026-2027	SY 2027-2028	SY 2028-2029	SY 2029-2030	FIVE-YEAR TOTAL	ANNUAL FIVE-YEAR AVERAGE
ADDED SUGARS							
SY 2014-2015 ESTIMATES	$91	$94	$96	$99	$102	$482	$96
HALF COST DIFFERENTIAL	$45	$47	$48	$50	$51	$241	$48
DOUBLE COST DIFFERENTIAL	$182	$187	$193	$198	$204	$964	$193
SODIUM							
SY 2014-2015 ESTIMATES	$99	$102	$167	$172	$178	$717	$143
HALF COST DIFFERENTIAL	$49	$51	$84	$86	$89	$359	$72
DOUBLE COST DIFFERENTIAL	$197	$203	$335	$345	$355	$1,435	$287
TOTAL							
SY 2014-2015 ESTIMATES	$189	$195	$264	$272	$279	$1,200	$240
HALF COST DIFFERENTIAL	$95	$98	$132	$136	$140	$600	$120
DOUBLE COST DIFFERENTIAL	$379	$390	$527	$543	$559	$2,399	$480

Another uncertainty is if manufacturers will eliminate product lines if it is no longer profitable to sell them, especially for products that need to be reformulated. Some product lines have been created specifically for schools which may become even more common with these proposed regulations. Supply chain delays have been challenging in recent years and may continue in the coming years. About 92 percent of SFAs reported experiencing some challenges due to supply chain disruptions in SY 2021–2022, including product availability, orders arriving with missing or substituted items, as well as labor shortages.[244] In addition, it may take longer to reformulate certain product lines than anticipated. Food manufacturers play an integral role in school food service operations and the ability for menus to meet regulations, especially when it comes to added sugars, milk, whole grains, and sodium.

For this analysis, HEI scores were utilized to measure the alignment of school menus with recommendations from the *Dietary Guidelines.* HEI component scores for added sugars and sodium only reflect one aspect of the diet, not a complete diet. HEI scores were originally designed to measure a full day of intake, not necessarily designed to evaluate one or two meals a day. One additional limitation regarding HEI scores, is that the calculation does not exactly align with the recommendations in the *Dietary Guidelines* but is more focused on nutrient density. For instance, a maximum score for the sodium component is achieved if sodium content is ≤1.1 grams of sodium per 1,000 kilocalories (HEI–2010 and HEI–2015) and a maximum score for the added sugars component is achieved if added sugars are at ≤6.5 percent of total energy (HEI–2015).[245] The *Dietary Guidelines for Americans, 2020–2025* sodium recommendations are based on the sodium DRIs and the added sugar recommendations are more liberal at 10 percent when considering the entire population, including adults. While these are limitations of using the HEI score and component scores, HEI is still a valuable tool to evaluate meals in a standardized way that allows for comparison and measuring improvement over time.

Decreasing sodium and added sugars menu content may inadvertently increase other nutrients such as fat and protein. It is uncertain what the effect of these proposed changes across this proposed rule will have on average across SFAs since there are so many combinations of food groups and permutations of menu changes. A decrease in added sugars content alone in meals could inadvertently increase sodium content through usage of more meat/meat alternate products on menus. These will have to be changes that food service operators and those designing school meal menus will have to be aware of and account for when making adjustments.

Health Benefits

Health benefits can be challenging to quantify with regards to cost and savings, especially in the younger population. While a variety of studies have shown that habits developed in childhood can track into adulthood,[246] [247] it is unclear what proportion of individuals hold to this trend and the level of reduced chronic health conditions in adults consuming healthier meals during childhood and adolescence.

As detailed above in the 'Impacts' section, reducing intake of added sugars can result in reductions in weight gain, obesity, T2D, CVD, and chronic kidney disease. Consumption of dietary patterns with low-fat dairy (including low-fat milk) and whole grains, were associated with lower fat-mass index and body mass index later in adolescence, as well as lower blood pressure and improved blood lipid levels. Throughout the lifespan, consumption of whole grains has been shown to reduce the risk of CVD, T2D, and some types of cancer. Reducing sodium intake has been shown to reduce blood pressure in children, birth to age 18 years, and in turn also reduce CVD incidence.[248]

Despite the challenges of quantifying the costs or savings resulting from improved health outcomes in children, there are some available studies that quantify these findings in adults for major health outcomes. For instance, annual medical costs for individuals with high blood pressure are up

[244] Results of the U.S. Department of Agriculture, Food and Nutrition Service-Administered School Food Authority Survey on Supply Chain Disruptions.

[245] *https://epi.grants.cancer.gov/hei/comparing.html.*

[246] Lioret S, Campbell KJ, McNaughton SA, et al. Lifestyle Patterns Begin in Early Childhood, Persist and Are Socioeconomically Patterned, Confirming the Importance of Early Life Interventions. Nutrients. 2020;12(3):724. Published 2020 Mar 9. doi:10.3390/nu12030724.

[247] Movassagh EZ, Baxter-Jones ADG, Kontulainen S, Whiting SJ, Vatanparast H. Tracking Dietary Patterns over 20 Years from Childhood through Adolescence into Young Adulthood: The Saskatchewan Pediatric Bone Mineral Accrual Study. Nutrients. 2017;9(9):990. Published 2017 Sep 8. doi:10.3390/nu9090990.

[248] More detailed explanations of health effects by each major provision are in the 'Impacts' section above.

to $2,500 higher than costs for people without high blood pressure,[249] [250] resulting in a $79 billion total annual medical cost associated with high blood pressure in the U.S.[251] From 1996 to 2016, there was an increase of over $100 billion in spending on adult cardiovascular disease, to a total of $320 billion spent in 2016 in the U.S.[252] This indicates that a reduction in CVD overall could result in significant savings. In a 2017 article evaluating cost savings associated with weight reduction, a 20-year-old going from obese to overweight resulted in around $18,000 savings over a lifetime, compared to a $28,000 savings on average over a lifetime if going from obese to a healthy weight. The expected savings are slightly higher if this same level of weight reduction occurred in a 40-year-old.[253] In 2016, it was estimated that the aggregate medical cost to due to obesity amongst adults was approximately $261 billion in the U.S.,[254] indicating an area in which costs could be widely reduced as a result of healthier habits. The most expensive chronic condition in the U.S. is diabetes, with a $327 billion annual cost ($237 billion of which are medical costs).[255] The cost and benefit estimates from these studies may be subject to a variety of limitations depending on study design and available data; however, these estimates help to provide insight into potential savings associated with consuming a healthy diet during the lifespan. While there is some cost associated with improving the dietary intake of school-aged-children through school meals and other child nutrition programs, the potential savings that could occur in adulthood through reduced medical costs and increased productivity as a result of forming healthy habits starting in childhood could be substantial, especially when considering blood pressure, CVD, obesity, and diabetes.

Added Sugars

For milk products, the market availability of those flavored milks that meet the proposed added sugars standards of ≤10 mg of added sugar per 8 fluid ounces is uncertain. While a cursory search completed by USDA showed that some manufacturers are already producing flavored milks that meet the proposed standard, it is unclear the full availability across the nation or whether it will be a slow transition for manufacturers.[256] It is possible that some SFAs will need to serve unflavored milk varieties only, temporarily, if the availability of flavored milks with a lower level of added sugars is limited.

Milk

When comparing the price per eight fluid ounces of milk based on SY 2009–2010 data to the SY 2014–2015 data, both analyses showed a similar difference in price, but the differences were varied by milk type. For instance, in the SY 2009–2010 data, flavored low-fat milk cost $0.02 more than flavored fat free milk and both unflavored low-fat and fat-free milk, but in the SY 2014–2015 data, flavored low-fat milk cost $0.01 more than flavored fat free milk and flavored fat free milk cost $0.01 more than unflavored fat free milk. More data regarding these cost differences are in Table 25. USDA is uncertain if these cost differences are because of varied quantities in purchasing or another unknown reason. USDA acknowledges the possibility that as a result of this rulemaking and the transitional standards rule, the cost of milk products may change in the future and that regardless of the data from SY 2009–2010 and SY 2014–2015, the milk prices are very similar by fat content and flavor status. Comparing the analyses from the two different data collection time points (SY 2009–2010 and SY 2014–2015) is below in the 'Alternate Analysis' section.

TABLE 25. COMPARISON OF COST OF MILK PER EIGHT FLUID OUNCES BY MILK TYPE DURING TWO DATA COLLECTIONS

	SY 2009-2010 Data	SY 2014-2015 Data
LOW-FAT, FLAVORED	$0.21	$0.25
LOW-FAT, UNFLAVORED	$0.19	$0.24
FAT FREE, FLAVORED	$0.19	$0.24
FAT FREE, UNFLAVORED	$0.19	$0.25

Alternate Analysis

As noted above, the Regulatory Impact Analysis accompanying the transitional standards rule, used milk cost data from SY 2009–2010. In the previous sections of this RIA, data from SY 2014–2015 were used, including analyses with milk products. This section provides updated milk cost estimates in an alternative analysis compared to the analysis in the transitional standards rule. USDA recognizes that this is a limitation but wants to show the differences observed.

Utilizing the SY 2014–2015 data, it was found, on average, that low-fat, flavored milk cost $0.01 more than low-fat unflavored milk per carton (8 fluid ounces). It was also found that fat-free, flavored milk cost $0.01 less than fat free unflavored milk per carton. USDA theorizes that low-fat, flavored milk costs more than low-fat, unflavored milk because it was purchased by SFAs in such small quantities compared to low-fat, unflavored milk. Low-fat, unflavored and fat-free, flavored milks were the most frequently offered varieties on daily menus in SY 2014–2015. As a result of the transitional standards rule, SFAs have the option to offer fat-free or low-fat flavored milk varieties school lunches and breakfast. This proposed rule would maintain the option for schools to offer fat-free or low-fat flavored milk varieties with school meals. About 91 percent of daily NSLP menus and 76 percent of daily SBP menus offered fat-free, flavored milk in SY

[249] Wang G, Zhou X, Zhuo X, Zhang P. Annual total medical expenditures associated with hypertension by diabetes status in US adults. Am J Prev Med. 2017;53(6 suppl 2):S182–S189.

[250] Kirkland EB, Heincelman M, Bishu KG, et al. Trends in healthcare expenditures among US adults with hypertension: national estimates, 2003–2014. J Am Heart Assoc. 2018;7(11).pii: e008731.

[251] Dieleman JL, Cao J, Chapin A, et al. US Health Care Spending by Payer and Health Condition, 1996–2016. 2020;323(9):863–884. doi:10.1001/jama.2020.0734.

[252] Birger M, Kaldjian AS, Roth GA, Moran AE, Dieleman JL, Bellows BK. Spending on Cardiovascular Disease and Cardiovascular Risk Factors in the United States: 1996 to 2016. Circulation. 2021;144(4):271–282. doi:10.1161/CIRCULATIONAHA.120.053216.

[253] Fallah-Fini S, Adam A, Cheskin LJ, Bartsch SM, Lee BY. The Additional Costs and Health Effects of a Patient Having Overweight or Obesity: A Computational Model. Obesity (Silver Spring). 2017;25(10):1809–1815. doi:10.1002/oby.21965

[254] Cawley J, Biener A, Meyerhoefer C, et al. Direct medical costs of obesity in the United States and the most populous states. J Manag Care Spec Pharm. 2021;27(3):354–366. doi:10.18553/jmcp.2021.20410.

[255] American Diabetes Association. Economic costs of diabetes in the US in 2017. Diabetes Care. 2018;41:917–928.

[256] It was found that at least four manufacturers had at least one flavored milk product with under 10 grams of added sugars per serving and in fact, three of them had products with six grams of added sugars per serving. A total of 10 flavored milk products from four companies were below the 10-gram proposed limit. The catalogs used for data collection generally showed that there were lower sugar and higher sugar versions of flavored milk available.

2014–2015.[257] If across all NSLP and SBP menus, all fat-free, flavored milk was replaced with low-fat, flavored milk, it would cost about $85 million more a year (using updated data). Any change to low-fat, flavored milk from fat-free, flavored must be made within available resources and calorie and fat limits, so it is unlikely that all SFAs will make this change for all flavored milk offerings. Using the average number of children per school district,[258] [259] it is estimated that about 9 percent of daily NSLP and SBP menus include low-fat, flavored milk through exemptions or flexibilities.[260] USDA estimates this to be about $9 million more a year in the value spent on milk (Table 26). By using the updated milk cost data, the annual cost of purchasing low fat flavored milk is about 30 percent less than the cost of the previous estimates including a yearly inflation factor of three percent. The outcomes of both analyses are shown in Table 26.

TABLE 26: ESTIMATED IMPACT OF PURCHASING LOW-FAT, FLAVORED MILK (MILLIONS) WITH UPDATED DATA

SUBSTITUTION LEVEL	Estimated Annual Cost with SY 2009-2010 Data	Estimated Annual Cost with SY 2014-2015 Data
MAXIMUM – REPLACE ALL FAT-FREE, FLAVORED WITH LOW FAT FLAVORED	$126	$85
MINIMUM - 9 PERCENT OF DAILY MENUS REPLACED FAT-FREE, FLAVORED WITH LOW-FAT, FLAVORED (BASED ON EXEMPTION DATA)[103]	$13	$9

Whole Grains

Due to the age of the available data, it is unknown if schools made substantial changes with regards to the proportion of grains served being whole grain-rich during the time from SY 2014–2015 up until SY 2019–2020, when the pandemic began. In order to update the RIA with SY 2014–2015 data, an analysis was completed that also incorporated whole grain-rich based combination entrées because they contribute so highly to daily intake in school meals, according to the SNMCS report.[261] Another limitation of the whole grain analysis is that the cost of combination entrees also includes the cost of other food groups, so the cost comparison was based on a cost per portion of the combination entrées. The values are still comparable because the same methodology was used for whole grain-rich products and the non-whole grain-rich products overall, but it is not possible to compare to the transitional standards rule RIA methodology which included bulk cost data from another source.[262]

Alternate Analysis

As noted above, the Regulatory Impact Analysis accompanying the transitional standards rule, used whole grain cost data from SY 2009–2010 (SFPS–III).[263] In the previous sections of this RIA, data from SY 2014–2015 were used, including analyses with whole grain-rich products. Additionally, the 2022 transitional standards rule RIA utilized the per pound cost data for grains, and this RIA analysis includes an average cost of both grains offered individually (*i.e.* biscuits, rice, crackers, croutons, etc.) and grains offered in combination entrees, which may include foods from other food groups than grains (*i.e.* cheeseburgers, pizza with meat, spaghetti with sauce, etc.). This section provides updated whole grain cost estimates in an alternative analysis compared to the analysis in the transitional standards rule. USDA recognizes that this is a limitation but wants to show the differences observed. This analysis also differs because it considers a greater diversity of items offered on school menus compared to the previous RIA.

For both individually offered grains and combination entrees offered at breakfast and at lunch, the cost of whole grain-rich options per ounce equivalent was less than their non whole grain-rich counterparts. On average, whole grain-rich grains offered alone cost $0.01 and $0.02 less than their non whole grain-rich counterparts at breakfast and lunch, respectively. Whole grain-rich combination entrees cost $0.02 less than their non whole grain-rich counterparts at both breakfast and lunch, on average (Table 27). These values are weighted to the proportions in which subcategories of grains (*i.e.* sweetened cold cereal, muffins and sweet/quick breads, rice, etc.) are offered on menus. Breakfast and lunch combination entrees cost more than individual grain ounce equivalents, but this was expected since combination entrees include various other food groups (fruit, vegetable, meat/meat alternate).

TABLE 27: PRICE PER OZ/PORTION FOR GRAIN ITEMS FROM SNMCS (SY 2014-2015)

	BREAKFAST		LUNCH	
GRAIN ITEM	Individual Grain (oz eq.)	Combination Entrée (per portion)	Individual Grain (oz eq.)	Combination Entrée (per portion)
WHOLE GRAIN-RICH	$0.22	$0.38	$0.11	$0.54
NOT WHOLE GRAIN-RICH	$0.23	$0.40	$0.13	$0.56

For the RIA in the transitional standards rule, the range of calculated costs were built on two separate sets of assumptions. The high estimated cost level assumed that all schools were offering half of their grains as whole grain-rich, which was the requirement in SY 2019–2020. Because the transitional standards rule is currently in place, the 2012 estimate was not repeated for this RIA with

[257] U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 2: Nutritional Characteristics of School Meals, by Elizabeth Gearan et.al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[258] Based on unpublished USDA data: Child Nutrition Program Operations study year 3.

[259] There were no significant characteristics of these school district suggesting that smaller or larger districts requesting the exemption. This analysis assumes that about 57 percent of children enrolled in the 8 percent of districts requesting an exemption participate in the NSLP and about 30 percent participate in the SBP.

[260] See Regulatory Impact Analysis from *Child Nutrition Programs: Transitional Standards for Milk, Whole Grains, and Sodium* (87 FR 6984, February 7, 2022). Available at: *https://www.federalregister.gov/.*

[261] *https://fns-prod.azureedge.us/sites/default/files/resource-files/SNMCS-Volume2.pdf.*

[262] School Food Purchase Study III.

[263] School Food Purchase Study III (SY 2009–2010).

the updated data. The low estimated scenario, which was the expected scenario, used the information to-date on whole grain-rich progress and assumed that on average schools are currently offering 75 percent grain items as whole grain-rich. This assumption was based on the finding that 70 percent of weekly menus at schools offered at least 80 percent of grain items as whole grain-rich in SY 2014–2015. This portion of the analysis was repeated utilizing the updated cost data from SY 2014–2015. Table 28 shows the costs associated with moving to the 80 percent threshold in this rulemaking from two estimated starting points (75 percent and 50 percent of grains as whole grain-rich) with SY 2009–2010 and SY 2014–2015 data. The 75 percent Alternative is the expected Alternative for both the transitional standards rule and the proposed rule, as shown above. Utilizing the updated data and expected alternative, there would be an expected savings of $21 million annually resulting from the increase to 80 percent of grain offerings being whole grain-rich across SFAs.

TABLE 28: ESTIMATED COSTS OF INCREASING WHOLE GRAIN-RICH ITEMS (MILLIONS) WITH UPDATED DATA

	ANNUAL COST WITH SY 2009-2010 DATA		ANNUAL COST WITH SY 2014-2015 DATA	
WHOLE GRAIN-RICH REQUIREMENT	Expected Annual Cost (Increasing from 75 percent WGR)	High Annual Cost (Increasing from 50 percent WGR)	Expected Annual Cost (Increasing from 75 percent WGR)	High Annual Cost (Increasing from 50 percent WGR)
INCREASING TO 80 PERCENT	$76	$454	-$21	-$126

USDA recognizes that the costs from SY 2009–2010 are very different from those collected in SY 2014–2015, as the previous analysis indicated that whole grain-rich foods cost more than their non whole grain-rich counterparts, whereas the opposite is true according to the SNMCS data. Additionally, the 2012 rule would have been implemented after data collection in SY 2009–2010. USDA believes that the whole grain-rich food items might be less expensive than their non whole grain-rich counterparts for a few reasons. First, whole grain-rich foods are offered far more often than enriched or other non-whole grain-rich products, as shown in the SNMCS data. Bulk purchases of these whole grain-rich items may have led to considerably lower prices over time. Next, it must be noted that grain ounce equivalents are not always exactly one ounce and can vary by food item according to the Food Buying Guide.[264] For instance, an ounce equivalent of doughnuts, sweet rolls, or toaster pastry ranges from 55 to 69 grams depending on if the product is frosted or not. For brownies and cake, an ounce equivalent is 125 grams, compared to bagels, biscuits, bread and tortillas which are 28 grams for one ounce equivalent. Adjusting for these ounce equivalent differences may have contributed to changes in price compared to the previous RIA analysis because they were not previously considered. Also, as noted above, this analysis included cost data for individual food items offered in SY 2014–2015 and weighted for how often each grouping of grains or combination entrees was offered. The two analyses should not be directly compared due to the differences in methodology. The findings of both analyses are included in Table 26 for reference.

Sodium

For the impact analysis of sodium specifically, a consumption adjustment was considered to account for actual daily consumption of meals by students excluding a percentage lost through waste or Offer versus Serve. Consumption data is estimated based on SNDA–III and SNMCS reports but this data includes foods consumed from competitive foods and foods brought from home without the isolated totals from reimbursable foods only, a significant limitation. As a result, it is likely that the estimates for a consumption adjustment are underestimated and actual sodium consumption from reimbursable school meals is lower than reported. Additional analyses are in progress to further clarify this data from SNMCS that will contribute to a final rule in the future.

Another limitation in the cost analysis of sodium is that the proposed limits are meant to be met by product reformulation, changing food menu items, and scratch cooking, so the 45 percent food, 45 percent labor, and 10 percent other split might not hold. As a result, the costs of sodium limits proposed after the first (2 additional for lunch and 1 for breakfast) were adjusted to account for additional cost of equipment as part of an estimate for this 'Uncertainties/Limitations' section. This is a limitation because the exact needs of each SFA to equip kitchens for scratch cooking and menu changes are not known.

This additional analysis provides a high and low estimate of the necessary costs for schools to become equipped to reduce sodium content of meals to the proposed limits. About half of schools make under 50 percent of their recipes from scratch according to the Farm to School Census data, based on 97,000 schools.[265] In the 2012 rule, estimates based on public comments regarding the sodium targets were included in the Uncertainties discussion to calculate potential equipment costs; around $5,000 per school for approximately half of schools.[266] Adjusting for inflation, this would be equivalent to $7,350 beginning in SY 2025–2026 for about 50,000 schools. On the low end, this would be equivalent to $367 million total, about $184 million each year over two school years (SY 2026–2027 and SY 2027–2028) or about $154 million annually for two school years when considering the offset of $30 million for equipment grants that are available annually. Assuming this estimate is on the low end of projected needs for schools, a higher end estimate doubles the expected cost to $14,700 per school for half of schools. The additional equipment costs for this estimate are factored into cost calculations from SY 2026–2027 to SY 2029–2030, starting the year before the second sodium reduction is proposed to be implemented to allow time for preparation to meet the proposed sodium limits. These estimates further adjusted for inflation are shown below in Table 29. As schools purchase more equipment, potential total costs range from $324 to $792 million during the 5-year implantation of the proposed sodium limits. The actual costs for equipment may be higher as the exact needs of schools with regards to equipment and remodeling to increase scratch cooking are unknown. Examples of equipment needed by schools to improve the appearance, safety of and healthfulness of food include, ovens, skillets, broilers, refrigerators or freezers, serving equipment, steam equipment, and food preparation equipment.[267] It is also possible that schools may sustain higher costs as a result of purchasing more pre-made meals and foods through food service companies if they do not have the necessary equipment to lower sodium content through scratch cooking or menu reformulation.

[264] U.S. Department of Agriculture, *Food Buying Guide for Child Nutrition Programs.* Available at: *https://foodbuyingguide.fns.usda.gov/Appendix/DownLoadFBG.*

[265] Bobronnikov, E. et al. (2021). Farm to School Grantee Report. Prepared by Abt Associates, Contract No. AG–3198–B–16–0015. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, Project Officer: Ashley Chaifetz.

[266] **Federal Register**: Final Rule: Nutrition Standards in the National School Lunch and School Breakfast Programs.

[267] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, Child Nutrition Program Operations Study (CN–OPS–II): SY 2015–16 by Jim Murdoch and Charlotte Cabili. Project Officer: Holly Figueroa. Alexandria, VA: December 2019.

[268] Changes to sodium limits as a result of this proposed rule would not begin to go into effect until SY 2025–2026.

[269] Includes the $30 million offset of annually available equipment grants.

TABLE 29: ESTIMATED 5-YEAR COSTS OF EQUIPMENT FOR IMPLEMENTING NEW SODIUM REDUCTION PLAN (MILLIONS) [268]

SODIUM LIMIT EFFECTIVE SCHOOL YEAR	SY 2025 - 2026	SY 2026-2027	SY 2027-2028	SY 2028-2029	SY 2029-2030	FIVE-YEAR TOTAL	ANNUAL FIVE-YEAR AVERAGE
LOW END ESTIMATES[269]	NA	$159	$165	NA	NA	$324	$65
HIGH END ESTIMATES	NA	$189	$195	$201	$207	$792	$158

USDA seeks comments and data on the cost of equipment needed in schools to increase scratch cooking and to decrease sodium content of foods served in school meals.

Participation Impacts

As noted earlier, in the Key Assumptions section, participation costs associated with this proposed rule are based on a level of service in school lunch and breakfast programs that mirrors the 2019 level of service. There are multiple contributing factors that may lead to an increased or decreased level of school meal participation in these years after the pandemic. Due to the uncertainty of the direction of participation, a variety of possibilities are detailed here and change in cost is simulated below (Table 30). If participation drops, then there would be expected corresponding reductions in food costs and potentially a reduction in labor hours. If participation increases, then there would be an expected increase in food and labor costs, but potentially a reduction of cost due to economies of scale as the operation scale increases. Relatedly, more schools may be offering universal free school meals due to the realized benefits of free school meals during the COVID pandemic. This could be through State initiatives [270] or increased use of Community Eligibility Provision (CEP). Research has shown that schools offering all meals at no charge through CEP experience higher participation levels and increases in Federal revenues.[271] These revenue increases may offset (from the local perspective, though not from the nationwide perspective) some of the estimated costs associated with this rulemaking.

TABLE 30: PROJECTED COSTS BY PARTICIPATION CHANGE (MILLIONS)

PROPOSED MILK ALTERNATIVE A		
	ONE-YEAR	SIX SCHOOL YEARS
FULL PARTICIPATION	$274	$1,641
ESTIMATED COSTS IF SCHOOL MEAL PARTICIPATION INCREASES		
2.5 PERCENT PARTICIPATION INCREASE	$281	$1,682
5 PERCENT PARTICIPATION INCREASE	$288	$1,723
10 PERCENT PARTICIPATION INCREASE	$301	$1,805
ESTIMATED COSTS IF SCHOOL MEAL PARTICIPATION DECREASES		
2.5 PERCENT PARTICIPATION DECREASE	$267	$1,600
5 PERCENT PARTICIPATION DECREASE	$260	$1,559
10 PERCENT PARTICIPATION DECREASE	$247	$1,477
PROPOSED MILK ALTERNATIVE B		
	ONE-YEAR	SIX SCHOOL YEARS
FULL PARTICIPATION	$220	$1,322
ESTIMATED COSTS IF SCHOOL MEAL PARTICIPATION INCREASES		
2.5 PERCENT PARTICIPATION INCREASE	$226	$1,355
5 PERCENT PARTICIPATION INCREASE	$231	$1,388
10 PERCENT PARTICIPATION INCREASE	$242	$1,454
ESTIMATED COSTS IF SCHOOL MEAL PARTICIPATION DECREASES		
2.5 PERCENT PARTICIPATION DECREASE	$215	$1,289
5 PERCENT PARTICIPATION DECREASE	$209	$1,256
10 PERCENT PARTICIPATION DECREASE	$198	$1,190

In the past, implementing healthier standards, specifically those implemented in SY 2012–2013 and beyond as a result of the 2012 final rule resulted in variable changes to school meal program participation. Total breakfasts served increased steadily between fiscal year 2012 and fiscal year 2016. School lunches served decreased by approximately three percent between fiscal year 2012 and fiscal year 2016. However, both breakfast and lunch trends existed prior to fiscal year 2012 [272] and it is unclear what the relationship between the new standards and the changes in participation actually is based on this data.

Other factors unrelated to meal standards may also impact participation. In 2014, a sample of principals and foodservice managers in elementary schools indicated that 70 percent of students 'generally seem to

[270] *https://www.cde.ca.gov/ls/nu/sn/cauniversalmeals.asp.*

[271] *https://fns-prod.azureedge.us/sites/default/files/resource-files/CEPSY2016-2017.pdf.*

[272] USDA—Food and Nutrition Service, National Data Bank—Publicly available data.

like the new school lunch' and 78 percent said participation in school lunch was the same or more than the previous year.[273] However, about 25 percent of those surveyed still disagreed that students seemed to like the new lunch. CEP became available to all school districts nationwide in SY 2014–2015, and it was found that in SY 2016–2017 rates of SBP and NSLP participation had increased in those Local Education Agencies that had implemented CEP.[274] As participation in CEP continues to increase, there may be some offset of the downward trend of school lunch participation. While participation may be variable in the years after new regulations are implemented, it is known that those that participate in school meal programs consume more whole grains, fruits, vegetables, and milk than non-participants, leading to a better quality of daily diet overall.[275]

It is assumed that levels of SBP and NSLP participation will come back up to pre-pandemic rates, but it is difficult to know how long the supply chain disruptions and staffing shortages will continue. A variety of Executive Orders and plans within the Federal government have been employed to track and address supply chain disruptions, as well as a task force with a focus on supply chain issues.[276] The U.S. Department of Transportation reported improvements in supply chain disruption in early 2022, but that there are still existing stressors in the U.S. supply chain.[277] Unemployment levels have returned to pre-pandemic rates as of mid-2022, and gains are continuing in the hospitality sector, so it is likely staffing shortages in school food service will continue to improve.[278] These disruptions in service have created additional burden for SFAs and it is possible this burden may hold on for a few years, potentially affecting student participation in school meal programs. As schools implement the transitional standards rule standards for sodium, it will be an easier baseline to move forward to future sodium limits compared to the multiple school years during the pandemic in which SFAs may have served menus with higher sodium foods. Students will have had time to adjust to the initial decrease in sodium from the transitional standards rule and decreased participation as a result of these proposed rule standards may be avoided. There is potential for a decrease in participation if students find meals less desirable as a result of lower added sugars and sodium levels. If there is a five percent decrease in participation of school meal programs, then the readily-quantifiable annual cost of this proposed rule would be between $209 and $260 million, or between $1.3 and $1.6 billion over the seven years of implementation (Table 30).[279] Other possible levels of potential decrease in participation are also provided.

Many students that had never participated in the NSLP and SBP prior to the pandemic but who did participate under USDA's COVID–19 nationwide waivers, may have found a level of convenience associated with participating in the school meals programs instead of needing to consume a breakfast at home or bringing a lunch from home. Parents may also find that school meals with reduced sodium and sugar content are a healthier option than meals that were available previously, especially during the pandemic. If there is a five percent increase in participation of school meal programs, then the quantified annual cost of this proposed rule would be between $231 and $288 million, or between $1.4 and $1.7 billion over the seven years of implementation (Table 30).[280] Other possible levels of potential increase in participation are also provided. It is possible that an increase in revenue resulting from greater participation in school meal programs would offset some of the costs that would occur due to implementation of this proposed rule.

Benefits of the Proposed Rule and Other Discussion

Health Benefits

The goal of this proposed rule is to more closely align with recommendations from the *Dietary Guidelines for Americans, 2020–2025,* and the *Dietary Guidelines* are meant to promote health, prevent and reduce risk of chronic disease, and meet nutrient needs.[281] School meals are an important source of nutrition for school age children. Pandemic disruption to school operations demonstrated the continued importance of child nutrition programs including the NSLP and SBP.

Making the changes outlined in this proposed rule can lead to improved health outcomes in the long-term. Lifestyle habits including dietary habits are established in childhood and research has shown may carry through into adulthood.[282] [283] The two major proposed shifts in this rulemaking are for reductions in added sugars and sodium content of school meals. Reducing sodium and added sugars intake is associated with a variety of potential health benefits that are detailed above in the sodium and added sugars 'Impacts' sections. Reduction in sodium intake reduces blood pressure which in turn can reduce CVD risk and CVD events. Added sugars contribute to higher energy intake and also contribute to weight gain, obesity, and a variety of other potential chronic health conditions including CVD and T2D and risk factors for these chronic diseases. While this document proposes to maintain the same level of whole grain-rich foods served in school meals, it is of note that increased whole grain consumption is associated with an improved overall dietary pattern and a healthier body weight in both children and adults.[284] On average, in SY 2014–2015, 70 percent of the weekly menus offered at least 80 percent of the grain items as whole grain-rich for both breakfast and lunch.[285] Evidence also exists that shows intake in children of healthier dietary patterns including ''higher intakes of vegetables, fruits, whole grains, fish, low-fat dairy, legumes, and lower intake of sugar-sweetened beverages, other sweets, and processed meat,'' are associated with lower blood pressure and improved blood lipid levels later in life.[286] According to another systematic review, a similar dietary pattern is

[273] Turner, Lindsey, and Frank Chaloupka (2014). ''Perceived Reactions of Elementary School Students to Changes in School Lunches after Implementation of the United States Department of Agriculture's New Meals Standards: Minimal Backlash, but Rural and Socioeconomic Disparities Exist,'' Childhood Obesity 10(4):1–8.

[274] *https://fns-prod.azureedge.us/sites/default/files/resource-files/CEPSY2016-2017.pdf.*

[275] Fox MK, Gearan E, Cabili C, et al. School Nutrition and Meal Cost Study, Final Report Volume 4: Student Participation, Satisfaction, Plate Waste, and Dietary Intakes. U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support; 2019. *https://www.fns.usda.gov/school-nutrition-and-meal-cost-study.*

[276] *https://crsreports.congress.gov/product/pdf/IN/IN11927.*

[277] *https://www.transportation.gov/briefing-room/usdot-supply-chain-tracker-shows-progress-supply-chains-remain-stressed.*

[278] *https://www.bls.gov/news.release/pdf/empsit.pdf.*

[279] If the decrease in participation is caused by provisions of the proposed rule, then there would be other effects—for example, incremental health consequences of revised eating patterns, or the transition cost to parents and guardians as they make other eating arrangements for their children—that would also be attributable to the proposal. By contrast, if participation decreases due to unrelated trends, then the quantified cost estimates would be as reported here but the (unquantified) accompanying effects would not be attributable to the proposed rule.

[280] If the increase in participation is caused by provisions of the proposed rule, then there would be other effects—for example, incremental health consequences of revised eating patterns—that would also be attributable to the proposal. By contrast, if participation increases due to unrelated trends, then the quantified cost estimates would be as reported here but the unquantified accompanying effects would not be attributable to the proposed rule.

[281] U.S. Department of Agriculture and U.S. Department of Health and Human Services. *Dietary Guidelines* for Americans, 2020–2025. 9th Edition. December 2020. Available at *DietaryGuidelines.gov.*

[282] Grummer-Strawn LM, Li R, Perrine CG, Scanlon KS, Fein SB. Infant feeding and long-term outcomes: results from the year 6 follow-up of children in the Infant Feeding Practices Study II. *Pediatrics.* 2014;134 Suppl 1(Suppl 1):S1–S3. doi:10.1542/peds.2014–0646B.

[283] Lioret S, Campbell KJ, McNaughton SA, et al. Lifestyle Patterns Begin in Early Childhood, Persist and Are Socioeconomically Patterned, Confirming the Importance of Early Life Interventions. *Nutrients.* 2020;12(3):724. Published 2020 Mar 9. doi:10.3390/nu12030724.

[284] Albertson AM, Reicks M, Joshi N, Gugger CK. Whole grain consumption trends and associations with body weight measures in the United States: results from the cross sectional National Health and Nutrition Examination Survey 2001–2012. Nutr J. 2016;15:8. Published 2016 Jan 22. doi:10.1186/s12937–016–0126–4.

[285] Based on an internal USDA analysis using data from: U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 2: Nutritional Characteristics of School Meals, by Elizabeth Gearan et.al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[286] 2020 *Dietary Guidelines* Advisory Committee and Nutrition Evidence Systematic Review Team. Dietary Patterns and Risk of Cardiovascular Disease: A Systematic Review. 2020 *Dietary Guidelines* Advisory Committee Project. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Center for Nutrition Policy and Promotion, July 2020. Available at: *https://nesr.usda.gov/2020-dietary-guidelines-advisory-committee-systematic-reviews.*

also associated with a lower fat-mass index and BMI in later adolescence.[287] These dietary patterns associated with improved health outcomes have higher intake of whole grains and lower intake of both foods high in sodium and high in added sugars. Improvements in the dietary pattern overall, as this rulemaking proposes across school meals, after school snacks, and competitive foods with a focus on sodium and added sugars reduction will lead to healthier dietary intake and improved health outcomes over time.

This proposed rule also includes sections on traditional foods and meal planning options for American Indian and Alaska Native students that may have some potential health benefits for the affected communities. USDA acknowledges that for decades, the United States government actively sought to eliminate traditional American Indian and Alaska Native ways of life—for example, by forcing indigenous families to send their children to boarding schools. This separated indigenous children from their families and heritage, and disrupted access to traditional foods, altering indigenous children's relationship to food. This disruption effected food access, food choice, and overall health. The Traditional Foods Project (TFP) and associated research have shown that there may be benefits to integrating culture and history through locally designed interventions framed by food sovereignty among American Indian and Alaska Native communities to help prevent chronic disease, especially type 2 diabetes.[288] [289]

Gradual Reduction

This rulemaking proposes for changes to occur gradually over time. Reduction of sodium to the limits proposed is meant to happen over a period of over five years, including the lead in time, allowing SFAs and manufacturers the time to make changes to menus and available food products. Reduction of added sugars in school meals first with product specific limits, and then with an overall reduction to ten percent of energy content of school meals will also allow time for adjustment both by food service operators and food/beverage manufacturers. Gradual formulation changes are also better for consumer satisfaction and product desirability.[290] [291] Taste preference may be established early in life and early food preference can influence later food choices, so a gradual change may influence school age children for years to come. This proposed rule ensures that there will be a high nutrition quality of school meals with continued improvements over time.

The issues just discussed relate to methodological challenges for benefit-cost analysis of a policy intervention of the type being proposed here, where benefits would typically be monetized with a willingness-to-pay (WTP) measure.[292] WTP reflects underlying preferences—in this case, preferences for food characteristics, including both health consequences and short-term eating experience—and if preferences are unstable, then key inputs to the analysis are not well-defined. Indeed, shifting taste preferences (when they are malleable during childhood) is a key potential outcome of this proposed rule. Feedback is welcome regarding analytic refinements to account for these issues, including the potential for parental preferences—as evidenced through observable actions, such as continuing or discontinuing their children's participation in the school meals program—to provide an adequate proxy for children's welfare effects.

Food Security

Prior to and during the pandemic, school meals played an important role in serving healthy meals to millions of children and preventing food insecurity. In 2020, about fifteen percent of households with children were food insecure compared to about fourteen percent in 2019.[293] This means that millions of children are affected by food insecurity on a daily basis in the U.S. Free and reduced-price meals in the SBP and NSLP are served to students from households with lower income levels. In 2019, about 85 percent of meals served in the SBP and about 75 percent of meals served in the NSLP were free or reduced-price meals.[294] Providing healthy school meals and snacks is especially valuable for children that may not always have access to healthy foods at home. In 2021, around 56 percent of food-insecure households participated in one or more of three Federal food and nutrition assistance programs (SNAP, WIC, NSLP).[295] This same report indicated that in households with income below 185 percent of the poverty line, those that received free or reduced-price school lunch in the previous 30 days (in 2021) were less likely to be food insecure compared to those that did not receive free or reduced-price lunch, indicating that school meals are an important source of food for families facing hardships. Student participation in the NSLP has been found to be associated with a reduction in food insecurity.[296] Households with incomes near or below the Federal poverty line, all households with children and particularly households with children headed by single women or single men, and Black- and Hispanic-headed households have higher rates of food insecurity than the national average.[115] Efforts to increase participation in child nutrition programs should focus on expanding and encouraging participation among children in households under these circumstances to promote equity in daily nutrient intake nationwide.[297] School meal programs reach children across the U.S. from households of all income levels and of various backgrounds and race/ethnicities with nutritious meals. As noted previously, the incremental effect of the proposed rule on program participation is uncertain as regards both magnitude and direction; the impact on food security is likewise uncertain.

Achievable Limits

While some elements of the 2012 rule were challenging to meet over a long period of time, this proposed rule prescribes smaller gradual shifts and changes to individual product types and overall nutrient content of meals. This rulemaking is calling for change, but at achievable levels for food service operators and manufacturers to adhere to. For instance, reductions in sodium are proposed in ten percent increments, which is more

[287] 2020 *Dietary Guidelines* Advisory Committee and Nutrition Evidence Systematic Review Team. Dietary Patterns and Growth, Size, Body Composition, and/or Risk of Overweight or Obesity: A Systematic Review. 2020 *Dietary Guidelines* Advisory Committee Project. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Center for Nutrition Policy and Promotion, July 2020. Available at: *https://nesr.usda.gov/2020-dietary-guidelines-advisory-committee-systematic-reviews.*

[288] DeBruyn L, Fullerton L, Satterfield D, Frank M. Integrating Culture and History to Promote Health and Help Prevent Type 2 Diabetes in American Indian/Alaska Native Communities: Traditional Foods Have Become a Way to Talk About Health. Prev Chronic Dis 2020;17:190213. DOI: *http://dx.doi.org/10.5888/pcd17.190213external icon.*

[289] Satterfield D, DeBruyn L, Santos M, Alonso L, Frank M. Health promotion and diabetes prevention in American Indian and Alaska Native communities—Traditional Foods Project, 2008–2014. CDC Morbidity Mortality Weekly Report. 2016;65(S1):4–10. *https://www.cdc.gov/mmwr/volumes/65/su/su6501a3.htm.*

[290] Hoppu U, Hopia A, Pohjanheimo T, et al. Effect of Salt Reduction on Consumer Acceptance and Sensory Quality of Food. Foods. 2017;6(12):103. Published 2017 Nov 27. doi:10.3390/foods6120103.

[291] Institute of Medicine (US) Committee on Strategies to Reduce Sodium Intake; Henney JE, Taylor CL, Boon CS, editors. Strategies to Reduce Sodium Intake in the United States. Washington (DC): National Academies Press (US); 2010. Available from: *https://www.ncbi.nlm.nih.gov/books/NBK50956/* doi: 10.17226/12818.

[292] Either a direct WTP estimate could be developed or a multistep estimation could quantify health and longevity effects with lost eating-experience utility subsequently being subtracted. For example, in the context of sugar-sweetened beverages (SSB), Kalamov and Runkel (2021), citing Allcott et al.'s (2019) estimates, suggest that internalities (representing the harm consumers of relatively unhealthy foods sub-optimally impose on their future selves) could be 30- to 50-percent of gross health impacts; it is the 30- to 50-percent that would appropriately be retained in an analysis of the intrapersonal benefits of a policy that reduces consumption of SSB or foods with similar characteristics. Kalamov, Z. Y. and M. Runkel, *Taxation of unhealthy food consumption and the intensive versus extensive margin of obesity.* International Tax and Public Finance, 2021: p. 1–27. Allcott, H., B. B. Lockwood, and D. Taubinsky, *Regressive sin taxes, with an application to the optimal soda tax.* The Quarterly Journal of Economics, 2019. 134(3): p. 1557–1626.

[293] *https://www.ers.usda.gov/amber-waves/2022/february/food-insecurity-for-households-with-children-rose-in-2020-disrupting-decade-long-decline/.*

[294] USDA—Food and Nutrition Service, National Data Bank—Publicly available data.

[295] Coleman-Jensen, Alisha, Matthew P. Rabbitt, Christian A. Gregory, Anita Singh, September 2022. Household Food Security in the United States in 2021, ERR–309, U.S. Department of Agriculture, Economic Research Service.

[296] Ralston, K.; Treen, K.; Coleman-Jensen, A.; Guthrie, J. Children's Food Security and USDA Child Nutrition Programs; U.S. Department of Agriculture, Economic Research Service: Washington, DC, USA, 2017.

[297] Gearan EC, Monzella K, Jennings L, Fox MK. Differences in Diet Quality between School Lunch Participants and Nonparticipants in the United States by Income and Race. Nutrients. 2021;12(12):3891. *https://www.mdpi.com/2072-6643/12/12/3891.*

manageable than previous targets from the 2012 rule. The FDA Voluntary Sodium Reduction goals were introduced in October 2021, so manufacturers may already be making changes to their products, especially considering that additional reduction goals are expected in the coming years. SFAs and manufacturers have both indicated in the past that the sodium targets from the 2012 rule (especially Target 3) were unachievable pointing to a number of contributing challenges. These challenges included increased labor and equipment costs to support food preparation, decreased access to lower sodium products associated with SFA urbanicity and size, and a lack of student acceptance varying by cultural and regional taste preferences.[298] This proposed rule attempts to address these concerns with smaller incremental shifts in sodium limits that are supported by FDA voluntary sodium goals for industry and the 2019 dietary reference intakes [299] that call for continued reduction in sodium intake to promote health.

USDA data collection in 2022 showed that reductions in total and added sugars content of certain food types (yogurt, milk, cereal) have already been observed, on average, since the last data collection during SY 2014–2015. This indicates that manufacturers are willing to make shifts in their product formulations and that regulations for programs such as CACFP do help to jumpstart product shifts. Another strength of this proposed rule, is that USDA is not using total sugar limits, but is rather proposing added sugar limits. Limiting added sugars would not limit naturally occurring sugars from fruit or milk, which would allow many yogurt products containing fruit and cereals containing dried fruit to remain a part of school meals. This less restrictive group of limits for added sugars is more achievable for SFAs than total sugar limits would be.

Alternative(s)

Whole Grains

This proposed rule requests comments on an alternative proposal for the whole grain-rich requirement. Under this alternative, all grains offered in the school lunch and breakfast programs would be required to be whole grain-rich, except that one day each school week, schools may offer grains that are not whole grain-rich. For most school weeks, this would result in four days of whole grain-rich grains, with enriched grains allowed on one day. This alternative proposal might increase the number of servings of whole grain-rich foods that individual students consume despite no change in average whole grain-rich products purchased and served overall. For example, under the proposed standard, a school could serve 80 percent whole grain-rich products and 20 percent enriched products each school day, which would allow individual students to choose enriched grains on a daily basis. This would not be the case with the alternative proposal, as enriched grains would only be available one day per week. On average, a similar number of servings of whole grains would be provided in this alternative proposal, just on different days than before, leading to no additional expected costs.

Other Considered Alternatives

In the process of creating this proposed rule, there were a few other potential alternatives considered for added sugars and for whole grains. Initially, product-specific total sugar limits were considered to align with the current CACFP total sugar limits for breakfast cereals and yogurts. However, this restricted naturally occurring sugars and did not align with the *Dietary Guidelines for Americans* [300] which recommend limiting added sugars to 10 percent of calories per day. The proposed product-specific added sugars limits for yogurt, breakfast cereal, and flavored milk are expected to help to introduce the concept of limiting added sugars, specifically as part of the gradual goal of reaching the proposed 10 percent weekly limit. For whole grains, other percentages were considered for the proportions of grains to be served that must be whole grain-rich (*i.e.,* 50 or 100%). However, 80% was decided on as a measure that allows for flexibility, but also still resulting in the majority of grains served being whole grain-rich.

[298] Gordon, E.L., Morrissey, N., Adams, E., Wieczorek, A. Glenn, M.E., Burke, S & Connor, P. (2019). Successful Approaches to Reduce Sodium in School Meals Final Report. Prepared by 2M Research under Contract No. AG–3198–P–15–0040. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service.

[299] *https://nap.nationalacademies.org/catalog/25353/dietary-reference-intakes-for-sodium-and-potassium.*

[300] U.S. Department of Agriculture and U.S. Department of Health and Human Services. Dietary Guidelines for Americans, 2020–2025. 9th Edition. December 2020. Available at *DietaryGuidelines.gov.*

Appendix

TABLE A: ESTIMATED ANNUAL COSTS IN MOVING FROM TRANSITIONAL STANDARDS RULE TO PROPOSED RULE BEGINNING BY SCHOOL YEAR (MILLIONS), IN 2022 DOLLARS[301, 302]

YEAR OF IMPLEMENTATION	SY 2024-2025	SY 2025-2026	SY 2026-2027	SY 2027-2028	SY 2028-2029	SY 2029-2030	Total	Average over six school years
ADMINISTRATIVE COSTS	$42	$42	$0	$42	$0	$42	$169	$28
ADDED SUGARS	$0	$83	$83	$83	$83	$83	$415	$69
MILK (ALTERNATIVE A)	$0	$55	$55	$55	$55	$55	$275	$46
MILK (ALTERNATIVE B)	$0	$0	$0	$0	$0	$0	$0	$0
SODIUM	$0	$90	$90	$144	$144	$144	$614	$102
AFTERSCHOOL SNACKS	-$10	-$10	-$10	-$10	-$10	-$10	-$62	-$10
SUBSTITUTING VEGETABLES FOR FRUITS AT BREAKFAST	-$4	-$4	-$4	-$4	-$4	-$4	-$24	-$4
BUY AMERICAN	$7	$7	$7	$7	$7	$7	$39	$7
TOTAL (ALTERNATIVE A)	**$34**	**$263**	**$221**	**$317**	**$275**	**$317**	**$1,426**	**$238**
TOTAL PER MEAL (ALTERNATIVE A)	$0.005	$0.036	$0.030	$0.043	$0.038	$0.043	NA	$0.032
TOTAL (ALTERNATIVE B)	**$34**	**$208**	**$166**	**$262**	**$220**	**$262**	**$1,151**	**$192**
TOTAL PER MEAL (ALTERNATIVE B)	$0.005	$0.028	$0.023	$0.036	$0.030	$0.036	NA	$0.026

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[301] Due to rounding, numbers may not add up to rounded sum in 'total' column exactly.

[302] This data is the same as in Table 1, but broken down by school years instead of fiscal years.

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 218

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Testing and Training Operations in the Eglin Gulf Test and Training Range; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 218

[Docket No. 230127–0029]

RIN 0648–BL77

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Testing and Training Operations in the Eglin Gulf Test and Training Range

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

ACTION: Proposed rule; request for comments and information.

SUMMARY: NMFS has received a request from the U.S. Department of the Air Force (USAF) to take marine mammals incidental to testing and training military operations proposed to be conducted in the Eglin Gulf Test and Training Range (EGTTR) from 2023 to 2030 in the Gulf of Mexico. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue regulations and subsequent Letter of Authorization (LOA) to the USAF to incidentally take marine mammals during the specified activities. NMFS will consider public comments prior to issuing any final rule and making final decisions on the issuance of the requested LOA. Agency responses to public comments will be summarized in the notice of the final decision in the final rule. The USAF's activities qualify as military readiness activities pursuant to the MMPA, as amended by the National Defense Authorization Act for Fiscal Year 2004 (2004 NDAA).

DATES: Comments and information must be received no later than March 9, 2023.

ADDRESSES: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2021–0064 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), 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). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

A copy of the USAF's application and other supporting documents and documents cited herein may be obtained online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-air-force-eglin-gulf-testing-and-training.* In case of problems accessing these documents, please use the contact listed here (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Robert Pauline, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Purpose of Regulatory Action

These proposed regulations, issued under the authority of the MMPA (16 U.S.C. 1361 *et seq.*), would provide the framework for authorizing the take of marine mammals incidental to the USAF's training and testing activities (which qualify as military readiness activities) from air-to-surface operations that involve firing live or inert munitions, including missiles, bombs, and gun ammunition, from aircraft at various types of targets on the water surface. Live munitions used in the EGTTR are set to detonate either in the air a few feet above the water, instantaneously upon contact with the water or target, or approximately 5 to 10 feet (ft) (1.5 to 3 meters (m)) below the water surface. There would also be training exercises for Navy divers that require the placement of small explosive charges by hand to disable live mines.

Eglin Air Force Base (AFB) would conduct operations in the existing Live Impact Area (LIA). In addition, the USAF is also proposing to create and use a new, separate LIA within the EGTTR that would be used for live missions in addition to the existing LIA. Referred to as the East LIA, it is located approximately 40 nautical miles (nmi)/(74 kilometers (km)) southeast of the existing LIA. (See Figure 1).

NMFS received an application from the USAF requesting 7-year regulations and an authorization to incidentally take individuals of multiple species of marine mammals (''USAF's rulemaking/LOA application'' or ''USAF's application''). Take is anticipated to occur by Level A and Level B harassment incidental to the USAF's training and testing activities, with no serious injury or mortality expected or proposed for authorization.

Background

The MMPA prohibits the take of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review and the opportunity to submit comments.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stocks and will not have an unmitigable adverse impact on the availability of the species or stocks 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 this rule as ''mitigation measures''). NMFS also must prescribe the requirements pertaining to the monitoring and reporting of such takings. The MMPA defines ''take'' to mean to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. The Preliminary Analysis and Negligible Impact Determination section below discusses the definition of ''negligible impact.''

The NDAA for Fiscal Year 2004 (2004 NDAA) (Pub. L. 108–136) amended section 101(a)(5) of the MMPA to remove the ''small numbers'' and ''specified geographical region'' provisions indicated above and amended the definition of ''harassment'' as applied to a ''military readiness activity.'' The definition of harassment for military readiness activities (section 3(18)(B) of the MMPA) is: (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A Harassment); or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural

behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered (Level B harassment). In addition, the 2004 NDAA amended the MMPA as it relates to military readiness activities such that the least practicable adverse impact analysis shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

More recently, section 316 of the NDAA for Fiscal Year 2019 (2019 NDAA) (Pub. L. 115–232), signed on August 13, 2018, amended the MMPA to allow incidental take rules for military readiness activities under section 101(a)(5)(A) to be issued for up to 7 years. Prior to this amendment, all incidental take rules under section 101(a)(5)(A) were limited to 5 years.

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 evaluate our USAF's proposed activities and alternatives with respect to potential impacts on the human environment. Accordingly, NMFS plans to adopt the Eglin Gulf Test and Training Range Environmental Assessment (2022 REA) (USAF 2022), provided our independent evaluation of the document finds that it includes adequate information analyzing the effects on the human environment of issuing regulations and LOAs under the MMPA. NMFS is a cooperating agency on the 2022 REA and has worked with the USAF developing the document. The draft 2022 REA was made available for public comment on December 13, 2022 through January 28, 2023. We will review all comments submitted in response to the request for comments on the 2022 REA and in response to the request for comments on this proposed rule prior to concluding our NEPA process or making a final decision on this proposed rule for the issuance of regulations under the MMPA and any subsequent issuance of a Letter of Authorization (LOA) to the USAF to incidentally take marine mammals during the specified activities.

Summary of Request

On January 18, 2022, NMFS received an application from the USAF for authorization to take marine mammals by Level A and Level B harassment incidental to training and testing activities (categorized as military readiness activities) in the EGTTR for a period of 7 years. On June 17, 2022 NMFS received an adequate and complete application for missions that would include air-to-surface operations that involve firing live or inert munitions, including missiles, bombs, and gun ammunition from aircraft at targets on the water surface. The types of targets used vary by mission and primarily include stationary, remotely controlled, and towed boats, inflatable targets, and marker flares. Live munitions used in the EGTTR are set to detonate either in the air a few feet above the water surface (airburst detonation), instantaneously upon contact with the water or target (surface detonation), or approximately 5 to 10 feet (1.5 to 3 m) below the water surface (subsurface detonation). On July 17, 2022, we published a notice of receipt (NOR) of application in the **Federal Register** (87 FR 42711), requesting comments and information related to the USAF's request. The public comment period was open for 30 days. We reviewed and considered all comments and information received on the NOR in development of this proposed rule.

On February 8, 2018, NMFS promulgated a rulemaking and issued an LOA for takes of marine mammals incidental to Eglin AFB's training and testing operations in the EGTTR (83 FR 5545). Current EGTTR operations are authorized under the 2018 EGTTR LOA which will expire on February 12, 2023. Under this proposed rulemaking action, the EGTTR would continue to be used during the next mission period based on the maritime training and testing requirements of the various military units that use the EGTTR. The next mission period would span 7 years, from 2023 to 2030. Most operations during this period would be a continuation of the same operations conducted by the same military units during the previous mission period. There would, however, be an increase in the annual quantities of all general categories of munitions (bombs, missiles, and gun ammunition) under the USAF's proposed activities, except for live gun ammunition, which is proposed to be used less over the next mission period. The highest net explosive weight (NEW) of the munitions under the USAF's proposed activities would be 945 pounds (lb) (430 kilograms (kg), which was also the highest NEW for the previous mission period. Live missions proposed for the 2023–2030 period would be conducted in the existing Live Impact Area (LIA) within the EGTTR. Certain missions may also be conducted in the proposed East LIA, which would be a new, separate area within the EGTTR where live munitions would be used. The USAF's rulemaking/LOA application reflects the most up-to-date compilation of training and testing activities deemed necessary to accomplish military readiness requirements. EGTTR training and testing operations are critical for achieving military readiness and the overall goals of the National Defense Strategy. The regulations proposed in this action, if issued, would be effective for seven years, beginning from the date of issuance.

Description of the Proposed Activity

The USAF requests authorization to take marine mammals incidental to conducting training and testing activities. The USAF has determined that acoustic and explosives stressors are most likely to result in impacts on marine mammals that could qualify as take under the MMPA, and NMFS concurs with this determination. Eglin AFB proposes to conduct military aircraft missions within the EGTTR that involve the employment of multiple types of live (explosive) and inert (non-explosive) munitions (*i.e.,* missiles, bombs, and gun ammunition) against various surface targets. Munitions may be delivered by multiple types of aircraft including, but not limited to, fighter jets, bombers, and gunships.

Detailed descriptions of these activities are described in the Eglin Gulf Test and Training Range (EGTTR) Range Environmental Assessment (REA) (USAF 2022), currently under preparation as well as the USAF's rulemaking/LOA application. (*https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-air-force-eglin-gulf-testing-and-training*). A summary of the proposed activities and are presented below.

Dates and Duration

The specified activities would occur at any time during the 7-year period of validity of the regulations. The proposed amount of training and testing activities are described in the Detailed Description of the Specified Activities section.

Geographical Region

The Eglin Military Complex encompasses approximately 724 square miles (1,825 km² of land in the Florida Panhandle and consists of the Eglin Reservation in Santa Rosa, Okaloosa, and Walton Counties, and property on Santa Rosa Island and Cape San Blas. The EGTTR is the airspace controlled by Eglin AFB over the Gulf of Mexico, beginning 3 nautical miles (nmi) (5.56

km) from shore, and the underlying Gulf of Mexico waters. The EGTTR extends southward and westward off the coast of Florida and encompasses approximately 102,000 nmi (349,850 km^2). It is subdivided into blocks of airspace that consist of Warning Areas W–155, W–151, W–470, W–168, and W–174 and Eglin Water Test Areas 1 through 6 (Figure 1). Most of the blocks are further subdivided into smaller airspace units for scheduling purposes (for example, W–151A, B, C, and D). Although Eglin AFB may use any portion of the EGTTR, the majority of training and testing operations proposed for the 2023–2030 mission period would occur in Warning Area W–151. The nearshore boundary of W–151 parallels much of the coastline of the Florida Panhandle and extends horizontally from 3 nmi (5.56 km) offshore to approximately 85 to 100 nmi (158 to185 km) to offshore, depending on the specific portion of its outer boundary. W–151 encompasses approximately 10,247 nmi^2 (35146 km^2) and includes water depths that range from approximately 5 to 720 m. The existing LIA, which is the portion of the EGTTR where the use of live munitions is currently authorized, lies mostly within W–151. The existing LIA encompasses approximately 940 nmi^2 (3,224 km^2 and includes water depths that range from approximately 30 to 145 m (Figure 2). This is where live munitions within the EGTTR are currently used in the existing LOA (83 FR 5545; February 8, 2018) and where the Gulf Range Armament Test Vessel (GRATV) is anchored. The GRATV remains anchored at a specific location during a given mission; however, it is mobile and relocated within the LIA based on mission needs.

The USAF's proposed activities provide for the creation of a new, separate area within the EGTTR that would be used for live missions in addition to the existing LIA. This area, herein referred to as the East LIA, would be located approximately 40 NM offshore of Eglin AFB property on Cape San Blas. Cape San Blas is located on St. Joseph Peninsula in Gulf County, Florida, approximately 90 mi (144 km) southeast of the Eglin Reservation. Eglin AFB facilities on Cape San Blas remotely support EGTTR operations via radar tracking, telemetry, and other functions. The proposed East LIA would be circular-shaped and have a radius of approximately 10 nmi (18.5 km) and a total area of approximately 314 NM^2. Water depths range from approximately 35 to 95 m. The general location of the proposed East LIA is shown in Figure 2. Establishment of the East LIA would allow Eglin AFB to maximize the flight range for large-footprint weapons and minimize the distance, time, and cost of deploying support vessels and targets. Based on these factors, the East LIA would allow testing of weapon systems and flight profiles that cannot be conducted within the constraints of the existing LIA.

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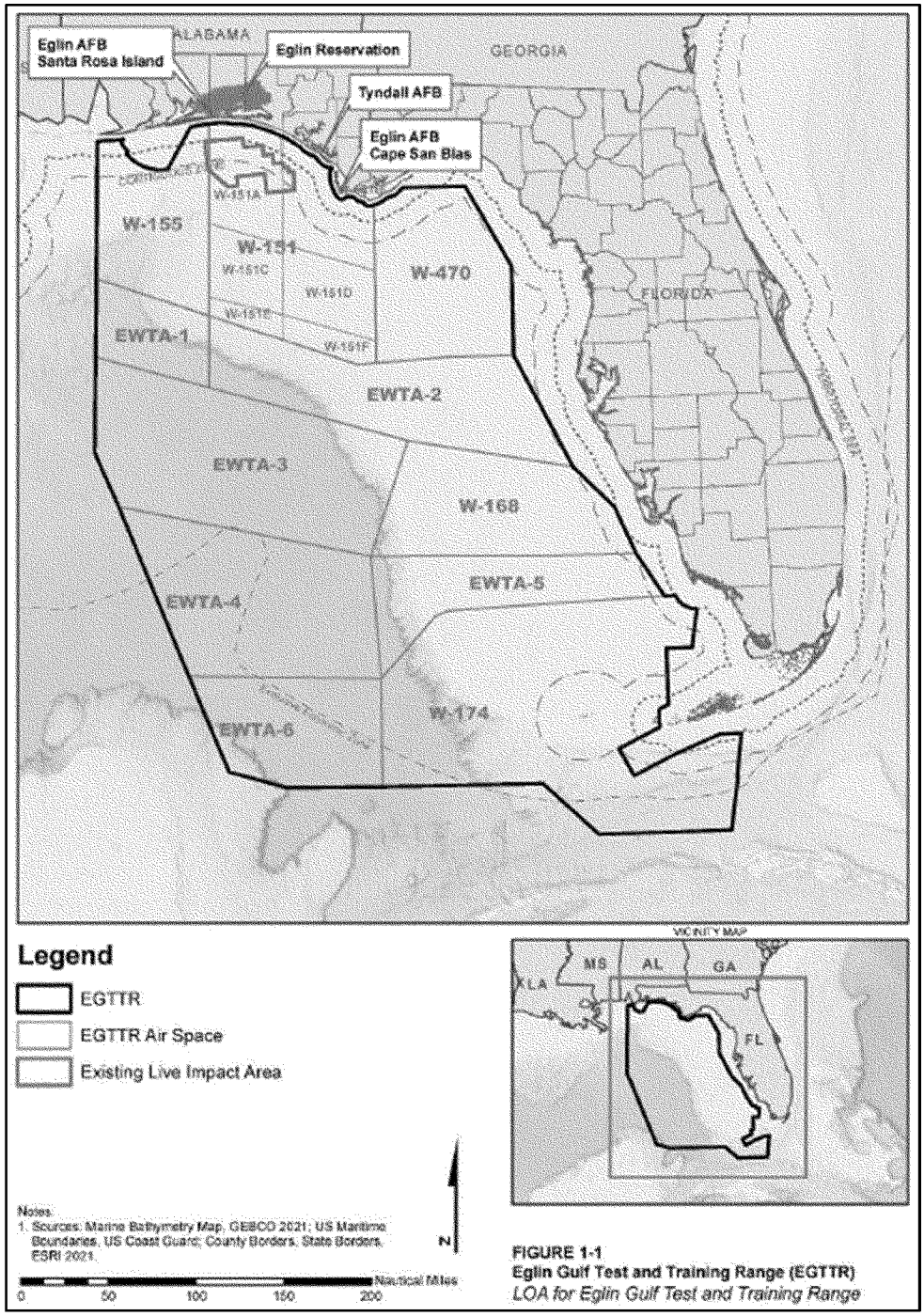

Figure 1: Elgin Gulf Test and Training Range

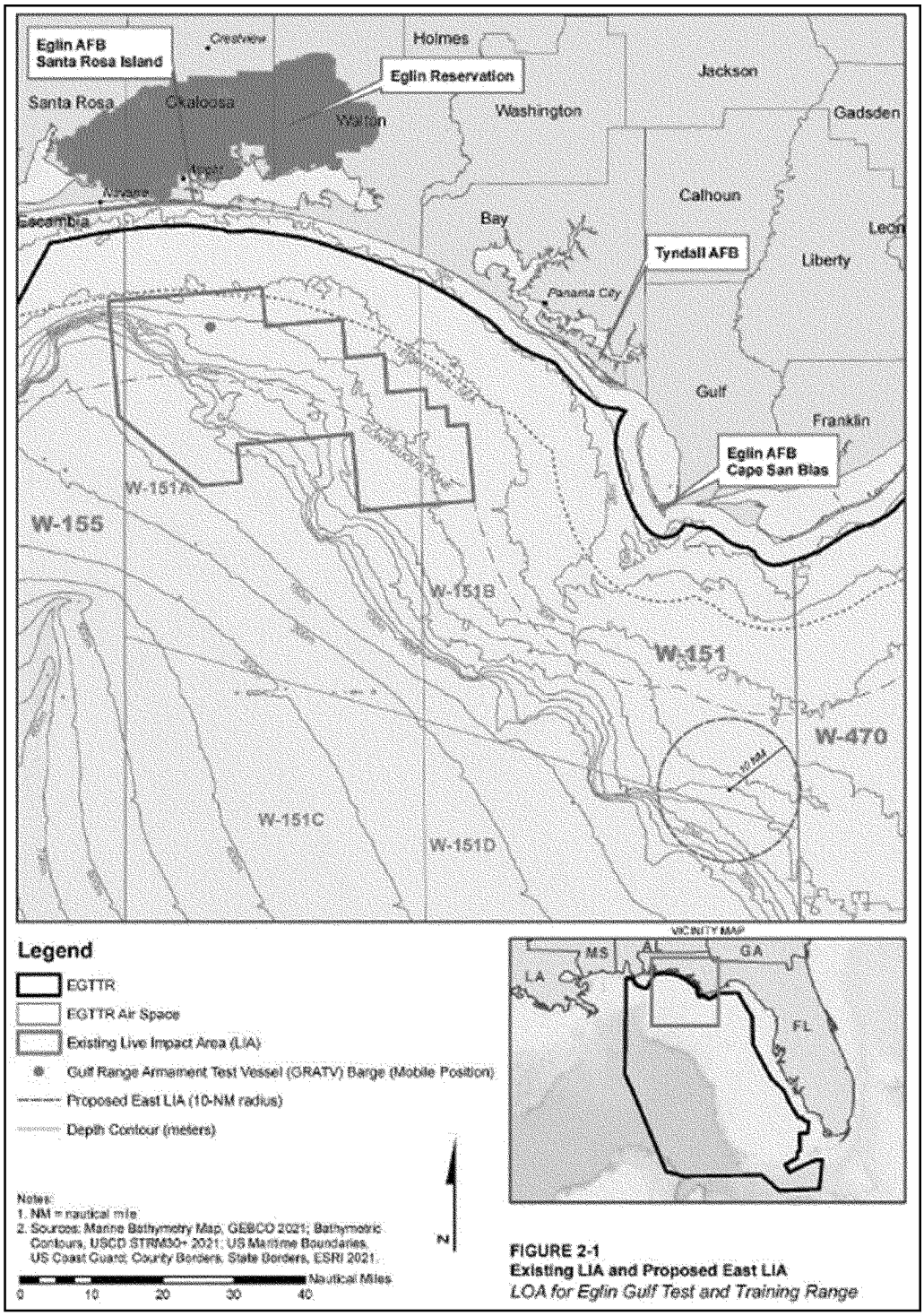

Figure 2: Existing LIA and Proposed East LIA

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Detailed Description of the Specified Activities

This section provides descriptions of each military user group's proposed EGTTR operations, as well as information regarding munitions proposed to be used during the operations. This information includes munition type, category, net explosive weight (NEW), detonation scenario, and annual quantity proposed to be expended in the EGTTR. NEW applies only to live munitions and is the total mass of the explosive substances in a given munition, without packaging, casings, bullets, or other non-explosive components of the munition. Note that for some munitions the warhead is removed and replaced with a telemetry package that tracks the munition's path and/or Flight Termination System (FTS) that ends the flight of the munition in a controlled manner. These munitions have been categorized as live munitions with NEWs that range from 0.30 to 0.70

lb (0.13 to 0.31 kg) While certain munitions with only FTS may be considered inert due to negligible NEW, those contained here are considered to be live with small amounts of NEW. The detonation scenario applies only to live munitions which are set to detonate in one of three ways: (1) in the air a few feet above the water surface, referred to as airburst or height of burst (HOB); (2) instantaneously upon contact with the water or target on the water surface; or (3) after a slight delay, up to 10 milliseconds, after impact, which would correspond to a subsurface detonation at a water depth of approximately 5 to 10 ft (1.5 to 3 m). Estimated take is only modeled for scenarios (2) and (3). The proposed annual expenditures of munitions are the quantities determined necessary to meet the mission requirements of the user groups.

Live missions proposed for the 2023–2030 period would be conducted in the existing LIA and potentially in the proposed East LIA, depending on the mission type and objectives. Live missions that involve only airburst or aerial target detonations would continue to be conducted in or outside the LIA in any portion of the EGTTR; such detonations have no appreciable effect on marine mammals because there is negligible transmission of pressure or acoustic energy across the air–water interface. Use of inert munitions and live air-to-surface gunnery operations would also continue to occur in or outside the LIA, subject to proposed mitigation and monitoring measures.

Eglin AFB proposes the following actions in the EGTTR which would be conducted in the existing LIA and potentially in the proposed East LIA, depending on the mission type and objectives:

(1) 53rd Weapons Evaluation Group missions that involve air-to-ground Weapons System Evaluation Program (WSEP) known as Combat Hammer which tests various types of munitions against small target boats and air-to-air missile testing known as Combat Archer;

(2) Continuation of the Air Force Special Operations Command (AFSOC) training missions in the EGTTR primarily involving air-to-surface gunnery, bomb, and missile exercises including AC–130 gunnery training, CV–22 training, and bomb and missile training;

(3) 96th Operations Group missions including AC–130 gunnery testing against floating marker targets on the water surface, MQ–9 air-to-surface testing, and 780th Test Squadron Precision Strike Weapons testing including air-launched cruise missile tests, air-to-air missile tests, Longbow and Joint Air-to-Ground Missile (JAGM) testing; Spike Non-Line-of-Sight (NLOS) air-to-surface missile testing, Patriot missile testing, Hypersonic Weapon Testing, sink at-sea live-fire training exercises (SINKEX), and testing using live and inert munitions against targets on the water surface; and

(4) Naval School Explosive Ordnance Disposal (NAVSCOLEOD) training missions that involve students diving and placing small explosive charges adjacent to inert mines.

53rd Weapons Evaluation Group

The 53rd Weapons Evaluation Group (53 WEG) conducts the USAF's air-to-ground Weapons System Evaluation Program (WSEP). The Combat Hammer program involves testing various types of live and inert munitions against small target boats. This testing is conducted to develop tactics, techniques, and procedures (TTP) to be used by USAF aircraft to counter small, maneuvering, hostile vessels. Combat Hammer missions proposed in the EGTTR for the 2023–2030 period would involve the use of several types of aircraft, including F–15, F–16, F–18, F–22, F–35, and A–10 fighter aircraft, AC–130 gunships, B–1, B–2, and B–52 bomber aircraft, and MQ–1 and MQ–9 drone aircraft. USAF, Air National Guard, and U.S. Navy units would support these missions. Live munitions would be deployed against static (anchored), remotely controlled, and towed targets. Static and remotely controlled targets would consist of stripped boat hulls with simulated systems and, in some cases, heat sources. Various types of live and inert munitions are used during Combat Hammer missions in the EGTTR, including missiles, bombs, and gun ammunition. Table 1 presents information on the munitions proposed for Combat Hammer missions in the EGTTR during the 2023–2030 period.

TABLE 1—PROPOSED MUNITIONS FOR WSEP COMBAT HAMMER MISSIONS IN THE EGTTR

Type	Category	Net explosive weight (lb)/(kg)	Destination scenario	Annual quantity
Live Munitions:				
AGR–20	Rocket	9.1 (4.1)	Surface	12
AGM–158D JASSM XR	Missile	240.26 (108.9)	Surface	4
AGM–158B JASSM ER	Missile	240.26 (108.9)	Surface	3
AGM–158A JASSM	Missile	240.26 (108.9)	Surface	3
AGM–65D	Missile	150 (68)	Surface	5
AGM–65G2	Missile	145 (65.7)	Surface	5
AGM–65H2	Missile	150 (68)	Surface	5
AGM–65K2	Missile	145 (65.7)	Surface	4
AGM–65L	Missile	150 (68)	Surface	5
AGM–114 N–6D with TM	Missile	29.1 (13.2)	Surface	4
AGM–114 N–4D with TM	Missile	29.94 (13.6)	Surface	4
AGM–114 R2 with TM (R10)	Missile	27.41 (12.4)	Surface	4
AGM–114 R–9E with TM (R11).	Missile	27.38 (12.4)	Surface	4
AGM–114Q with TM	Missile	20.16 (9.1)	Surface	4
CBU–105D	Bomb	108.6 (49.5)	HOB	8
GBU–53/B (GTV)	Bomb	0.34(0.1)[a]	HOB/Surface	8
GBU–39 SDB (GTV)	Bomb	0.39(0.1)[a]	Surface	4
AGM–88C w/FTS	Missile	0.70 (0.31)[a]	Surface	2
AGM–88B w/FTS	Missile	0.70 (0.31)[a]	Surface	2
AGM–88F w/FTS	Missile	0.70(0.31)[a]	Surface	2
AGM–88G w/FTS	Missile	0.70(0.31)[a]	Surface	2
AGM–179 JAGM	Missile	27.47(12.5)	Surface	4
GBU–69	Bomb	6.88 (3.1)	Surface	2
GBU–70	Bomb	6.88 (3.1)	Surface	4

TABLE 1—PROPOSED MUNITIONS FOR WSEP COMBAT HAMMER MISSIONS IN THE EGTTR—Continued

Type	Category	Net explosive weight (lb)/(kg)	Destination scenario	Annual quantity
AGM–176	Missile	8.14 (3.7)	Surface	4
GBU–54 KMU–572C/B	Bomb	193 (87.5)	Surface	4
GBU–54 KMU–572B/B	Bomb	193	Surface	4
PGU–43 (105 mm)	Gun Ammunition	4.7	Surface	100
Inert Munitions:				
ADM–160B MALD	Missile	N/A	N/A	4
ADM–160C MALD–J	Missile	N/A	N/A	4
ADM–160C–1 MALD–J	Missile	N/A	N/A	4
ADM–160D MALD–J	Missile	N/A	N/A	4
GBU–10	Bomb	N/A	N/A	8
GBU–12	Bomb	N/A	N/A	32
GBU–49	Bomb	N/A	N/A	16
GBU–24/B (84)	Bomb	N/A	N/A	16
GBU–24A/B (109)	Bomb	N/A	N/A	2
GBU–31B(v)1	Bomb	N/A	N/A	16
GBU–31C(v)1	Bomb	N/A	N/A	16
GBU–31B(v)3	Bomb	N/A	N/A	2
GBU–31C(v)3	Bomb	N/A	N/A	2
GBU–32C	Bomb	N/A	N/A	8
GBU–38B	Bomb	N/A	N/A	4
GBU–38C w/BDU–50 (No TM).	Bomb	N/A	N/A	4
GBU–38C	Bomb	N/A	N/A	10
GBU–54 KMU–572C/B	Bomb	N/A	N/A	4
GBU–54 KMU–572B/B	Bomb	N/A	N/A	4
GBU–69	Bomb	N/A	N/A	2
BDU–56A/B	Bomb	N/A	N/A	4
PGU–27 (20 mm)	Gun Ammunition	0.09 (0.04)	N/A	16,000
PGU–15 (30 mm)	Gun Ammunition	N/A	N/A	16,000
PGU–25 (25 mm)	Gun Ammunition	N/A	N/A	16,000
ALE–50	Decoy System	N/A	N/A	6

[a] Warhead replaced by FTS/TM. Identified NEW is for the FTS.

ADM = American Decoy Missile; AGM = Air-to-Ground Missile; ALE = Ammunition Loading Equipment; BDU = Bomb Dummy Unit; CBU = Cluster Bomb Unit; EGTTR = Eglin Gulf Test and Training Range; ER = Extended Range; FTS = Flight Termination System; GBU = Guided Bomb Unit; GTV = Guided Test Vehicle; HOB = height of burst; JAGM = Joint Air-to-Ground Missile; JASSM = Joint Air-to-Surface Standoff Missile; lb = pound(s); MALD = Miniature Air-Launched Decoy; mm = millimeter(s); N/A = not applicable; PGU = Projectile Gun Unit; SDB = Small-Diameter Bomb, TM = telemetry; WSEP = Weapons System Evaluation Program.

The Combat Archer program involves live air-to-air missile testing in the EGTTR. Combat Archer missions also include firing inert gun ammunition and releasing flares and chaff from aircraft. Air-to-air missile testing during these missions specifically involves firing live AIM–9 Sidewinder and AIM–120 Advanced Medium-Range Air-to-Air Missiles (AMRAAMs) at BOM–167 Subscale Aerial Targets and QF–16 Full-Scale Aerial Targets to evaluate the effectiveness of missile delivery techniques. Combat Archer missions involve the use of several types of fighter aircraft, including the F–15, F–16, F–18, F–22, F–35, and A–10. Table 2 presents information on the munitions proposed to be used during Combat Archer missions in the EGTTR.

TABLE 2—PROPOSED MUNITIONS FOR COMBAT ARCHER MISSIONS IN THE EGTTR

Type	Category	Net explosive weight (lb)/(kg)	Detonation scenario	Annual quantity
Live Munitions:				
AIM–120D	Missile	113.05 (51.3)	HOB	24
AIM–120C7	Missile	113.05 (51.3)	HOB	10
AIM–120C5/6	Missile	113.05 (51.3)	HOB	8
AIM–120C3	Missile	102.65 (46.5)	HOB	14
AIM–120C3	Missile	117.94 (63.5)	HOB/Surface	4
AIM–120B	Missile	102.65 (46.5)	HOB	18
AIM–9X Blk I	Missile	60.25 (27.3)	HOB	7
AIM–9X Blk I	Missile	67.9 (30.8)	HOB/Surface	10
AIM–9X Blk II	Missile	60.25 (27.3)	HOB	24
AIM–9M–9	Missile	60.55 (27.3)	HOB	90
Inert Munitions:				
AIM–260A JATM	Missile	N/A	N/A	4
PGU–27 (20 mm)	Gun Ammunition	N/A	N/A	80,000
PGU–23 (25 mm)	Gun Ammunition	N/A	N/A	6,000
MJU–7A/B Flare	Flare	N/A	N/A	1,800
R–188 Chaff	Chaff	N/A	N/A	6,000

TABLE 2—PROPOSED MUNITIONS FOR COMBAT ARCHER MISSIONS IN THE EGTTR—Continued

Type	Category	Net explosive weight (lb)/(kg)	Detonation scenario	Annual quantity
R–196 (T–1) Chaff	Chaff	N/A	N/A	1,500

AIM = Air Intercept Missile; EGTTR = Eglin Gulf Test and Training Range; HOB = height of burst; JATM = Joint Advanced Tactical Missile; lb = pound(s); MJU = Mobile Jettison Unit; mm = millimeter(s); N/A = not applicable; PGU = Projectile Gun Unit; WSEP = Weapons System Evaluation Program.

Air Force Special Operations Command Training

The Air Force Special Operations Command (AFSOC) proposes to continue conducting training missions during the 2023–2030 period. These missions primarily involve air-to-surface gunnery, bomb, and missile exercises. Gunnery training in the EGTTR involves firing live rounds from AC–130 gunships at targets on the water surface. Gun ammunition used for this training primarily includes 30-millimeter (mm) High Explosive (HE) and 105 mm HE rounds. A standard 105 mm HE round has a NEW of 4.7 lb. The Training Round (TR) variant of the 105 mm HE round, which has a NEW of 0.35 lb, is used by AFSOC for nighttime missions. This TR was developed to have less explosive material to minimize potential impacts to protected marine species, which could not be adequately surveyed at night by earlier aircraft instrumentation. Since the development of the 105 mm HE TR, AC–130s have been equipped with low-light electro-optical and infrared sensor systems that provide excellent night vision. Targets used for AC–130 gunnery training include Mark (Mk)-25 marine markers and inflatable targets. During each gunnery training mission, gun firing can last up to 90 minutes but typically lasts approximately 30 minutes. Live firing is continuous, with pauses usually lasting well under 1 minute and rarely up to 5 minutes. Table 3 presents information on the rounds proposed for AC–130 gunnery training by AFSOC.

TABLE 3—PROPOSED ROUNDS FOR AC–130 GUNNERY TRAINING IN THE EGTTR

Type	Net explosive weight (lb)/(kg)	Detonation scenario	Number of missions	Rounds per mission	Annual quantity
Daytime Missions:					
105 mm HE (FU)	4.7 (2.1)	Surface	25	30	750
30 mm HE	0.1 (0.04)			500	12,500
Nighttime Missions:					
105 mm HE (TR)	0.35 (0.2	Surface	45	30	1,350
30 mm HE	0.1 (0.04)			500	22,500
Total			70		37,100

EGTTR = Eglin Gulf Test and Training Range; FU = Full Up; HE = High Explosive; mm = millimeter(s); lb = pound(s); TR = Training Round.

The 8th Special Operations Squadron (8 SOS) under AFSOC conducts training in the EGTTR using the tiltrotor CV–22 Osprey. This training involves firing .50 caliber rounds from CV–22s at floating marker targets on the water surface. The .50 caliber rounds do not contain explosive material and, therefore, do not detonate. Flight procedures for CV–22 training are similar to those described for AC–130 gunnery training, except that CV–22 aircraft typically operate at much lower altitudes (100 to 1,000 feet (30.48 to 304.8 m) (AGL) than AC–130 gunships (6,000 to 20,000 feet (1,828 to6,96 m) AGL). Like AC–130 gunships, CV–22s are equipped with highly sophisticated electro-optical and infrared sensor systems that allow advanced detection capability during day and night. Table 4 presents information on the rounds proposed for CV–22 training missions.

TABLE 4—PROPOSED ROUNDS FOR CV–22 TRAINING IN THE EGTTR

Type	Net explosive weight (lb)	Detonation scenario	Number of missions	Rounds per mission	Annual quantity
Daytime Missions:					
.50 Caliber	N/A	Surface	25	600	15,000
Nighttime Missions:					
.50 Caliber	N/A	Surface	25	600	15,000
Total				50	30,000

In addition to AC–130 gunnery and CV–22 training, AFSOC also conducts other air-to-surface training in the EGTTR using various types of bombs and missiles as shown in Table 5. This training is conducted primarily to develop TTPs and train strike aircraft to counter small moving boats. Munitions used for this training primarily include live AGM–176 Griffin missiles, live AGM–114 Hellfire missiles, and various types of live and inert bombs. These

munitions are launched from various types of aircraft against small target boats, and they either detonate on impact with the target or at a programmed HOB.

TABLE 5—PROPOSED MUNITIONS FOR AFSOC BOMB AND MISSILE TRAINING IN THE EGTTR

Type	Category	Net explosive weight (lb)(kg)	Detonation scenario	Annual quantity
Live Munitions:				
AGM–176 Griffin	Missile	4.58 (2.1)	HOB	100
AGM–114R9E/R2 Hellfire.	Missile	20.0 (9.07)	HOB	70
2.75-inch Rocket (including APKWS).	Rocket	2.3 (1.0)	Surface	400
GBU–12	Bomb	198.0 (89.8)/298.0 (135.1)	Surface	30
Mk-81 (GP 250 lb)	Bomb	151.0 (98.4)	Surface	30
GBU–39 (SDB I)	Bomb	37.0 (16.7)	HOB	30
GBU–69	Bomb	36.0 (16.3)	HOB	40
Inert Munitions:				
.50 caliber	Gun Ammunition	N/A	N/A	30,000
GBU–12	Bomb	N/A	N/A	30
MkK–81 (GP 250 lb)	Bomb	N/A	N/A	30
BDU–50	Bomb	N/A	N/A	30
BDU–33	Bomb	N/A	N/A	50

AFSOC = Air Force Special Operations Command; AGM = Air-to-Ground Missile; APKWS = Advanced Precision Kill Weapon System; BDU = Bomb Dummy Unit; EGTTR = Eglin Gulf Test and Training Range; GBU = Guided Bomb Unit; GP = General Purpose; HOB = height of burst; lb = pound(s); Mk = Mark; N/A = not applicable; SDB = Small-Diameter Bomb.

96th Operations Group

Three units under the 96th Operations Group (96 OG) propose to conduct missions in the EGTTR during the 2023–2030 period: the 417th Flight Test Squadron (417 FLTS), the 96th Operational Support Squadron (96 OSS), and the 780th Test Squadron (780 TS).

The 417 FLTS proposes to continue conducting AC–130 testing in the EGTTR to evaluate the capabilities of the Precision Strike Package (PSP), Stand Off Precision Guided Munitions (SOPGM), and other systems on AC–13O aircraft. AC–130 gunnery testing is generally similar to activities previously described for AFSOC AC–130 gunnery training.

Table 6 presents information on the munitions proposed for AC–130 testing in the EGTTR during the 2023–2030 mission period.

TABLE 6—PROPOSED ROUNDS FOR AC–130 GUNNERY TESTING IN THE EGTTR

Type	Category	Net explosive weight (lb)/(kg)	Detonation scenario	Annual quantity
Live Munitions:				
AGM–176 Griffin	Missile	4.58 (2.1)	Surface	10
AGM–114 Hellfire	Missile	20.0 (9.1)	Surface	10
GBU–39 (SDB I)	Bomb	37.0 (16.8)	Surface	6
GBU–39 (LSDB)	Bomb	37.0 (16.8)	Surface	10
105 mm HE (FU)	Gun Ammunition	4.7 (2.1)	Surface	60
105 mm HE (TR)	Gun Ammunition	0.35 (0.2)	Surface	60
30 mm HE	Gun Ammunition	0.1 (0.1)	Surface	99

AGM = Air-to-Ground Missile; EGTTR = Eglin Gulf Test and Training Range; FU = Full Up; GBU = Guided Bomb Unit; HE = High Explosive; lb = pound(s); mm = millimeter(s); LSDB = Laser Small-Diameter Bomb; SDB = Small-Diameter Bomb; TR = Training Round.

The 96 OSS proposes to conduct air-to-surface testing in the EGTTR using assorted live missiles and live and inert precision-guided bombs to support testing requirements of the MQ–9 Reaper unmanned aerial vehicle (UAV) program. The proposed munitions would be tested for MQ–9 integration and would include captive carry and munitions employment tests. During munition employment tests, the proposed munitions would be launched from MQ–9 aircraft at various types of static and moving targets on the water surface. Table 7 presents information on the munitions proposed by the 96 OSS for MQ–9 testing in the EGTTR.

TABLE 7—PROPOSED MUNITIONS FOR MQ–9 TESTING IN THE EGTTR

Type	Category	Net explosive weight (lb)/(kg)	Detonation scenario	Annual quantity
Live Munitions:				
AGM–114R Hellfire	Missile	20.0 (9.1)	Surface	36
AIM–9X	Missile	7.9 (3.6)	HOB	1

TABLE 7—PROPOSED MUNITIONS FOR MQ–9 TESTING IN THE EGTTR—Continued

Type	Category	Net explosive weight (lb)/(kg)	Detonation scenario	Annual quantity
GBU–39B/B LSDB	Bomb	37.0 (16.8)	Surface	2
Inert Munitions:				
GBU–39B/B LSDB	Bomb	N/A	N/A	2
GBU–49	Bomb	N/A	N/A	10
GBU–48	Bomb	N/A	N/A	1

AGM = Air-to-Ground Missile; AIM = Air Intercept Missile; EGTTR = Eglin Gulf Test and Training Range; GBU = Guided Bomb Unit; lb = pound(s); LSDB = Laser Small-Diameter Bomb.

The 780 TS, the Air Force Life Cycle Management Center, and the U.S. Navy jointly conduct Precision Strike Weapons (PSW) test missions in the EGTTR. These missions use the AGM–158 JASSM and GBU–39 SDB precision-guided bomb. The JASSM is an air-launched cruise missile with a range of more than 200 nmi (370 km). During test missions, the JASSM would be launched from aircraft more than 200 nmi (370 km) from the target location at altitudes greater than 25,000 ft (7,620 m) km above ground level (AGL). The JASSM would cruise at altitudes greater than 12,000 ft (3,657 m) AGL for most of the flight profile until its terminal descent toward the target. The GBU–39 SDB is a precision-guided glide bomb with a range of more than 50 nmi (92.6 km). This bomb would be launched from aircraft more than 50 nmi (92.6 km) from the target location at altitudes greater than 5,000 ft (1,524 m) AGL. The bomb would travel via a non-powered glide to the intended target. Instrumentation in the bomb self-controls the bomb's flight path. Live JASSMs would detonate at a HOB of approximately 5 ft (0.30 m); however, these detonations are assumed to occur at the surface for the impact analysis. The SDBs would detonate either at a HOB of approximately 7 to 14 ft (2.1 to 4.2 m) or upon impact with the target (surface). For simultaneous SDB launches, two SDBs would be launched from the same aircraft at approximately the same time to strike the same target. The SDBs would strike the target within approximately 5 seconds or less of each other. Such detonations would be considered a single event, with the associated NEW being doubled for a conservative impact analysis.

Two types of targets are typically used for PSW tests: Container Express (CONEX) targets and hopper barge targets. CONEX targets typically consist of up to five CONEX containers strapped, braced, and welded together to form a single structure. A hopper barge is a common type of barge that cannot move itself; a typical hopper barge measures approximately 30 ft (9.1 m) by 12 ft (3.6 m) by 125 ft (38.1 m).

Other SDB tests in the EGTTR during the 2023–2030 mission period may include operational testing of the GBU–53 (SDB II). These tests may involve live and inert testing of the munition against target boats.

Table 8 presents information on the munitions proposed for PSW missions in the EGTTR during the 2023–2030 period.

TABLE 8—PROPOSED MUNITIONS FOR PRECISION STRIKE WEAPON MISSIONS

Type	Category	Net explosive weight (lb)/(kg)	Detonation scenario	Annual quantity
Live Munitions:				
AGM–158 (JASSM)	Missile	240.26 (108.9)	Surface	2
GBU–39 (SDB I)	Bomb	37.0 (16.8)	HOB/Surface	2
GBU–39 (SDB I) Simultaneous Launch[a].	Bomb	74.0 (33.35)	HOB/Surface	2
GBU–53 (SDB II)	Bomb	22.84 (10.4)	HOB/Surface	2
Inert Munitions:				
AGM–158 (JASSM)	Missile	N/A	N/A	4
GBU–39 (SDB I)	Bomb	N/A	N/A	4
GBU–39 (SDB I) Simultaneous Launch.	Bomb	N/A	N/A	4
GBU–53 (SDB II)	Bomb	N/A	N/A	1

[a] NEW is doubled for simultaneous launch.

AGM = Air-to-Ground Missile; EGTTR = Eglin Gulf Test and Training Range; GBU = Guided Bomb Unit; HOB = height of burst; JASSM = Joint Air-to-Surface Standoff Missile; lb = pound(s); N/A = not applicable; SDB = Small-Diameter Bomb.

The 780 TS, along with the Air Force Life Cycle Management Center and U.S. Navy, propose to jointly conduct air-to-air missile testing in the EGTTR. These missions would involve the use of the AIM–260A Joint Advanced Tactical Missile (JATM), AIM–9X Sidewinder, and AIM–120 AMRAAM missiles; all missiles used in these tests would be inert. Table 9 presents information on the munitions proposed for air-to-air missile testing missions in the EGTTR during the 2023–2030 mission period.

TABLE 9—PROPOSED MUNITIONS FOR AIR-TO-AIR MISSILE TESTING IN THE EGTTR

Type	Category	Net explosive weight (lb)	Detonation scenario	Annual quantity
AIM–260 JATM—Inert	Missile	N/A	N/A	6
AIM–9X—Inert	Missile	N/A	N/A	10
AIM–120 AMRAAM—Inert	Missile	N/A	N/A	15

AIM = Air Intercept Missile; AMRAAM = Advanced Medium-Range Air-to-Air Missile; EGTTR = Eglin Gulf Test and Training Range; lb = pound(s); JATM = Joint Advanced Tactical Missile; N/A = not applicable.

The 780 TS proposes to test the ability of the AGM–114L Longbow missile and AGM–179A Joint Air-to-Ground Missile (JAGM) missile to track and impact moving target boats in the EGTTR as shown in Table 10. These missiles are typically launched from an AH–64D Apache helicopter. The test targets would be remotely controlled boats, including the 25-foot High-Speed Maneuverable Surface Target (HSMST) (foam filled) and 41-foot (12.5 m) Coast Guard Utility Boat (metal hull). The missiles would be launched approximately 0.9 to 4.3 nmi (1.7 to 7.9 km) from the targets.

TABLE 10—PROPOSED MUNITIONS FOR LONGBOW AND JAGM MISSILE TESTING IN THE EGTTR

Type	Category	Net explosive weight (lb)/(kg)	Detonation scenario	Annual quantity
AGM–114L Longbow	Missile	35.95 (16.3)	HOB	6
AGM–179A JAGM	Missile	27.47 (11.1)	HOB	8

AGM = Air-to-Ground Missile; EGTTR = Eglin Gulf Test and Training Range; HOB = height of burst; JAGM = Joint Air-to-Ground Missile; lb = pound(s).

The 780 TS proposes to test the Spike Non-Line-of-Sight (NLOS) air-to-surface tactical missile system against static and moving target boats in the EGTTR in support of the U.S. Army's initiative to incorporate the Spike NLOS missile system onto the AH–64E Apache helicopter. These missiles shown in Table 11 would be launched from an AH–64D Apache helicopter and the test targets would include foam-filled fiberglass boats approximately 25 ft (7.62 m) in length that are either anchored or towed by a remotely controlled (HSMST).

TABLE 11—PROPOSED MUNITIONS FOR NLOS SPIKE MISSILE TESTING IN THE EGTTR

Type	Category	Net explosive weight (lb)/(kg)	Detonation scenario	Annual quantity
Spike NLOS	Missile	34.08 (14.5)	Surface	3

The 780 TS proposes to conduct surface-to-air testing of Patriot Advanced Capability (PAC)–2 and PAC–3 missiles in the EGTTR. These missiles are expected to be fired from the A–15 launch site on Santa Rosa Island at drones in the EGTTR. Detailed operational data for this testing are not yet available. Standard inventory missiles would be used and up to eight PAC–2 tests and two PAC–3 tests per year are proposed as shown in Table 12.

TABLE 12—PROPOSED MUNITIONS FOR PATRIOT MISSILE TESTING IN THE EGTTR

Type	Category	Net explosive weight (lb)/(kg)	Detonation scenario	Annual quantity
PAC–2	Missile	[a]145.0 (65.7)	N/A (drone target)	8
PAC–3	Missile	[a]145.0 (65.7)	N/A (drone target)	2

[a] Assumed for impact analysis.

Hypersonic weapons are capable of traveling at least five times the speed of sound, referred to as Mach 5. While conventional weapons typically rely on explosive warheads to inflict damage on a target, hypersonic weapons typically rely on kinetic energy from high-velocity impact to inflict damage on targets. For the purpose of assessing impacts, the kinetic energy of a hypersonic weapon may be correlated to energy release in units of feet-lb or trinitrotoluene (TNT) equivalency.

The 780 TS supports several hypersonic weapon programs, including the Hypersonic Attack Cruise Missile (HACM) and Precision Strike Missile (PrSM) programs, which are presented in Table 13.

HACM is a developmental air-breathing hypersonic cruise missile that uses scramjet technology for propulsion. This weapon would air-launched. The 780 TS proposes to conduct HACM

testing, which would involve air launches through a north-south corridor within the EGTTR to a target location on the water surface. The dimensions and orientation of the test flight corridor within the EGTTR for HACM tests are to be determined; the flight corridor is preliminarily expected to be 300 to 400 nmi (555 to 740 km) in total length. Live HACMs would be fired from the southern portion of the EGTTR into either the existing LIA or proposed East LIA. Up to two live HACMs per year are proposed to be tested in the EGTTR during the 2023–2030 mission period.

The PrSM is being developed by the U.S. Army as a surface-to-surface, long-range, precision-strike guided missile to be fired from the M270A1 Multiple Launch Rocket System and the M142 High Mobility Artillery Rocket System. The 780 TS in coordination with the U.S. Army proposes to conduct PrSM testing in the EGTTR. Some PrSM testing is expected to involve surface launches of the PrSM from the A–15 launch site on Santa Rosa Island. The dimensions and orientation of the test flight corridor within the EGTTR for PrSM tests are to be determined; the flight corridor is preliminarily expected to be 162 to 270 nmi (300 to 500 km) in total length. For tests that involve a live warhead on the PrSM, the PrSM would be preset to detonate at a specific height above the water surface (HOB/airburst) and could occur in any portion of the EGTTR. Any surface strikes proposed with live PrSMs would be required to be in the existing LIA or proposed East LIA. Like inert HACM tests, inert PrSM tests could occur in any portion of the EGTTR, except between the 100-m and 400-m isobaths to prevent impacts to the Rice's whale.

TABLE 13—PROPOSED MUNITIONS FOR HYPERSONIC WEAPON TESTING IN THE EGTTR

Type	Category	Net explosive weight (lb)/(kg)	Detonation scenario	Annual quantity
Live Munitions:				
HACM	Hypersonic Weapon	[a]350 (158.7)	Surface	2
PrSM	Hypersonic Weapon	[a]46 (158.7)	HOB	2
Inert Munitions:				
PrSM—Inert	Hypersonic Weapon	N/A	N/A	2

[a] Net explosive weight at impact/detonation.

The 780 TS, in coordination with the Air Force Research Laboratory, proposes to conduct SINKEX testing in the EGTTR. SINKEX exercises would involve the sinking of vessels, typically 200–400 ft (61 –122 m) in length, in the existing LIA. The types of munitions that would be used for SINKEX testing is controlled information and, therefore, not identified (Table 14).

TABLE 14—PROPOSED SINKEX EXERCISES IN THE EGTTR

Type	Category	Net explosive weight (lb)	Detonation scenario	Annual quantity
SINKEX	Vessel Sinking Exercise	Not Available	Not Available	2

The 780 TS plans to lead or support other types of testing in the EGTTR as shown in Table 15. These missions would primarily include testing live and inert munitions against targets on the water surface, such as boats and barges. Some of the tests would involve munitions with NEWs of up to 945 lb, which is the highest NEW associated with the munitions analyzed in this LOA application.

TABLE 15—PROPOSED MUNITIONS FOR OTHER 780 TEST SQUADRON TESTING IN THE EGTTR

Type	Category	Net explosive weight (lb)/(kg)	Detonation scenario	Target type	Annual quantity
Live Munitions:					
GBU–10, 24, or 31 (QUICKSINK).	Bomb	945 (428.5)	Subsurface	TBD	4 to 8
2,000 lb bomb with JDAM kit.	Bomb	945 (428.5) or less	HOB	TBD	2
Inert GBU–39 (LSDB). with live fuze	Bomb	0.4 (0.2)	HOB/Surface	Small Boat	4
Inert GBU–53 (SDB II). with live fuze	Bomb	0.4 (0.2)	HOB/Surface	Small Boat	4
Inert Munitions:					
SiAW AARGM–ER.	Missile	N/A	N/A	TBD	7
Multipurpose Booster	Booster	N/A	N/A	TBD	1
JDAM ER	Bomb	N/A	N/A	Water Surface and Barge.	3

TABLE 15—PROPOSED MUNITIONS FOR OTHER 780 TEST SQUADRON TESTING IN THE EGTTR—Continued

Type	Category	Net explosive weight (lb)/(kg)	Detonation scenario	Target type	Annual quantity
Navy HAAWC	Torpedo	N/A	N/A	Water Surface	2

AARGM–ER = Advanced Anti-Radiation Guided Missile—Extended Range; EGTTR = Eglin Gulf Test and Training Range; Guided Bomb Unit; HOB = height of burst; HAAWC = High Altitude Anti-Submarine Warfare Weapon Capability; JDAM = Joint Direct Attack Munition; lb = pound(s); LSDB = Laser Small-Diameter Bomb; N/A = not applicable; SDB = Small-Diameter Bomb; SiAW = Stand-in Attack Weapon; TBD = to be determined.

The 96 OG proposes to continue expending approximately nine inert bombs a year in the EGTTR for testing purposes. The bombs are expected to be up to 2,000 lb (907 kg) in total weight. For the impact analysis, the bombs to be used by the 96 OG in the EGTTR during the 2023–2030 mission period are assumed to be Mk–84 2,000 lb (907 kg) General Purpose (GP) inert bombs (Table 16).

TABLE 16—PROPOSED MUNITIONS FOR INERT BOMB TESTING IN THE EGTTR

Type	Category	Net explosive weight (lb)	Detonation scenario	Annual quantity
Mk-84 (GP 2,000 lb) [a]	Bomb	N/A	N/A	9

[a] Assumed for impact analysis.
EGTTR = Eglin Gulf Test and Training Range; GP = General Purpose; lb = pound(s); Mk = Mark; N/A = not applicable.

Naval School Explosive Ordnance Disposal (NAVSCOLEOD)

NAVSCOLEOD proposes to conduct training missions in the EGTTR which would include Countermeasures (MCM) exercises to teach NAVSCOLEOD students techniques for neutralizing mines underwater (Table 17). Underwater MCM training exercises are conducted in nearshore waters and primarily involve diving and placing small explosive charges adjacent to inert mines by hand; the detonation of such charges disables live mines. NAVSCOLEOD training is conducted offshore of Santa Rosa Island and in other locations and has not yet extended into the EGTTR. NAVSCOLEOD training proposed for the 2023–2030 mission period would extend approximately 5 nmi (9.26 km) offshore of Santa Rosa Island, in the EGTTR. Up to 8 MCM training missions would be conducted annually in the EGTTR during the 2023–2030 period. Each mission would involve 4 underwater detonations of charges hand placed adjacent to inert mines, for a total of 32 annual detonations. The MCM neutralization charges consist of C–4 explosives, detonation cord, non-electric blasting caps, time fuzes, and fuze igniters; each charge has a NEW of approximately 20 lb. (9.07 kg). During each mission, with a maximum of 4 charges, would detonate with a delay no greater than 20 minutes between shots. After the final detonation, or a delay greater than 20 minutes, a 30-minute environmental observation would be conducted. Additionally, NAVSCOLEOD proposes to conduct up to 80 floating mine training missions, which would involve detonations of charges on the water surface; these charges would have a NEW of approximately 5 lb (2.3 kg). All NAVSCOLEOD missions would occur only during daylight hours.

TABLE 17—PROPOSED MUNITIONS FOR NAVSCOLEOD TRAINING IN THE EGTTR

Type	Category	Net Explosive weight (lb)/(kg)	Detonation scenario	Annual quantity
Underwater Mine Charge	Charge	[a]20 (9.1)	Subsurface	32
Floating Mine Charge	Charge	[a]5 (2.3)	Surface	80

[a] Estimated

Description of Stressors

The USAF uses the EGTTR for training purposes and for testing of a variety of weapon systems described in this proposed rule. All of the weapons systems considered likely to cause the take of marine mammals involve explosive detonations. Training and testing with these systems may introduce acoustic (sound) energy or shock waves from explosives into the environment. The following section describes explosives detonated at or just below the surface of the water within the EGTTR. Because of the complexity of analyzing sound propagation in the ocean environment, the USAF relied on acoustic models in its environmental analyses and rulemaking/LOA application that considered sound source characteristics and conditions across the EGTTR.

Explosive detonations at the water surface send a shock wave and sound energy through the water and can release gaseous by-products, create an oscillating bubble, or cause a plume of water to shoot up from the water surface. When an air-to-surface munition impacts the water, some of the kinetic energy displaces water in the formation of an impact ''crater'' in the water, some of the kinetic energy is transmitted from the impact point as underwater acoustic energy in a pressure impulse, and the remaining kinetic energy is retained by the munition continuing to move through the water. Following impact, the warhead of a live munition detonates at or slightly below the water surface. The warhead detonation converts explosive

material into gas, further displacing water through the rapid creation of a gas bubble in the water, and creates a much larger pressure wave than the pressure wave created by the impact. These impulse pressure waves radiate from the impact point at the speed of sound in water, roughly 1,500 m per second. If the detonation is sufficiently deep, the gas bubble goes through a series of expansions and contractions, with each cycle being of successively lower energy. When detonations occur below but near the water surface, the initial gas bubble reaches the surface and causes venting, which also dissipates energy through the ejection of water and release of detonation gases into the atmosphere. When a detonation occurs below the water surface after the impact crater has fully or partially closed, water can be violently ejected upward by the pressure impulse and through venting of the gas bubble formed by the detonation.

With radii of up to 15 m, the gas bubbles that would be generated by EGTTR munition detonations would be larger than the depth of detonation but much smaller than the water depth, so all munitions analyzed are considered to fully vent to the surface without forming underwater bubble expansion and contraction cycles. When detonations occur at the water surface, a large portion of the energy and gases that would otherwise form a detonation bubble are reflected upward from the water. Likewise, when a shallow detonation occurs below the water surface but prior to the impact crater closing, considerable energy is reflected upward from the water. As a conservative assumption, no energy losses from surface effects are included in the acoustic model.

The impulsive pressure waves generated by munition impact and warhead detonation radiate spherically and are reflected between the water surface and the sea bottom. There is generally some attenuation of the pressure waves by the sea bottom but relatively little attenuation of the pressure waves by the water surface. As a conservative assumption, the water surface is assumed to be flat (no waves) to allow for maximum reflectivity. Additionally, is it assumed that all detonations occur in the water and none of the detonations occur above the water surface when a munition impacts a target. This conservative assumption implies that all munition energy is imparted to the water rather than the intended targets. The potential impacts of exposure to explosive detonations are discussed in detail in the Potential Effects of Specified Activities on Marine Mammals and their Habitat section.

Description of Marine Mammals in the Area of the Specified Activities

Table 18 lists all species or stocks for which take is expected and proposed to be authorized for this activity, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as 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 (as described in NMFS' SARs). While no serious injury or mortality is expected to occur, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All stocks managed under the MMPA in this region are assessed in NMFS' 2021 U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessment (Hayes *et al.* 2022; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports*). All values presented in Table 18 are the most recent available at the time of publication and are available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*).

TABLE 18—MARINE MAMMALS POTENTIALLY PRESENT IN THE SPECIFIED GEOGRAPHICAL REGION

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	NMFS stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Balaenopteridae (rorquals):						
Rice's whale [4]	*Balaenoptera ricei*	Gulf of Mexico	E/D; Y	51 (0.50; 34; 2017–18)	0.1	0.5
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Common bottlenose dolphin	*Tursiops 939runcates truncatus*	Northern GOM Continental Shelf.	-; N	63,280 (0.11; 57,917; 2018).	556	65
Atlantic spotted dolphin	*Stenella frontalis*	GOM	-; N	21,506 (0.26; 17,339; 2017–18).	166	36

[1] ESA status: Endangered/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[3] These values, found in NMFS' SARs, represent annual levels of human-caused mortality (M) plus serious injury (SI) from all sources combined (*e.g.,* commercial fisheries, ship strike). These values are generally considered minimums because, among other reasons, not all fisheries that could interact with a particular stock are observed and/or observer coverage is very low, and, for some stocks (such as the Atlantic spotted dolphin and continental shelf stock of bottlenose dolphin), no estimate for injury due to the *Deepwater Horizon* oil spill has been included. See SARs for further discussion.

[4] The 2021 final rule refers to the Gulf of Mexico (GOM) Bryde's whale (*Balaenoptera edeni*). These whales were subsequently described as a new species, Rice's whale (*Balaenoptera ricei*) (Rosel *et al.,* 2021).

As indicated above, all three species (with three managed stocks) in Table 18 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. These species are generally categorized into those species that occur over the continental shelf, which is typically considered to extend from shore to the 200-m (656-ft) isobath, and those species that occur beyond the continental shelf break in waters deeper than 200 m. Since water depths range from approximately 30 to 145 m in the existing LIA and from approximately 35 to 95 m in the proposed new East LIA, most of EGTTR activities would occur in waters over the continental shelf. Any live munitions would be set to detonate above the water surface if used outside the LIA beyond the 200-m isobath. Airburst detonations are not considered to affect marine mammals because there is little transmission of pressure or sound energy across the air-water interface. For these reasons, only cetacean species that predominantly occur landward of the 200-m isobath are carried forward in the analysis. These species include common bottlenose dolphin, Atlantic spotted dolphin, and Rice's whale.

Common Bottlenose Dolphin

The common bottlenose dolphin is abundant in the northeastern Gulf from inshore to upper continental slope waters less than 1,000 m deep (Mullin and Fulling 2004). It is the most common cetacean species found in the coastal waters of the Gulf of Mexico. Genetically distinct coastal and offshore ecotypes of the bottlenose dolphin occur in the Gulf of Mexico and in other locations (Hoelzel *et al.* 1998). A total of 36 common bottlenose dolphin stocks have been identified in the northern Gulf of Mexico including coastal, continental shelf, and oceanic stocks, as well as 31 bay, sound, and estuarine stocks (Waring *et al.* 2016). Stocks that may be found near or within the EGTTR include the Gulf of Mexico Northern Coastal, Northern Gulf of Mexico Continental Shelf, and Northern Gulf of Mexico Oceanic stocks, in addition to three inshore stocks, which include the Choctawhatchee Bay, Pensacola/East Bay, and St. Andrew Bay stocks. However, the designated inshore stock areas are landward of the EGTTR boundary; therefore, individuals from these stocks are not anticipated to be exposed to or affected by EGTTR operations. The Gulf of Mexico Northern Coastal Stock inhabits waters from shore to the 20-m (65-ft) isobath and, therefore, has potential to occur within the EGTTR, which starts at 3 nmi (5.5 km) offshore, where water depths can be 20 m or slightly less. However, given that most EGTTR operations would occur in either the existing LIA, where water depths range from approximately 30 to 145 m, or in the proposed East LIA, where water depths range from approximately 35 to 85 m, EGTTR operations are expected to have no appreciable effect on this stock. The Northern Gulf of Mexico Continental Shelf Stock inhabits waters that are 20 to 200 m deep and, therefore, is expected to be the primary bottlenose dolphin stock that occurs in the existing LIA. The Northern Gulf of Mexico Oceanic Stock inhabits waters deeper than 200 m and, therefore, is not expected to be exposed to or affected by EGGTR operations in either LIA.

The bottlenose dolphin reaches a length ranging from about 6 to 13 ft (1.8 to 3.9 m) and a weight ranging from about 300 to 1,400 lb (136 to 635 kg). The diet of bottlenose dolphins consists primarily of fish, squid, and crustaceans. They hunt for prey using a variety of techniques individually and cooperatively. For example, they may work as a group to herd and trap fish as well as use high-frequency echolocation, to catch prey.

Atlantic Spotted Dolphin

The Atlantic spotted dolphin occurs throughout the Atlantic Ocean and the Gulf of Mexico. There is a single stock of the Atlantic spotted dolphin in U.S. Gulf waters, which is the Northern Gulf of Mexico Stock. Animals occur primarily from continental shelf waters of 10–200 m deep to slope waters <500 m deep and were spotted in all seasons during aerial and vessel surveys of the northern Gulf of Mexico (*i.e.,* U.S. Gulf of Mexico; Hansen *et al.* 1996; Mullin and Hoggard 2000; Fulling *et al.* 2003; Mullin and Fulling 2004; Maze-Foley and Mullin 2006). Atlantic spotted dolphins are about 5 to 7.5 ft (1.5 to 2.3 m) long and weigh about 220 to 315 lb (99.8 to 142.8 kg). Their diet consists primarily of small fish, invertebrates, and cephalopods, which they catch using a variety of techniques including echolocation. Atlantic spotted dolphins are social animals and form groups of up to 200 individuals. Most groups consist of fewer than 50 individuals, and in coastal waters groups typically consist of 5 to 15 individuals (NMFS 2021b).

Rice's Whale

The Gulf of Mexico Bryde's whale was listed as endangered throughout its entire range on April 15, 2019, under the Endangered Species Act (ESA). Based on genetic analyses and new morphological information NOAA Fisheries recently revised the common and scientific names to recognize this new species (*Balaenoptera ricei*) as being separate from other Bryde's whale populations (86 FR 47022; August 21, 2021). Rosel and Wilcox (2014) first identified a new, evolutionarily distinct lineage of whale in the Gulf of Mexico. Genetic analysis of whales sampled in the northeastern Gulf of Mexico revealed that this population is evolutionarily distinct from all other whales within the Bryde's whale complex and all other known balaenopterid species (Rosel and Wilcox 2014).

The Rice's whale is the only year-round resident baleen whale species in the Gulf of Mexico. Rosel *et.al.* (2021) reported that based on a compilation of sighting and stranding data from 1992 to 2019, the primary habitat of the Rice's whale is the northeastern Gulf of Mexico, particularly the De Soto Canyon area, at water depths of 150 to 410 m.

Biologically Important Areas (BIAs) include areas of known importance for reproduction, feeding, or migration, or areas where small and resident populations are known to occur (Van Parijs, 2015). Unlike ESA critical habitat, these areas are not formally designated pursuant to any statute or law but are a compilation of the best available science intended to inform impact and mitigation analyses. In 2015, a year round small and resident population BIA for Bryde's whales (later designated as Rice's whales) was identified from the De Soto Canyon along the shelf break to the southeast (LaBrecque *et al.* 2015). The 23,559 km^2 BIA covers waters between 100 and 300 m deep from approximately south of Pensacola to approximately west of Fort Myers, FL (LaBrecque *et al.* 2015). The deepest location where a Rice's whale has been sighted is 408 m (Rosel *et al.* 2021). Habitat for the Rice's whale is currently considered by NMFS to be primarily within the depth range of 100 to 400 m in this part of the Gulf of Mexico (NMFS 2016, 2020a), and in 2019 NMFS delineated a Core Distribution Area (*https://www.fisheries.noaa.gov/resource/map/rices-whale-core-distribution-area-map-gis-data*) based on visual and tag data available through 2019. No critical habitat has yet been designated for the species, and no recovery plan has yet been developed.

The Rice's whale is a medium-sized baleen whale. To date, the largest verified Rice's whale to strand was a lactating female about 12.65 m long; the largest male was 11.26 m (Rosel *et al.* 2021). Little is known about their

foraging ecology and diet. However, data from two Rice's whales suggest they may mostly forage at or near the seafloor.

Unusual Mortality Events (UMEs)

An UME is defined under Section 410(6) of the MMPA as a stranding that is unexpected; it involves a significant die-off of any marine mammal population and demands immediate response. There are currently no UMEs with ongoing investigations in the EGTTR. There was a UME for bottlenose dolphins that was active beginning in February 2019 and closing in November of the same year that included the northern Gulf of Mexico. Dolphins developed lesions that were thought to be caused by exposure to low salinity water stemming from extreme freshwater discharge. This UME is closed.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, etc.). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 19.

TABLE 19—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*)	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary of the ways that components of the specified activity may impact marine mammals and their habitat. The Estimated Take of Marine Mammals section later in this rule includes a quantitative analysis of the number of instances of take that could occur from these activities. The Preliminary Analysis and Negligible Impact Determination section considers the content of this section, the Estimated Take of Marine Mammals section, and the Proposed Mitigation Measures section to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts on individuals are likely to adversely affect the species through effects on annual rates of recruitment or survival.

The USAF has requested authorization for the take of marine mammals that may occur incidental to training and testing activities in the EGTTR. The USAF analyzed potential impacts to marine mammals from air-to-surface operations that involve firing live or inert munitions, including missiles, bombs, and gun ammunition, from aircraft at targets on the water surface in the LOA application as well as the 2022 REA, for which NMFS served as a cooperating agency. The proposed training and testing exercises have the potential to cause take of marine mammals by exposing them to impulsive noise and pressure waves generated by explosive detonation at or near the surface of the water. Exposure to noise or pressure resulting from these detonations could result in non-lethal injury (Level A harassment) or disturbance (Level B harassment). As explained in the Estimated Take of Marine Mammals section, neither mortality nor non-auditory injury are anticipated or authorized.

A summary of the potential impacts of the pressure waves generated by explosive detonations is included below. Following, a brief technical background is provided here on sound, on the characteristics of certain sound types, and on metrics used in this proposal. Last, a brief overview of the potential effects (*e.g.,* tolerance, masking, hearing threshold shift, behavioral disturbance, and stress responses) to marine mammals associated with the USAF's proposed activities is included.

Impacts from Pressure Waves Caused by Explosive Detonations

Exposure to the pressure waves generated by explosive detonations has the potential to cause injury, serious injury, or mortality, although those impacts are not anticipated here. (This conclusion is based on the size, type, depth, and duration of the explosives in combination with the density of marine mammals, which together predict a low probability of exposures, as well as the required mitigation measures, as described in detail the Estimated Take of Marine Mammals section.) The potential acoustic impacts of explosive detonations *(e.g.,* permanent threshold shift (PTS), temporary threshold shift (TTS), and behavioral disturbance) are described in subsequent sections.

Generally speaking, the pressure from munition detonations have the potential to cause mortality, injury, hearing impairment, or behavioral disturbances in marine mammals, depending on the explosive energy released by the munition and the distance of the animal from the detonation. The impulsive noise from these detonations may also cause hearing impairment or behavioral disturbances. The most potentially severe effects would occur close to the detonation point, including tissue damage, barotrauma, or even death. Serious injury or mortality to marine mammals from explosive detonations, if they occurred, which is not expected here, would consist of primary blast injury, which refers to those injuries that result from the compression of a body exposed to a blast wave and which is usually observed as barotrauma of gas-containing structures (*e.g.,* lung and gut) and structural damage to the auditory system (Richmond *et al.* 1973). The near instantaneous high magnitude pressure change near an explosion can injure an animal where tissue material properties significantly differ from the surrounding environment, such as around air-filled cavities in the lungs or gastrointestinal (GI) tract. The gas-containing organs (lungs and GI tract) are most vulnerable to primary blast injury. Severe injuries to these organs are presumed to result in mortality (*e.g.,* severe lung damage may introduce air into the cardiopulmonary vascular system, resulting in lethal air emboli). Large pressure changes at tissue-air interfaces in the lungs and GI tract may cause tissue rupture, resulting in a range of injuries depending on degree of exposure. Recoverable injuries would include slight lung injury, such as capillary interstitial bleeding, and contusions to the GI tract. More severe injuries, such as tissue lacerations, major hemorrhage, organ rupture, or air in the chest cavity (pneumothorax), would significantly reduce fitness and likely cause death in the wild. Rupture of the lung may also introduce air into the vascular system, producing air emboli that can cause a stroke or heart attack and restrict oxygen delivery to critical organs. Susceptibility would increase with depth, until normal lung collapse (due to increasing hydrostatic pressure) and increasing ambient pressures again reduce susceptibility.

Exposures to higher levels of impulse and pressure levels would generally result in greater impacts to an individual animal. However, the effects of noise on marine mammals are highly variable, often depending on species and contextual factors (Richardson *et al.* 1995). As described in the Estimated Take of Marine Mammals section, the more serious impacts (*i.e.,* mortality, serious injury, and non-auditory injury) are not anticipated to result from this action.

The USAF performed a quantitative analysis to estimate the probability that marine mammals could be exposed to the sound and energy from explosions during USAF activities and the effects of those exposures (Appendix A in LOA Application). The effects of underwater explosions on marine mammals depend on a variety of factors including animal size and depth; charge size and depth; depth of the water column; and distance between the animal and the charge. In general, an animal would be less susceptible to injury near the water surface because the pressure wave reflected from the water surface would interfere with the direct path pressure wave, reducing positive pressure exposure. There are a limited number of explosives that would detonate just below the water surface as outlined previously in the section, Description of Stressors. Most explosives would detonate at or near the surface of the water and are unlikely to transfer energy underwater sufficient to result in non-auditory injury (GI injury or lung injury) or mortality. For reasons described in the Estimated Take of Marine Mammals section, NMFS agrees with USAF's analysis that no mortality or serious injury from tissue damage in the form of GI injury or lung injury is anticipated to result from the proposed activities. The USAF did not request, and NMFS does not propose, mortality or serious injury for authorization, and therefore this proposed rule will not discuss it further. For additional details on the criteria for estimating non-auditory physiological impacts on marine mammals due to naval underwater explosions, we refer the reader to the report, Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase III) (U.S. Department of the Navy, 2017e).

Sections 6, 7, and 9 of the USAF's application include summaries of the ways that components of the specified activity may impact marine mammals and their habitat, including specific discussion of potential effects to marine mammals from noise and pressure waves produced through the use explosives detonating at or near the surface. We have reviewed the USAF's discussion of potential effects for accuracy and completeness in its application and refer to that information rather than repeating it in full here. Below we include a summary of the potential effects to marine mammals.

Description of Sound Sources

This section contains a brief technical background on sound, on the characteristics of certain sound types, and on metrics used in this proposal inasmuch as the information is relevant to the specified activity and to a discussion of the potential effects of the specified activity on marine mammals found later in this document. For general information on sound and its interaction with the marine environment, please see Au and Hastings (2008); Richardson *et al.* (1995); and Urick (1983).

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz or cycles per second. Wavelength is the distance between two peaks or corresponding points of a sound wave (length of one cycle). Higher frequency sounds have shorter wavelengths than lower frequency sounds, and typically attenuate (decrease) more rapidly, except in certain cases in shallower water. Amplitude is the height of the sound pressure wave or the ''loudness'' of a sound and is typically described using the relative unit of the decibel (dB). A sound pressure level (SPL) in dB is described as the ratio between a measured pressure and a reference pressure (for underwater sound, this is 1 microPascal (μPa)), and is a logarithmic unit that accounts for large variations in amplitude. Therefore, a relatively small change in dB corresponds to large changes in sound pressure. The source level (SL) represents the SPL referenced at a distance of 1 m from the source (referenced to 1 μPa), while the received level is the SPL at the listener's position (referenced to 1 μPa).

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Root mean square is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick 1983). Root mean square accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

Sound exposure level (SEL; represented as dB re 1 μPa^2-s) represents the total energy in a stated frequency band over a stated time interval or event and considers both intensity and duration of exposure. The per-pulse SEL is calculated over the time window containing the entire pulse (*i.e.,* 100 percent of the acoustic energy). SEL is a cumulative metric; it can be accumulated over a single pulse, or calculated over periods containing multiple pulses. Cumulative SEL represents the total energy accumulated by a receiver over a defined time window or during an event. Peak sound pressure (also referred to as zero-to-peak sound pressure or 0-pk) is the maximum instantaneous sound pressure measurable in the water at a specified distance from the source and is represented in the same units as the rms sound pressure.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in a manner similar to ripples on the surface of a pond and may be either directed in a beam or beams or may radiate in all directions (omnidirectional sources). The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound, which is defined as environmental background sound levels lacking a single source or point (Richardson *et al.* 1995). The sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* wind and waves, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic (*e.g.,* vessels, dredging, construction) sound. A number of sources contribute to ambient sound, including wind and waves, which are a main source of naturally occurring ambient sound for frequencies between 200 Hz and 50 kHz (Mitson 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Precipitation can become an important component of total sound at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times. Marine mammals can contribute significantly to ambient sound levels, as can some fish and snapping shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz. Sources of ambient sound related to human activity include transportation (surface vessels), dredging and construction, oil and gas drilling and production, geophysical surveys, sonar, and explosions. Vessel noise typically dominates the total ambient sound for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly.

The sum of the various natural and anthropogenic sound sources that comprise ambient sound at any given location and time depends not only on the source levels (as determined by current weather conditions and levels of biological and human activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 decibels (dB) from day to day (Richardson *et al.* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals. Details of source types are described in the following text.

Sounds are often considered to fall into one of two general types: Pulsed and non-pulsed (defined in the following). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward 1997 in Southall *et al.* 2007). Please see Southall *et al.* (2007) and NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) Underwater Thresholds for Onset of Permanent and Temporary Threshold Shift (Acoustic Technical Guidance) (NMFS 2018) for an in-depth discussion of these concepts. The distinction between these two sound types is not always obvious, as certain signals share properties of both pulsed and non-pulsed sounds. A signal near a source could be categorized as a pulse, but due to propagation effects as it moves farther from the source, the signal duration becomes longer (*e.g.,* Greene and Richardson 1988).

Pulsed sound sources (*e.g.,* airguns, explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI 1986, 2005; Harris 1998; NIOSH 1998; ISO 2003) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds can be tonal, narrowband or broadband, brief or prolonged, and may be either continuous or intermittent (ANSI, 1995; NIOSH, 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.,* rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems. The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

Hearing Loss—Threshold Shift

Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift, which is the loss of hearing sensitivity at certain frequency ranges after cessation of sound (Finneran 2015). Threshold shift can be permanent (PTS), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.* 2007).

Irreparable damage to the inner or outer cochlear hair cells may cause PTS; however, other mechanisms are also involved, such as exceeding the elastic limits of certain tissues and membranes in the middle and inner ears and resultant changes in the chemical composition of the inner ear fluids (Southall *et al.* 2007). PTS is considered an injury and Level A harassment while TTS is considered to be Level B harassment and not considered an injury.

Hearing loss, or threshold shift (TS), is typically quantified in terms of the amount (in decibels) that hearing thresholds at one or more specified frequencies are elevated, compared to their pre-exposure values, at some specific time after the noise exposure. The amount of TS measured usually decreases with increasing recovery time—the amount of time that has elapsed since a noise exposure. If the TS eventually returns to zero (*i.e.,* the hearing threshold returns to the pre-exposure value), the threshold shift is called a TTS. If the TS does not completely recover (the threshold remains elevated compared to the pre-exposure value), the remaining TS is a PTS.

Hearing loss has only been studied in a few species of marine mammals, although hearing studies with terrestrial mammals are also informative. There are no direct measurements of hearing loss in marine mammals due to exposure to explosive sources. The sound resulting from an explosive detonation is considered an impulsive sound and shares important qualities (*i.e.,* short duration and fast rise time) with other impulsive sounds such as those produced by air guns. General research findings regarding TTS and PTS in marine mammals, as well as findings specific to exposure to other impulsive sound sources, are discussed below.

Many studies have examined noise-induced hearing loss in marine mammals (see Finneran (2015) and Southall *et al.* (2019) for summaries), however for cetaceans, published data on the onset of TTS are limited to the captive bottlenose dolphin, beluga, harbor porpoise, and Yangtze finless porpoise, and, for pinnipeds in water, measurements of TTS are limited to harbor seals, elephant seals, and California sea lions. These studies examine hearing thresholds measured in marine mammals before and after exposure to intense sounds. The difference between the pre-exposure and post-exposure thresholds can then be used to determine the amount of threshold shift at various post-exposure times. NMFS has reviewed the available studies, which are summarized below:

- The method used to test hearing may affect the resulting amount of measured TTS, with neurophysiological measures producing larger amounts of TTS compared to psychophysical measures (Finneran *et al.* 2007; Finneran 2015).
- The amount of TTS varies with the hearing test frequency. As the exposure SPL increases, the frequency at which the maximum TTS occurs also increases (Kastelein *et al.* 2014). For high-level exposures, the maximum TTS typically occurs one-half to one octave above the exposure frequency (Finneran *et al.* 2007; Mooney *et al.* 2009a; Nachtigall *et al.* 2004; Popov *et al.* 2011; Popov *et al.* 2013; Schlundt *et al.* 2000; Kastelein *et al.* 2021b; Kastelein *et al.* 2022). The overall spread of TTS from tonal exposures can therefore extend over a large frequency range (*i.e.,* narrowband exposures can produce broadband (greater than one octave) TTS).
- The amount of TTS increases with exposure SPL and duration and is correlated with SEL, especially if the range of exposure durations is relatively small (Kastak *et al.* 2007; Kastelein *et al.* 2014b; Popov *et al.* 2014). As the exposure duration increases, however, the relationship between TTS and SEL begins to break down. Specifically, duration has a more significant effect on TTS than would be predicted on the basis of SEL alone (Finneran *et al.* 2010a; Kastak *et al.* 2005; Mooney *et al.* 2009a). This means if two exposures have the same SEL but different durations, the exposure with the longer duration (thus lower SPL) will tend to produce more TTS than the exposure with the higher SPL and shorter duration. In most acoustic impact assessments, the scenarios of interest involve shorter duration exposures than the marine mammal experimental data from which impact thresholds are derived; therefore, use of SEL tends to over-estimate the amount of TTS. Despite this, SEL continues to be used in many situations because it is relatively simple, more accurate than SPL alone, and lends itself easily to scenarios involving multiple exposures with different SPL.
- Gradual increases of TTS may not be directly observable with increasing exposure levels before the onset of PTS (Reichmuth *et al.* 2019). Similarly, PTS can occur without measurable behavioral modifications (Reichmuth *et al.* 2019).
- The amount of TTS depends on the exposure frequency. Sounds at low frequencies, well below the region of best sensitivity, are less hazardous than those at higher frequencies, near the region of best sensitivity (Finneran and Schlundt, 2013). The onset of TTS—defined as the exposure level necessary to produce 6 dB of TTS (*i.e.,* clearly above the typical variation in threshold measurements)—also varies with exposure frequency. At low frequencies, onset-TTS exposure levels are higher compared to those in the region of best sensitivity. For example, for harbor porpoises exposed to one-sixth octave noise bands at 16 kHz (Kastelein *et al.* 2019a), 32 kHz (Kastelein *et al.* 2019b), 63 kHz (Kastelein *et al.* 2020a), and 88.4 kHz (Kastelein *et al.* 2020b), less susceptibility to TTS was found as frequency increased, whereas exposure frequencies below ~6.5 kHz showed an increase in TTS susceptibility as frequency increased and approached the region of best sensitivity. Kastelein *et al.* (2020b) showed a much higher onset of TTS for a 88.5 kHz exposure as compared to lower exposure frequencies (*i.e.,* 16 kHz (Kastelein *et al.,* 2019) 1.5 kHz and 6.5 kHz (Kastelein *et al.* 2020a)). For the 88.4 kHz test frequency, a 185 dB re 1 micropascal squared per second (μPa^2 -s) exposure resulted in 3.6 dB of TTS, and a 191 dB re 1 μPa^2 -s exposure produced 5.2 dB of TTS at 100 kHz and 5.4 dB of TTS at 125 kHz. Together, these new studies demonstrate that the criteria for high-frequency (HF) cetacean auditory impacts is likely to be conservative.
- TTS can accumulate across multiple exposures, but the resulting TTS will be less than the TTS from a single, continuous exposure with the same SEL (Finneran *et al.* 2010a; Kastelein *et al.* 2014b; Kastelein *et al.* 2015b; Mooney *et al.* 2009b). This means that TTS predictions based on the total, cumulative SEL will overestimate the amount of TTS from intermittent exposures such as sonars and impulsive sources. The importance of duty cycle in predicting the likelihood of TTS is demonstrated further in Kastelein *et al.* (2021b). The authors found that reducing the duty cycle of a sound generally reduced the potential for TTS in California sea lions, and that, further, California sea lions are more susceptible to TTS than previously believed at the 2 and 4 kHz frequencies tested.
- The amount of observed TTS tends to decrease with increasing time following the exposure; however, the relationship is not monotonic (*i.e.,* increasing exposure does not always increase TTS). The time required for complete recovery of hearing depends on the magnitude of the initial shift; for relatively small shifts recovery may be complete in a few minutes, while large

shifts (*e.g.,* approximately 40 dB) may require several days for recovery. Recovery times are consistent for similar-magnitude TTS, regardless of the type of fatiguing sound exposure (impulsive, continuous noise band, or sinusoidal wave; (Kastelein *et al.* 2019c)). Under many circumstances TTS recovers linearly with the logarithm of time (Finneran *et al.,* 2010a, 2010b; Finneran and Schlundt 2013; Kastelein *et al.* 2012a; Kastelein *et al.* 2012b; Kastelein *et al.* 2014b; Kastelein *et al.* 2014c; Popov *et al.* 2011; Popov *et al.* 2013; Popov *et al.* 2014). This means that for each doubling of recovery time, the amount of TTS will decrease by the same amount (e.g.*,* 6 dB recovery per doubling of time).

Nachtigall *et al.* (2018) and Finneran (2018) describe the measurements of hearing sensitivity of multiple odontocete species (bottlenose dolphin, harbor porpoise, beluga, and false killer whale) when a relatively loud sound was preceded by a warning sound. These captive animals were shown to reduce hearing sensitivity when warned of an impending intense sound. Based on these experimental observations of captive animals, the authors suggest that wild animals may dampen their hearing during prolonged exposures or if conditioned to anticipate intense sounds. Another study showed that echolocating animals (including odontocetes) might have anatomical specializations that might allow for conditioned hearing reduction and filtering of low-frequency ambient noise, including increased stiffness and control of middle ear structures and placement of inner ear structures (Ketten *et al.* 2021). Finneran recommends further investigation of the mechanisms of hearing sensitivity reduction in order to understand the implications for interpretation of existing TTS data obtained from captive animals, notably for considering TTS due to short duration, unpredictable exposures.

Marine mammal TTS data from impulsive sources are limited. Two studies with measured TTS of 6 dB or more, with Finneran *et al.* (2002) reporting behaviorally measured TTSs of 6 and 7 dB in a beluga exposed to single impulses from a seismic water gun, and with Lucke *et al.* (2009) reporting Audio-evoked Potential measured TTS of 7–20 dB in a harbor porpoise exposed to single impulses from a seismic air gun. Kastelein *et al.* (2017) quantified TTS caused by exposure to 10–20 consecutive shots from 2 airguns simultaneously in harbor porpoises. Statistically significant initial TTS (1–4 min after sound exposure stopped) of ~4.4 dB occurred. However, recovery occurred within 12 min post-exposure.

Several impulsive noise exposure studies have also been conducted without behaviorally measurable TTS. Specifically, Finneran *et al.* (2000) exposed dolphins and belugas to single impulses from an explosion simulator, and Finneran *et al.* (2015) exposed three dolphins to sequences of 10 impulses from a seismic air gun (maximum cumulative SEL = 193–195 dB re 1 μPa^2s, peak SPL =196–210 dB re 1 µPa) without measurable TTS. The proposed activities include both TTS and a limited amount of PTS in some marine mammals.

Behavioral Disturbance

Behavioral responses to sound are highly variable and context-specific. Many different variables can influence an animal's perception of and response to an acoustic event. An animal's prior experience with a sound or sound source affects whether it is less likely (habituation) or more likely (sensitization) to respond to certain sounds in the future (animals can also be innately predisposed to respond to certain sounds in certain ways) (Southall *et al.* 2007). Related to the sound itself, the perceived nearness of the sound, bearing of the sound (approaching vs. retreating), the similarity of a sound to biologically relevant sounds in the animal's environment (*i.e.,* calls of predators, prey, or conspecifics), and familiarity of the sound may affect the way an animal responds to the sound (Southall *et al.*2007, DeRuiter *et al.* 2013). Individuals (of different age, gender, reproductive status, *etc.*) among most populations will have variable hearing capabilities, and differing behavioral sensitivities to sounds that will be affected by prior conditioning, experience, and current activities of those individuals. Often, specific acoustic features of the sound and contextual variables (*i.e.,* proximity, duration, or recurrence of the sound or the current behavior that the marine mammal is engaged in or its prior experience), as well as entirely separate factors such as the physical presence of a nearby vessel, may be more relevant to the animal's response than the received level alone.

Controlled experiments with captive marine mammals have shown pronounced behavioral reactions, including avoidance of loud underwater sound sources (Ridgway *et al.* 1997; Finneran *et al.* 2003). Observed responses of wild marine mammals to loud pulsed sound sources (typically seismic guns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds 2002; Thorson and Reyff 2006; see also Gordon *et al.,* 2004; Nowacek *et al.* 2007).

The onset of noise can result in temporary, short-term changes in an animal's typical behavior and/or avoidance of the affected area. These behavioral changes may include: reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior; avoidance of areas where sound sources are located; and/or flight responses (Richardson *et al.* 1995).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could potentially be biologically significant if the change affects growth, survival, or reproduction. The onset of behavioral disturbance from anthropogenic sound depends on both external factors (characteristics of sound sources and their paths) and the specific characteristics of the receiving animals (hearing, motivation, experience, demography) and is difficult to predict (Southall *et al.* 2007).

Ellison *et al.* (2011) outlined an approach to assessing the effects of sound on marine mammals that incorporates contextual-based factors. The authors recommend considering not just the received level of sound, but also the activity the animal is engaged in at the time the sound is received, the nature and novelty of the sound (*i.e.,* is this a new sound from the animal's perspective), and the distance between the sound source and the animal. They submit that this ''exposure context,'' as described, greatly influences the type of behavioral response exhibited by the animal. Forney *et al.* (2017) also point out that an apparent lack of response (*e.g.,* no displacement or avoidance of a sound source) may not necessarily mean there is no cost to the individual or population, as some resources or habitats may be of such high value that animals may choose to stay, even when experiencing stress or hearing loss. Forney *et al.* (2017) recommend considering both the costs of remaining in an area of noise exposure such as TTS, PTS, or masking, which could lead to an increased risk of predation or other threats or a decreased capability to forage, and the costs of displacement,

including potential increased risk of vessel strike, increased risks of predation or competition for resources, or decreased habitat suitable for foraging, resting, or socializing. This sort of contextual information is challenging to predict with accuracy for ongoing activities that occur over large spatial and temporal expanses. However, distance is one contextual factor for which data exist to quantitatively inform a take estimate, and the method for predicting Level B harassment in this proposed rule does consider distance to the source. Other factors are often considered qualitatively in the analysis of the likely consequences of sound exposure, where supporting information is available.

Exposure of marine mammals to sound sources can result in, but is not limited to, no response or any of the following observable responses: increased alertness; orientation or attraction to a sound source; vocal modifications; cessation of feeding; cessation of social interaction; alteration of movement or diving behavior; habitat abandonment (temporary or permanent); and, in severe cases, panic, flight, stampede, or stranding, potentially resulting in death (Southall *et al.* 2007). A review of marine mammal responses to anthropogenic sound was first conducted by Richardson (1995). More recent reviews (Nowacek *et al.* 2007; DeRuiter *et al.* 2012 and 2013; Ellison *et al.* 2012; Gomez *et al.* 2016) address studies conducted since 1995 and focused on observations where the received sound level of the exposed marine mammal(s) was known or could be estimated. Gomez *et al.* (2016) conducted a review of the literature considering the contextual information of exposure in addition to received level and found that higher received levels were not always associated with more severe behavioral responses and vice versa. Southall *et al.* (2016) states that results demonstrate that some individuals of different species display clear yet varied responses, some of which have negative implications, while others appear to tolerate high levels, and that responses may not be fully predictable with simple acoustic exposure metrics (*e.g.,* received sound level). Rather, the authors state that differences among species and individuals along with contextual aspects of exposure (*e.g.,* behavioral state) appear to affect response probability.

During an activity with a series of explosions (not concurrent multiple explosions shown in a burst), an animal is expected to exhibit a startle reaction to the sound of the first detonation followed by another behavioral response after multiple detonations. At close ranges and high sound levels, avoidance of the area around the explosions is the assumed behavioral response in most cases. In certain circumstances, exposure to loud sounds can interrupt feeding behaviors and potentially decrease foraging success, interfere with communication or migration, or disrupt important reproductive or young-rearing behaviors, among other effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant for fitness if they last more than one diel cycle or recur on subsequent days (Southall *et al.* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.* 2007). It is important to note the difference between behavioral reactions lasting or recurring over multiple days and anthropogenic activities lasting or recurring over multiple days. For example, just because a given anthropogenic activity lasts for multiple days (*e.g.,* a training event) does not necessarily mean that individual animals will be either exposed to those activity-related stressors (*i.e.,* explosions) for multiple days or further exposed at a level would result in sustained multi-day substantive behavioral responses.

Auditory Masking

Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, or navigation) (Richardson *et al.* 1995; Erbe and Farmer 2000; Tyack 2000; Erbe *et al.* 2016). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age, or TTS hearing loss), and existing ambient noise and propagation conditions. Masking these acoustic signals can disturb the behavior of individual animals, groups of animals, or entire populations. Masking can lead to behavioral changes including vocal changes (*e.g.,* Lombard effect, increasing amplitude, or changing frequency), cessation of foraging, and leaving an area, to both signalers and receivers, in an attempt to compensate for noise levels (Erbe *et al.* 2016). Masking only occurs in the presence of the masking noise and does not persist after the cessation of the noise. Masking may lead to a change in vocalizations or a change in behavior (*e.g.,* cessation of foraging, leaving an area). Masking by explosive detonation sounds would not be expected, given the short duration, and there are no direct observations of masking in marine mammals due to exposure to sound from explosive detonations.

Physiological Stress

There is growing interest in monitoring and assessing the impacts of stress responses to sound in marine animals. Classic stress responses begin when an animal's central nervous system perceives a potential threat to its homeostasis. That perception triggers stress responses regardless of whether a stimulus actually threatens the animal; the mere perception of a threat is sufficient to trigger a stress response (Moberg 2000; Sapolsky *et al.* 2005; Seyle 1950). Once an animal's central nervous system perceives a threat, it mounts a biological response or defense that consists of a combination of the four general biological defense responses: behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses.

According to Moberg (2000), in the case of many stressors, an animal's first and sometimes most economical (in terms of biotic costs) response is behavioral avoidance of the potential stressor or avoidance of continued exposure to a stressor. An animal's second line of defense to stressors involves the sympathetic part of the autonomic nervous system and the classical ''fight or flight'' response which includes the cardiovascular system, the gastrointestinal system, the exocrine glands, and the adrenal medulla to produce changes in heart rate, blood pressure, and gastrointestinal activity that humans commonly

associate with ''stress.'' These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's welfare.

An animal's third line of defense to stressors involves its neuroendocrine systems or sympathetic nervous systems; the system that has received the most study has been the hypothalamus-pituitary-adrenal system (also known as the HPA axis in mammals or the hypothalamus-pituitary-interrenal axis in fish and some reptiles). Unlike stress responses associated with the autonomic nervous system, virtually all neuro-endocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction (Moberg, 1987; Rivier and Rivest 1991), altered metabolism (Elasser *et al.* 2000), reduced immune competence (Blecha 2000), and behavioral disturbance (Moberg 1987; Blecha 2000). Increases in the circulation of glucocorticosteroids (cortisol, corticosterone, and aldosterone in marine mammals; see Romano *et al.* 2004) have been equated with stress for many years.

Because there are many unknowns regarding the occurrence of acoustically induced stress responses in marine mammals, it is assumed that any physiological response (*e.g.,* hearing loss or injury) or significant behavioral response is also associated with a stress response.

Munition Strike

Another potential risk to marine mammals is direct strike by ordnance, in which the ordnance physically hits an animal. Based on the dispersed distribution of marine mammals in the open ocean, the relatively short amount of time they spend at the water surface compared with the time they spend underwater, and the annual quantities of munitions proposed to be expended, it is highly improbable that a marine mammal would be directly struck by a munition during EGTTR operations. This conclusion, which NMFS concurs with, was reached in the previous 2015 REA (USAF 2015). The Air Force did not request take of marine mammals by direct munition strikes, as it is not anticipated, and it is not analyzed further.

Marine Mammal Habitat

Impacts on marine mammal habitat are part of the consideration in making a finding of negligible impact on the species and stocks of marine mammals. Habitat includes, but is not necessarily limited to, rookeries, mating grounds, feeding areas, and areas of similar significance. We have preliminarily determined USAF's proposed activities would not result in permanent effects on the habitats used by the marine mammals in the EGTTR, including the availability of prey (*i.e.* fish and invertebrates). While it is anticipated that the proposed activity may result in marine mammals avoiding certain areas due to temporary ensonification, any impact to habitat is temporary and reversible and was considered in further detail earlier in this document, as behavioral modification. The main impact associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals, previously discussed in this proposed rule.

Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, zooplankton). Marine mammal prey varies by species, season, and location and, for some species, is not well documented. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Effects on Fish—Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.,* Zelick *et al.* 1999; Fay 2009). The most likely effects on fishes exposed to loud, intermittent, low-frequency sounds are behavioral responses (*i.e.,* flight or avoidance). Short duration, sharp sounds (such as pile driving or air guns) can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to acoustic sources depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fishes, like other vertebrates, have a variety of different sensory systems to glean information from ocean around them (Astrup and Mohl 1993; Astrup 1999; Braun and Grande 2008; Carroll *et al.* 2017; Hawkins and Johnstone 1978; Ladich and Popper 2004; Ladich and Schulz-Mirbach 2016; Nedwell *et al.* 2004; Popper *et al.* 2003; Popper *et al.* 2005). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.* 2008) (terrestrial vertebrates generally only detect pressure). Most marine fishes primarily detect particle motion using the inner ear and lateral line system, while some fishes possess additional morphological adaptations or specializations that can enhance their sensitivity to sound pressure, such as a gas-filled swim bladder (Braun and Grande 2008; Popper and Fay 2011).

Hearing capabilities vary considerably between different fish species with data only available for just over 100 species out of the 34,000 marine and freshwater fish species (Eschmeyer and Fong 2016). In order to better understand acoustic impacts on fishes, fish hearing groups are defined by species that possess a similar continuum of anatomical features which result in varying degrees of hearing sensitivity (Popper and Hastings 2009a). There are four hearing groups defined for all fish species (modified from Popper *et al.* 2014) within this analysis and they include: fishes without a swim bladder (*e.g.,* flatfish, sharks, rays, *etc.*); fishes with a swim bladder not involved in hearing (*e.g.,* salmon, cod, pollock, *etc.*); fishes with a swim bladder involved in hearing (*e.g.,* sardines, anchovy, herring, *etc.*); and fishes with a swim bladder involved in hearing and high-frequency hearing (*e.g.,* shad and menhaden). Currently, less data are available to estimate the range of best sensitivity for fishes without a swim bladder.

In terms of behavioral responses of fish, Juanes *et al.* (2017) discuss the potential for negative impacts from anthropogenic soundscapes on fish, but the authors' focus was on broader based sounds, such as ship and boat noise sources. Occasional behavioral reactions to intermittent explosions occurring at or near the surface are unlikely to cause long-term consequences for individual fish or populations; there are no detonations of explosives occurring underwater from the proposed activities. Fish that experience hearing loss as a result of exposure to explosions may have a reduced ability to detect relevant sounds, such as predators, prey, or social vocalizations. However, PTS has not been known to occur in fishes and any hearing loss in fish may be as temporary as the timeframe required to repair or replace the sensory cells that were damaged or destroyed (Popper *et al.* 2005; Popper *et al.* 2014; Smith *et al.* 2006). It is not known if damage to auditory nerve fibers could occur, and if so, whether fibers would recover during this process. It is also possible for fish to be injured or killed by an explosion in the immediate

vicinity of the surface from dropped or fired ordnance. Physical effects from pressure waves generated by detonations at or near the surface could potentially affect fish within proximity of training or testing activities. The shock wave from an explosion occurring at or near the surface may be lethal to fish at close range, causing massive organ and tissue damage and internal bleeding (Keevin and Hempen, 1997). At greater distance from the detonation point, the extent of mortality or injury depends on a number of factors including fish size, body shape, orientation, and species (Keevin and Hempen, 1997; Wright, 1982). At the same distance from the source, larger fish are generally less susceptible to death or injury, elongated forms that are round in cross-section are less at risk than deep-bodied forms, and fish oriented sideways to the blast suffer the greatest impact (Edds-Walton and Finneran 2006; Wiley *et al.* 1981; Yelverton *et al.* 1975). Species with gas-filled organs are more susceptible to injury and mortality than those without them (Gaspin, 1975; Gaspin *et al.* 1976; Goertner *et al.* 1994).

Training and testing exercises involving explosions at or near the surface are dispersed in space and time; therefore, repeated exposure of individual fishes are unlikely. Mortality and injury effects to fishes from explosives would be localized around the area of a given explosion at or above the water surface, but only if individual fish and the explosive at the surface were co-located at the same time. Fishes deeper in the water column or on the bottom would not be affected by surface explosions. Most acoustic effects, if any, are expected to be short term and localized. Long-term consequences for fish populations, including key prey species within the EGTTR Area, would not be expected.

Effects on Invertebrates—In addition to fish, prey sources such as marine invertebrates could potentially be impacted by sound stressors as a result of the proposed activities. However, most marine invertebrates' ability to sense sounds is very limited. In most cases, marine invertebrates would not respond to impulsive sounds. Data on response of invertebrates such as squid, another marine mammal prey species, to anthropogenic sound has been documented (de Soto 2016; Sole *et al.* 2017). Explosions could kill or injure nearby marine invertebrates. Vessels also have the potential to impact marine invertebrates by disturbing the water column or sediments, or directly striking organisms (Bishop 2008). The propeller wash (water displaced by propellers used for propulsion) from vessel movement and water displaced from vessel hulls can potentially disturb marine invertebrates in the water column and are a likely cause of zooplankton mortality (Bickel *et al.* 2011). The localized and short-term exposure to explosions or vessels at or near the surface could displace, injure, or kill zooplankton, invertebrate eggs or larvae, and macro-invertebrates. However, mortality or long-term consequences for a few animals is unlikely to have measurable effects on overall populations. As with fish, cumulatively individual and population-level impacts from exposure to explosives at or above the water surface are not anticipated, and impacts would be short term and localized, and would likely be inconsequential to invertebrate populations, and to the marine mammals that use them as prey.

Expended Materials—Military expended materials resulting from training and testing activities could potentially result in minor long-term changes to benthic habitat, however the impacts of small amounts of expended materials are unlikely to have measurable effects on overall populations. Military expended materials may be colonized over time by benthic organisms that prefer hard substrate and would provide structure that could attract some species of fish or invertebrates.

Overall, the combined impacts of explosions and military expended materials resulting from the proposed activities would not be expected to have measurable effects on populations of marine mammal prey species. Prey species exposed to sound might move away from the sound source or show no obvious direct effects at all, but a rapid return to normal recruitment, distribution, and behavior is anticipated. Long-term consequences to fish or marine invertebrate populations would not be expected as a result of exposure to sounds or vessels in the EGTTR.

Acoustic Habitat—Acoustic habitat is the soundscape which encompasses all of the sound present in a particular location and time, as a whole, when considered from the perspective of the animals experiencing it. Animals produce sound for, or listen for sounds produced by, conspecifics (communication during feeding, mating, and other social activities), other animals (finding prey or avoiding predators), and the physical environment (finding suitable habitats, navigating). Together, sounds made by animals and the geophysical environment (*e.g.,* produced by earthquakes, lightning, wind, rain, waves) make up the natural contributions to the total acoustics of a place. These acoustic conditions, termed acoustic habitat, are one attribute of an animal's total habitat.

Soundscapes are also defined by, and acoustic habitat influenced by, the total contribution of anthropogenic sound. This may include incidental emissions from sources, such as vessel traffic or may be intentionally introduced to the marine environment for data acquisition purposes (*e.g.,* as in the use of air gun arrays) or USAF training and testing purposes (as in the use of explosives). Anthropogenic noise varies widely in its frequency, content, duration, and loudness, and these characteristics greatly influence the potential habitat-mediated effects to marine mammals, which may range from local effects for brief periods of time to chronic effects over large areas and for long durations. Depending on the extent of effects to habitat, animals may alter their communications signals (thereby potentially expending additional energy) or miss acoustic cues (either conspecific or adventitious). Problems arising from a failure to detect cues are more likely to occur when noise stimuli are chronic and overlap with biologically relevant cues used for communication, orientation, and predator/prey detection (Francis and Barber, 2013). For more detail on these concepts see Pijanowski *et al.* 2011; Francis and Barber 2013; Lillis *et al.* 2014. We do not anticipate these problems arising from at or near surface explosions during training and testing activities as they would be either widely dispersed or concentrated in small areas for shorter periods of time. Sound produced from training and testing activities in the EGTTR would be temporary and transitory; the affected area would be expected to immediately return to the original state when these activities cease.

Marine Water Quality—Training and testing activities may introduce water quality constituents into the water column. Metals are the dominant constituent by weight of bombs, missiles, gun ammunition, and other munitions, including inert munitions, used during EGTTR training and testing operations. Some targets used during EGTTR missions also contain metals, including CONEX and hopper barge targets used for PSW tests and certain components of remotely controlled target boats. Metals contained in casing fragments of detonated munitions, intact inert munitions, unexploded ordnance, and other mission-related debris will corrode from exposure to seawater. The

rate of corrosion depends on the metal type and the extent to which the item is directly exposed to seawater, which can be influenced by existing corrosion on the item, and how much the item may be encrusted by marine organisms and/or buried in sediments. Aluminum and steel, which is composed mostly of iron, comprise the bulk of the metal that enters the marine environment from EGTTR operations. Iron and aluminum are relatively benign metals in terms of toxicity. Chromium, lead, and copper, which make up a relatively small percentage of the overall metal input into the marine environment from EGTTR operations, have higher toxicity effects. Through its lifetime in the marine environment, a portion of the overall metal content would dissolve, depending on the solubility of the material. Dissolved metals would readily undergo mixing and dilution and would have no appreciable effect on water quality or marine life within the water column. Metals in particulate form would be released into sediments through the corrosion process. Elevated levels of undissolved metals in sediments would be restricted to a relatively small area around the metal-containing item and any associated impacts to water quality would be negligible.

Munitions used for EGTTR training and testing operations contain a wide variety of explosives, including TNT, RDX, HMX, Composition B, Tritonal, AFX–757, PBXN, and others. During live missions in the EGTTR, explosives can enter the marine environment via high-order detonations, which occur when the munition functions as intended and the vast majority of explosives are consumed; low-order detonations, which occur when the munition partially functions and only a portion of the explosives are consumed; and unexploded munitions, which fail to detonate with no explosives consumed. During high-order detonations, a residual amount of the explosive material, typically less than 1 percent, would be unconsumed and released into the environment (Walsh *et al.* 2011). The majority of live munitions used during EGTTR operations are successfully detonated as intended. During low-order detonations, a residual amount of explosives associated with the detonation and the remaining unconsumed portion of the explosive fill would enter the marine environment. If the munition does not explode, it becomes unexploded ordnance (UXO). In this case, all the explosive material would remain within the munition casing and enter the marine environment with explosives potentially being released due to corrosion or rupture. Explosives and explosives by-products released into the marine environment can be removed via biodegradation, and expended or disposed military munitions on the seafloor do not result in excessive accumulation of explosives in sediments or significant degradation of sediment quality by explosives. Given that high-order detonations consume the vast majority of explosive material in the munition, successful detonations are considered a negligible source of explosives released into the marine environment.

Estimated Take of Marine Mammals

This section indicates the number of takes that NMFS is proposing to authorize, which is based on the maximum amount that is reasonably likely to occur, depending on the type of take and the methods used to estimate it, as described in detail below. NMFS preliminarily agrees that the methods the USAF has put forth described herein to estimate take (including the model, thresholds, and density estimates), and the resulting numbers estimated for authorization, are appropriate and based on the best available science.

All takes are by harassment. For a military readiness activity, the MMPA defines ''harassment'' as (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A Harassment); or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered (Level B Harassment). No serious injury or mortality of marine mammals is expected to occur.

Proposed authorized takes would primarily be in the form of Level B harassment, as use of the explosive sources may result, either directly or as result of TTS, in the disruption of natural behavioral patterns to a point where they are abandoned or significantly altered (as defined specifically at the beginning of this section, but referred to generally as behavioral disruption). There is also the potential for Level A harassment, in the form of auditory injury to result from exposure to the sound sources utilized in training and testing activities. As described in this Estimated Take of Marine Mammals section, no non-auditory injury is anticipated or proposed for authorization, nor is any serious injury or mortality.

Generally speaking, for acoustic impacts NMFS estimates the amount and type of harassment by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be taken by Level B harassment or incur some degree of temporary or permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day or event; (3) the density or occurrence of marine mammals within these ensonified areas; and (4) the number of days of activities or events. This analysis of the potential impacts of the proposed activities on marine mammals was conducted by using the spatial density models developed by NOAA's Southeast Fisheries Science Center for the species in the Gulf of Mexico (NOAA 2022). The density model integrated visual observations from aerial and shipboard surveys conducted in the Gulf of Mexico from 2003 to 2019.

The munitions proposed to be used by each military unit were grouped into mission-day categories so the acoustic impact analysis could be based on the total number of detonations conducted during a given mission to account for the accumulated energy from multiple detonations over a 24-hour period. A total of 19 mission-day categories were developed for the munitions proposed to be used. Using the dBSea underwater acoustic model and associated analyses, the threshold distances associated with Level A harassment (PTS) and Level B (TTS and behavioral) harassment zones were estimated for each mission-day category for each marine mammal species. Takes were estimated based on the area of the harassment zones, predicted animal density, and annual number of events for each mission-day category. To assess the potential impacts of inert munitions on marine mammals, the proposed inert munitions were categorized into four classes based on their impact energies, and the threshold distances for each class were modeled and calculated as described for the mission-day categories.

Acoustic Thresholds

Using the best available science, NMFS has established acoustic thresholds that identify the most appropriate received level of underwater sound above which marine mammals exposed to these sound sources could be reasonably expected to directly experience a disruption in behavior patterns to a point where they are abandoned or significantly altered,

to incur TTS (equated to Level B harassment), or to incur PTS of some degree (equated to Level A harassment). Thresholds have also been developed to identify the pressure levels above which animals may incur non-auditory injury from exposure to pressure waves from explosive detonation. Refer to the Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase III) report (U.S. Department of the Navy 2017c) for detailed information on how the criteria and thresholds were derived.

Hearing Impairment (TTS/PTS), Tissues Damage, and Mortality

NMFS' Acoustic Technical Guidance (NMFS 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The Acoustic Technical Guidance also identifies criteria to predict TTS, which is not considered injury and falls into the Level B harassment category. The USAF's proposed activity only includes the use of impulsive (explosives) sources. These thresholds (Table 20) were developed by compiling and synthesizing the best available science and soliciting input multiple times from both the public and peer reviewers. The references, analysis, and methodology used in the development of the thresholds are described in Acoustic Technical Guidance, which may be accessed at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

Additionally, based on the best available science, NMFS uses the acoustic and pressure thresholds indicated in Table 20 to predict the onset of TTS, PTS, tissue damage, and mortality for explosives (impulsive) and other impulsive sound sources.

TABLE 20—ONSET OF TTS, PTS, TISSUE DAMAGE, AND MORTALITY THRESHOLDS FOR MARINE MAMMALS FOR EXPLOSIVES AND OTHER IMPULSIVE SOURCES

Functional hearing group	Species	Onset TTS	Onset PTS	Mean onset slight GI tract injury	Mean onset slight lung injury	Mean onset mortality
Low-frequency cetaceans	Rice's whale	168 dB SEL (weighted) or 213 dB Peak SPL.	183 dB SEL (weighted) or 219 dB Peak SPL.	237 dB Peak SPL	Equation 1	Equation 2
Mid-frequency cetaceans	Dolphins	170 dB SEL (weighted) or 224 dB Peak SPL.	185 dB SEL (weighted) or 230 dB Peak SPL.	237 dB Peak SPL..		

Notes: Equation 1: $47.5M^{1/3}$ $(1+[D_{Rm}/10.1])^{1/6}$ Pa-sec. Equation 2: $103M^{1/3}$ $(1+[D_{Rm}/10.1])^{1/6}$ Pa-sec. M = mass of the animals in kg; D_{Rm} = depth of the receiver (animal) in meters; SPL = sound pressure level.

Refer to the Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase III) report (U.S. Department of the Navy, 2017c) for detailed information on how the criteria and thresholds were derived. Non-auditory injury (*i.e.,* other than PTS) and mortality are so unlikely as to be discountable under normal conditions and are therefore not considered further in this analysis.

Behavioral Disturbance

Though significantly driven by received level, the onset of Level B harassment by direct behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle, distance), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Ellison *et al.* 2011; Southall *et al.* 2007). Based on what the available science indicates and the practical need to use thresholds based on a factor or factors that are both predictable and measurable for most activities, NMFS uses generalized acoustic thresholds based primarily on received level (and distance in some cases) to estimate the onset of Level B harassment by behavioral disturbance.

Explosives—Explosive thresholds for Level B harassment by behavioral disturbance for marine mammals are the hearing groups' TTS thresholds minus 5 dB (see Table 21 below for the TTS thresholds for explosives) for events that contain multiple impulses from explosives underwater. See the Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase III) report (U.S. Department of the Navy 2017c) for detailed information on how the criteria and thresholds were derived. NMFS continues to concur that this approach represents the best available science for determining behavioral disturbance of marine mammals from multiple explosives. While marine mammals may also respond to single explosive detonations, these responses are expected to more typically be in the form of startle reaction, rather than a disruption in natural behavioral patterns to the point where they are abandoned or significantly altered. On the rare occasion that a single detonation might result in a more severe behavioral response that qualifies as Level B harassment, it would be expected to be in response to a comparatively higher received level. Accordingly, NMFS considers the potential for these responses to be quantitatively accounted for through the application of the TTS threshold, which, as noted above, is 5 dB higher than the behavioral harassment threshold for multiple explosives.

TABLE 21—THRESHOLDS FOR LEVEL B HARASSMENT BY BEHAVIORAL DISTURBANCE FOR EXPLOSIVES FOR MARINE MAMMALS

Medium	Functional hearing group	SEL (weighted)
Underwater	LF	163
Underwater	MF	165

Note: Weighted SEL thresholds in dB re 1 μPa^2s underwater. LF = low-frequency, MF = mid-frequency, HF = high-frequency.

USAF's Acoustic Effects Model

The USAF's Acoustic Effects Model calculates sound energy propagation from explosives during UASF activities in the EGTTR. The net explosive weight (NEW) of a munition at impact can be directly correlated with the energy in the impulsive pressure wave generated by the warhead detonation. The NEWs of munitions addressed as part of this proposed rule range from 0.1 lb (0.04 kg) for small projectiles to 945 lb (428.5kg) for the largest bombs. The explosive materials used in these munitions also vary considerably with different formulations used to produce different intended effects. The primary detonation metrics directly considered and used for modeling analysis are the peak impulse pressure and duration of the impulse. An integration of the

pressure of an impulse over the duration (time) of an impulse provides a measure of the energy in an impulse. Some of the NEWs of certain types of munitions, such as missiles, are associated with the propellant used for the flight of the munition. This propellant NEW is unrelated to the NEW of the warhead, which is the primary source of explosive energy in most munitions. The propellant of a missile fuels the flight phase and is mostly consumed prior to impact. Missile propellant typically has a lower flame speed than warhead explosives and is relatively insensitive to detonation from impacts but burns readily. A warhead detonation provides a high-pressure, high-velocity flame front that may cause burning propellant to detonate; therefore, this analysis assumes that the unconsumed residual propellant that remains at impact contributes to the detonation-induced pressure impulse in the water. The impact analysis assumes that 20 percent of the propellant remains unconsumed in missiles at impact; this assumption is based on input from user groups and is considered a reasonable estimate for the purpose of analysis. The NEW associated with this unconsumed propellant is added to the NEW of the warhead to derive the total energy released by the detonation. Absent a warhead detonation, it is assumed that continued burning or deflagration of unconsumed residual propellant does not contribute to the pressure impulse in the water; this applies to inert missiles that lack a warhead but contain propellant for flight.

In addition to the energy associated with the detonation, energy is also released by the physical impact of the munition with the water. This kinetic energy has been calculated and incorporated into the estimations of munitions energy for both live and inert munitions in this proposed rule. The kinetic energy of the munition at impact is calculated as one half of the munition mass times the square of the munition velocity. The initial impact event contributing to the pressure impulse in water is assumed to be 1 millisecond in duration. To calculate the velocity (and kinetic energy) immediately after impact, the deceleration contributing to the pressure impulse in the water is assumed for all munitions to be 1,500 g-forces, or 48,300 feet per square second over 1 millisecond. A substantial portion of the change in kinetic energy at impact is dissipated as a pressure impulse in the water, with the remainder being dissipated through structural deformation of the munition, heat, displacement of water, and other smaller energy categories. Even with 1,500 g-forces of deceleration, the change in velocity over this short time period is small and is proportional to the impact velocity and munition mass. The impact energy is the portion of the kinetic energy at impact that is transmitted as an underwater pressure impulse, expressed in units of trinitrotoluene-equivalent (TNTeq). The impact energies of the proposed live munitions were calculated and included in their total energy estimations. The impact energies of the inert munitions proposed to be used were also calculated. To assess the potential impacts of inert munitions on marine animals, the inert munitions were categorized based on their impact energies into the following four classes of 2 lb (0.9 kg), 1 lb (0.45 kg), 0.5 lb (0.22 kg), and 0.15 lb (0.07 kg) TNTeq; these values correspond closely to the actual or average impact energy values of the munitions and are rounded for the purpose of analysis. The 2 lb class represents the largest inert bomb, which includes the Mark (Mk)–84 General Purpose (GP), Guided Bomb Unit (GBU)–10, and GBU–31 bombs, whereas the 1 lb class represents the largest inert missile, which is the Air-to-Ground Missile (AGM)–158 Joint Air-to-Surface Standoff Missile (JASSM). The JASSM has greater mass but lower impact energy than the GBU–31; this is because of the JASSM's lower velocity at impact and associated change in velocity over the deceleration period, which contributes to the pressure impulse. The 0.5 lb and 0.15 lb impact energy classes each represent the approximate average impact energy of multiple munitions, with the 0.5 lb class representing munitions with mid-level energies, and the 0.15 lb class representing munitions with the lowest energies (Table 22).

TABLE 22—IMPACT ENERGY CLASSES FOR PROPOSED INERT MUNITIONS

Impact energy class (lb TNT_{eq})/(kg)	Representative munitions	Approximate weight (lb)/(kg)	Approximate velocity (mach)
2 (0.9)	Mk–84, GBU–10, and GBU–31	2,000 (907)	1.1.
1 (0.45)	AGM–158 JASSM	2,250 (1020.3)	0.9.
0.5 (0.22)	GBU–54 and AIM–120	250 to 650 (113.4 to 294.8)	Variable.
0.15 (0.07)	AIM–9, GBU–39, and PGU–15	1 to 285 (0.5 to 129.2)	Variable.

The NEW associated with the physical impact of each munition and the unconsumed propellant in certain munitions is added to the NEW of the warhead to derive the NEW at impact (NEWi) for each live munition. The NEWi of each munition was then used to calculate the peak pressure and pressure decay for each munition. This results in a more accurate estimate of the actual energy released by each detonation. Extensive research since the 1940s has shown that each explosive formulation produces unique correlations to explosive performance metrics. The peak pressure and pressure decay constant depend on the NEW, explosive formulation, and distance from the detonation. The peak pressure and duration of the impulse for each munition can be calculated empirically using similitude equations, with constants used in these equations determined from experimental data (NSWC 2017). The explosive-specific similitude constants and munition-specific NEWi were used for calculating the peak pressure and pressure decay for each munition analyzed. It should be noted that this analysis assumes that all detonations occur in the water and none of the detonations occur above the water surface when a munition impacts a target. This exceptionally conservative assumption implies that all munition energy is imparted to the water rather than the intended targets. See Appendix A in the LOA application for detailed explanations of similitude equations.

The following standard metrics are used to assess underwater pressure and impulsive noise impacts on marine animals:

- *SPL:* The SPL for a given munition can be explicitly calculated at a radial distance using the similitude equations.
- *SEL:* A commercially available software package, dBSea (version 2.3), was used to calculate the SEL for each mission day.
- *Positive Impulse:* This is the time integral of the initial positive phase of

the pressure impulse. This metric provides a measure of energy in the form of time-integrated pressure. Units are typically pascal-seconds (Pa·s) or pounds per square inch (psi) per millisecond (msec) (psi·msec). The positive impulse for a given munition can be explicitly calculated at a given distance using the similitude equations and integrating the pressure over the initial positive phase of the pressure impulse.

The munition-specific peak pressure and pressure decay at various radii were used to determine the species-specific distance to effect threshold for mortality, non-auditory injury, peak pressure–induced permanent threshold shift (PTS) in hearing and peak pressure–induced temporary threshold shift (TTS) in hearing for each species. The munition-specific peak pressures and decays for all munitions in each mission-day category were used as a time-series input in the dBSea underwater acoustic model to determine the distance to effect for cumulative SEL-based (24-hour) PTS, TTS, and behavioral effects for each species for each mission day.

The dBSea model was conducted using a constant sound speed profile (SSP) of 1500 m/s to be both representative of local conditions and to prevent thermocline induced refractions from distorting the analysis results. Salinity was assumed to be 35 parts per thousand (ppt) and pH was 8. The water surface was treated as smooth (no waves) to conservatively eliminate diffraction induced attenuation of sound. Currents and tidal flow were treated as zero. Energy expended on the target and/or on ejecting water or transfer into air was ignored and all weapon energy was treated as going into underwater acoustic energy to be conservative. Finally, the bottom was treated as sand with a sound speed of 1650 m/s and an attenuation of 0.8 dB/wavelength.

The harassment zone is the area or volume of ocean in which marine animals could be exposed to various pressure and impulsive noise levels generated by a surface or subsurface detonation that would result in mortality; non-auditory injury and PTS (Level A harassment impacts); and TTS and behavioral impacts (Level B harassment impacts). The harassment zones for the proposed detonations were estimated using Version 2.3 of the dBSea model for cumulative SEL and using explicit similitude equations for SPL and positive impulse. The characteristics of the impulse noise at the source were calculated based on munition-specific data including munition mass at impact, munition velocity at impact, NEW of warheads, explosive-specific similitude data, and propellant data for missiles. Table 23 presents the source-level SPLs (at r = 1 meter) calculated for the proposed munitions.

TABLE 23—CALCULATED SOURCE SPLS FOR MUNITIONS

Type	Warhead NEW (lb)/(kg)	Modeled explosive	Model NEWi (lm)/(kg)	Peak pressure and decay values		
				Pmax @1 m (psi)	SPL @1 m dB re 1 mPa	Θ msec
AGM–158 JASSM All Variants	240.26 (108.9)	Tritonal	241.36 (109.5)	45961.4858	290.0	0.320
GBU–54 KMU–572C/B, B/B	192 (87.1)	Tritonal	192.3 (87.2)	42101.8577	289.3	0.302
AGM–65 (all variants)	85 (38.5)	Comp B	98.3 (44.6)	37835.4932	288.3	0.200
AIM–120C3	15 (6.8)	PBXN–110	36.18 (13.4)	24704.864	284.6	0.167
AIM–9X Blk I	7.7 (3.5)	PBXN–110	20 (9.1)	19617.2833	282.6	0.143
AGM–114 (All ex R2 with TM(R10))	9 (4.1)	PBXN–110	13.08 (5.9)	16630.2435	281.2	0.128
AGM–179 JAGM	9 (4.1)	PBXN–110	13.08 (5.9)	16630.2435	281.2	0.128
AGM–114 R2 with TM (R10)	8 (3.6)	PBXN–9	13.08 (5.9)	17240.2131	281.5	0.124
AGR–20 (APKWS)	2.3 (1.0)	Comp B	3.8 (1.7)	10187.8419	276.9	0.090
PGU–43 (105 mm)	4.7 (2.1)	Comp B	4.72 (2.1)	11118.8384	277.7	0.095
GBU–69	36 (16.3)	Tritonal	36.1 (16.4)	22074.1015	283.7	0.198
GBU–70	36 (16.3)	Tritonal	36.1 (19.4)	22074.1015	283.7	0.198
GBU–39 SDB (GTV)	0.39 (0.2)	PBXN–9	0.49 (0.2)	4757.6146	270.3	0.054
GBU–53/B (GTV)	0.34 (0.2)	PBXN–9	0.44 (0.2)	4561.06062	270.0	0.053
GBU–12	192 (87.1)	Tritonal	192.3 (87.2)	42101.8577	289.3	0.302
Mk–81 (GP 250 lb)	100 (45.4)	H–6	100 (45.4)	38017.3815	288.4	0.237

θ = shock wave time constant; AGM = Air-to-Ground Missile; AIM = Air Intercept Missile; APKWS = Advanced Precision Kill Weapon System; dB re 1 μPa = decibel(s) referenced to 1 micropascal; FU = Full Up; GBU = Guided Bomb Unit; GP = General Purpose; GTV = Guided Test Vehicle; HACM = Hypersonic Attack Cruise Missile; HE = High Explosive; JASSM = Joint Air-to-Surface Standoff Missile; lb = pound(s); lbm = pound-mass; LSDB = Laser Small-Diameter Bomb; m = meter(s); Mk = Mark; mm = millimeter(s); msec = millisecond(s); NEW = net explosive weight; NEWi = net explosive weight at impact; NLOS = Non-Line-of-Sight; PGU = Projectile Gun Unit; Pmax = shock wave peak pressure; psi = pound(s) per square inch; SDB = Small-Diameter Bomb; SPL = sound pressure level; TM = telemetry.

For SEL analysis, the dBSea model was used with the ray-tracing option for calculating the underwater transmission of impulsive noise sources represented in a time series (1,000,000 samples per second) as calculated using similitude equations (r = 1 meter) for each munition for each mission day. All surface detonations are assumed to occur at a depth of 1 m, and all subsurface detonations, which would include the GBU–10, GBU–24, GBU–31, and subsurface mines, are assumed to occur at a depth of 3 m. The model used bathymetry for LIA with detonations occurring at the center of the LIA with a water depth of 70 m. The seafloor of the LIA is generally sandy, so sandy bottom characteristics for reflectivity and attenuation were used in the dBSea model, as previously described. The model was used to calculate impulsive acoustic noise transmission on one-third octaves from 31.5 hertz to 32 kilohertz. Maximum SELs from all depths projected to the surface were used for the analyses.

The cumulative SEL is based on multiple parameters including the acoustic characteristics of the detonation and sound propagation loss in the marine environment, which is influenced by a number of environmental factors including water depth and seafloor properties. Based on integration of these parameters, the dBSea model predicts the distances at which each marine animal species is estimated to experience SELs associated with the onset of PTS, TTS, and behavioral disturbance. As noted previously, thresholds for the onset of TTS and PTS used in the model and pressure calculations are based on those presented in Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase III) (DoN 2017) for cetaceans with mid- to high-frequency hearing (dolphins) and low-frequency hearing (Rice's whale). Behavioral thresholds are set 5 dB

below the SEL-based TTS threshold. Table 24 shows calculated SPLs and SELs for the designated mission-day categories.

TABLE 24—CALCULATED SOURCE SPLS AND SELS FOR MISSION-DAY CATEGORIES

Mission day	Total warhead NEW, lbm [a] (kg)	Modeled NEWi, lbm/(kg)	Source cumulative SEL, dB	Source peak SPL, dB
A	2402.6 (108.6)	2413.6 (1094.6)	262.1	290
B	1961 (889.3)	2029.9 (920.6)	261.4	289.3
C	1145 (519.2)	1376.2 (624.1)	259.8	288.3
D	562 (254.8)	836.22 (379.2)	257.6	288.3
E	817.88 (370.9)	997.62 (452.0)	257.1	281.5
F	584 (264.8)	584.6 (265.1)	256.2	289.3
G	191(86.6)	191.6 (86.9)	250.4	277.7
H	60.5 (24.7)	61.1 (27.7)	245.2	268.8
I	18.4 (8.3)	30.4 (13.8)	242.5	276.9
J	945 (428.6)	946.8 (429.4)	258.1	294.6
K	Not available	350 (158.7)	253.4	291.5
L	624.52 (283.2)	627.12 (284.4)	256.2	290
M	324 (146.9)	324.9 (147.3)	253.2	283.6
N	219.92 (99.7)	238.08 (107.9)	252	285.3
O	72 (36.6)	104.64 (47.5)	248.3	281.2
P	90 (40.8)	130.8 (59.3)	249.3	281.2
Q	94 (42.6)	94.4 (42.8)	247.5	277.7
R	35.12 (15.9)	35.82 (16.2)	241.7	270.3
S	130 (58.9)	130 (58.9)	249.4	283

[a] lbm = pound-mass.

Mission-Day Categories

The munitions proposed to be used by each military unit were grouped into mission-day categories so the acoustic impact analysis could be based on the total number of detonations conducted during a given mission instead of each individual detonation. This analysis was done to account for the accumulated energy from multiple detonations over a 24-hour period.

The estimated number of mission days assigned to each category was based on historical numbers and projections provided by certain user groups. Although the mission-day categories may not represent the exact manner in which munitions would be used, they provide a conservative range of mission scenarios to account for accumulated energy from multiple detonations. It is important to note that only acoustic energy metrics (SEL) are affected by the accumulation of energy over a 24-hour period. Pressure metrics (*e.g.,* peak SPL and positive impulse) do not accumulate and are based on the highest impulse pressure value within the 24-hour period. Based on the categories developed, the total NEWi per mission day would range from 2,413.6 to 30.4 lb (1,094.6 to 13.8 kg). The highest detonation energy of any single munition used under the USAF's proposed activities would be 945 lb (428.5 kg) NEW, which was also the highest NEW for a single munition in the previous LOA Request. The munitions having this NEW include the GBU–10, GBU–24, and GBU–31.

Note that the types of munitions that would be used for SINKEX testing are controlled information and, therefore, not identified in this LOA Request. For the purpose of analysis, SINKEX exercises are assigned to mission-day category J, which represents a single subsurface detonation of 945 lb NEW. SINKEX exercises would not exceed this NEW. The 2 annual SINKEX exercises are added to the other 8 annual missions involving subsurface detonations of these bombs, resulting in 10 total annual missions under mission-day category J.

As indicated in Table 25, a total of 19 mission-day categories (A through S) were developed a part of this LOA application. The table also contains information on the number of munitions per day, number of mission days per year, annual quantity of munitions and the NEWi per mission day.

TABLE 25—MISSION-DAY CATEGORIES FOR ACOUSTIC IMPACT ANALYSIS

User group	Mission-day category	Munition type	Category	Warhead NEW (lb)/(kg)	NEWi (lb)/kg	Detonation scenario	Munitions per day	Mission days per year	Annual quantity	NEWi per mission day (lb)/(kg)
53 WEG	A	AGM–158D JASSM XR.	Missile	240.26 (108.9)	241.36 (109.4)	Surface	4	1	4	2,413.6 (1,095.9)
		AGM–158B JASSM ER.	Missile	240.26 (108.9)	241.36 (109.4)	Surface	3	1	3	
		AGM–158A JASSM	Missile	240.26 (108.9)	241.36 (109.4)	Surface	3	1	3	
	B	GBU–54 KMU–572C/B.	Bomb (Mk–82)	192 (87.1)	192.3 (87.2)	Surface	4	1	4	2,029.9 (920.5)
		GBU–54 KMU–572B/B.	Bomb (Mk–82)	192 (87.1)	192.3 (87.2)	Surface	4	1	4	
		AGM–65D	Missile	85 (38.5)	98.3 (44.6)	Surface	5	1	5	
	C	AGM–65H2	Missile	85 (37.5)	98.3 (44.6)	Surface	5	1	5	1,376.2 (624.1)
		AGM–65G2	Missile	85 (38.5)	98.3 (44.6)	Surface	5	1	5	
		AGM–65K2	Missile	85 (38.5)	98.3 (44.6)	Surface	4	1	4	
	D	AGM–65L	Missile	85 (38.5)	98.3 (44.6)	Surface	5	1	5	836.22 (379.2)
		AIM–120C3	Missile	15 (6.8)	36.18 (16.4)	Surface	4	1	4	
		AIM–9X Blk I	Missile	7.7 (4.5)	20 (9.1)	Surface	10	1	10	
	E	AGM–114 N–4D with TM.	Missile	9 (4.1)	13.08 (5.9)	Surface	4	1	4	997.62 (452.4)
		AGM–114 N–6D with TM.	Missile	9 (4.1)	13.08 (5.9)	Surface	4	1	4	

TABLE 25—MISSION-DAY CATEGORIES FOR ACOUSTIC IMPACT ANALYSIS—Continued

User group	Mission-day category	Munition type	Category	Warhead NEW (lb)/(kg)	NEWi (lb)/kg	Detonation scenario	Munitions per day	Mission days per year	Annual quantity	NEWi per mission day (lb)/(kg)
		AGM–179 JAGM	Missile	9 (4.1)	13.08 (5.9)	Surface	4	1	4	
		AGM–114 R2 with TM (R10).	Missile	9 (4.1)	13.08 (5.9)	Surface	4	1	4	
		AGM–114 R–9E with TM (R11).	Missile	9 (4.1)	13.08 (5.9)	Surface	4	1	4	
		AGM–114Q with TM	Missile	9 (4.1)	13.08 (5.9)	Surface	4	1	4	
		AGR–20 (APKWS)	Rocket	2.3 (1.0)	3.8 (1.7)	Surface	12	1	12	
		AGM–176	Missile	9 (4.1)	13.08 (5.9)	Surface	4	1	4	
		PGU–43 (105 mm)	Gun Ammunition	4.7 (2.1)	4.72 (2.1)	Surface	100	1	100	
		GBU–69	Bomb	36 (16.3)	36.1 (13.3)	Surface	2	1	2	
		GBU–70	Bomb	36 (16.3)	36.1 (16.3)	Surface	1	1	4	
		AGM–88C w/FTS	Missile	[a] 0.70 (0.3)	0	Surface	2	1	2	
		AGM–88B w/FTS	Missile	[a] 0.70 (0.3)	0	Surface	2	1	2	
		AGM–88F w/FTS	Missile	[a] 0.70 (0.3)	0	Surface	2	1	2	
		AGM–88G w/FTS	Missile	[a] 0.70 (0.3)	0	Surface	2	1	2	
		GBU–39 SDB (GTV)	Bomb	[a] 0.39 (0.2)	0.49 (0.2)	Surface	4	1	4	
		GBU–53/B (GTV)	Bomb	[a] 0.34 (0.2)	0.44 (0.2)	Surface	8	1	8	
AFSOC	F	GBU–12	Bomb (Mk–82)	192 (87.1)	192.3 (87.2)	Surface	2	15	30	584.6 (263.1)
		Mk–81 (GP 250 lb)	Bomb	100 (45.3)	100 (45.3)	Surface	2	15	30	
AFSOC	G	105 mm HE (FU)	Gun Ammunition	4.7 (2.1)	4.72 (2.1)	Surface	30	25 (daytime)	750	191.6 (86.8)
		30 mm HE	Gun Ammunition	0.1 (0.1)	0.1 (0.01)	Surface	500		12,500	
	H	105 mm HE (TR)	Gun Ammunition	0.35 (0.2)	0.37 (0.2)	Surface	30	45 (nighttime)	1,350	61.1 (27.7)
		30 mm HE	Gun Ammunition	0.1 (0.1)	0.1 (0.01)	Surface	500		22,500	
	I	2.75-inch Rocket (including APKWS).	Rocket	2.3 (1.0)	3.8 (1.7)	Surface	8	50	400	30.4 (13.8)
96 OG	J	GBU–10, 24, or 31 (QUICKSINK).	Bomb (Mk–84)	945 (428.6)	946.8 (429.4)	Subsurface.	1	[b] 10	[b] 10	946.8 (429.4)
	K	HACM	Hypersonic Weapon	Not available	350 (158.7)	Surface	1	1	2	350 (158.7)
	L	AGM–158 (JASSM)	Missile	240.26 (108.9)	241.36 (109.4)	Surface	2	1	2	627.12 (284.3)
		GBU–39 (SDB I) Simultaneous Launch[c].	Bomb	72 (32.6)	72.2 (32.7)	Surface	2	1	2	
	M	GBU–39 (SDB I)	Bomb	36 (16.3)	36.1 13.3)	Surface	4	2	8	324.9 (147.3)
		GBU–39 (LSDB)	Bomb	36 (16.3)	36.1 (16.3)	Surface	5	2	10	
	N	GBU–39B/B LSDB	Bomb	36 (16.3)	36.1 (16.3)	Surface	2	1	2	238.08 (107.9)
		Spike NLOS	Missile	34.08 (15.4)	40 (18.1)	Surface	3	1	3	
		GBU–53 (SDB II)	Bomb	22.84 (13.4)	22.94 (10.4)	Surface	2	1	2	
	O	AGM–114R Hellfire	Missile	9 (4.1)	13.08 (5.9)	Surface	8	4	36	104.64 (47.5)
	P	AGM–114 Hellfire	Missile	9 (4.1)	13.08 (5.9)	Surface	5	2	10	130.8 (59.3)
		AGM–176 Griffin	Missile	9 (4.1)	13.08 (5.9)	Surface	5	2	10	
	Q	105 mm HE (FU)	Gun Ammunition	4.7 (2.1)	4.72 (2.1)	Surface	20	3	60	94.4 (42.8)
	R	Inert GBU–39 (LSDB) with live fuze.	Bomb	0.39 (0.2)	0.49 (0.2)	Surface	4	1	4	35.82 (16.2)
		Inert GBU–53 (SDB II) with live fuze.	Bomb	0.34 (0.2)	0.44 (0.2)	Surface	4	1	4	
		105 mm HE (TR)	Gun Ammunition	0.35 (0.2)	0.37 (0.2)	Surface	60	1	60	
		30 mm HE	Gun Ammunition	0.1 (0.1)	0.1 (0.01)	Surface	99	1	99	
NAVSCOL EOD.	S	Underwater Mine Charge.	Charge	[d] 20 (9.07)	20 (9.07)	Subsurface.	4	8	32	130 (58.9)
		Floating Mine Charge.	Charge	[d] 5 (2.3)	5 (2.3)	Surface	10	8	80	

[a] Warhead replaced by FTS/TM. Identified NEW is for the FTS.
[b] Includes 2 SINKEX exercises.
[c] NEW is doubled for simultaneous launch.
[d] Estimated.

Marine Mammal Density

Densities of the common bottlenose dolphin, Atlantic spotted dolphin, and Rice's whale in the study area are based on habitat-based density models and spatial density models developed by the NOAA Southeast Fisheries Science Center for the species in the Gulf of Mexico (NOAA 2022). The density models, herein referred to as the NOAA model, integrated visual observations from aerial and shipboard surveys conducted in the Gulf of Mexico from 2003 to 2019.

The NOAA model was used to predict the average density of the common bottlenose dolphin and Atlantic spotted dolphin in the existing LIA and proposed East LIA. The model generates densities for hexagon-shaped raster grids that are 40 square kilometers (km^2). The average annual density of each dolphin species in the existing LIA and proposed East LIA was computed in a geographic information system (GIS) based on the densities of the raster grids within the boundaries of each LIA. To account for portions of the grids outside of the LIA, the species density value of each grid was area-weighted based on the respective area of the grid within the LIA. For example, the density of a grid that is 70 percent within the LIA would be weighted to reflect only the 70 percent grid area, which contributes to the average density of the entire LIA. The density of the 30 percent grid area outside the LIA does not contribute to the average LIA density, so it is not included in the estimation. The resulting area-weighted densities of all the grids were summed to determine the average annual density of each dolphin species within each LIA. The densities of dolphins estimated are presented in Table 26.

TABLE 26—PREDICTED DOLPHIN DENSITIES IN THE EXISTING AND PROPOSED LIAS

Species	Density estimate (animals per km²) [a]	
	Existing LIA	Proposed east LIA
Atlantic spotted dolphin	0.032	0.038
Common bottlenose dolphin	0.261	0.317

[a] Estimated average density within LIA based on spatial density model developed by NOAA (2022).

The NOAA model was used to determine Rice's whale density in the exposure analysis conducted for the Rice's whale in this LOA Request. Areas of Rice's whale exposure to pressure and impulsive noise from munitions use, predicted by underwater acoustic modeling and quantified by GIS analysis, were coupled with the associated modeled grid densities from the NOAA model to estimate abundance of affected animals.

Take Estimation

The distances from the live ammunition detonation point that correspond to the various effect thresholds described previously are referred to as threshold distances. The threshold distances were calculated using dBSea for each mission-day category for each marine mammal species. The model was run assuming that the detonation point is at the center of the existing LIA, the SEL threshold distances are the same for the proposed East LIA, and all missions are conducted in either the existing LIA or proposed East LIA. Model outputs for the two LIAs are statistically the same as a result of similarities in water depths, sea bottom profiles, water temperatures, and other environmental characteristics. Table 27, Table 28 and Table 29 present the threshold distances estimated for the dolphins and Rice's whale, respectively, for live missions in the existing LIA.

The threshold distances were used to calculate the harassment zones for each effect threshold for each species. The thresholds resemble concentric circles, with the most severe (mortality) being closest to the center (detonation point) and the least severe (behavioral disturbance) being farthest from the center. The areas encompassed by the concentric thresholds are the impact areas associated with the applicable criteria. To prevent double counting of animals, areas associated with higher-impact criteria were subtracted from areas associated with lower-impact criteria. To estimate the number of animals potentially exposed to the various thresholds within the harassment zone, the adjusted impact area was multiplied by the predicted animal density and the annual number of events for each mission-day category. The results were rounded at the annual mission-day level and then summed for each criterion to estimate the total annual take numbers for each species. For impulse and SPL metrics, a take is considered to occur if the received level is equal to or above the associated threshold. For SEL metrics, a take is considered to occur if the received level is equal to or above the associated threshold within the appropriate frequency band of the sound received, adjusted for the appropriate weighting function value of that frequency band. For impact categories with multiple criteria (*e.g.,* non-auditory injury and PTS for Level A harassment) and criteria with two thresholds (*e.g.,* SEL and SPL for PTS), the criterion and/or threshold that yielded the higher exposure estimate was used. Threshold distances for dolphins are shown in Table 27 and 28, while Table 29 contains threshold distances for Rice's whale.

TABLE 27—BOTTLENOSE DOLPHIN THRESHOLD DISTANCES (IN km) FOR LIVE MISSIONS IN THE EXISTING LIVE IMPACT AREA

Mission-day category	Mortality	Level A harassment				Level B harassment		
		Slight lung injury	GI tract injury	PTS		TTS		Behavioral [a]
	Positive impulse B: 248.4 Pa·s AS: 197.1 Pa·s	Positive impulse B: 114.5 Pa·s AS: 90.9 Pa·s	Peak SPL 237 dB	Weighted SEL 185 dB	Peak SPL 230 dB	Weighted SEL 170 dB	Peak SPL 224 dB	Weighted SEL 165 dB
Bottlenose Dolphin								
A	0.139	0.276	0.194	0.562	0.389	5.59	0.706	9.538
B	0.128	0.254	0.180	0.581	0.361	5.215	0.655	8.937
C	0.100	0.199	0.144	0.543	0.289	4.459	0.524	7.568
D	0.100	0.199	0.144	0.471	0.289	3.251	0.524	5.664
E	0.068	0.136	0.103	0.479	0.207	3.272	0.377	5.88
F	0.128	0.254	0.180	0.352	0.362	2.338	0.655	4.596
G	0.027	0.054	0.048	0.274	0.093	1.095	0.165	2.488
H	0.010	0.019	0.021	0.225	0.040	0.809	0.071	1.409
I	0.025	0.049	0.045	0.136	0.087	0.536	0.154	0.918
J	0.228	0.449	0.306	0.678	0.615	3.458	1.115	6.193
K	0.158	0.313	0.222	0.258	0.445	1.263	0.808	2.663
L	0.139	0.276	0.194	0.347	0.389	2.35	0.706	4.656
M	0.068	0.136	0.103	0.286	0.207	1.446	0.377	3.508
N	0.073	0.145	0.113	0.25	0.225	1.432	0.404	2.935
O	0.046	0.092	0.078	0.185	0.155	0.795	0.278	1.878
P	0.046	0.092	0.078	0.204	0.155	0.907	0.278	2.172
Q	0.027	0.054	0.048	0.247	0.093	0.931	0.165	1.563
R	0.012	0.024	0.026	0.139	0.052	0.537	0.093	0.91

TABLE 27—BOTTLENOSE DOLPHIN THRESHOLD DISTANCES (IN km) FOR LIVE MISSIONS IN THE EXISTING LIVE IMPACT AREA—Continued

Mission-day category	Mortality	Level A harassment				Level B harassment		
		Slight lung injury	GI tract injury	PTS		TTS		Behavioral [a]
	Positive impulse B: 248.4 Pa·s AS: 197.1 Pa·s	Positive impulse B: 114.5 Pa·s AS: 90.9 Pa·s	Peak SPL 237 dB	Weighted SEL 185 dB	Peak SPL 230 dB	Weighted SEL 170 dB	Peak SPL 224 dB	Weighted SEL 165 dB
S	0.053	0.104	0.084	0.429	0.164	1.699	0.294	2.872

[a] Behavioral threshold for multiple detonations assumes TTS threshold minus 5 dB.

TABLE 28—ATLANTIC SPOTTED DOLPHIN THRESHOLD DISTANCES (IN km) FOR LIVE MISSIONS IN THE EXISTING LIVE IMPACT AREA

Mission-day category	Mortality	Level A harassment				Level B harassment		
		Slight lung injury	GI tract injury	PTS		TTS		Behavioral [a]
	Positive impulse B: 248.4 Pa·s AS: 197.1 Pa·s	Positive impulse B: 114.5 Pa·s AS: 90.9 Pa·s	Peak SPL 237 dB	Weighted SEL 185 dB	Peak SPL 230 dB	Weighted SEL 170 dB	Peak SPL 224 dB	Weighted SEL 165 dB
Atlantic Spotted Dolphin								
A	0.171	0.338	0.194	0.562	0.389	5.59	0.706	9.538
B	0.157	0.311	0.180	0.581	0.361	5.215	0.655	8.937
C	0.123	0.244	0.144	0.543	0.289	4.459	0.524	7.568
D	0.123	0.244	0.144	0.471	0.289	3.251	0.524	5.664
E	0.084	0.168	0.103	0.479	0.207	3.272	0.377	5.88
F	0.157	0.312	0.180	0.352	0.362	2.338	0.655	4.596
G	0.033	0.066	0.048	0.274	0.093	1.095	0.165	2.488
H	0.012	0.023	0.021	0.225	0.040	0.809	0.071	1.409
I	0.030	0.060	0.045	0.136	0.087	0.536	0.154	0.918
J	0.279	0.550	0.306	0.678	0.615	3.458	1.115	6.193
K	0.194	0.384	0.222	0.258	0.445	1.263	0.808	2.663
L	0.171	0.338	0.194	0.347	0.389	2.35	0.706	4.656
M	0.084	0.168	0.103	0.286	0.207	1.446	0.377	3.508
N	0.090	0.179	0.113	0.25	0.225	1.432	0.404	2.935
O	0.057	0.113	0.078	0.185	0.155	0.795	0.278	1.878
P	0.057	0.113	0.078	0.204	0.155	0.907	0.278	2.172
Q	0.033	0.066	0.048	0.247	0.093	0.931	0.165	1.563
R	0.015	0.030	0.026	0.139	0.052	0.537	0.093	0.91
S	0.065	0.128	0.084	0.429	0.164	1.699	0.294	2.872

[a] Behavioral threshold for multiple detonations assumes TTS threshold minus 5 dB.

TABLE 29—RICE'S WHALE THRESHOLD DISTANCES (IN km) FOR LIVE MISSIONS IN THE EXISTING LIVE IMPACT AREA

Mission-day category	Mortality	Level A harassment				Level B harassment		
		Slight lung injury	GI tract injury	PTS		TTS		Behavioral [a]
	Positive impulse 906.2 Pa·s	Positive impulse 417.9 Pa·s	Peak SPL 237 dB	Weighted SEL 183 dB	Peak SPL 219 dB	Weighted SEL 168 dB	Peak SPL 213 dB	Weighted SEL 163 dB
A	0.044	0.088	0.194	5.695	1.170	21.435	2.120	27.923
B	0.041	0.81	0.180	5.253	1.076	20.641	1.955	26.845
C	0.031	0.063	0.144	4.332	0.861	18.772	1.562	24.526
D	0.031	0.063	0.144	2.979	0.861	16.419	1.562	21.579
E	0.021	0.043	0.103	2.323	0.617	15.814	1.121	21.22
F	0.041	0.081	0.180	2.208	1.076	14.403	1.955	19.439
G	0.009	0.017	0.048	0.494	0.266	7.532	0.470	12.92
H	0.003	0.006	0.021	0.401	0.114	3.624	0.201	7.065
I	0.008	0.016	0.045	0.305	0.247	2.95	0.437	6.059
J	0.073	0.145	0.306	4.487	1.830	13.216	3.323	16.88
K	0.050	0.100	0.222	0.831	1.320	7.723	2.393	11.809
L	0.044	0.088	0.194	2.325	1.170	15.216	2.120	20.319
M	0.021	0.043	0.103	1.304	0.617	11.582	1.121	16.688
N	0.023	0.046	0.113	1.026	0.658	9.904	1.183	14.859
O	0.015	0.029	0.078	0.611	0.460	6.926	0.832	11.159
P	0.014	0.029	0.078	0.671	0.460	7.841	0.832	12.307
Q	0.009	0.017	0.048	0.549	0.266	6.299	0.470	10.393
R	0.004	0.008	0.026	0.283	0.152	2.383	0.273	5.06
S	0.017	0.034	0.084	0.938	0.473	8.676	0.843	12.874

[a] Behavioral threshold for multiple detonations assumes TTS threshold minus 5 dB.

As discussed previously and shown in Table 22, a portion of the kinetic energy released by an inert munition at impact is transmitted as underwater acoustic energy in a pressure impulse. The proposed inert munitions were categorized into four classes based on their impact energies to assess the potential impacts of inert munitions on marine mammals. The threshold distances for each class were modeled and calculated as described for the mission-day categories. Table 30 presents the impact energy classes developed for the proposed inert munitions. The four impact energy classes represent the entire suite of inert munitions proposed to be used in the EGTTR during the next mission period. The impact energy is the portion of the kinetic energy at impact that is transmitted as an underwater pressure impulse, expressed in units of TNT-equivalent (TNTeq). Tables 30 and 31 present the threshold distances estimated for the dolphins and Rice's whale, respectively, for inert munitions in the existing LIA.

TABLE 30—DOLPHIN THRESHOLD DISTANCES (IN KM) FOR INERT MUNITIONS IN THE EXISTING LIVE IMPACT AREA

Inert impact class (lb TNT_{eq})	Mortality	Level A harassment				Level B harassment		
		Slight lung injury	GI tract injury	PTS		TTS	Behavioral [a]	
	Positive impulse B: 248.4 Pa·s AS: 197.1 Pa·s	Positive impulse B: 114.5 Pa·s AS: 90.9 Pa·s	Peak SPL 237 dB	Weighted SEL 185 dB	Peak SPL 230 dB	Weighted SEL 170 dB	Peak SPL 224 dB	Weighted SEL 165 dB
Bottlenose Dolphin								
2	0.020	0.041	0.040	0.030	0.080	0.205	0.145	0.327
1	0.015	0.031	0.032	0.025	0.063	0.134	0.114	0.250
0.5	0.012	0.023	0.025	0.015	0.050	0.119	0.091	0.198
0.15	0.008	0.015	0.017	0.009	0.034	0.061	0.061	0.119
Atlantic Spotted Dolphin								
2	0.025	0.051	0.040	0.030	0.080	0.205	0.145	0.327
1	0.019	0.038	0.032	0.025	0.063	0.134	0.114	0.250
0.5	0.014	0.029	0.025	0.015	0.050	0.119	0.091	0.198
0.15	0.009	0.018	0.017	0.009	0.034	0.061	0.061	0.119

[a] Behavioral threshold for multiple detonations assumes TTS threshold minus 5 dB.

TABLE 31—RICE'S WHALE THRESHOLD DISTANCES (IN KM) FOR INERT MUNITIONS IN THE EXISTING LIVE IMPACT AREA

Inert impact class (lb TNT_{eq})	Mortality	Level A harassment				Level B harassment		
		Slight lung injury	GI tract injury	PTS		TTS	Behavioral [a]	
	Positive impulse 906.2 Pa·s	Positive impulse 417.9 Pa·s	Peak SPL 237 dB	Weighted SEL 183 dB	Peak SPL 219 dB	Weighted SEL 168 dB	Peak SPL 213 dB	Weighted SEL 163 dB
2	0.006	0.013	0.040	0.151	0.238	0.474	0.430	0.884
1	0.005	0.010	0.032	0.110	0.188	0.327	0.340	0.542
0.5	0.004	0.007	0.025	0.055	0.149	0.261	0.270	0.521
0.15	0.002	0.005	0.017	0.026	0.100	0.154	0.181	0.284

[a] Behavioral threshold for multiple detonations assumes TTS threshold minus 5 dB.

Dolphin Species

Estimated takes for dolphins are based on the area of the Level A and Level B harassment zones, predicted dolphin density, and annual number of events for each mission-day category. As previously discussed, take estimates for dolphins are based on the average yearly density of each dolphin species in each LIA. To estimate the takes of each dolphin species in both LIAs collectively, the take estimates for each LIA were weighted based on the expected usage of each LIA over the 7-year mission period. This information was provided by the user groups. Ninety percent of the total missions are expected to be conducted in the existing LIA and 10 percent are expected to be conducted in the proposed East LIA. Therefore, total estimated takes are the sum of 90 percent of the takes in the existing LIA and 10 percent of the takes in the proposed East LIA. Should the usage ratio changes substantially in the future, USAF would re-evaluate the exposure estimates and reinitiate consultation with NMFS to determine whether the take estimations need to be adjusted.

TABLE 32—CALCULATED ANNUAL EXPOSURES OF DOLPHINS UNDER THE USAF'S PROPOSED ACTIVITIES

	Mortality	Level A harassment		Level B harassment	
		Injury [a]	PTS	TTS	Behavioral
Bottlenose Dolphin					
Missions at Existing LIA	0.74	2.14	9.25	312.7	799.7
Missions at East LIA	0.89	2.6	11.24	379.79	971.29
90 Percent of Existing LIA Missions	0.66	1.92	8.33	281.4	719.73

TABLE 32—CALCULATED ANNUAL EXPOSURES OF DOLPHINS UNDER THE USAF'S PROPOSED ACTIVITIES—Continued

	Mortality	Level A harassment		Level B harassment	
		Injury [a]	PTS	TTS	Behavioral
10 Percent of East LIA Missions	0.09	0.26	1.12	37.98	97.13
Total	0.75	2.18	9.45	319.14	816.86
Total Takes Requested	0	0	9	319	817
Atlantic Spotted Dolphin					
Missions at Existing LIA	0.14	0.39	0.96	38.34	98.05
Missions at East LIA	0.16	0.47	1.14	45.53	116.43
90 Percent of Existing LIA Missions	0.12	0.36	0.86	34.50	88.24
10 Percent of East LIA Missions	0.02	0.05	0.11	4.55	11.64
Total	0.14	0.4	0.98	39.06	99.89
Total Takes Proposed	0	0	1	39	100

[a] Slight lung and/or gastrointestinal tract injury.

The annual exposures of dolphins requested by the USAF and proposed for authorization by NMFS are presented in Table 32. As indicated, a total of 9 Level A harassment takes and 1,136 Level B harassment takes of the common bottlenose dolphin, and 1 Level A harassment takes and 139 Level B harassment takes of the Atlantic spotted dolphin are requested annually for EGTTR operations during the next 7-year mission period. The presented takes are overestimates of actual exposure based on the conservative assumption that all proposed detonations would occur at or just below the water surface instead of a portion occurring upon impact with targets.

Based on the best available science, the USAF (in coordination with NMFS) used the acoustic and pressure thresholds indicated in Tables 26–30 to predict the onset of tissue damage and mortality for explosives (impulsive) and other impulsive sound sources for inert and live munitions in both the existing LIA and proposed East LIA. The mortality takes calculated for the bottlenose dolphin (0.75) and Atlantic spotted dolphin (0.14) are both less than one animal. Mortality for Rice's whale is zero. Therefore, and in consideration of the required mitigation measures, no mortality takes are requested for either dolphin species or Rice's whale. The non-auditory injury takes are calculated to be 2.18 and 0.40 for the bottlenose dolphin and Atlantic spotted dolphin, respectively. However, these (and the take estimates for the other effect thresholds) are the sum of the respective takes for all 19 mission-day categories. Each individual mission-day category results in a fraction of a non-auditory injury take. Given the required mitigation, adding up all the fractional takes in this manner would likely result in an over-estimate of take. Calculated non-auditory injury for the Rice's whale is zero.

The mitigation measures associated with explosives are expected to be effective in preventing mortality and non-auditory tissue damage to any potentially affected species. All of the calculated distances to mortality or non-auditory injury thresholds are less than 400 m. The USAF would be required to employ trained protected species observers (PSOs) to monitor the mitigation zones based on the mission-day activities. The mitigation zone is defined as double the threshold distance at which Level A harassment exposures in the form of PTS could occur (also referred to below as ''double the Level A PTS threshold distance''). During pre-monitoring PSOs would be required to postpone or cancel operations if animals are found in these zones. Protected species monitoring would be vessel-based, aerial-based or remote video-based depending on the mission-day activities. The USAF would also be required to conduct testing and training exercise beyond setback distances shown in Table 33. These setback distances would start from the 100-m isobath, which is approximately the shallowest depth where the Rice's whale has been observed. The setback distances are based on the PTS threshold calculated for the Rice's whale depending on the mission-day activity. Also, all gunnery missions must take place 500 m landward of the 100-m isopleth to avoid impacts to the Rice's whale. When these mitigation measures are considered in combination with the modeled exposure results, no species are anticipated to incur mortality or non-auditory tissue damage during the period of this rule.

Based on the conservative assumptions applied to the impact analysis and the pre-mission surveys conducted for dolphins, which extend out to, at a minimum, twice the PTS threshold distance that applies to both dolphin species (185 dB SEL), NMFS has determined that no mortality or non-auditory injury takes are expected and none are authorized for EGTTR operations.

Rice's Whale

Figure 6–2 in the LOA application shows the estimated Rice's whale threshold distances and associated harassment zones for mission-day category A, J, and P and use of a 2 lb class inert munition at the location where the GRATV is typically anchored in the existing LIA. As indicated on Figure 6–2, portions of the behavioral harassment zone of mission-day categories A and J extend into Rice's whale habitat, whereas the monitoring zones for mission-day category P and the largest inert munition are entirely outside Rice's whale habitat. The monitoring zone is defined as the area between double the Level A harassment mitigation zone and the human safety zone perimeter. As previously discussed, the spatial density model developed by NOAA (2022) for the Rice's whale was used to predict Rice's whale density for the purpose of estimating takes. The NOAA model generates densities for hexagon-shaped raster grids that are 40 km^2. The specific areas of the raster grids within each of the Level A and Level B harassment zones were computed in GIS and coupled with their respective modeled

densities to estimate the number of animals that would be exposed.

Figure 6–3 in the LOA application shows the harassment zones of mission-day category A at the current GRATV anchoring site. As shown, portions of the mitigation zones (TTS and behavioral disturbance) are within grids of modeled density greater than zero individuals per 40 km². However, the modeled densities in these areas are small and reflect higher occurrence probability for the Rice's whale farther to the southwest, outside the LIA. To estimate annual takes, the number of animals in all model grids within each mitigation, monitoring zone, and Level B harassment (behavioral) zone for all mission-day categories, except gunnery missions (G and H), were computed using the densities from the NOAA model (2022) model and the impact areas calculated in GIS. The modeled densities and the associated areas were multiplied together to estimate abundance within each mitigation, monitoring, and Level B harassment zone. The resulting abundance estimates were summed together and then multiplied by the number of annual missions proposed to estimate annual takes. These calculations resulted in a total of 0.04 annual TTS take and 0.10 annual behavioral disturbance take, which indicates that all missions conducted at the current GRATV site combined would not result in a single Level B harassment take of the Rice's whale. For comparison, Figure 6–4 shows the harassment zones of mission-day category A at the center of the proposed East LIA. As shown, a small portion of the behavioral disturbance zone (27.9 km) encompasses a grid of low modeled density, with grids of higher density being farther to the southwest.

Certain missions could have a PTS impact if they were to be conducted farther to the southwest within the LIAs closer to Rice's whale habitat, as defined by the 100-m isobath. The modeled threshold distances were used to determine the locations in the existing LIA and proposed East LIA where each mission-day category would cause the onset of PTS, measured as a setback from the 100-m isobath. At this setback location, the mission would avoid PTS and result only in non-injury Level B harassment, if one or more Rice's whales were in the affected habitat. The setback distances are based on the longest distance predicted by the dBSea model for a cumulative SEL of 168 dB within the mitigation zone; the predicted average cumulative SEL is used as the basis of effect for estimating takes. The setback distances determined for the mission-day categories are presented in Table 33 and are shown for the existing LIA and proposed East LIA on Figures 6–5 and 6–6, respectively.

TABLE 33—SETBACKS TO PREVENT PERMANENT THRESHOLD SHIFT IMPACTS TO THE RICE'S WHALE

User group	Mission-day category	NEWi (lb)/(kg)	Setback from 100-meter isobath (km)/(nmi)
53 WEG	A	2,413.6 (1094.6)	7.323 (3.95)
	B	2,029.9 (920.6)	6.659 (5.59)
	C	1,376.2 (624.1)	5.277 (2.84)
	D	836.22 (379.2)	3.557 (1.92)
	E	934.9 (423.9)	3.192 (1.72)
AFSOC	F	584.6 (265.1)	3.169 (1.71)
	I	29.6 (13.4)	0.394 (0.21)
96 OG	J	946.8 (429.4	5.188 (2.80
	K	350 (158.7)	1.338 (0.72)
	L	627.1 (284.3)	3.315 (1.78)
	M	324.9 (147.3)	2.017 (1.08)
	N	238.1 (107.9)	1.815 (0.98)
	O	104.6 (47.5)	0.734 (0.39)
	P	130.8 (59.3)	0.787 (0.42)
	Q	94.4 (42.8)	0.667 (0.36)
	R	37.1 (16.8)	0.368 (0.19)
NAVSCOLEOD	S	130 (58.9)	1.042 (0.56)

Locating a given mission in the LIA at its respective setback distance would represent the maximum Level B harassment scenario for the mission. If all the missions were conducted at their respective setbacks, the resulting takes would represent the maximum Level B harassment takes that would result for all mission-day categories except for gunnery missions. This is not a realistic scenario; however, it is analyzed to provide a worst-case estimate of takes. The takes under this scenario were calculated using the NOAA model (2022) model as described for the GRATV Location scenario. Figure 6–7 shows mission-day category A conducted at its maximum Level B setback location (7.23 km). Under this scenario, the TTS and behavioral disturbance mitigation zones extend farther into Rice's whale habitat. However, the modeled densities within affected areas are still relatively small. PTS impacts are avoided entirely. The PTS mitigation zone is slightly offset from the 100-m isobath because the setback is based on the longest distance predicted by the dBSea model, whereas the mitigation zones shown are based on the average distance predicted by the model. The take calculations for the maximum Level B harassment scenario resulted in a total of 0.49 annual TTS takes and 1.19 annual behavioral disturbance takes as shown in Table 34. These are the maximum number of takes estimated to potentially result from detonations in the existing LIA. These takes are overestimates because a considerable portion of all missions in the LIA are expected to continue to be conducted at or near the currently used GRATV anchoring site. These takes would not be exceeded because all missions will be conducted behind their identified setbacks as a new mitigation measure to prevent injury to the Rice's whale. Take calculations for the maximum Level B harassment scenario in the East LIA resulted in 0.63 annual TTS takes and 2.33 annual behavioral disturbance takes (Table 34). However, if we assume that 90 percent of the mission would occur in existing LIA and 10 percent would occur in the proposed East LIA as was done for

dolphins, the estimated result is 0.55 annual TTS (0.49 + 0.06) and 1.42 annual behavioral (1.19 + 0.23) takes.

The take calculations were performed using the NOAA (2022) density model for both day and night gunnery missions. As indicated on Figures 6–8 and 6–9 in the application, the modeled Rice's whale densities in the TTS and behavioral disturbance zones are small, and reflect a higher occurrence probability for the Rice's whale farther to the southwest. The take calculations estimated 0.003 TTS takes and 0.012 behavioral disturbance takes per daytime gunnery mission and 0.0006 TTS takes and 0.002 behavioral disturbance takes per nighttime gunnery mission. The resulting annual takes for all proposed 25 daytime gunnery missions are 0.08 TTS take and 0.30 behavioral disturbance take, and the resulting annual takes for all 45 proposed nighttime gunnery missions are 0.03 TTS take and 0.09 behavioral disturbance take (Table 34). This is a conservative estimation of Level B harassment takes because all gunnery missions would not be conducted precisely 500 m landward of the 100-m isobath as assumed under this worst-case take scenario. This represents a mitigation measure described later in the Proposed Mitigation section. Based on a review of gunnery mission locations, most gunnery missions during the last 5 years have occurred in waters shallower than 100 m.

The annual maximum Level B harassment takes estimated for daytime gunnery missions (mission-day G) and nighttime gunnery missions (mission-day category H) are combined with the annual maximum Level B harassment takes estimated for the other mission-day categories to determine the total takes of the Rice's whale from all EGTTR operations during the next mission period. The annual takes of the Rice's whale requested under the USAF's proposed activities are 0.61 TTS takes conservatively and 1.69 behavioral takes as presented in Table 34. However, the average group size for Bryde's whales found in the northeast Gulf of Mexico is two animals (Maze-Foley and Mullin 2006). NMFS will assume that each exposure would result in take of two animals. Therefore, NMFS is proposing to authorize Level B harassment in the form of two takes by TTS and four takes by behavioral disturbance annually for EGTTR operations during the next 7-year mission period.

Note that the requested takes are likely overestimates because they represent the maximum Level B harassment scenario for all missions. These takes are also likely overestimates of actual exposure based on the conservative assumption that all proposed detonations would occur at or just below the water surface instead of a portion occurring upon impact with targets.

TABLE 34—CALCULATED ANNUAL EXPOSURES OF THE RICE'S WHALE UNDER THE USAF'S PROPOSED ACTIVITIES

		Level A harassment		Level B harassment	
		Injury [a]	PTS	TTS	Behavioral
Missions at Existing LIA	0	0	0	0.49	1.19
Missions at East LIA	0	0	0	0.63	2.33
90 Percent of Existing LIA Missions	0	0	0	0.441	1.071
10 Percent of East LIA Missions	0	0	0	0.063	0.233
Daytime Gunnery Missions	0	0	0	0.08	0.30
Nighttime Gunnery Missions	0	0	0	0.03	0.09
Total	0	0	0	0.61	1.69
Total Takes Requested	0	0	0	*2* [b]	*4* [b]

[a] Slight lung and/or gastrointestinal tract injury.
[b] Based on average group size (Maze-Foley and Mullin (2006).

For the USAF's proposed activities in the EGTTR, Table 35 summarizes the take NMFS proposes, to authorize, including the maximum annual, 7-year total amount, and type of Level A harassment and Level B harassment that NMFS anticipates is reasonably likely to occur by species and stock. Note that take by Level B harassment includes both behavioral disturbance and TTS. No mortality or non-auditory injury is anticipated or proposed, as described previously.

TABLE 35—PROPOSED ANNUAL AND SEVEN-YEAR TOTAL SPECIES-SPECIFIC TAKE AUTHORIZATION FROM EXPLOSIVES FOR ALL TRAINING AND TESTING ACTIVITIES IN THE EGTTR

Common name	Stock/DPS	Proposed annual take			Proposed 7-year total take		
		Level A	Level B		Level A	Level B	
		PTS	TTS	Behavioral disturbance	PTS	TTS	Behavioral disturbance
Common bottlenose dolphin.	Northern Gulf of Mexico Continental Shelf.	9	319	817	63	2,233	5,719
Atlantic spotted dolphin.	Northern Gulf of Mexico.	1	39	100	7	273	700
Rice's whale *	NSD	0	2	4	0	14	28

* ESA-listed species.
Note: NSD = No stock designation.

Proposed Mitigation

Under section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable adverse impact on the species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)). The NDAA for FY 2004 amended the MMPA as it relates to military readiness activities and the incidental take authorization process such that ''least practicable impact'' shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Assessment of Mitigation Measures for the EGTTR

Section 216.104(a)(11) of NMFS' implementing regulations requires an applicant for incidental take authorization to include in its request, among other things, ''the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, their habitat, and [where applicable] on their availability for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance.'' Thus, NMFS' analysis of the sufficiency and appropriateness of an applicant's measures under the least practicable adverse impact standard will always begin with evaluation of the mitigation measures presented in the application.

NMFS has fully reviewed the specified activities and the mitigation measures included in the USAF's rulemaking/LOA application and the EGTTR 2022 REA to determine if the mitigation measures would result in the least practicable adverse impact on marine mammals and their habitat. The USAF would be required to implement the mitigation measures identified in this rule for the full 7 years to avoid or reduce potential impacts from proposed training and testing activities.

Monitoring and mitigation measures for protected species are implemented for all EGTTR missions that involve the use of live or inert munitions (*i.e.,* missiles, bombs, and gun ammunition). Mitigation includes operational measures such as pre-mission monitoring, postponement, relocation, or cancellation of operations, to minimize the exposures of all marine mammals to pressure waves and acoustic impacts as well as vessel strike avoidance measures to minimize the potential for ship strikes; geographic mitigation measures, such as setbacks and areas where mission activity is prohibited, to minimize impacts in areas used by Rice's whales; gunnery-specific mitigation measures which dictate how and where gunnery operations occur; and environmental mitigation which describes when missions may occur and under what weather conditions. These measures are supported by the use of PSOs from various platforms, and sea state restrictions. Identification and observation of appropriate mitigation zones (*i.e.* double the threshold distance at which Level A harassment exposures in the form of PTS could occur) and monitoring zones (*i.e.,* area between the mitigation zone and the human safety zone perimeter) are important components of an effective mitigation plan.

Operational Measures

Pre-Mission Surveys

Pre-mission surveys for protected species are conducted prior to every mission (*i.e.,* missiles, bombs, and gunnery) in order to verify that the mitigation zone is free of visually detectable marine mammals and to evaluate the mission site for environmental suitability. USAF range-clearing vessels and protected species survey vessels holding PSOs will be onsite approximately 90 minutes prior to the mission. The duration of pre-mission surveys depends on the area required to be surveyed, the type of survey platforms used (*i.e.,* vessels, aircraft, video), and any potential lapse in time between the end of the surveys and the beginning of the mission. Depending on the mission category, vessel-based PSOs will survey the mitigation and/or monitoring zones for marine mammals. Surveys of the mitigation zone will continue for approximately 30 minutes or until the entire mitigation zone has been adequately surveyed, whichever comes first. The mitigation zone survey area is defined by the area covered by double the dolphin Level A harassment (PTS) threshold distances predicted for the mission-day categories as presented previously in Table 27 and Table 28. Each user group will identify the mission-day category that best corresponds to its actual mission based on the energy that would be released. The user group will estimate the NEWi of the actual mission to identify which mission-day category to use. The energy of the actual mission will be less than the energy of the mission-day category in terms of total NEWi and largest single munition NEWi to ensure that the energy and effects of the actual mission will not exceed the energy and effects estimated for the corresponding mission-day category. For any live mission other than gunnery missions, the pre-mission survey mitigation zone will extend out to, at a minimum, double the Level A harassment PTS threshold distance that applies to both dolphin species. Depending on the mission-day category that best corresponds to the actual mission, the distance from the detonation point to the mitigation zone (*i.e.,* double the Level A harassment (PTS) threshold distance) could vary between approximately 1,356 m for mission-day category J and 272 m for mission-day category I (Table 36). Surveying twice the dolphin Level A harassment (PTS) threshold distance provides a buffer area for when there is a lapse between the time when the survey ends and the

time when the species observers reach the perimeter of the human safety zone before the start of the mission. Surveying this additional buffer area ensures that dolphins are not within the PTS zone at the start of the mission. Missions involving air-to-surface gunnery operations must conduct surveys of even larger areas based on previously established safety profiles and the ability to conduct aerial surveys of large areas from the types of aircraft used for these missions.

The monitoring zone for non-gunnery missions is the area between the mitigation zone and the human safety zone and is not standardized, since the size of the human safety zone is not standardized. The safety zone will be determined per each mission by the Eglin AFB Test Wing Safety Office based on the munition and parameters of its release (to include altitude, pitch, heading, and airspeed). Additionally, based on the operational altitudes of gunnery firing, and the fact that the only monitoring during the mission will be coming from onboard the aircraft conducting the live firing, the monitoring zone for gunnery missions will be a smaller area than the mitigation zone and will be based on the field of view from the aircraft. These observable areas will at least be double the Level A harassment (PTS) threshold distance for the mission-day categories G, H, and Q (gunnery-only mission-day categories) as shown in Table 36.

TABLE 36—MITIGATION AND MONITORING ZONE SIZES FOR LIVE MISSIONS IN THE EXISTING LIVE IMPACT AREA (m)

Mission-day category	Mitigation zone (m)/(ft)	Monitoring zone
A	1,130 (3,706.4)	TBD
B	1,170 (3,837.6)	TBD
C	1,090 (3,575.2)	TBD
D	950 (3,116)	TBD
E	950 (3,116)	TBD
F	710 (2,328)	TBD
G	[1] 9,260 (30.372.8)	550 (1,804)
H	[2] 9,260 (30,372.8)	450 (1,476)
I	280 (918.4)	TBD
J	1,360 (4,460.8)	TBD
K	520 (1,705.6)	TBD
L	700 (2,296)	TBD
M	580 (1,640)	TBD
N	500 (1,640)	TBD
O	370 (1,213.6)	TBD
P	410 (1,344.8)	TBD
Q	[3] 9,260 (30,372.6)	490 (1,607)
R	[4] 280 (918.4) and 9,260 (30372.8)	TBD
S	860 (2,820.8)	TBD

[1] For G, double the Level A harassment threshold distance (PTS) is 0.548 km, but G is AC–130 gunnery mission with an inherent mitigation zone of 9.260 km/5 NMI.

[2] For H, double the Level A harassment (PTS) threshold distance is 0.450 km, but H is AC–130 gunnery mission with an inherent mitigation zone of 9.260 km/5 nmi.

[3] For Q, double the Level A harassment (PTS) threshold distance is 0.494 km, but Q is AC–130 gunnery mission with an inherent mitigation zone of 9.260 km/5 nmi.

[4] R has components of both gunnery and inert small diameter bomb. Double the Level A harassment (PTS) threshold distance is 0.278 km, however, for gunnery component the inherent mitigation zone would be 9.260 km.

[5] The Monitoring Zone for non-gunnery missions is the area between the Mitigation Zone and the Human Safety Zone and is not standardized, as the Human Safety Zone is not standardized. HSZ is determined per each mission by the Test Wing Safety Office based on the munition and parameters of its release (to include altitude, pitch, heading, and airspeed).

[6] Based on the operational altitudes of gunnery firing, and the only monitoring during mission coming from onboard the aircraft conducting the firing, the Monitoring Zone for gunnery missions will be a smaller area than the Mitigation Zone and be based on the field of view from the aircraft. These observable areas will at least be double the Level A harassment (PTS) threshold distance for the mission-day categories G, H, and Q (gunnery-only mission-day categories).

For non-gunnery inert missions, the mitigation zone is based on double the Level A harassment (PTS) threshold distance as shown in Table 37. The monitoring zone is the area between the mitigation zone and the human safety zone which is not standardized. The safety zone is determined per each mission by the Test Wing Safety Office based on the munition and parameters of its release including altitude, pitch, heading, and airspeed.

TABLE 37—PRE-MISSION MITIGATION AND MONITORING ZONES (IN m) FOR INERT MISSIONS IMPACT AREA

Inert impact class (lb TNTeq)	Mitigation zone m/(ft)	Monitoring zone [1]
2	160 (524)	TBD
1	126 (413)	TBD
0.5	100 (328)	TBD
0.15	68 (223)	TBD

[1] The Monitoring Zone for non-gunnery missions is the area between the Mitigation Zone and the Human Safety Zone and is not standardized, as the Human Safety Zone is not standardized. HSZ is determined per each mission by the Test Wing Safety Office based on the munition and parameters of its release (to include altitude, pitch, heading, and airspeed).

Mission postponement, relocation, or cancellation—Mission postponement, relocation, or cancellation would be required when marine mammals are observed within the mitigation or monitoring zone depending on the mission type to minimize the potential for marine mammals to be exposed to injurious levels of pressure and noise energy from live detonations. If one or more marine mammal species other than the two dolphin species for which take is proposed to be authorized are detected in either the mitigation zone or the monitoring zone, then mission activities will be cancelled for the remainder of the day. The mission must be postponed, relocated or cancelled if either of the two dolphin species are

visually detected in the mitigation zone during the pre-mission survey. If members of the two dolphin species for which authorized take has been proposed are observed in the monitoring zone while vessels are exiting the human safety zone and the PSO has determined the animals are heading towards the mitigation zone, then missions will be postponed, relocated, or cancelled, based on mission-specific test and environmental parameters. Postponement would continue until the animals are confirmed to be outside of the mitigation zone on a heading away from the targets or are not seen again for 30 minutes and are presumed to be outside the mitigation zone. If large schools of fish or large flocks of birds are observed feeding at the surface are observed within the mitigation zone, postponement would continue until these potential indicators of marine mammal presence are confirmed to be outside the mitigation zone.

Vessel strike avoidance measures—Vessel strike avoidance measures as previously advised by NMFS Southeast Regional Office must be employed by the USAF to minimize the potential for ship strikes. These measures include staying at least 150 ft (46 m) away from protected species and 300 ft (92 m) away from whales. Additional action area measures will require vessels to stay 500 m away from the Rice's whale. If a baleen whale cannot be positively identified to species level then it must be assumed to be a Rice's whale and 500 m separation distance must be maintained. Vessels must avoid transit in the Core Distribution Area (CDA) and within the 100–400 m isobath zone outside the CDA. If transit in these areas is unavoidable, vessels must not exceed 10 knots and transit at night is prohibited. An exception to the speed restriction is for instances required for human safety, such as when members of the public need to be intercepted to secure the human safety zone, or when the safety of a vessel operations crew could be compromised.

Geographic Mitigation Measures

Setbacks From Rice's Whale Habitat

New mitigation measures that were not required as part of the existing LOA have been proposed to reduce impacts to the Rice's whale. These measures would require that given mission-day activities could only occur in areas that are exterior to and set back some specified distance from Rice's whale habitat boundaries as well as areas where mission activities are prohibited. These are described below.

As a mitigation measure to prevent impacts to cetacean species known to occur in deeper portions of the Gulf of Mexico, such as the federally endangered sperm whale, all gunnery missions have been located landward of the 200-m isobath, which is generally considered to be the shelf break in the Gulf of Mexico. Most missions conducted over the last 5 years under the existing LOA have occurred in waters less than 100 m in depth. While implementing this measure would prevent impacts to most marine mammal species in the Gulf, it may not provide full protection to the Rice's whale, which has been documented to occur in waters as shallow as 117 m, although the majority of sightings have occurred in waters deeper than 200 m.

To prevent any PTS impacts to the Rice's whale from gunnery operations, NMFS has proposed that all gunnery missions would be conducted at least 500 m landward of the 100-m isobath instead of landward of the 200-m isobath as was originally proposed by the USAF. This setback distance from the 100-m isobath is based on the modeled PTS threshold distance for daytime gunnery missions (mission-day G) of 494 m (Table 29). At this setback distance, potential PTS effects from daytime gunnery missions would not extend into Rice's whale habitat, as defined by the 100-m isobath. The PTS Level A harassment isopleth of a nighttime gunnery mission, which is 401 m in radius, is contained farther landward of the habitat boundary.

Another mitigation measure to prevent any PTS (or more severe) impacts to the Rice's whale will restrict the use of all live munitions in the western part of the existing LIA and proposed East LIA based on the setbacks from the 100-m isobaths. The setback distances determined for the mission-day categories are presented in Table 33 and are shown for the existing LIA and proposed East LIA on Figures 6–5 and 6–6, respectively. For example, the subsurface detonation of a GBU–10, GBU–24, or GBU–31, each of which have a NEW of 945 lb (428.5 kg), would represent the most powerful single detonation that would be conducted under the USAF's proposed activities. Such a detonation would correspond to mission-day category J. To prevent any PTS impacts to the Rice's whale, a mission that would involve such a single subsurface detonation would be conducted in a portion of the LIA that is behind the setback identified for mission-day category J.

Likewise, a mission that would involve multiple detonations that have a total cumulative NEWi comparable to that of mission-day category A would be conducted behind the setback identified for mission-day category A. Each user group will use the mission-day categories and corresponding setback distances to determine the setback distance that is appropriate for their actual mission. The user group will estimate the NEWi of the actual mission to identify which mission-day category and associated setback to use. The energy of the actual mission must be less than the energy of the mission-day category in terms of total NEWi and largest single-munition NEWi to ensure that the energy and effects of the actual mission will not exceed the energy and effects estimated for the corresponding mission-day category.

Rice's Whale Habitat Area Prohibitions

This section identifies areas where firing of live or inert munitions is prohibited to limit impacts to Rice's whales. The USAF will prohibit the use of live or inert munitions in Rice's whale habitat during the effective period for the proposed LOA. Under this new mitigation measure, all munitions use will be prohibited between the 100-m and 400-m isobaths which represents the area where most Rice's whale detections have occurred. Live HACMs would be permitted to be fired into the existing LIA or East LIA but must have a setback of 1.338 km from the 100-m isobath while inert HACMs could be fired into portions of the EGTTR outside the LIAs. However, they would need to be outside the area between the 100-m and 400-m isobaths.

Overall, the USAF has agreed to procedural mitigation measures that would reduce the probability and/or severity of impacts expected to result from acute exposure to live explosives and inert munitions and impacts to marine mammal habitat.

Gunnery-Specific Mitigation

Additional mitigation measures are applicable only to gunnery missions. The USAF must use 105 mm Training Rounds (TR; NEW of 0.35 lb (0.16 kg)) for nighttime missions. These rounds contain less explosive material content than the 105 mm Full Up (FU; NEW of 4.7 lb (2.16 kg)) rounds that are used during the day. Therefore, the harassment zones associates with the 105 mm TR are smaller and can be more effectively monitored compared to the daytime zones. Ramp-up procedures will also be required for day and night gunnery missions which must begin firing with the smallest round and proceed to increasingly larger rounds. The purpose of this measure is to expose the marine environment to

steadily increasing noise levels with the intent that marine animals will move away from the area before noise levels increase. During each gunnery training mission, gun firing can last up to 90 minutes but typically lasts approximately 30 minutes. Live firing is continuous, with pauses usually lasting well under 1 minute and rarely up to 5 minutes. Aircrews must reinitiate protected species surveys if gunnery firing pauses last longer than 10 minutes.

Protected species monitoring procedures for CV–22 gunnery training are similar to those described for AC–130 gunnery training, except that CV–22 aircraft typically operate at much lower altitudes than AC–130 gunships. If protected marine species are detected during pre-mission surveys or during the mission, operations will be immediately halted until the monitoring zone is clear of all animals, or the mission will be relocated to another target area. If the mission is relocated, the pre-mission survey procedures will be repeated in the new area. If multiple gunnery missions are conducted during the same flight, marine species monitoring will be conducted separately for each mission. Following each mission, aircrews will conduct a post-mission survey beginning at the operational altitude and continuing through an orbiting descent to the designated monitoring altitude.

All gunnery missions must monitor a set distance depending on the aircraft type as show in Table 38. Pre-mission aerial surveys conducted by gunnery aircrews in AC–130s extend out 5 nmi (9,260 m) while CV–22 aircraft would have a monitoring range of 3 nmi (5,556 m). The modeled distances for behavioral disturbance for gunnery daytime and nighttime missions are 12.9 km and 7.1 km, respectively. The behavioral disturbance zone is smaller at night due to the required use of less impactful training rounds (105-mm TR). Therefore, the aircrews are able to survey all of the behavioral disturbance for a nighttime gunnery mission but not for a daytime gunnery mission. The size of the monitoring areas are based on the monitoring and operational altitudes of each aircraft as well as previously established aircraft safety profiles.

TABLE 38—MONITORING AREAS AND ALTITUDES FOR GUNNERY MISSIONS

Aircraft	Gunnery round	Monitoring area	Monitoring altitude	Operational altitude
AC–30 Gunship	30 mm; 105 mm (FU and TR).	5 nmi (9,260 m)	6,000 feet (1,828 m)	15,000 to 20,000 feet (4572–6096 m).
CV–22 Osprey	.50 caliber	3 nmi (5,556 m)	1,000 feet (305 m)	1,000 feet (305 m).

Other than gunnery training, HACM tests are the only other EGTTR missions currently proposed to be conducted at nighttime during the 2023–2030 period. HACM tests and any other missions that are actually conducted at nighttime during the mission period will be required to be supported by AC–130 aircraft with night-vision instrumentation or other platforms with comparable nighttime monitoring capabilities. For live HACM missions, the pre-mission survey area will extend out to, at a minimum, double the Level A harassment (PTS) threshold distance that applies to both dolphin species for a HACM test. A HACM test would correspond to mission-day category K, which is estimated to have a PTS threshold distance of 0.258 km. Therefore, the pre-mission survey for a HACM test would extend out to 0.52 km, at a minimum.

Environmental Conditions

Sea State Conditions—Appropriate sea state conditions must exist for protected species monitoring to be effective. Wind speed and the associated roughness of the sea surface are key factors that influence the efficacy of PSO monitoring. Strong winds increase wave height and create whitecaps, both of which limit a PSO's ability to visually detect marine species at or near the surface. The sea state scale used for EGTTR pre-mission protected species surveys is presented in Table 39. All missions will be postponed or rescheduled if conditions exceed sea state 4, which is defined as moderate breeze, breaking crests, numerous white caps, wind speed of 11 to 16 knots, and wave height of 3.3 to 6 ft (1.0 to 1.8 m). PSOs will determine whether sea conditions are suitable for protective species monitoring.

TABLE 39—SEA STATE SCALE USED FOR EGTTR PRE-MISSION PROTECTED SPECIES SURVEYS

Sea state number	Sea conditions
0	Flat, calm, no waves or ripples.
1	Light air, winds 1 to 2 knots; wave height to 1 foot; ripples without crests.
2	Light breeze, winds 3 to 6 knots; wave height 1 to 2 feet; small wavelets, crests not breaking.
3	Gentle breeze, winds 7 to 10 knots; wave height 2 to 3.5 feet; large wavelets, scattered whitecaps.
4	Moderate breeze, winds 11 to 16 knots; wave height 3.5 to 6 feet; breaking crests, numerous whitecaps.
5	Strong breeze, winds 17 to 21 knots; wave height 6 to 10 feet; large waves, spray possible.

Daylight Restrictions—Daylight and visibility restrictions are also implemented to ensure the effectiveness of protected species monitoring. All live missions except for nighttime gunnery and hypersonic weapon missions will occur no earlier than 2 hours after sunrise and no later than 2 hours before sunset to ensure adequate daylight for pre- and post-mission monitoring.

Mitigation Conclusions

NMFS has carefully evaluated the USAF's proposed mitigation measures. Our evaluation of potential measures included consideration of the following factors in relation to one another: the manner in which, and the degree to which, the successful implementation of the mitigation measures is expected to reduce the likelihood and/or magnitude of adverse impacts to marine mammal species and their habitat; the proven or likely efficacy of the measures; and the practicability of the measures for applicant implementation, including consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Based on our evaluation of the USAF's proposed measures including pre-mission surveys; mission postponements or cancellations if animals are observed in the mitigation or monitoring zones; Rice's whale setbacks; Rice's whale habitat prohibitions; gunnery-specific measures; and environmental measures, NMFS has preliminarily determined that these proposed mitigation measures are the appropriate means of effecting the least practicable adverse impact on the marine mammal species and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and considering specifically personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. Additionally, an adaptive management provision ensures that mitigation is regularly assessed and provides a mechanism to improve the mitigation, based on the factors above, through modification as appropriate.

The proposed rule comment period provides the public an opportunity to submit recommendations, views, and/or concerns regarding the USAF's activities and the proposed mitigation measures. While NMFS has preliminarily determined that the USAF's proposed mitigation measures would effect the least practicable adverse impact on the affected species and their habitat, NMFS will consider all public comments to help inform our final determination. Consequently, the proposed mitigation measures may be refined, modified, removed, or added to prior to the issuance of the final rule, based on public comments received, and, as appropriate, analysis of additional potential mitigation measures.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as to ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,
- Mitigation and monitoring effectiveness.

The USAF will require training for all PSOs who will utilize vessel-based, aerial-based, video-based platforms or some combination of these approaches depending on the requirements of the mission type as shown in Table 40. Specific PSO training requirements are described below.

PSO Training

All personnel who conduct protected species monitoring are required to complete Eglin AFB's Marine Species Observer Training Course, which was developed in consultation with NMFS. The required PSO training covers applicable environmental laws and regulations, consequences of non-compliance, PSO roles and responsibilities, photographs and descriptions of protected species and indicators, survey methods, monitoring requirements, and reporting procedures. Any person who will serve as a PSO for a particular mission must have completed the training within a year prior to the mission. For missions that require multiple survey platforms to cover a large area, a Lead Biologist is designated to lead the monitoring and coordinate sighting information with the Eglin AFB Test Director (Test Director) or the Eglin AFB Safety Officer (Safety Officer).

Note that all three monitoring platforms described in Table 40 are not needed for all missions. The use of the platforms for a given mission are evaluated based on mission logistics, public safety, and the effectiveness of the platform to monitor for protected species. Vessel and video monitoring are almost always used but aerial monitoring may not be used for some missions because it is not needed in addition to the vessel-based surveys that are conducted. Aerial monitoring is considered to be supplemental to vessel-based monitoring and is used only when needed, for example if not enough vessels are available or to provide coverage in areas farther offshore where using vessels may be more logistically difficult. Note that at least one of the monitoring platforms described in Table 40 must be used for every mission. In most instances, two or three of the monitoring platforms will be employed.

TABLE 40—MONITORING OPTIONS REQUIRED TO THE EXTENT PRACTICABLE AND LOCATIONS FOR LIVE AIR-TO-SURFACE MISSION PROPONENTS OPERATING IN THE EGTTR

User group	Mission-day category	Munition type	Monitoring platform			Location		
			Aerial-based	Vessel-based	Video-based	LIA	East LIA	Outside LIAs
53 WEG	A	Missile	x	x	x	x	x	
	B	Missile, Bomb	x	x	x	x	x	
	C	Missile	x	x	x	x	x	
	D	Missile	x	x	x	x	x	
	E	Missile, Bomb, Rocket, Gun Ammunition.	x	x	x	x	x	
AFSOC	F	Bomb	x	x	x	x	x	

TABLE 40—MONITORING OPTIONS REQUIRED TO THE EXTENT PRACTICABLE AND LOCATIONS FOR LIVE AIR-TO-SURFACE MISSION PROPONENTS OPERATING IN THE EGTTR—Continued

User group	Mission-day category	Munition type	Monitoring platform			Location		
			Aerial-based	Vessel-based	Video-based	LIA	East LIA	Outside LIAs
	G	Gun Ammunition	x			x	x	x
	H	Gun Ammunition	x			x	x	x
	I	Rockets	x	x	x	x	x	
96 OG	J	Bomb	x	x	x	x	x	
	K	Hypersonic	x	x	x	x	x	
	L	Missile, Bomb	x	x	x	x	x	
	M	Bomb	x	x	x	x	x	
	N	Missile, Bomb	x	x	x	x	x	
	O	Missile	x	x	x	x	x	
	P	Missile	x	x	x	x	x	
	Q	Gun Ammunition	x			x	x	
	R	Bomb, Gun Ammunition	x			x	x	
NAVSCOLOED	S	Charge		x		x	x	x

Monitoring Platforms

Vessel-Based Monitoring

Pre-mission surveys conducted from vessels will typically begin at sunrise. Vessel-based monitoring is required for all mission-day categories except for gunnery missions. Trained marine species PSOs will use dedicated vessels to monitor for protected marine species and potential indicators during the pre-mission surveys. For missions that require multiple vessels to cover a large survey area, a Lead Biologist will be designated to coordinate all survey efforts, compile sighting information from the other vessels, serve as the point of contact between the survey vessels and Tower Control, and provide final recommendations to the Safety Officer/Test Director on the suitability of the mission site based on environmental conditions and survey results.

Survey vessels will run predetermined line transects, or survey routes, that will provide sufficient coverage of the survey area. Monitoring will be conducted from the highest point feasible on the vessels. There will be at least two PSOs on each vessel, and they will each use professional-grade binoculars.

All sighting information from pre-mission surveys will be communicated to the Lead Biologist on a predetermined radio channel to reduce overall radio chatter and potential confusion. After compiling all the sighting information from the other survey vessels, the Lead Biologist will inform Tower Control if the survey area is clear or not clear of protected species. If the area is not clear, the Lead Biologist will provide recommendations on whether the mission should be postponed or cancelled. For example, a mission postponement would be recommended if a protected species is in the mitigation zone but appears to be heading away from the mission area. The postponement would continue until the Lead Biologist has confirmed that the animals are no longer in the mitigation zone and are swimming away from the range. A mission cancellation could be recommended if one or more protected species are sighted in the mitigation zones and there is no indication that they would leave the area within a reasonable time frame. Tower Control will relay the Lead Biologist's recommendation to the Safety Officer. The Safety Officer and Test Director will collaborate regarding range conditions based on the information provided. Ultimately, the Safety Officer will have final authority on decisions regarding postponements and cancellations of missions.

Human Safety Zone Monitoring

Established range clearance procedures are followed during all EGTTR missions for public safety. Prior to each mission, a human safety zone appropriate for the mission is established around the target area. The size of the human safety zone varies depending on the munition type and delivery method. A composite safety zone is often developed for missions that involve multiple munition types and delivery methods. A typical composite safety zone is octagon-shaped to make it easier to monitor by range clearing boats and easier to interpret by the public when it is overlaid on maps with latitude and longitude coordinates. The perimeter of a composite safety zone may extend out to approximately 15 miles (13 nmi) from the center of the zone and may be monitored by up to 25 range-clearing boats to ensure it is free of any non-participating vessels before and during the mission.

Air Force Support Vessels

USAF support vessels will be operated by a combination of USAF and civil service/civilian personnel responsible for mission site/target setup and range-clearing activities. For each mission, USAF personnel will be within the mission area (on boats and the GRATV) well in advance of initial munitions use, typically around sunrise. While in the mission area, they will perform a variety of tasks, such as target preparation and equipment checks, and will also observe for marine mammals and indicators when possible. Any sightings would be relayed to the Lead Biologist.

The Safety Officer, in cooperation with the CCF (Central Control Facility) and Tower Control, will coordinate and manage all range-clearing efforts and will be in direct communication with the survey vessel team, typically through the Lead Biologist. All support vessels will be in radio contact with each other and with Tower Control. The Safety Officer will monitor all radio communications, and Tower Control will relay messages between the vessels and the Safety Officer. The Safety Officer and Tower Control will also be in constant contact with the Test Director throughout the mission to convey information on range clearance and marine species surveys. Final decisions regarding mission execution, including possible mission postponement or cancellation based on marine species sightings or civilian boat traffic, will be the responsibility of the Safety Officer, with concurrence from the Test Director.

Aerial-Based Monitoring

Aircraft provide an excellent viewing platform for detecting marine mammals at or near the sea surface. Depending on the mission, the aerial survey team will consist of Eglin AFB Natural Resources

Office personnel or their designees aboard a non-mission aircraft or the mission aircrew who have completed the PSO training. The Eglin AFB Natural Resources Office has overall responsibility for implementing the natural resources management program and is the lead organization for monitoring compliance with applicable Federal, State, and local regulations. It reports to the installation command, the 96th Test Wing, via the Environmental Management Branch of the 96th Civil Engineer Group. All mission-day categories require aerial-based monitoring, assuming assets are available and when such monitoring does not interfere with testing and training parameters required by mission proponents. Note that gunnery mission aircraft must also serve as aerial-based monitoring platforms.

For non-mission aircraft, the pilot will be instructed on marine species survey techniques and will be familiar with the protected species expected to occur in the area. One PSO in the aircraft will record data and relay information on species sightings, including the species (if possible), location, direction of movement, and number of animals, to the Lead Biologist. The aerial team will also look for potential indicators of protected species presence, such as large schools of fish and large, active groups of birds. Pilots will fly the aircraft so that the entire mitigation and monitoring zones (and a buffer, if required) are monitored. Marine species sightings from the aerial survey team will be compiled by the Lead Biologist and communicated to the Test Director or Safety Officer. Monitoring by non-mission aircraft would be conducted only for certain missions, when the use of such aircraft is practicable based on other mission-related factors.

Some mission aircraft have the capability to conduct aerial surveys for marine species immediately prior to releasing munitions. Mission aircraft used to conduct aerial surveys will be operated at reasonable and safe altitudes appropriate for visually scanning the sea surface and/or using onboard instrumentation to detect protected species. The primary mission aircraft that conduct aerial surveys for marine species are the AC–130 gunship and CV–22 Osprey used for gunnery operations.

AC–130 gunnery training involves the use of 30 mm and 105 mm FU rounds during daytime and 30 mm and 105 mm TRs during nighttime. The TR variant (0.35 lb (0.15 kg) NEW) of the 105 mm HE round has less explosive material than the FU round (4.7 lb (2.13 kg) NEW). AC–130s are equipped with and required to use low-light electro-optical and infrared sensor systems that provide excellent night vision. Gunnery missions use the 105 mm TRs during nighttime missions as an additional mitigation measure for protected marine species. If a towed target is used, mission personnel will maintain the target in the center portion of the survey area to ensure gunnery impacts do not extend past the predetermined mitigation and monitoring zones. During the low-altitude orbits and climb, the aircrew will visually scan the sea surface for the presence of protected marine species. The visual survey will be conducted by the flight crew in the cockpit and personnel stationed in the tail observer bubble and starboard viewing window.

After arriving at the mission site and before initiating gun firing, the aircraft would be required to fly at least two complete orbits around the target area out to the applicable monitoring zone at a minimum safe airspeed and appropriate monitoring altitude. If no protected species or indicators are detected, the aircraft will then ascend to an operational altitude while continuing to orbit the target area as it climbs. The initial orbits typically last approximately 10 to 15 minutes. Monitoring for marine species and non-participating vessels continues throughout the mission. When aerial monitoring is conducted by aircraft, a minimum ceiling of 305 m (1,000 feet) and visibility of 5.6 km (3 nmi) are required for effective monitoring efforts and flight safety.

Infrared systems are equally effective during day or night. Nighttime missions would be conducted by AC–130s that have been upgraded recently with MX–25D sensor systems, which provide superior night-vision capabilities relative to earlier sensor systems. CV–22 training involves the use of only .50 caliber rounds, which do not contain explosive material and, therefore, do not detonate. Aircrews will conduct visual and instrumentation-based scans during the post-mission survey as described for the pre-mission survey.

Video-Based Monitoring

Video-based monitoring is conducted via transmission of live, high-definition video feeds from the GRATV at the mission site to the CCF and is required on all mission-day categories except for gunnery missions. These video feeds can be used to remotely view the mission site to evaluate environmental conditions and monitor for marine species up to the time munitions are used. There are multiple sources of video that can be streamed to multiple monitors within the CCF. A PSO from Eglin Natural Resources will monitor the live video feeds transmitted to the CCF when practicable and will report any protected marine species sightings to the Safety Officer, who will also be at the CCF. Video monitoring can mitigate the lapse in time between the end of the pre-mission survey and the beginning of the mission.

Four video cameras are typically operated on the GRATV for real-time monitoring and data collection during the mission. All cameras have a zoom capability of up to at least a 300 mm equivalent. The cameras allow video PSOs to detect an item as small as 1 square foot (0.09 square m) up to 4,000 m away.

Supplemental video monitoring must be used when practicable via additional aerial assets. Aerial assets with video monitoring capabilities include Eglin AFB's aerostat balloon and unmanned aerial vehicles (UAVs). These aerial assets support certain missions, for example by providing video of munition detonations and impacts; these assets are not used during all missions. The video feeds from these aerial assets can be used to monitor protected species; however, they would always be a supplemental form of monitoring that would be used only when available and practicable. Eglin AFB's aerostat balloon provides aerial imagery of weapon impacts and instrumentation relay. When used, it is tethered to a boat anchored near the GRATV. The balloon can be deployed to an altitude of up to 2,000 ft (607 m). It is equipped with a high-definition camera system that is remotely controlled to pivot and focus on a specific target or location within the mission site. The video feed from the camera system is transmitted to the CCF. Eglin AFB may also employ other assets such as intelligence, surveillance, and reconnaissance aircraft to provide real-time imagery or relay targeting pod videos from mission aircraft. UAVs may also be employed to provide aerial video surveillance. While each of these platforms may not be available for all missions, they typically can be used in combination with each other and with the GRATV cameras to supplement overall monitoring efforts. Even with a variety of platforms potentially available to supply video feeds to the CCF, the entirety of the mitigation and monitoring zones may not be visible for the entire duration of the mission. The targets and immediate surrounding areas will typically be in the field of view of the GRATV cameras, which will allow the PSO to detect any protected species that may enter the target area before weapon releases. The cameras

also allow the PSO to readily inspect the target area for any signs that animals were injured. If a protected marine species is detected on the live video, the weapon release can be stopped almost immediately because the video camera PSO is in direct contact with Test Director and Safety Officer at the CCF.

The video camera PSO will have open lines of communication with the PSOs on vessels to facilitate real-time reporting of marine species sightings and other relevant information, such as the presence of non-participating vessels near the human safety zone. Direct radio communication will be maintained between vessels, GRATV personnel, and Tower Control throughout the mission. The Safety Officer will monitor all radio communications from the CCF, and information between the Safety Officer and support vessels will be relayed via Tower Control.

Post-Mission Monitoring

During post-mission monitoring, PSOs would survey the mission site for any dead or injured marine mammals. Vessels will move into the survey area from outside the safety zone and monitor for at least 30 minutes, concentrating on the area down current of the test site. The duration of post-mission surveys is based on the survey platforms used and any potential time lapse between the last detonation and the beginning of the post-mission survey. This lapse typically occurs when survey vessels stationed on the perimeter of the human safety zone are required to wait until the range has been declared clear before they can begin the survey. Up to 10 USAF support vessels will spend several hours in this area collecting debris from damaged targets.

All vessels will report any dead or injured marine mammals to the Lead Biologist. All marine mammal sightings during post-mission surveys are documented on report forms that are submitted to Eglin Natural Resources Office after the mission. The post-mission survey area will be the area covered in 30 minutes of observation in a direction down-current from impact site or the actual pre-mission survey area, whichever is reached first.

For gunnery missions, aircrews must conduct a post-mission surveys beginning at the operational altitude and continuing through an orbiting descent to the designated monitoring altitude. The descent will typically last approximately 3 to 5 minutes. The post-mission survey area will be the area covered in 30 minutes of observation in a direction down-current from impact site or the actual pre-mission survey area, whichever is reached first. Aircrews will conduct visual and instrumentation-based scans during the post-mission survey as described for the pre-mission survey.

As agreed upon between the USAF and NMFS, the proposed mitigation monitoring measures presented in the Proposed Mitigation section focus on the protection and management of potentially affected marine mammals. A well-designed monitoring program can provide important feedback for validating assumptions made in analyses and allow for adaptive management of marine resources.

Adaptive Management

NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with Eglin AFB regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring measures for these regulations.

Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA include: (1) Results from Eglin AFB's acoustic monitoring study; (2) results from monitoring during previous year(s); (3) results from other marine mammal and/or sound research or studies; and (4) any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of proposed LOA in the **Federal Register** and solicit public comment. If, however, NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals in the Gulf of Mexico, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within 30 days of the action.

Proposed Reporting

Section 101(a)(5)(A) of the MMPA states that, in order to issue incidental take authorization for an activity, NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. Effective reporting is critical both to compliance as well as to ensuring that the most value is obtained from the required monitoring.

A summary annual report of marine mammal observations and mission activities must be submitted to the NMFS Southeast Regional Office and the NMFS Office of Protected Resources 90 days after completion of mission activities each year. A final report shall be prepared and submitted within 30 days following resolution of comments on the draft report from NMFS. This annual report must include the following information:

- Date, time and location of each mission including mission-day category, general munition type, and specific munitions used;
- Complete description of the pre-mission and post-mission monitoring activities including type and location of monitoring platforms utilized (*i.e.,* vessel-, aerial or video-based);
- Summary of mitigation measures employed including postponements, relocations, or cancellations of mission activity;
- Number, species, and any other relevant information regarding marine mammals observed and estimated exposed/taken during activities;
- Description of the observed behaviors (in both presence and absence of test activities);
- Environmental conditions when observations were made, including visibility, air temperature, clouds, wind speed, and swell height and direction;
- Assessment of the implementation and effectiveness of mitigation and monitoring measures; and
- PSO observation results as provided through the use of protected species observer report forms.

A Final Comprehensive Report summarizing monitoring and mitigation activities over the 7-year LOA effective period must be submitted 90 days after the completion of mission activities at the end of Year 7.

If a dead or seriously injured marine mammal is found during post-mission monitoring, the incident must be reported to the NMFS Office of Protected Resources, NMFS Southeast Region Marine Mammal Stranding Network, and the Florida Marine Mammal Stranding Network. In the unanticipated event that any cases of marine mammal mortality are judged to result from missions in the EGTTR at any time during the period covered by the LOA, this will be reported to NMFS Office of Protected Resources and the National Marine Fisheries Service's Southeast Regional Administrator. The report must include the following information:

1. Time and date of the incident;
2. Description of the incident;
3. Environmental conditions (*e.g.,* wind speed and direction, cloud cover, and visibility);

4. Species identification or description of the animal(s) involved;
5. Fate of the animal(s); and
6. Photographs or video footage of the animal(s).

Mission activities must not resume in the EGTTR until NMFS is able to review the circumstances of the prohibited take. If it is determined that the unauthorized take was caused by mission activities, NMFS will work with the USAF to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The USAF may not resume their activities until notified by NMFS.

Past Monitoring Results in the EGTTR

Eglin AFB has submitted to NMFS annual reports that summarize the results of protected species surveys conducted for EGTTR missions. From 2010 to 2021, Eglin AFB conducted 67 gunnery missions in the EGTTR. To date, there has been no evidence that marine mammals have been impacted from gunnery operations conducted in the EGTTR. The use of instrumentation on the AC–130 and CV–22 in pre-mission surveys has proven effective to ensure the mission site is clear of protected species prior to gun firing. Monitoring altitudes during pre-mission surveys for both the AC–130 and CV–22 are much lower than 15,000 ft (4,572 m); therefore, the instrumentation on these aircraft would be even more effective at detecting marine species than indicated by photographs. From 2013 to 2020, Eglin AFB conducted 25 live missions collectively under the Maritime Strike Operations and Maritime Weapons System Evaluation Program (WSEP) Operational Testing programs in the EGTTR. From 2016–2021, Eglin AFB conducted 16 live PSW (Precision Strike Weapon) missions in the EGTTR. Protected species monitoring for these past missions was conducted using a combination of vessel-based surveys and live video monitoring from the CCF, as described. Pre-mission survey areas for Maritime WSEP and PSW missions were based on mission-day categories developed per NMFS's request to account for the accumulated energy from multiple detonations. Note that surveys conducted for the earlier Maritime Strike missions were based on thresholds determined for single detonations; however, these Maritime WSEP and PSW missions involved detonations of larger munitions. There has been no evidence of mortality, injury, or any other detectable adverse impact to any marine mammal from the Maritime Strike, Maritime WSEP, or WSEP missions conducted to date. Dolphins were sighted within the mitigation zone prior to ordnance delivery during some of these past missions. In these cases, the mission was postponed until the animals were confirmed to be outside the mitigation zone. Although monitoring during and following munitions use is limited to observable impacts within and in the vicinity of the mission area, the lack of any past evidence of any associated impacts on marine mammals is an indication that the monitoring and mitigation measures implemented for EGTTR operations are effective.

Eglin AFB submitted annual reports required under the existing LOA from 2018–2021. Although marine mammals were sighted on a number of mission days, usually during pre-and post-mission surveys, Eglin AFB concluded that no marine mammal takes occurred as a result of any mission activities from 2018–2021. The annual monitoring reports are available at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-air-force-testing-and-training-activities-eglin-gulf-test.*

Preliminary Analysis and Negligible Impact Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (*i.e.,* population-level effects) (50 CFR 216.103). An estimate of the number of takes alone is not enough information on which to base an impact determination. In considering how Level A harassment or Level B harassment factor into the negligible impact analysis, in addition to considering the number of estimated takes, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known).

In the Estimated Take of Marine Mammals section of this proposed rule, we identified the subset of potential effects that are reasonably expected to occur and rise to the level of takes based on the methods described. The impact that any given take will have on an individual, and ultimately the species or stock, is dependent on many case-specific factors that need to be considered in the negligible impact analysis (*e.g.,* the context of behavioral exposures such as duration or intensity of a disturbance, the health of impacted animals, the status of a species that incurs fitness-level impacts to individuals, *etc.*). For this proposed rule, we evaluated the likely impacts of the number of harassment takes reasonably expected to occur, and proposed for authorization, in the context of the specific circumstances surrounding these predicted takes. Last, we collectively evaluated this information, as well as other more taxa-specific information and mitigation measure effectiveness, to support our negligible impact conclusions for each species and stock.

As explained in the Estimated Take of Marine Mammals section, no take by serious injury or mortality is proposed for authorization or anticipated to occur. Further, any Level A harassment would be expected to be in the form of PTS; no non-auditory injury is anticipated or authorized.

The Specified Activities reflect maximum levels of training and testing activities. The Description of the Proposed Activity section describes annual activities. There may be some flexibility in the exact number of missions that may vary from year to year, but take totals will not exceed the maximum annual numbers or the 7-year totals indicated in Table 35. We base our analysis and negligible impact determination on the maximum number of takes that are reasonably expected to occur and that are proposed for authorization, although, as stated before, the number of takes are only a part of the analysis, which includes qualitative consideration of other contextual factors that influence the degree of impact of the takes on the affected individuals. To avoid repetition, in this Preliminary Analysis and Negligible Impact Determination section we provide some general analysis that applies to all the species and stocks listed in Table 35, given that some of the anticipated effects of the USAF's training and testing activities on marine mammals are expected to be relatively similar in nature. Next, we break up our analysis by species and stock, to provide more specific information related to the anticipated effects on individuals of that species and to discuss where there is information about the status or structure of any species that would lead to a

differing assessment of the effects on the species.

The USAF's take request, which, as described above, is for harassment only, is based on its acoustic effects model. The model calculates sound energy propagation from explosive and inert munitions during training and testing activities in the EGTTR. The munitions proposed to be used by each military unit were grouped into mission-day categories so the acoustic impact analysis could be based on the total number of detonations conducted during a given mission to account for the accumulated energy from multiple detonations over a 24-hour period. A total of 19 mission-day categories were developed for the munitions proposed to be used. Using the dBSea underwater acoustic model and associated analyses, the threshold distances and harassment zones were estimated for each mission-day category for each marine mammal species. Takes were estimated based on the area of the harassment zones, predicted animal density, and annual number of events for each mission-day category. To assess the potential impacts of inert munitions on marine mammals, the proposed inert munitions were categorized into four classes based on their impact energies, and the threshold distances for each class were modeled and calculated as described for the mission-day categories. Assumptions in the USAF model intentionally err on the side of overestimation. For example, the model conservatively assumes that (1) the water surface is flat (no waves) to allow for maximum energy reflectivity; (2) munitions striking targets confer all weapon energy into underwater acoustic energy; and (3) above or at surface explosions assume no energy losses from surface effects (*e.g.,* venting which dissipates energy through the ejection of water and release of detonation gases into the atmosphere).

Generally speaking, the USAF and NMFS anticipate more severe effects from takes resulting from exposure to higher received levels (though this is in no way a strictly linear relationship for behavioral effects throughout species, individuals, or circumstances) and less severe effects from takes resulting from exposure to lower received levels. However, there is also growing evidence of the importance of distance in predicting marine mammal behavioral response to sound—*i.e.,* sounds of a similar level emanating from a more distant source have been shown to be less likely to evoke a response of equal magnitude (DeRuiter 2012, Falcone *et al.* 2017). The estimated number of Level A harassment and Level B harassment takes does not necessarily equate to the number of individual animals the USAF expects to harass (which is likely slightly lower). Rather, the estimates are for the instances of take (*i.e.,* exposures above the Level A harassment and Level B harassment threshold) that are anticipated to occur annually and over the 7-year period. Some of the enumerated instances of exposure could potentially represent exposures of the same individual marine mammal on different days, meaning that the number of individuals taken is less than the number of instances of take, but the nature of the activities in this rule (*e.g.,* short duration, intermittent) and the distribution and behavior of marine mammals in the area do not suggest that any single marine mammal would likely be taken on more than a few days within a year. Further, any of these instances of take may represent either brief exposures (seconds) or, in some cases, several exposures within a day. Most explosives detonating at or near the surface have brief exposures lasting only a few milliseconds to minutes for the entire event. Explosive events may be a single event involving one explosion (single exposure) or a series of intermittent explosives (multiple explosives) occurring over the course of a day. Gunnery events, in some cases, may have longer durations of exposure to intermittent sound. In general, gunnery events can last intermittently up to 90 minutes total, but typically lasts approximately 30 minutes. Live firing is continuous, with pauses usually lasting well under 1 minute and rarely up to 5 minutes.

Behavioral Disturbance

Behavioral reactions from explosive sounds are likely to be similar to reactions studied for other impulsive sounds such as those produced by air guns. Impulsive signals, particularly at close range, have a rapid rise time and higher instantaneous peak pressure than other signal types, making them more likely to cause startle responses or avoidance responses. Most data has come from seismic surveys that occur over long durations (*e.g.,* on the order of days to weeks), and typically utilize large multi-air gun arrays that fire repeatedly. While seismic air gun data provides the best available science for assessing behavioral responses to impulsive sounds (*i.e.,* sounds from explosives) by marine mammals, it is likely that these responses represent a worst-case scenario compared to most USAF explosive noise sources, because the overall duration of exposure to a seismic airgun survey would be expected to be significantly longer than the exposure to sounds from any exercise using explosives.

Take estimates alone do not provide information regarding the potential fitness or other biological consequences of the reactions on the affected individuals. NMFS therefore considers the available activity-specific, environmental, and species-specific information to determine the likely nature of the modeled behavioral responses and the potential fitness consequences for affected individuals.

In the range of potential behavioral effects that might be expected to be part of a response that qualifies as an instance of Level B harassment by behavioral disturbance (which by nature of the way it is modeled/counted, occurs within one day), the less severe end might include exposure to comparatively lower levels of a sound, at a detectably greater distance from the animal, for a few or several minutes. A less severe exposure of this nature could result in a behavioral response such as avoiding an area that an animal would otherwise have chosen to move through or feed in for some amount of time or breaking off one or a few feeding bouts. More severe effects could occur when the animal gets close enough to the source to receive a comparatively higher level, or is exposed intermittently to different sources throughout a day. Such effects might result in an animal having a more severe flight response and leaving a larger area for a day or more or potentially losing feeding opportunities for a day. However, such severe behavioral effects are expected to occur infrequently since monitoring and mitigation requirements would limit exposures to marine mammals. Additionally, previous marine mammal monitoring efforts in the EGTTR over a number of years have not demonstrated any impacts on marine mammals.

The majority of Level B harassment takes are expected to be in the form of milder responses *(i.e.,* lower-level exposures that still rise to the level of take) of a generally shorter duration due to lower received levels that would occur at greater distances from the detonation site due to required monitoring and mitigation efforts. For example, the largest munitions (*e.g.* mission-day category A with 2,413 lb (1.094.6 kg) NEWi) feature up to 10 intermittent explosions over several hours. However, it is likely that animals would not be present in the PTS or TTS zones due to mitigation efforts, and this activity would occur on only a single day per year. Gunnery missions may last continuously up to 90 minutes, but most will be less than 30 minutes and the NEWi of such missions (*i.e.,* 191.6 to

61.1 lb (86.9 to 27.7 kg) are relatively small. We anticipate more severe effects from takes when animals are exposed to higher received levels or at closer proximity to the source. However, depending on the context of an exposure *(e.g.,* depth, distance, if an animal is engaged in important behavior such as feeding), a behavioral response can vary across species and individuals within a species. Specifically, given a range of behavioral responses that may be classified as Level B harassment, to the degree that higher received levels are expected to result in more severe behavioral responses, only a smaller percentage of the anticipated Level B harassment from USAF activities would be expected to potentially result in more severe responses. To fully understand the likely impacts of the predicted/authorized take on an individual (*i.e.,* what is the likelihood or degree of fitness impacts), one must look closely at the available contextual information presented above, such as the duration of likely exposures and the likely severity of the exposures (*e.g.,* whether they will occur for a longer duration over sequential days or the comparative sound level that will be received). Ellison *et al.* (2012) and Moore and Barlow (2013), among others, emphasize the importance of context (*e.g.,* behavioral state of the animals, distance from the sound source) in evaluating behavioral responses of marine mammals to acoustic sources.

Diel Cycle

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant for fitness if they last more than one diel cycle or recur on subsequent days (Southall *et al.* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.* 2007). It is important to note the difference between behavioral reactions lasting or recurring over multiple days and anthropogenic activities lasting or recurring over multiple days (*e.g.,* vessel traffic noise). The duration of USAF activities utilizing explosives vary by mission category and weapon type. There are a maximum of 230 mission days proposed in any given year, assuming every mission category utilizes all of their allotted mission days.

Many mission days feature only a single or limited number of explosive munitions. Explosive detonations on such days would likely last only a few seconds. There are likely to be days or weeks that pass without mission activities. Because of their short activity duration and the fact that they are in the open ocean and animals can easily move away, it is similarly unlikely that animals would be exposed for long, continuous amounts of time, or repeatedly, or demonstrate sustained behavioral responses. All of these factors make it unlikely that individuals would be exposed to the exercise for extended periods or on consecutive days.

Temporary Threshold Shift

NMFS and the USAF have estimated that some species and stocks of marine mammals may sustain some level of TTS from explosive detonations. In general, TTS can last from a few minutes to days, be of varying degree, and occur across various frequency bandwidths, all of which determine the severity of the impacts on the affected individual, which can range from minor to more severe. Explosives are generally referenced as broadband because of the various frequencies. Table 32 indicates the number of takes by TTS that may be incurred by different species from exposure to explosives. The TTS sustained by an animal is primarily classified by three characteristics:

1. Frequency—Available data (of mid-frequency hearing specialists exposed to mid- or high-frequency sounds; Southall *et al.,* 2007) suggest that most TTS occurs in the frequency range of the source up to one octave higher than the source (with the maximum TTS at one-half octave above). TTS from explosives would be broadband.

2. Degree of the shift (*i.e.,* by how many dB the sensitivity of the hearing is reduced)—Generally, both the degree of TTS and the duration of TTS will be greater if the marine mammal is exposed to a higher level of energy (which would occur when the peak dB level is higher or the duration is longer). The threshold for the onset of TTS was discussed previously in this proposed rule. An animal would have to approach closer to the source or remain in the vicinity of the sound source appreciably longer to increase the received SEL. The sound resulting from an explosive detonation is considered an impulsive sound and shares important qualities (*i.e.,* short duration and fast rise time) with other impulsive sounds such as those produced by air guns. Given the anticipated duration and levels of sound exposure, we would not expect marine mammals to incur more than relatively low levels of TTS (*i.e.,* single digits of sensitivity loss).

3. Duration of TTS (recovery time)—In the TTS laboratory studies (as discussed in the Potential Effects of Specified Activities on Marine Mammals and their Habitat section of the proposed rule), some using exposures of almost an hour in duration or up to 217 SEL, almost all individuals recovered within 1 day (or less, often in minutes), although in one study (Finneran *et al.* 2007) recovery took 4 days. For the same reasons discussed in the Preliminary Analysis and Negligible Impact Determination - *Diel Cycle* section, and because of the short distance animals would need to be from the sound source, it is unlikely that animals would be exposed to the levels necessary to induce TTS in subsequent time periods such that their recovery is impeded.

The TTS takes would be the result of exposure to explosive detonations (broad-band). As described above, we expect the majority of these takes to be in the form of mild (single-digit), short-term (minutes to hours) TTS. This means that for one time a year, for several minutes, a taken individual will have slightly diminished hearing sensitivity (slightly more than natural variation, but nowhere near total deafness). The expected results of any one of these small number of mild TTS occurrences could be that (1) it does not overlap signals that are pertinent to that animal in the given time period, (2) it overlaps parts of signals that are important to the animal, but not in a manner that impairs interpretation, or (3) it reduces detectability of an important signal to a small degree for a short amount of time—in which case the animal may be aware and be able to compensate (but there may be slight energetic cost), or the animal may have some reduced opportunities (*e.g.,* to detect prey) or reduced capabilities to react with maximum effectiveness (*e.g.,* to detect a predator or navigate optimally). However, given the small number of times that any individual might incur TTS, the low degree of TTS and the short anticipated duration, and the low likelihood that one of these instances would occur across a time period in which the specific TTS overlapped the entirety of a critical signal, it is unlikely that TTS of the nature expected to result from the USAF's activities would result in behavioral changes or other impacts that would impact any such individual's reproduction or survival.

Auditory Masking

The ultimate potential impacts of masking on an individual (if it were to occur) are similar to those discussed for TTS, but an important difference is that masking only occurs during the time of the signal, versus TTS, which continues beyond the duration of the signal. Fundamentally, masking is referred to as a chronic effect because one of the key potential harmful components of masking is its duration—the fact that an animal would have reduced ability to hear or interpret critical cues becomes much more likely to cause a problem the longer it is occurring. Also inherent in the concept of masking is the fact that the potential for the effect is only present during the times that the animal and the source are in close enough proximity for the effect to occur (and further, this time period would need to coincide with a time that the animal was utilizing sounds at the masked frequency). As our analysis has indicated, because of the sound sources primarily involved in this rule, we do not expect the exposures with the potential for masking to be of a long duration. Masking is fundamentally more of a concern at lower frequencies, because low frequency signals propagate significantly further than higher frequencies and because they are more likely to overlap both the narrower low-frequency calls of mysticetes, as well as many non-communication cues, such as sounds from fish and invertebrate prey and geologic sounds that inform navigation. Masking is also more of a concern from continuous (versus intermittent) sources when there is no quiet time between a sound source within which auditory signals can be detected and interpreted. Explosions introduce low-frequency, broadband sounds into the environment, which could momentarily mask hearing thresholds in animals that are nearby, although sounds from missile and bomb explosions last for only a few seconds. Sound from gunnery ammunition, however, can last up to 90 minutes, although a 30-minute duration is more typical. Masking due to these relatively short duration detonations would not be significant. Effects of masking are only present when the sound from the explosion is present, and the effect is over the moment the sound is no longer detectable. Therefore, short-term exposure to the predominantly intermittent or single explosions are not expected to result in a meaningful amount of masking. For the reasons described here, any limited masking that could potentially occur from explosives would be minor, short-term and intermittent. Long-term consequences from physiological stress due to the sound of explosives would not be expected. In conclusion, masking is more likely to occur in the presence of broadband, relatively continuous noise sources, such as from vessels; however, the duration of temporal and spatial overlap with any individual animal would not be expected to result in more than short-term, low impact masking that would not affect reproduction or survival of individuals.

Auditory Injury (Permanent Threshold Shift)

Table 42 indicates the number of individuals of each species for which Level A harassment in the form of PTS resulting from exposure to or explosives is estimated to occur. The number of individuals to potentially incur PTS annually from explosives for each species ranges from 0 (Rice's whale) to 9 (bottlenose dolphin). As described previously, no species are expected to incur non-auditory injury from explosives.

As discussed previously, the USAF utilizes aerial, vessel and video monitoring to detect marine mammals for mitigation implementation, which is not taken into account when estimating take by PTS. Therefore, NMFS expects that Level A harassment is unlikely to occur at the authorized numbers. However, since it is difficult to quantify the degree to which the mitigation and avoidance will reduce the number of animals that might incur Level A harassment, NMFS proposes to authorize take by Level A harassment at the numbers derived from the exposure model. These estimated Level A harassment take numbers represent the maximum number of instances in which marine mammals would be reasonably expected to incur PTS, and we have analyzed them accordingly. In relation to TTS, the likely consequences to the health of an individual that incurs PTS can range from mild to more serious depending upon the degree of PTS and the frequency band. Any PTS accrued as a result of exposure to USAF activities would be expected to be of a small amount due to required monitoring and mitigation measures. Permanent loss of some degree of hearing is a normal occurrence for older animals, and many animals are able to compensate for the shift, both in old age or at younger ages as the result of stressor exposure (Green *et al.* 1987; Houser *et al.* 2008; Ketten 2012). While a small loss of hearing sensitivity may include some degree of energetic costs for compensating or may mean some small loss of opportunities or detection capabilities, at the expected scale it would be unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival of any individuals.

Physiological Stress Response

Some of the lower level physiological stress responses (*e.g.,* orientation or startle response, change in respiration, change in heart rate) discussed in the Potential Effects of Specified Activities on Marine Mammals and their Habitat would likely co-occur with the predicted harassments, although these responses are more difficult to detect and fewer data exist relating these responses to specific received levels of sound. However, we would not expect the USAF's generally short-term and intermittent activities to create conditions of long-term, continuous noise leading to long-term physiological stress responses in marine mammals that could affect reproduction or survival.

TABLE 41—ANNUAL ESTIMATED TAKES BY LEVEL A AND LEVEL B HARASSMENT FOR MARINE MAMMALS IN THE EGTTR AND THE NUMBER INDICATING THE INSTANCES OF TOTAL TAKE AS A PERCENTAGE OF STOCK ABUNDANCE

Common name	Stock/DPS	Proposed annual take by Level A and Level B harassment			Total take	Abundance (2021 SARS)	Takes as a percentage of abundance
		Behavioral disturbance	TTS	PTS			
Common bottlenose dolphin.	Northern Gulf of Mexico Continental Shelf.	817	319	9	1145	63,280	1.8
Atlantic spotted dolphin.	Northern Gulf of Mexico.	100	39	1	140	21,506	0.6

TABLE 41—ANNUAL ESTIMATED TAKES BY LEVEL A AND LEVEL B HARASSMENT FOR MARINE MAMMALS IN THE EGTTR AND THE NUMBER INDICATING THE INSTANCES OF TOTAL TAKE AS A PERCENTAGE OF STOCK ABUNDANCE—Continued

Common name	Stock/DPS	Proposed annual take by Level A and Level B harassment			Total take	Abundance (2021 SARS)	Takes as a percentage of abundance
		Behavioral disturbance	TTS	PTS			
Rice's whale*	.....	4	2	0	6	51	11.8

*ESA-listed species in EGTTR

Assessing the Number of Individuals Taken and the Likelihood of Repeated Takes

The estimated takes by Level B harassment shown in Table 40 represent instances of take, not the number of individuals taken (the much lower and less frequent takes by Level A harassment are far more likely to be associated with separate individuals). As described previously, USAF modeling uses the best available science to predict the instances of exposure above certain acoustic thresholds, which are quantified as harassment takes. However, these numbers from the model do not identify whether and when the enumerated instances occur to the same individual marine mammal on different days, or how any such repeated takes may impact those individuals. One method that NMFS can use to help better understand the overall scope of the impacts is to compare the total instances of take against the abundance of that species (or stock if applicable). For example, if there are 100 estimated harassment takes in a population of 100, one can assume either that every individual will be exposed above acoustic thresholds in no more than 1 day, or that some smaller number will be exposed in one day but a few individuals will be exposed multiple days within a year and a few not exposed at all. Abundance percentage comparisons are less than 8 percent for all authorized species and stocks. This means that: (1) not all of the individuals will be taken, and many will not be taken at all; (2) barring specific circumstances suggesting repeated takes of individuals, the average or expected number of days taken for those individuals taken is one per year; and (3) we would not expect any individuals to be taken more than a few times in a year. There are often extended periods of days or even weeks between individual mission days, although a small number of mission-days may occur consecutively. Marine mammals proposed to be authorized for take in this area of the Gulf of Mexico have expansive ranges and are unlikely to congregate in a small area that would be subject to repeated mission-related exposures for an extended time.

To assist in understanding what this analysis means, we clarify a few issues related to estimated takes and the analysis here. An individual that incurs PTS or TTS may sometimes, for example, also be subject to direct behavioral disturbance at the same time. As described above in this section, the degree of PTS, and the degree and duration of TTS, expected to be incurred from the USAF's activities are not expected to impact marine mammals such that their reproduction or survival could be affected. Similarly, data do not suggest that a single instance in which an animal incurs PTS or TTS and also has an additional direct behavioral response would result in impacts to reproduction or survival. Accordingly, in analyzing the numbers of takes and the likelihood of repeated and sequential takes, we consider all the types of take, so that individuals potentially experiencing both threshold shift and direct behavioral responses are appropriately considered. The number of Level A harassment takes by PTS are so low for dolphin species (and zero for Rice's whale) compared to abundance numbers that it is considered highly unlikely that any individual would be taken at those levels more than once.

Occasional, milder behavioral reactions are unlikely to cause long-term consequences for individual animals or populations, and even if some smaller subset of the takes are in the form of longer (several hours or a day) and more severe responses, if they are not expected to be repeated over sequential days, impacts to individual fitness are not anticipated. Nearly all studies and experts agree that infrequent exposures of a single day or less are unlikely to impact an individual's overall energy budget (Farmer *et al.* 2018; Harris *et al.* 2017; NAS 2017; New *et al.* 2014; Southall *et al.* 2007; Villegas-Amtmann *et al.* 2015).

Impacts to Marine Mammal Habitat

Any impacts to marine mammal habitat are expected to be relatively minor. Noise and pressure waves resulting from live weapon detonations are not likely to result in long-term physical alterations of the water column or ocean floor. These effects are not expected to substantially affect prey availability, are of limited duration, and are intermittent. Impacts to marine fish were analyzed in our Potential Effects of Specified Activities on Marine Mammals and their Habitat section as well as in the 2002 (REA)(USAF 2022). In the REA, it was determined that fish populations were unlikely to be affected and prey availability for marine mammals would not be impaired. Other factors related to EGTTR activities that could potentially affect marine mammal habitat include the introduction of metals, explosives and explosion by-products, other chemical materials, and debris into the water column and substrate due to the use of munitions and target vessels. However, the effects of each were analyzed in the REA and were determined to be not significant.

Species/Stock-Specific Analyses

This section builds on the broader discussion above and brings together the discussion of the different types and amounts of take that different species are likely to incur, the applicable mitigation, and the status of the species to support the negligible impact determinations for each species. We have described (above in the Preliminary Analysis and Negligible Impact Determination section) the unlikelihood of any masking having effects that would impact the reproduction or survival of any of the individual marine mammals affected by the USAF's activities. We also described in the Potential Effects of Specified Activities on Marine Mammals and their Habitat section of the proposed rule the unlikelihood of any habitat impacts having effects that would impact the reproduction or survival of any of the individual marine mammals affected by the USAF's activities. There is no predicted non-auditory tissue damage from explosives for any species, and limited takes of dolphin species by PTS are predicted. Much of the discussion below focuses on the Level B harassment (behavioral disturbance and TTS) and the mitigation measures that

reduce the probability or severity of effects. Because there are species-specific considerations, these are discussed below where necessary.

Rice's Whale

The Gulf of Mexico Bryde's whale was listed as an endangered subspecies under the ESA in 2019. NMFS revised the common and scientific name of the listed animal in 2021 to Rice's whale and classification to a separate species to reflect the new scientifically accepted taxonomy and nomenclature. NMFS has identified the core distribution area in the northern Gulf of Mexico where the Rice's whale is primarily found and, further, LaBreque *et al.* (2015) identify the area as a small and resident BIA. The Rice's whale has a very small estimated population size (51, Hayes *et al.* 2021) with limited distribution.

NMFS is proposing to allow for the authorization of two annual takes of Rice's whale by Level B harassment in the form of TTS and four annual takes by Level B harassment in the form of behavioral disturbance. The implementation of the required mitigation is expected to minimize the severity of any behavioral disturbance and TTS of Rice's whales. When we look at the northern Gulf of Mexico where the USAF has been intensively training and testing with explosives in the EGTTR for a number of years, there are no data suggesting any long-term consequences to reproduction or survival rates of Rice's whale from explosives.

Rice's whale will benefit from the mitigation measures proposed to limit impacts to the species. As a mitigation measure to prevent any PTS and limit TTS and behavioral impacts to the Rice's whale, the USAF will restrict the use of live munitions in the western part of each LIA based on the setbacks from the 100-m isobath presented earlier. The USAF will also prohibit the use of inert munitions in Rice's whale habitat (100–400 m depth) throughout the EGTTR. The less impactful 105 mm Training Round must be used by the USAF for nighttime missions and all gunnery missions must be conducted 500 m landward of the 100-m isobath. Furthermore, depending on the mission category, vessel-based, aerial, or video feed monitoring would be required. Noise from explosions is broadband with most energy below a few hundred Hz; therefore, any reduction in hearing sensitivity from exposure to explosive sounds is likely to be broadband with effects predominantly at lower frequencies. The limited number of Rice's whales, estimated to be two animals, that do experience TTS from exposure to explosives may have reduced ability to detect biologically important sounds (*e.g.,* social vocalizations). However, any TTS that would occur would be of short duration.

Research and observations show that if mysticetes are exposed to impulsive sounds such as those from explosives, they may react in a variety of ways, which may include alerting, startling, breaking off feeding dives and surfacing, diving or swimming away, changing vocalization, or showing no response at all (DOD 2017; Nowacek 2007; Richardson 1995; Southall *et al.* 2007). Overall, and in consideration of the context for an exposure, mysticetes have been observed to be more reactive to acoustic disturbance when a noise source is located directly in their path or the source is nearby (somewhat independent of the sound level) (Dunlop et al. 2016; Dunlop *et al.* 2018; Ellison *et al.* 2011; Friedlaender *et al.* 2016; Henderson *et al.* 2019; Malme *et al.* 1985; Richardson *et al.* 1995; Southall *et al.* 2007a). Animals disturbed while engaged in feeding or reproductive behaviors may be more likely to ignore or tolerate the disturbance and continue their natural behavior patterns. Because noise from most activities using explosives is short term and intermittent, and because detonations usually occur within a small area (most of which are set back from the primary area of Rice's whale use), behavioral reactions from Rice's whales, if they occur at all, are likely to be short term and of little to no significance.

As described, the anticipated and proposed take of Rice's whale is of a low magnitude and severity that is not expected to impact the reproduction or survival of any individuals, much less population rates of recruitment or survival. Accordingly, we have found that the take allowable and proposed for authorization under the rule will have a negligible impact on Rice's whales.

Delphinids

Neither the common bottlenose dolphin (Northern Gulf of Mexico continental shelf stock) or Atlantic spotted dolphin (Gulf of Mexico stock) are listed as strategic or depleted under the MMPA, and no active unusual mortality events (UME) have been declared. No mortality or non-auditory injury is predicted or proposed for authorization for either of these species. There are no areas of known biological significance for dolphins in the EGTTR. Repeated takes of the same individual animals would be unlikely. The number of PTS takes from the proposed activities are low (one for Atlantic spotted dolphin; nine for common bottlenose dolphin). Because of the low degree of PTS discussed previously (*i.e.,* low amount of hearing sensitivity loss), it is unlikely to affect reproduction or survival of any individuals. Regarding the severity of individual takes by Level B harassment by behavioral disturbance, we have explained the duration of any exposure is expected to be between seconds and minutes (*i.e.,* relatively short duration) and the severity of takes by TTS are expected to be low-level, of short duration and not at a level that will impact reproduction or survival.

As described, the anticipated and proposed take of dolphins is of a low magnitude and severity such that it is not expected to impact the reproduction or survival of any individuals, much less population rates of recruitment or survival. Accordingly, we have found that the take allowable and proposed for authorization under the rule will have a negligible impact on common bottlenose dolphins and Atlantic spotted dolphins.

Determination

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, NMFS preliminarily finds that the total marine mammal take from the specified activities will have a negligible impact on all affected marine mammal species. In addition as described previously, the USAF's proposed implementation of monitoring and mitigation measures would further reduce impacts to marine mammals.

Unmitigable Adverse Impact Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has preliminarily determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of the species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA, 16 U.S.C. 1531 *et seq.*) requires that each Federal agency ensure 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 LOAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species, in this case with the NMFS Office of

Protected Resources Interagency Cooperation Division.

NMFS is proposing to authorize take of the Rice's whale, which is listed under the ESA. The Permits and Conservation Division has requested initiation of section 7 consultation with the Interagency Cooperation Division for the issuance of this proposed rule. NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorization.

National Marine Sanctuaries Act

NMFS will work with NOAA's Office of National Marine Sanctuaries to fulfill our responsibilities under the National Marine Sanctuaries Act as warranted and will complete any NMSA requirements prior to a determination on the issuance of the final rule and LOA.

Classification

Executive Order 12866

The Office of Management and Budget has determined that this proposed rule is not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The RFA requires Federal agencies to prepare an analysis of a rule's impact on small entities whenever the agency is required to publish a notice of proposed rulemaking. However, a Federal agency may certify, pursuant to 5 U.S.C. 605(b), that the action will not have a significant economic impact on a substantial number of small entities. The USAF is the sole entity that would be affected by this rulemaking, and the USAF is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Any requirements imposed by an LOA issued pursuant to these regulations, and any monitoring or reporting requirements imposed by these regulations, would be applicable only to the USAF. NMFS does not expect the issuance of these regulations or the associated LOA to result in any impacts to small entities pursuant to the RFA. Because this action, if adopted, would directly affect the USAF and not a small entity, NMFS concludes that the action would not result in a significant economic impact on a substantial number of small entities.

List of Subjects in 50 CFR Part 218

Exports, Fish, Imports, Incidental take, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Sonar, Transportation, USAF.

Dated: January 30, 2023.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 218 is proposed to be amended as follows:

PART 218—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 218 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

■ 2. Revise subpart G to read as follows:

Subpart G—Taking and Importing Marine Mammals; U.S. Air Force's Eglin Gulf Test and Training Range (EGTTR)

Sec.

§ 218.60 Specified activity and geographical region.

(a) Regulations in this subpart apply only to the U.S. Air Force (USAF) for the taking of marine mammals that occurs in the area described in paragraph (b) of this section and that occurs incidental to the activities listed in paragraph (c) of this section.

(b) The taking of marine mammals by the USAF under this subpart may be authorized in a Letter of Authorization (LOA) only if it occurs within the Eglin Gulf Test and Training Range (EGTTR). The EGTTR is located adjacent to Santa Rosa, Okaloosa, and Walton Counties and includes property on Santa Rosa Island and Cape San Blas. The EGTTR is the airspace controlled by Eglin AFB over the Gulf of Mexico, beginning 3 nautical miles (nmi) from shore, and the underlying Gulf of Mexico waters. The EGTTR extends southward and westward off the coast of Florida and encompasses approximately 102,000 square nautical miles (nmi^2). It is subdivided into blocks of airspace that consist of Warning Areas W–155, W–151, W–470, W–168, and W–174 and Eglin Water Test Areas 1 through 6. The two primary components of the EGTTR Complex are Live Impact Area and East Live Impact Area.

(c) The taking of marine mammals by the USAF is only authorized if it occurs incidental to the USAF conducting training and testing activities, including air warfare and surface warfare training and testing activities.

§ 218.61 Effective dates.

Regulations in this subpart are effective for seven years from the date of issuance.

§ 218.62 Permissible methods of taking.

(a) Under an LOA issued pursuant to § 216.106 of this subchapter and § 218.66, the Holder of the LOA (hereinafter ''USAF'') may incidentally, but not intentionally, take marine mammals within the area described in § 218.60(b) by Level A and Level B harassment associated training and testing activities described in § 218.60(c) provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the applicable LOA.

(b) The incidental take of marine mammals by the activities listed in § 218.60(c) is limited to the species and stocks listed in Table 1 of this section.

TABLE 1 TO § 218.62(b)

Common name	Scientific name	Stock
Atlantic spotted dolphin	*Stenella frontalis*	Northern Gulf of Mexico.
Common Bottlenose dolphin	*Tursiops truncatus*	Northern Gulf of Mexico Continental Shelf.
Rice's whale	*Balaenoptera ricei*	No Stock Designated.

§ 218.63 Prohibitions.

Except for permissible incidental take described in § 218.62 and authorized by an LOA issued under § 216.106 of this section and § 218.66, no person in connection with the activities listed in § 218.66 may do any of the following in connection with activities listed in § 218.60(c):

(a) Violate, or fail to comply with, the terms, conditions, or requirements of this subpart or an LOA issued under § 216.106 of this section and § 218.66;

(b) Take any marine mammal not specified in § 218.62(b);

(c) Take any marine mammal specified in § 218.62(b) in any manner other than as specified in the LOA issued under § 216.106 of this subchapter and § 218.66;

(d) Take a marine mammal specified in § 218.62(b) after NMFS determines such taking results in more than a negligible impact on the species or stock of such marine mammal.

§ 218.64 Mitigation requirements.

When conducting the activities identified in § 218.60(c), the mitigation measures contained in this part and any LOA issued under § 216.106 of this subchapter and § 218.66 must be implemented. These mitigation measures include, but are not limited to:

(a) Operational measures. Operational mitigation is mitigation that the USAF must implement whenever and wherever an applicable training or testing activity takes place within the EGTTR for each mission-day category.

(1) Pre-mission Survey.

(i) All missions must occur during daylight hours with the exception of gunnery training and Hypersonic Active Cruise Missile (HACM) Tests, and other missions that can have nighttime monitoring capabilities comparable to the nighttime monitoring capabilities of gunnery aircraft.

(ii) USAF range-clearing vessels and protected species survey vessels must be onsite 90 minutes before mission to clear prescribed human safety zone and survey the mitigation zone for the given mission-day category.

(iii) For all live missions except gunnery missions, USAF Protected Species Observers (PSOs) must monitor the mitigation zones as defined in Table 2 for the given mission-day category for a minimum of 30 minutes or until the entirety of the mitigation zone has been surveyed, whichever comes first.

(A) The mitigation zone for live munitions must be defined by the mission-day category that most closely corresponds to the actual planned mission based on the predicted net explosive weight at impact (NEWi) to be released, as shown in Table 2.

(B) The mitigation zone for inert munitions must be defined by the energy class that most closely corresponds to the actual planned mission, as shown in Table 3.

(C) The energy of the actual mission must be less than the energy of the identified mission-day category in terms of total NEWi as well as the largest single munition NEWi.

(D) For any inert mission other than gunnery missions PSOs must at a minimum monitor out to the mitigation zone distances shown in Table 3 that applies for the corresponding energy class.

(E) Missions falling under mission-day categories A, B, C, and J, and all other missions when practicable must allot time to provide PSOs to vacate the human safety zone. While exiting, PSOs must observe the monitoring zone out to corresponding mission-day category as shown in Table 1 to § 218.64(a)(1)(iv).

(iv) For all missions except gunnery missions, PSOs and vessels must exit and remain outside the human safety zone designated by the USAF at least thirty minutes prior to live weapon deployment.

TABLE 1 TO § 218.64(a)(1)(iv)—PRE-MISSION MITIGATION AND MONITORING ZONES (IN m) FOR LIVE MISSIONS IMPACT AREA

Mission-day category	Mitigation zone	Monitoring zone [5] [6]
A	1,130	TBD
B	1,170	TBD
C	1,090	TBD
D	950	TBD
E	950	TBD
F	710	TBD
G	[1] 9,260	550
H	[2] 9,260	450
I	280	TBD
J	1,360	TBD
K	520	TBD
L	700	TBD
M	580	TBD
N	500	TBD
O	370	TBD
P	410	TBD
Q	[3] 9,260	490
R	[4] 280 and 9,260	TBD
S	860	TBD

[1] For G, double the Level A harassment threshold distance (PTS) is 0.548 km, but G is AC–130 gunnery mission with an inherent mitigation zone of 9.260 km/5 nmi.

[2] For H, double the Level A harassment threshold distance (PTS) is 0.450 km, but H is AC–130 gunnery mission with an inherent mitigation zone of 9.260 km/5 nmi.

[3] For Q, double the Level A harassment threshold distance (PTS) is 0.494 km, but Q is AC–130 gunnery mission with an inherent mitigation zone of 9.260 km/5nmi.

[4] R has components of both gunnery and inert small diameter bomb. Double the Level A harassment threshold distance (PTS) is 0.278 km, however, for gunnery component the inherent mitigation zone would be 9.260 km.

[5] The Monitoring Zone for non-gunnery missions is the area between the Mitigation Zone and the Human Safety Zone and is not standardized, as the Human Safety Zone is not standardized. The Human Safety Zone is determined per each mission by the Test Wing Safety Office based on the munition and parameters of its release (to include altitude, pitch, heading, and airspeed).

[6] Based on the operational altitudes of gunnery firing, and the only monitoring during mission coming from onboard the aircraft conducting the firing, the Monitoring Zone for gunnery missions will be a smaller area than the Mitigation Zone and be based on the field of view from the aircraft. These observable areas will at least be double the Level A harassment threshold distance (PTS) for the mission-day categories G, H, and Q (gunnery-only mission-day categories).

TABLE 2 TO § 218.64(a)(1)(iv)—PRE-MISSION MITIGATION AND MONITORING ZONES (IN m) FOR INERT MISSIONS IMPACT AREA

Inert impact class (lb TNTeq)	Mitigation zone	Monitoring zone [1]
2	160	TBD
1	126	TBD
0.5	100	TBD
0.15	68	TBD

[1] The Monitoring Zone for non-gunnery missions is the area between the Mitigation Zone and the Human Safety Zone and is not standardized, as the Human Safety Zone is not standardized. HSZ is determined per each mission by the Test Wing Safety Office based on the munition and parameters of its release (to include altitude, pitch, heading, and airspeed).

(v) Missions involving air-to-surface gunnery operations must conduct aerial monitoring of the mitigation zones, as described in the Table 4.

TABLE 3 TO § 218.64(a)(1)(v)—AERIAL MONITORING REQUIREMENTS FOR AIR-TO-SURFACE GUNNERY OPERATIONS

Aircraft	Gunnery round	Mitigation zone	Monitoring altitude	Operational altitude
AC–30 Gunship.	30 mm; 105 mm (FU and TR)	5 nmi (9,260 m)	6,000 ft (1,828 m) ..	15,000 ft (4,572 m) to 20,000 ft (6,096 m).
CV–22 Osprey	.50 caliber	3 nmi (5,556 m)	1,000 ft (3,280 m) ..	1,000 ft (3,280 m).

FU = Full Up; TR = Training Round.

(2) Mission postponement, relocation, or cancellation.

(i) If marine mammals other than the two authorized dolphin species for which take is authorized are observed in either the mitigation zone or monitoring zone by PSOs, then mission activities must be cancelled for the remainder of the day.

(ii) The mission must be postponed, relocated or cancelled if either of the two authorized dolphin species are visually detected in the mitigation zone during the pre-mission survey. Postponement must continue until the animals are confirmed to be outside of the mitigation zone and observed by a PSO to be heading away from the mitigation zone or until the animals are not seen again for 30 minutes.

(iii) The mission must be postponed if marine mammal indicators (*i.e.,* large schools of fish or large flocks of birds) are observed feeding at the surface within the mitigation zone. Postponement must continue until these potential indicators are confirmed to be outside the mitigation zone.

(iv) If either of the two authorized dolphin species are observed in the monitoring zone by PSOs when observation vessels are exiting the human safety zone, and if PSOs determine the marine mammals are heading toward the mitigation zone, then missions must either be postponed, relocated, or cancelled based on mission-specific test and environmental parameters. Postponement must continue until the animals are confirmed by a PSO to be heading away from the mitigation zone or until the animals are not seen again for 30 minutes.

(v) Aerial-based PSOs must look for potential indicators of protected species presence, such as large schools of fish and large, active groups of birds.

(vi) If protected marine species or potential indicators are detected in the monitoring area during pre-mission surveys or during the mission by aerial-based or video-based PSOs, operations must be immediately halted until the mitigation zone is clear of all marine mammals, or the mission must be relocated to another target area.

(3) Vessel avoidance measures.

(i) Vessel operators must follow Vessel Strike Avoidance Measures.

(A) When a marine mammal protected species is sighted, vessels must attempt to maintain a distance of at least 150 ft (46 m) away from protected species and 300 ft (92 m) away from whales. Vessels must reduce speed and avoid abrupt changes in direction until the animal(s) has left the area.

(B) If a whale is sighted in a vessel's path or within 300 feet (92 m) from the vessel, the vessel speed must be reduced and the vessel's engine must be shifted to neutral. The engines must not be engaged until the animals are clear of the area.

(C) If a whale is sighted farther than 300 feet (92 m) from the vessel, the vessel must maintain a distance of 300 feet greater between the whale and the vessel's speed must be reduced to 10 knots or less.

(D) Vessels are required to stay 500 m away from the Rice's whale. If a baleen whale cannot be positively identified to species level then it must be assumed to be a Rice's whale and the 500 m separation distance must be maintained.

(E) Vessels must avoid transit in the Core Distribution Area (CDA) and within the 100–400 m isobath zone outside the CDA. If transit in these areas is unavoidable, vessels must not exceed 10 knots and transit at night is prohibited.

(F) An exception to any vessel strike avoidance measure is for instances required for human safety, such as when members of the public need to be intercepted to secure the human safety zone, or when the safety of a vessel operations crew could be compromised.

(4) Gunnery-specific Mitigation.

(A) 105–mm training rounds (TR) must be used during nighttime gunnery missions.

(B) Ramp-up procedures. Within a mission, firing must start with use of the lowest caliber munition and proceed to increasingly larger rounds.

(C) Any pause in live fire activities greater than 10 minutes must be followed by the re-initiation of protected species surveys.

(b) Geographic mitigation measures.

(1) Use of live munitions is restricted in the western part of the existing LIA and proposed East LIA such that activities may not occur seaward of the setbacks from the 100 m-isobath shown in Table 5.

TABLE 4 TO § 218.64(b)(1)—SETBACK DISTANCES TO PREVENT PERMANENT THRESHOLD SHIFT IMPACTS TO THE RICE'S WHALE

User group	Mission-day category	NEWi (lb)	Setback from 100-meter isobath (km)
53 WEG	A	2,413.6	7.323
	B	2,029.9	6.659
	C	1,376.2	5.277
	D	836.22	3.557
	E	934.9	3.192
AFSOC	F	584.6	3.169
	I	29.6	0.394
96 OG	J	946.8	5.188
	K	350	1.338

TABLE 4 TO § 218.64(b)(1)—SETBACK DISTANCES TO PREVENT PERMANENT THRESHOLD SHIFT IMPACTS TO THE RICE'S WHALE—Continued

User group	Mission-day category	NEWi (lb)	Setback from 100-meter isobath (km)
	L	627.1	3.315
	M	324.9	2.017
	N	238.1	1.815
	O	104.6	0.734
	P	130.8	0.787
	Q	94.4	0.667
	R	37.1	0.368
NAVSCOLEOD	S	130	1.042

(2) All gunnery missions must be conducted at least 500 meters landward of the 100–m isobath.

(3) Use of live munitions must be restricted to the LIA and East LIA and is prohibited from the area between the 100–m and 400–m isobaths.

(4) Use of inert munitions is prohibited between the 100–m and 400–m isobaths throughout the EGTTR.

(5) Live Hypersonic Attack Cruise Missiles (HACMs) must be fired into the EGTTR inside of the LIAs and outside of the area between 100–m to 400–m isobaths

(6) Live HACMs (Mission-day category K) must have a setback of 1.338 km from the 100–m isobath.

(7) Inert HACMs may be fired into portions of the EGTTR outside the LIAs but must be outside the area between the 100–m and 400–m isobaths.

(4) Environmental mitigation.

(i) Sea state conditions—Missions must be postponed or rescheduled if conditions exceed Beaufort sea state 4, which is defined as moderate breeze, breaking crests, numerous white caps, wind speed of 11 to 16 knots, and wave height of 3.3 to 6 feet.

(ii) Daylight Restrictions—All live missions except for nighttime gunnery and hypersonic weapon missions will occur no earlier than 2 hours after sunrise and no later than 2 hours before sunset.

§ 218.65 Monitoring and Reporting

Requirements

(a) PSO Training. All personnel who conduct protected species monitoring must complete Eglin Air Force Base's (AFB) Marine Species Observer Training Course.

(1) Any person who will serve as a PSO for a particular mission must have completed the training within a year prior to the mission.

(2) For missions that require multiple survey platforms to cover a large area, a Lead Biologist must be designated to lead the monitoring and coordinate sighting information with the Test Director or Safety Officer.

(b) Vessel-based Monitoring.

(1) Survey vessels must run predetermined line transects, or survey routes that will provide sufficient coverage of the survey area.

(2) Monitoring must be conducted from the highest point feasible on the vessels.

(3) There must be at least two PSOs on each survey vessel.

(4) For missions that require multiple vessels to cover a large survey area, a Lead Biologist must be designated.

(i) The Lead Biologist must coordinate all survey efforts.

(ii) The Lead Biologist must compile sightings information from other vessels.

(iii) The Lead Biologist must inform Tower Control if the mitigation and monitoring zones are clear or not clear of protected species.

(iv) If the area is not clear, the Lead Biologist must provide recommendations on whether the mission should be postponed or canceled.

(v) Tower Control must relay the Lead Biologist's recommendation to the Safety Officer. The Safety Officer and Test Director must collaborate regarding range conditions based on the information provided.

(vi) The Safety Officer must have the final authority on decisions regarding postponements and cancellations of missions.

(c) Aerial-based monitoring.

(1) All mission-day categories require aerial-based monitoring, assuming assets are available and when such monitoring does not interfere with testing and training parameters required by mission proponents.

(2) Gunnery mission aircraft must also serve as aerial-based monitoring platforms.

(3) Aerial survey teams must consist of Eglin Natural Resources Office personnel or their designees aboard a non-mission aircraft or the mission aircrew.

(4) All aircraft personnel on non-mission and mission aircraft who are acting in the role of a PSO must have completed Eglin AFB's Marine Species Observer Training course.

(5) One trained PSO in the aircraft must record data and relay information on species sightings, including the species (if possible), location, direction of movement, and number of animals, to the Lead Biologist.

(6) For gunnery missions, after arriving at the mission site and before initiating gun firing, the aircraft must fly at least two complete orbits around the target area out to the applicable monitoring zone at a minimum safe airspeed and appropriate monitoring altitude.

(7) Aerial monitoring by aircraft must maintain a minimum ceiling of 305 m (1,000 feet) and visibility of 5.6 km (3 nmi) for effective monitoring efforts and flight safety as show in Table 5.

(8) Pre-mission aerial surveys conducted by gunnery aircrews in AC–130s must extend out 5 nmi (9,260 m) from the target location while aerial surveys in CV–22 aircraft must extend out from the target location to a range of 3 nmi (5,556 m) as shown in Table 4.

(9) If the mission is relocated, the pre-mission survey procedures must be repeated in the new area.

(10) If multiple gunnery missions are conducted during the same flight, marine species monitoring must be conducted separately for each mission;

(11) During nighttime missions, night-vision goggles must be used.

(12) During nighttime missions, low-light electro-optical and infrared sensor systems on board the aircraft must be used for protected species monitoring.

(13) HACM tests and any other missions that are conducted at nighttime must be supported by AC–130 aircraft with night-vision instrumentation or other platforms with

comparable nighttime monitoring capabilities.

(14) For HACM missions, the pre-mission survey area must extend out to, at a minimum, double the Level A harassment (PTS) threshold distance for delphinids (0.52 km). A HACM test would correspond to mission-day category K, which is estimated to have a PTS threshold distance of 0.26 km.

(d) Video-based monitoring.

(1) All mission-day categories require video-based monitoring when practicable except for gunnery missions.

(2) A trained PSO (the video camera PSO) must monitor the live video feeds from the Gulf Range Armament Test Vessel (GRATV) transmitted to the Central Control Facility (CCF).

(3) The video camera PSO must report any protected marine species sightings to the Safety Officer, who will also be at the CCF.

(4) The video camera PSO must have open lines of communication with the PSOs on vessels to facilitate real-time reporting of marine species sightings.

(5) Direct radio communication must be maintained between vessels, GRATV personnel, and Tower Control throughout the mission.

(6) If a protected marine species is detected on the live video by a PSO prior to weapon release, the mission must be stopped immediately by the Safety Officer.

(7) Supplemental video monitoring by additional aerial assets must be used when practicable (*e.g.,* balloons, unmanned aerial vehicles).

(e) Post-mission monitoring.

(1) All marine mammal sightings must be documented on report forms that are submitted to the Eglin Natural Resources Office after the mission.

(2) For gunnery missions, following each mission, aircrews must conduct a post-mission survey beginning at the operational altitude and continuing through an orbiting descent to the designated monitoring altitude. The post-mission survey area will be the area covered in 30 minutes of observation in a direction down-current from the impact site or the actual pre-mission survey area, whichever is reached first.

(3) During post-mission monitoring, PSOs must survey the mission site for any dead or injured marine mammals. The post-mission survey area will be the area covered in 30 minutes of observation in a direction down-current from the impact site or the actual pre-mission survey area, whichever is reached first.

(f) The USAF must submit an annual draft monitoring report to NMFS within 90 working days of the completion of each year's activities authorized by the LOA as well as a comprehensive summary report at the end of the project. The annual reports and final comprehensive report must be prepared and submitted within 30 days following resolution of any NMFS comments on the draft report. If no comments are received from NMFS within 30 days of receipt of the draft report, the report will be considered final. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments. The annual reports must contain the informational elements described below, at a minimum. The comprehensive 7-year report must include a summary of the monitoring information collected over the 7-year period (including summary tables), along with a discussion of the practicability and effectiveness of the mitigation and monitoring and any other important observations or discoveries.

(1) Dates and times (begin and end) of each EGTTR mission;

(2) Complete description of mission activities;

(3) Complete description of pre-and post-monitoring activities occurring during each mission;

(4) Environmental conditions during monitoring periods including Beaufort sea state and any other relevant weather conditions such as cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance;

(5) Upon observation of a marine mammal, the following information should be collected:

(i) Observer who sighted the animal and observer location and activity at time of sighting;

(ii) Time of sighting;

(iii) Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), observer confidence in identification, and the composition of the group if there is a mix of species;

(iv) Distances and bearings of each marine mammal observed in relation to the target site;

(v) Estimated number of animals including the minimum number, maximum number, and best estimate);

(vi) Estimated number of animals by cohort (*e.g.,* adults, juveniles, neonates, group composition etc.);

(vii) Estimated time that the animal(s) spent within the mitigation and monitoring zones;

(viii) Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling);

(ix) Detailed information about implementation of any mitigation (*e.g.,* postponements, relocations and cancellations), and

(x) All PSO datasheets and/or raw sightings data.

(6) The final comprehensive report must include a summary of data collected as part of the annual reports.

(g) In the event that personnel involved in the monitoring activities discover an injured or dead marine mammal, the USAF must report the incident to NMFS Office of Protected Resources (OPR), and to the NMFS Southeast Region Marine Mammal Stranding Network Coordinator, as soon as feasible. If the death or injury was likely caused by the USAF's activity, the USAF must immediately cease the specified activities until NMFS OPR is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of this rule and the LOA issued under § 216.106 of this subchapter and § 218.66.

(1) The USAF will not resume their activities until notified by NMFS. The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

(ii) Species identification (if known) or description of the animal(s) involved;

(iii) Condition of the animal(s) (including carcass condition if the animal is dead);

(iv) Observed behaviors of the animal(s), if alive;

(v) If available, photographs or video footage of the animal(s); and

(vi) General circumstances under which the animal was discovered.

(2) [Reserved]

§ 218.66 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to the regulations in this subpart, the USAF must apply for and obtain an LOA in accordance with § 216.106 of this section.

(b) An LOA, unless suspended or revoked, may be effective seven years from the date of issuance.

(c) Except for changes made pursuant to the adaptive management provision of § 218.67(b)(1), in the event of projected changes to the activity or to mitigation, monitoring, or reporting required by an LOA issued under this subpart, the USAF must apply for and obtain a modification of the LOA as described in § 218.67.

(d) Each LOA will set forth:

(1) Permissible methods of incidental taking;

(2) Geographic areas for incidental taking;

(3) Means of effecting the least practicable adverse impact (*i.e.,* mitigation) on the species or stocks of marine mammals and their habitat; and

(4) Requirements for monitoring and reporting.

(e) Issuance of the LOA(s) must be based on a determination that the level of taking is consistent with the findings made for the total taking allowable under the regulations in this subpart.

(f) Notice of issuance or denial of the LOA(s) will be published in the **Federal Register** within 30 days of a determination.

§ 218.67 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under § 216.106 of this subchapter and § 218.66 for the activity identified in § 218.60(c) may be modified upon request by the applicant, consistent with paragraph (b), provided that any requested changes to the activity or to the mitigation, monitoring, or reporting measures (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) do not change the underlying findings made for the regulations and do not result in more than a minor change in the total estimated number of takes (or distribution by species or years). NMFS may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(b) An LOA issued under § 216.106 of this section and § 218.66 may be modified by NMFS under the following circumstances:

(1) *Adaptive management.* After consulting with the USAF regarding the practicability of the modifications, NMFS may modify (including adding or removing measures) the existing mitigation, monitoring, or reporting measures if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA include:

(A) Results from USAF's annual monitoring report and annual exercise report from the previous year(s);

(B) Results from other marine mammal and/or sound research or studies;

(C) Results from specific stranding investigations; or

(D) Any information that reveals marine mammals may have been taken in a manner, extent, or number not authorized by the regulations in this subpart or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of a new proposed LOA in the **Federal Register** and solicit public comment.

(2) *Emergencies.* If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species of marine mammals specified in LOAs issued pursuant to § 216.106 of this section and § 218.66, an LOA may be modified without prior public notice or opportunity for public comment. Notice will be published in the **Federal Register** within thirty days of the action.

§ 218.68 [Reserved]

§ 218.69 [Reserved]

[FR Doc. 2023–02242 Filed 2–6–23; 8:45 am]

BILLING CODE 3510–22–P

FEDERAL REGISTER

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No. 25 February 7, 2023

Part IV

The President

Federal Register
Vol. 88, No. 25
Tuesday, February 7, 2023

Presidential Documents

Title 3—

The President

Proclamation 10520 of February 3, 2023

30th Anniversary of the Family and Medical Leave Act

By the President of the United States of America

A Proclamation

For 30 years, the Family and Medical Leave Act (FMLA) has given American workers the right to take time to care for themselves and their loved ones without losing their jobs. When President Clinton signed it into law on February 5, 1993, I was proud to have fought for it as a United States Senator alongside tenacious advocates and Members of Congress.

Before its passage, parents were not guaranteed time off for staying home with a newborn or sick child, and workers could lose their health insurance for taking leave to fight an illness. The FMLA ended that for millions of Americans, guaranteeing up to 12 weeks of unpaid leave annually to care for a spouse, a parent, a child, or themselves, and preserving their jobs until they returned. The law has given countless Americans peace of mind in their toughest moments. It has made workplaces fairer and healthier. And it has made it easier for millions of women—who still disproportionately shoulder caregiving responsibilities—to remain in the workforce, benefitting our whole economy.

But it is not enough to just protect people's jobs; we must also protect their paychecks so every American worker can afford to be there for their loved ones. The COVID–19 pandemic made this even more obvious. The United States is one of the only countries in the world that does not provide paid leave to its workers, undermining the health and economic security of families and our Nation. As millions more Americans join today's so-called ''sandwich generation,'' struggling to care for both young kids and aging parents, we need to help.

That is why, when I took office as President, I proposed the first national paid family and medical leave program in our history. Paid leave would help bring more people back into the workforce—boosting productivity, securing wages, and easing budgets for working families. And it would give workers more dignity and control over their own lives.

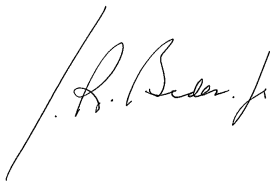
During the depths of the COVID–19 pandemic, my Administration expanded the Child Tax Credit to give millions of families a little more breathing room, helping cut child poverty to the lowest rate on record. We gave 200,000 childcare providers the funding needed to keep their doors open, serving over 9.5 million children nationwide. We invested $145 million in the National Family Caregiver Support Program, which gives family and other informal care providers counseling, training, and respite care to support loved ones. I recently signed the Pregnant Workers Fairness Act to ensure that employers make reasonable accommodations related to pregnancy, childbirth, or related medical conditions. And just yesterday, I signed a Presidential Memorandum to make sure Federal employees are able to access leave when they need it, to the fullest extent possible.

I ran for President to restore the backbone of this country—the middle class. My Administration is fighting for working families across the board. We are lowering health care costs and prescription drug costs. We are reducing home energy bills. We have created nearly 11 million jobs, reducing unemployment to a 50-year low as wages keep rising. And we have protected the pensions that over a million American workers and retirees worked

for their whole lives, making sure they can retire with dignity and respect. Thirty years after the FMLA was signed, we reaffirm that nothing is more important than being there for the ones you love when they need you most.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim February 5, 2023, as the 30th Anniversary of the Family and Medical Leave Act. I call upon Americans to honor those who advocated for this crucial legislation and to join the fight for the dignity and rights of workers across this Nation.

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



[FR Doc. 2023–02757
Filed 2–6–23; 11:15 am]
Billing code 3395–F3–P

Presidential Documents

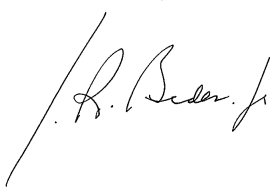
Notice of February 6, 2023

Continuation of the National Emergency With Respect to the Situation in and in Relation to Burma

On February 10, 2021, by Executive Order 14014, I declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the situation in and in relation to Burma.

The situation in and in relation to Burma, and in particular the February 1, 2021 coup, in which the military overthrew the democratically elected civilian government of Burma and unjustly arrested and detained government leaders, politicians, human rights defenders, journalists, and religious leaders, thereby rejecting the will of the people of Burma as expressed in elections held in November 2020 and undermining the country's democratic transition and rule of law, continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared on February 10, 2021, must continue in effect beyond February 10, 2023. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 14014 with respect to the situation in and in relation to Burma.

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



THE WHITE HOUSE,
February 6, 2023.

[FR Doc. 2023–02770
Filed 2–6–23; 11:15 am]
Billing code 3395–F3–P

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Federal Register

Vol. 88, No. 25

Tuesday, February 7, 2023

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