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The Code of Federal Regulations is sold by the Superintendent of Documents.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1577; Project Identifier MCAI–2022–00860–T; Amendment 39–22330; AD 2023–03–05]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2022–09–06, which applied to certain Airbus SAS Model A350–941 and –1041 airplanes. AD 2022–09–06 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 new or more restrictive airworthiness limitations are necessary. This AD continues to require the actions in AD 2022–09–06 and requires revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 23, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 23, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of June 21, 2022 (87 FR 29654, May 16, 2022; corrected May 23, 2022 (87 FR 31123)).

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1577; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this 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–2022–1577.

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

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2022–09–06, Amendment 39–22026 (87 FR 29654, May 16, 2022; corrected May 23, 2022 (87 FR 31123)) (AD 2022–09–06). AD 2022–09–06 applied to certain Airbus SAS Model A350–941 and –1041 airplanes. AD 2022–09–06 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA issued AD 2022–09–06 to address hazardous or catastrophic airplane system failures. AD 2022–09–06 specifies that accomplishing the revision required by that AD terminates certain requirements of AD 2019–20–01, Amendment 39–19754 (84 FR 55495, October 17, 2019) (AD 2019–20–01).

The NPRM published in the **Federal Register** on December 9, 2022 (87 FR 75522). The NPRM was prompted by AD 2022–0127, dated June 28, 2022, issued by the European Union Aviation Safety Agency, which is the Technical Agent for the Member States of the European Unions (EASA AD 2022–0127) (referred to after this as the MCAI). The MCAI states that new and/or more restrictive tasks and limitations were introduced for Airbus A350 airplanes.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1577.

In the NPRM, the FAA proposed to continue to require the actions in AD 2022–09–06 and to require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, as specified in EASA AD 2022–0127. The FAA is issuing this AD to address hazardous or catastrophic airplane system failures.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from Air Line Pilots Association, International (ALPA), who supported the NPRM without change.

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered the 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

The FAA reviewed EASA AD 2022–0127. This service information specifies new or more restrictive airworthiness

limitations for airplane structures and safe life limits.

This AD also requires EASA AD 2021–0208, dated September 15, 2021, which the Director of the Federal Register approved for incorporation by reference as of June 21, 2022 (87 FR 29654, May 16, 2022; corrected May 23, 2022 (87 FR 31123)).

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

Costs of Compliance

The FAA estimates that this AD affects 30 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 2022–09–06 to be $7,650 (90 work-hours × $85 per work-hour).

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate.

The FAA estimates the total cost per operator for the new 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

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) 2022–09–06, Amendment 39–22026 (87 FR 29654, May 16, 2022; corrected May 23, 2022 (87 FR 31123)); and

■ b. Adding the following new airworthiness directive:

2023–03–05 Airbus SAS: Amendment 39–22330; Docket No. FAA–2022–1577; Project Identifier MCAI–2022–00860–T.

(a) Effective Date

This airworthiness directive (AD) is effective March 23, 2023.

(b) Affected ADs

(1) This AD replaces AD 2022–09–06, Amendment 39–22026 (87 FR 29654, May 16, 2022; corrected May 23, 2022 (87 FR 31123)) (AD 2022–09–06).

(2) This AD affects AD 2019–20–01, Amendment 39–19754 (84 FR 55495, October 17, 2019) (AD 2019–20–01).

(c) Applicability

This AD applies to Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before May 2, 2022.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address hazardous or catastrophic airplane system failures.

(f) Compliance

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

(g) Retained Maintenance or Inspection Program Revision, With No Changes

This paragraph restates the requirements of paragraph (j) of AD 2022–09–06, with no changes. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before July 20, 2021: Except as specified in paragraph (h) of this AD, comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0208, dated September 15, 2021 (EASA AD 2021–0208). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (j) of this AD terminates the requirements of this paragraph.

(h) Retained Exceptions to EASA AD 2021–0208, With No Changes

This paragraph restates the exceptions specified in paragraph (k) of AD 2022–09–06, with no changes.

(1) Where EASA AD 2021–0208 refers to its effective date, this AD requires using June 21, 2022 (the effective date of AD 2022–09–06).

(2) The requirements specified in paragraphs (1) and (2) of EASA AD 2021–0208 do not apply to this AD.

(3) Paragraph (3) of EASA AD 2021–0208 specifies revising ''the approved AMP [aircraft maintenance program]'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after June 21, 2022 (the effective date of AD 2022–09–06).

(4) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2021–0208 is at the applicable ''limitations'' as incorporated by the requirements of paragraph (3) of EASA AD 2021–0208, or within 90 days after June 21, 2022 (the effective date of AD 2022–09–06), whichever occurs later.

(5) The provisions specified in paragraphs (4) and (5) of EASA AD 2021–0208 do not apply to this AD.

(6) The ''Remarks'' section of EASA AD 2021–0208 does not apply to this AD.

(7) Where EASA AD 2021–0208 refers to Airbus A350 Airworthiness Limitations Section (ALS) Part 4, Revision 6 and Variation 6.1, replace the text ''Airbus A350 Airworthiness Limitations Section (ALS) Part 4, Revision 6 and Variation 6.1,'' with ''Airbus A350 Airworthiness Limitations Section (ALS) Part 4, Revision 6 and

Variation 6.1; for any airworthiness limitations (tasks and life limits) that are in both documents, the airworthiness limitations (tasks and life limits) specified in Variation 6.1 prevail.''

(i) Retained Provisions for Alterative Actions and Intervals With a New Exception

This paragraph restates the requirements of paragraph (l) of AD 2022–09–06, with a new exception. Except as required by paragraph (j) of this AD, after the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2021–0208.

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

Except as specified in paragraph (k) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2022–0127, dated June 28, 2022 (EASA AD 2022–0127). Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements of paragraph (g) of this AD.

(k) Exceptions to EASA AD 2022–0127

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2022–0127 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2022–0127 specifies to revise ''the AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2022–0127 is at the applicable ''limitations'' as incorporated by the requirements of paragraph (3) of EASA AD 2022–0127, or within 90 days after the effective date of this AD, whichever occurs later.

(4) The provisions specified in paragraphs (4) and (5) of EASA AD 2022–0127 do not apply to this AD.

(5) The ''Remarks'' section of EASA AD 2022–0127 does not apply to this AD.

(l) New Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2022–0127.

(m) Terminating Action for Certain Requirements of AD 2019–20–01

Accomplishing the actions required by paragraph (g) or (j) of this AD terminates the repetitive greasing task for batch 02 group of affected thrust reverser actuators required by paragraph (g) of AD 2019–20–01.

(n) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the International Validation Branch, send it to the attention of the person identified in paragraph (o) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(o) Additional Information

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

(p) 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 23, 2023.

(i) European Union Aviation Safety Agency (EASA) AD 2022–0127, dated June 28, 2022.

(ii) [Reserved]

(4) The following service information was approved for IBR on June 21, 2022 (87 FR 29654, May 16, 2022; corrected May 23, 2022 (87 FR 31123)).

(i) European Union Aviation Safety Agency (EASA) AD 2021–0208, dated September 15, 2021.

(ii) [Reserved]

(5) For EASA ADs 2022–0127 and 2021–0208, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find these EASA ADs on the EASA website at *ad.easa.europa.eu.*

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

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

Issued on February 1, 2023.

Christina Underwood,

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

[FR Doc. 2023–03177 Filed 2–15–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1302; Project Identifier MCAI–2022–00062–E; Amendment 39–22301; AD 2023–01–07]

RIN 2120–AA64

Airworthiness Directives; GE Aviation Czech s.r.o. (Type Certificate Previously Held by WALTER Engines a.s., Walter a.s., and MOTORLET a.s.) Turboprop Engines

Editorial Note: Rule document R1–2023–00490, published on pages 7355–7357 in the issue of Friday, February 3, 2023. In that publication, on page 7356, the table in section (39.13) appeared incorrectly. The rule is republished here corrected and in its entirety.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all GE Aviation Czech s.r.o. (GEAC) H75–100, H75–200, H80, H80–100, H80–200, H85–100, and H85–200 model turboprop engines. This AD is prompted by the manufacturer revising the airworthiness limitations section (ALS) of the existing engine maintenance manual (EMM) to introduce updated coefficients for the calculation of the cyclic life and safe life for the main shaft. This AD requires revising the ALS of the existing EMM and the operator's existing approved maintenance or inspection program, as applicable, to incorporate the updated coefficients and recalculate the cycles accumulated on critical parts. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 21, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1302; or in person at Docket Operations between 9 a.m. and

5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Barbara Caufield, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7146; email: *barbara.caufield@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 GEAC H75–100, H75–200, H80, H80–100, H80–200, H85–100, and H85–200 model turboprop engines. The NPRM published in the **Federal Register** on October 24, 2022 (87 FR 64175). The NPRM was prompted by AD 2022–0008, dated January 19, 2022, issued by the European Union Aviation Safety Agency (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 the airworthiness limitations for H series engine models, which are approved by EASA, are currently defined and published in the ALS of the GEAC EMM. These instructions have been identified as mandatory for continued airworthiness. Failure to accomplish these instructions could result in an unsafe condition. The MCAI explains that recently GEAC published a revision to the ALS, introducing updated coefficients for the calculation of the cyclic life and safe life for the main shaft.

In the NPRM, the FAA proposed to require revising the ALS of the existing EMM and the operator's existing approved maintenance or inspection program, as applicable, to incorporate the updated coefficients and recalculate the cycles accumulated on critical parts. An owner/operator (pilot) holding at least a private pilot certificate may revise the ALS of the existing EMM, and the owner/operator must enter compliance with the applicable paragraphs of the AD into the aircraft records in showing compliance with this AD in accordance with 14 CFR 43.9(a) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439. This is an exception to the FAA's standard maintenance regulations. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1302.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the costs.

Conclusion

These products have been approved by the aviation authority of another country and are 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 these products. Except for minor editorial changes, this AD is adopted as proposed in the NPRM.

Related Service Information

The FAA reviewed the ALS of the GEAC EMM, Part No: 0983402, Rev. 22, dated December 18, 2020. This service information provides updated coefficients for the calculation of the cyclic life and safe life for the main shaft.

Costs of Compliance

The FAA estimates that this AD affects 33 engines 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 EMM and the operator's existing approved maintenance or inspection program.	1 work-hour × $85 per hour = $85.	$0	$85	$2,805

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:

2023–01–07 GE Aviation Czech s.r.o (Type Certificate previously held by WALTER Engines a.s., Walter a.s., and MOTORLET a.s.):

Amendment 39–22301; Docket No. FAA–2022–1302; Project Identifier MCAI–2022–00062–E.

(a) Effective Date

This airworthiness directive (AD) is effective February 21, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to GE Aviation Czech s.r.o. (Type Certificate previously held by WALTER Engines a.s., Walter a.s., and MOTORLET a.s.) H75–100, H75–200, H80, H80–100, H80–200, H85–100, and H85–200 model turboprop engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7200, Engine (Turbine/Turboprop).

(e) Unsafe Condition

This AD was prompted by the manufacturer revising the airworthiness limitations section (ALS) of the existing engine maintenance manual (EMM) to introduce updated coefficients for the calculation of the cyclic life and safe life for the main shaft. The FAA is issuing this AD to prevent failure of the engine. The unsafe condition, if not addressed, could result in uncontained release of a critical part, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) Within 90 days of the effective date of this AD, revise the ALS of the existing EMM and the existing approved maintenance or inspection program, as applicable, to incorporate the information in Table 1 to paragraph (g)(1) of this AD and recalculate the cycles accumulated on critical parts.

TABLE 1 TO PARAGRAPH (g)(1)—EQUIVALENT CYCLIC LIFE (N) AND SAFE LIFE OF CRITICAL PARTS

Description	Drawing No.	Abbreviated flight cycle coefficient		Flight mission coefficient	Equivalent cyclic life limit
		A_V	A_P	L	N
Main Shaft	M601–1017.75	0.47		1.05	16,000

(2) After performing the action required by paragraph (g)(1) of this AD, except as provided in paragraph (h) of this AD, no alternative life limits may be approved.

(3) The action required by paragraph (g)(1) of this AD may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with § § 43.9(a) and 91.417(a)(2)(v). The record must be maintained as required by § 91.417, 121.380, or 135.439.

(h) 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 § 39.19. In accordance with § 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 (i)(2) of this AD and email to: *ANE-AD-AMOC@faa.gov.*

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

(i) Additional Information

(1) Refer to European Union Aviation Safety Agency (EASA) AD 2022–0008, dated January 19, 2022, for related information. This EASA AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2022–1302.

(2) For more information about this AD, contact Barbara Caufield, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7146; email: *barbara.caufield@faa.gov.*

(j) Material Incorporated by Reference

None.

Issued on January 6, 2023.

Christina Underwood,

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

[FR Doc. R2–2023–00490 Filed 2–15–23; 8:45 am]

BILLING CODE 0099–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1419; Project Identifier MCAI–2022–01002–R; Amendment 39–22328; AD 2023–03–03]

RIN 2120–AA64

Airworthiness Directives; Leonardo S.p.a. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Leonardo S.p.a. Model AB139 and AW139 helicopters. This AD was prompted by a report of a damaged tail rotor duplex bearing (TRDB). This AD requires repetitively inspecting certain TRDBs and depending on the results, replacing the TRDB or tail rotor actuator (TRA), or as an option, replacing the sliding control assembly. This AD also requires replacing an affected TRDB with a serviceable TRDB at a specified threshold and prohibits the installation of certain TRDBs or sliding control assemblies on any helicopter, 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 23, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 23, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1419; 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 EASA material that is incorporated by reference in this final rule, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *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, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2022–1419.

Other Related Service Information: For Leonardo service information identified in this final rule, contact Leonardo S.p.A. Helicopters, Emanuele Bufano, Head of Airworthiness, Viale G. Agusta 520, 21017 C. Costa di Samarate (Va) Italy; telephone (+39) 0331–225074; fax (+39) 0331–229046; or at *customerportal.leonardocompany.com/en-US/.* You may also view this service information at the FAA contact information under *Material Incorporated by Reference* above.

FOR FURTHER INFORMATION CONTACT: Dan McCully, Program Manager, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1701 Columbia Ave., Mail Stop: ACO, College Park, GA 30337; telephone (404) 474–5548; email *william.mccully@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued a series of ADs, with the most recent being EASA Emergency AD 2022–0182–E, dated August 30, 2022 (EASA AD 2022–0182–E), to correct an unsafe condition for all serial-numbered Leonardo S.p.A. Helicopters Model AB139 and AW139 helicopters. EASA AD 2022–0182–E defines the ''affected part'' as TRDB part number (P/N) 3G6430V00151, P/N 3G6430V00152, and P/N 3G6430V00153, the ''affected TRA'' as TRA P/N 3G6730V00731 and P/N 3G6730V00732, and the ''affected assembly'' as sliding control assembly P/N 3G6430A02531.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to Leonardo S.p.a. Model AB139 and AW139 helicopters. The NPRM published in the **Federal Register** on November 10, 2022 (87 FR 67840). The NPRM was prompted by a report of a damaged TRDB. According to EASA, after an investigation, it was determined that the TRDB had been removed from a sliding control assembly and reinstalled on another sliding control assembly, even though Aircraft Maintenance Programme procedures do not allow reinstallation of a removed TRDB. The NPRM proposed to require accomplishing the actions specified in EASA AD 2022–0182–E.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the costs.

Conclusion

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. 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 these helicopters.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0182–E requires repetitively inspecting certain affected parts, and depending on the results, replacing the affected part with a serviceable part, and for certain conditions, replacing the affected TRA or sliding control assembly, as defined therein. EASA AD 2022–0182–E also requires replacing affected parts with serviceable parts at specified thresholds. Lastly, EASA AD 2022–0182–E prohibits the installation of certain TRDBs or sliding control assemblies on any helicopter.

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.

Other Related Service Information

The FAA also reviewed Leonardo Helicopters Emergency Alert Service Bulletin No. 139–725, Revision A, dated August 9, 2022 (EASB 139–725 Rev A). EASB 139–725 Rev A specifies procedures for inspecting for rotation between the trunnion and pitch control rod, and applying slippage marks; inspecting the visible areas of the TRDB (including seals) for wear, damages, corrosion, particles, grease leakage, grease leakage particles (including magnetic/metallic particles), and roughness in its movement; and accomplishing a TRDB operational test. Finally, EASB 139–725 Rev A specifies procedures for replacing a TRDB and TRA, discarding the removed TRDB, and sending certain photos and information to Leonardo S.p.A.

Costs of Compliance

The FAA estimates that this AD affects 80 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Inspecting the TRDB takes up to about 12 work-hours and parts cost about $100 for an estimated cost of up to $1,120 per helicopter and $89,600 for the U.S. fleet, per inspection cycle. If required, replacing a TRDB takes about 3 additional work-hours and parts cost about $2,100, for an estimated cost of $2,355 per helicopter. Replacing a TRA takes about 2 additional work-hours and parts cost about $42,802, for an estimated cost of $42,972 per helicopter. Alternatively, replacing the sliding control assembly takes about 6 work-hours and parts cost about $11,500, for an estimated cost of $12,010 per helicopter.

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some 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:

2023–03–03 Leonardo S.p.a.: Amendment 39–22328; Docket No. FAA–2022–1419; Project Identifier MCAI–2022–01002–R.

(a) Effective Date

This airworthiness directive (AD) is effective March 23, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Leonardo S.p.a. Model AB139 and AW139 helicopters, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6400, Tail Rotor System.

(e) Unsafe Condition

This AD was prompted by a report of a damaged tail rotor duplex bearing (TRDB) that was improperly installed on a sliding control assembly. The FAA is issuing this AD to ensure the proper installation of a TRDB and prevent a TRDB from remaining in service beyond its life limit. The unsafe condition, if not detected and corrected, could lead to structural failure of the TRDB, possibly resulting in loss of control of the helicopter.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) Emergency AD 2022–0182–E, dated August 30, 2022 (EASA AD 2022–0182–E).

(h) Exceptions to EASA AD 2022–0182–E

(1) Where EASA AD 2022–0182–E requires compliance in terms of flight hours, this AD requires using hours time-in-service (TIS).

(2) Where EASA AD 2022–0182–E refers to July 28, 2022 (the effective date of EASA AD 2022–0152–E, dated July 26, 2022) and its effective date, this AD requires using the effective date of this AD.

(3) Where the service information referenced in EASA AD 2022–0182–E specifies discarding certain parts, this AD requires removing those parts from service.

(4) Where the service information referenced in EASA AD 2022–0182–E specifies returning a part to the manufacturer, this AD does not require that action.

(5) The ''Remarks'' section of EASA AD 2022–0182–E does not apply to this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2022–0182–E specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Alternative Methods of Compliance (AMOCs)

(1) 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 local Flight Standards District Office, as appropriate. If sending information directly to the manager of the 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.*

(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.

(k) Additional Information

For more information about this AD, contact Dan McCully, Program Manager, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1701 Columbia Ave., Mail Stop: ACO, College Park, GA 30337; telephone (404) 474–5548; email *william.mccully@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) Emergency AD 2022–0182–E, dated August 30, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0182–E, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*

(4) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. 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 31, 2023.

Christina Underwood,

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

[FR Doc. 2023–03270 Filed 2–15–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1407; Project Identifier MCAI–2022–01043–T; Amendment 39–22321; AD 2023–02–14]

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 A350–941 and –1041 airplanes. This AD was prompted by reports of potential foreign object debris (FOD) contamination of the thermal relief valve (TRV). This AD requires replacement of affected auxiliary power unit (APU) low-pressure (LP) shut-off valves (SOVs), an inspection to detect

fuel leaks of affected engine LP SOVs and APU isolation shut-off valves (ISOVs), and applicable corrective actions, and prohibits installation of affected parts, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference (IBR). The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 23, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 23, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1407; 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 identified in this final rule, 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 at *regulations.gov* under Docket No. FAA–2022–1407.

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

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A350–941 and –1041 airplanes. The NPRM published in the **Federal Register** on November 4, 2022 (87 FR 66623). The NPRM was prompted by AD 2022–0157, dated August 4, 2022, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2022–0157) (also referred to as the MCAI). The MCAI states that reports have been received from the manufacturer of the APU, the engine LP SOV, and the APU ISOV of potential FOD contamination of the TRV, which was generated by a quality escape during the manufacturing assembly process. Results of the technical investigation determined that FOD in the TRV may lead to a fuel leakage through the valve. This condition, if not detected and corrected, could, in case of an APU or engine fire, contribute to an uncontrolled fire, possibly resulting in loss of control of the airplane.

In the NPRM, the FAA proposed to require replacement of affected APU LP SOVs, an inspection to detect fuel leaks of affected engine LP SOVs and APU ISOVs, and applicable corrective actions, as specified in EASA AD 2022–0157. The NPRM also proposed to prohibit installation of affected parts. The FAA is issuing this AD to address potential FOD contamination, which could lead to a fuel leak. The unsafe condition, if not addressed, could result in an APU or engine fire and contribute to an uncontrolled fire, possibly resulting in loss of control of the airplane.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1407.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from the Air Line Pilots Association, International (ALPA), who supported the NPRM without change.

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered the 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

The FAA reviewed EASA AD 2022–0157, which specifies procedures for replacement of affected APU LP SOVs with serviceable parts, a special detailed inspection of affected engine LP SOVs and APU ISOVs for discrepancies (leaks), and replacement of discrepant engine LP SOVs and APU ISOVs with serviceable parts. EASA AD 2022–0157 also prohibits installation of an affected APU LP SOV, engine LP SOV, or APU ISOV. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Costs of Compliance

The FAA estimates that this AD affects 69 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
Up to 15 work-hours × $85 per hour = $585	$0	$585	$40,365

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 agency has no way of determining the number of aircraft that might need on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
Up to 7 work-hours × $85 per hour = $595	Up to $18,000	$18,595

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:

2023–02–14 Airbus SAS: Amendment 39–22321; Docket No. FAA–2022–1407; Project Identifier MCAI–2022–01043–T.

(a) Effective Date

This airworthiness directive (AD) is effective March 23, 2023.

(b) Affected ADs

None.

(c) Applicability

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

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel System.

(e) Unsafe Condition

This AD was prompted by reports of potential foreign object debris (FOD) contamination of the thermal relief valve (TRV). The FAA is issuing this AD to address potential FOD contamination, which could lead to a fuel leak. The unsafe condition, if not addressed, could result in an auxiliary power unit (APU) or engine fire and contribute to an uncontrolled fire, possibly resulting 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 paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0157, dated August 4, 2022 (EASA AD 2022–0157).

(h) Exceptions to EASA AD 2022–0157

(1) Where EASA AD 2022–0157 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph (3) of EASA AD 2022–0157 specifies ''any discrepancy'' this AD defines discrepancy as leaks of the APU, the engine low-pressure (LP) shut-off valve (SOV), and the APU isolation shut-off valve (ISOV).

(3) This AD does not adopt the ''Remarks'' section of EASA AD 2022–0157.

(4) Where the service information referenced in EASA AD 2022–0157 specifies to scrap certain parts, send those parts to the manufacturer, or check spares, this AD does not include that requirement.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2022–0157 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the International Validation Branch, send it to the attention of the person identified in paragraph (k) of this AD. 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 (j)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Additional Information

For more information about this AD, contact Dat Le, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des

Moines, WA 98198; telephone 516–228–7317; email *Dat.V.Le@faa.gov.*

(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 the AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2022–0157, dated August 4, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0157, 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 service information at FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(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 27, 2023.

Christina Underwood,

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

[FR Doc. 2023–03178 Filed 2–15–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1408; Project Identifier MCAI–2022–00857–T; Amendment 39–22325; AD 2023–02–18]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2022–09–03, which applied to certain Airbus SAS Model A350–941 and –1041 airplanes. AD 2022–09–03 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 new or more restrictive airworthiness limitations are necessary. This AD continues to require the actions in AD 2022–09–03 and requires revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference (IBR). The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 23, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 23, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of June 16, 2022 (87 FR 29030, May 12, 2022).

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1408; 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 identified in this final rule, 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 at *regulations.gov* under Docket No. FAA–2022–1408.

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

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2022–09–03, Amendment 39–22023 (87 FR 29030, May 12, 2022) (AD 2022–09–03). AD 2022–09–03 applied to certain Airbus SAS Model A350–941 and –1041 airplanes. AD 2022–09–03 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA issued AD 2022–09–03 to address the potential failure of certain life-limited parts, which could result in reduced structural integrity of the airplane.

The NPRM published in the **Federal Register** on November 9, 2022 (87 FR 67575). The NPRM was prompted by AD 2022–0124, dated June 28, 2022, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2022–0124) (referred to after this as the MCAI). EASA AD 2022–0124 superseded EASA AD 2021–0206 (which corresponds to FAA AD 2022–09–03). The MCAI states that new or more restrictive airworthiness limitations have been developed.

In the NPRM, the FAA proposed to continue to require the actions in AD 2022–09–03. The NPRM also proposed to require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, as specified in EASA AD 2022–0124. The FAA is issuing this AD to address the potential failure of certain life-limited parts, which could result in reduced structural integrity of the airplane.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1408.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from the Air Line Pilots Association, International (ALPA), who supported the NPRM without change.

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered the 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

The FAA reviewed EASA AD 2022–0124, which specifies new or more restrictive airworthiness limitations for airplane structures and safe life limits.

This AD also requires EASA AD 2021–0206, dated September 15, 2021, which the Director of the Federal Register approved for incorporation by reference as of June 16, 2022 (87 FR 29030, May 12, 2022).

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

Costs of Compliance

The FAA estimates that this AD affects 30 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 2022–09–03 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 has determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2022–09–03, Amendment 39–22023 (87 FR 29030, May 12, 2022); and

■ b. Adding the following new airworthiness directive:

2023–02–18 Airbus SAS: Amendment 39–22325; Docket No. FAA–2022–1408; Project Identifier MCAI–2022–00857–T.

(a) Effective Date

This airworthiness directive (AD) is effective March 23, 2023.

(b) Affected ADs

This AD replaces AD 2022–09–03, Amendment 39–22023 (87 FR 29030, May 12, 2022) (AD 2022–09–03).

(c) Applicability

This AD applies to Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before May 2, 2022.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address the potential failure of certain life-limited parts, which could result in 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 No Changes

This paragraph restates the requirements of paragraph (j) of AD 2022–09–03, with no changes. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before June 30, 2021: Except as specified in paragraph (h) of this AD, comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0206, dated September 15, 2021 (EASA AD 2021–0206). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (j) of this AD terminates the requirements of this paragraph.

(h) Retained Exceptions to EASA AD 2021–0206, With No Changes

This paragraph restates the requirements of paragraph (k) of AD 2022–09–03, with no changes.

(1) Where EASA AD 2021–0206 refers to its effective date, this AD requires using June 16, 2022 (the effective date of AD 2022–09–03).

(2) The requirement specified in paragraph (1) of EASA AD 2021–0206 does not apply to this AD.

(3) Paragraph (2) of EASA AD 2021–0206 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 June 16, 2022 (the effective date of AD 2022–09–03).

(4) The initial compliance time for doing the tasks specified in paragraph (2) of EASA AD 2021–0206 is at the applicable ''limitations'' as incorporated by the requirements of paragraph (2) of EASA AD 2021–0206, or within 90 days after June 16, 2022 (the effective date of AD 2022–09–03), whichever occurs later.

(5) The provisions specified in paragraphs (3) and (4) of EASA AD 2021–0206 do not apply to this AD.

(6) The ''Remarks'' section of EASA AD 2021–0206 does not apply to this AD.

(i) Retained Restrictions on Alternative Actions and Intervals, With a New Exception

This paragraph restates the requirements of paragraph (l) of AD 2022–09–03, with a new exception. Except as required by paragraph

(j) of this AD, after the revision of the existing maintenance or inspection program has been accomplished as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2021–0206.

(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 2022–0124, dated June 28, 2022 (EASA AD 2022–0124). 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 2022–0124

(1) The requirement specified in paragraph (1) of EASA AD 2022–0124 does not apply to this AD.

(2) Paragraph (2) of EASA AD 2022–0124 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 complying with the limitations specified in paragraph (2) of EASA AD 2022–0124 is at the applicable ''limitations'' as incorporated by the requirements of paragraph (2) of EASA AD 2022–0124, or within 90 days after the effective date of this AD, whichever occurs later.

(4) The provisions specified in paragraphs (3) and (4) of EASA AD 2022–0124 do not apply to this AD.

(5) This AD does not adopt the ''Remarks'' section of EASA AD 2022–0124.

(l) New Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2022–0124.

(m) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the International Validation Branch, send it to the attention of the person identified in paragraph (n) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(n) Additional Information

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

(o) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on March 23, 2023.

(i) European Union Aviation Safety Agency (EASA) AD 2022–0124, dated June 28, 2022.

(ii) [Reserved]

(4) The following service information was approved for IBR on June 16, 2022 (87 FR 29030, May 12, 2022).

(i) European Union Aviation Safety Agency (EASA) AD 2021–0206, dated September 15, 2021.

(ii) [Reserved]

(5) For EASA ADs 2021–0206 and 2022–0124, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find these EASA ADs on the EASA website at *ad.easa.europa.eu.*

(6) You may view this 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 30, 2023.

Christina Underwood,

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

[FR Doc. 2023–03176 Filed 2–15–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 591

Publication of Venezuela Sanctions Regulations Web General Licenses 23, 24, 25, 26, 27, and 28

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing six general licenses (GLs) issued in the Venezuela Sanctions program: GLs 23, 24, 25, 26, 27, and 28, each of which was previously made available on OFAC's website.

DATES: GL 23 was issued on August 5, 2019. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website: *www.treas.gov/ofac.*

Background

On August 5, 2019, OFAC issued GLs 23, 24, 25, and 28 authorizing certain transactions otherwise prohibited by Executive Order (E.O.) 13884 of August 5, 2019, ''Blocking Property of the Government of Venezuela'' (84 FR 38843). GL 28 expired on September 4, 2019.

Also on August 5, 2019, OFAC issued GL 26, authorizing certain transactions otherwise prohibited by the Venezuela Sanctions Regulations, 31 CFR part 591, E.O. 13692 of March 8, 2015, ''Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Venezuela'' (80 FR 12747), and other E.O.s issued pursuant to the national emergency declared in E.O. 13692.

Also on August 5, 2019, OFAC issued GL 27, authorizing certain transactions otherwise prohibited by E.O. 13692, E.O. 13850 of November 1, 2018, ''Blocking Property of Additional Persons Contributing to the Situation in Venezuela'' (83 FR 55243); and E.O. 13884.

Each GL was made available on OFAC's website (*www.treas.gov/ofac*) when it was issued. The text of these GLs is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order of August 5, 2019

Blocking Property of Government of Venezuela

GENERAL LICENSE NO. 23

Third-Country Diplomatic and Consular Funds Transfers Authorized

(a) Except as provided in paragraph (b), U.S. depository institutions, U.S.-registered brokers or dealers in securities, and U.S.-registered money transmitters are authorized to process funds transfers involving the Government of Venezuela that are necessary for the operating expenses or other official business of third-country diplomatic or consular missions in Venezuela.

Note to paragraph (a): The authorization in paragraph (a) of this general license authorizes funds transfers involving Government of Venezuela persons blocked solely pursuant to Executive Order (E.O.) of August 5, 2019.

(b) This general license does not authorize any transaction that is otherwise prohibited by E.O. of August 5, 2019, or E.O. 13850 of November 1, 2018, E.O. 13835 of May 21, 2018, E.O. 13827 of March 19, 2018, E.O. 13808 of August 24, 2017, or E.O. 13692 of March 8, 2015, each as amended by E.O. 13857 of January 25, 2019, or any part of 31 CFR chapter V.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: August 5, 2019.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order of August 5, 2019

Blocking Property of the Government of Venezuela

GENERAL LICENSE NO. 24

Certain Transactions Involving the Government of Venezuela Related to Telecommunications and Mail Authorized

(a) Except as provided in paragraph (c) of this general license, all transactions involving the Government of Venezuela incident to the receipt and transmission of telecommunications are authorized.

(b) Except as provided in paragraph (c) of this general license, all transactions of common carriers involving the Government of Venezuela incident to the receipt or transmission of mail and packages between the United States and Venezuela are authorized.

Note to paragraphs (a) and (b): The authorizations in paragraphs (a) and (b) of this general license authorize transactions with Government of Venezuela persons blocked solely pursuant to E.O. of August 5, 2019.

(c) This general license does not authorize any transaction that is otherwise prohibited by Executive Order (E.O.) of August 5, 2019, or E.O. 13850 of November 1, 2018, E.O. 13835 of May 21, 2018, E.O. 13827 of March 19, 2018, E.O. 13808 of August 24, 2017, or E.O. 13692 of March 8, 2015, each as amended by E.O. 13857 of January 25, 2019, or any part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the Government of Venezuela persons described in paragraphs (a) and (b) of this general license.

Note to General License No. 24: Nothing in this general license relieves any exporter from compliance with the requirements of other Federal agencies, including the Department of Commerce's Bureau of Industry and Security.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: August 5, 2019.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order of August 5, 2019

Blocking Property of the Government of Venezuela

GENERAL LICENSE NO. 25

Exportation of Certain Services, Software, Hardware, and Technology Incident to the Exchange of Communications Over the Internet Authorized

(a) Except as provided in paragraph (b) of this general license, the exportation or reexportation, directly or indirectly, from the United States or by U.S. persons, wherever located, to or involving the Government of Venezuela of services, software, hardware, and technology incident to the exchange of communications over the internet, such as instant messaging, chat and email, social networking, sharing of photos and movies, web browsing, blogging, web hosting, and domain name registration services, that would otherwise be prohibited by Executive Order (E.O.) of August 5, 2019, is authorized.

Note to paragraph (a): The authorization in paragraph (a) of this general license authorizes transactions with Government of Venezuela persons blocked solely pursuant to E.O. of August 5, 2019.

(b) This general license does not authorize any transaction that is otherwise prohibited by E.O. of August 5, 2019, or E.O. 13850 of November 1, 2018, E.O. 13835 of May 21, 2018, E.O. 13827 of March 19, 2018, E.O. 13808 of August 24, 2017, or E.O. 13692 of March 8, 2015, each as amended by E.O. 13857 of January 25, 2019, or any part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the Government of Venezuela persons described in paragraph (a) of this general license.

Note to General License No. 25: Nothing in this general license relieves any exporter from compliance with the requirements of other Federal agencies, including the Department of Commerce's Bureau of Industry and Security.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: August 5, 2019.

OFFICE OF FOREIGN ASSETS CONTROL

Venezuela Sanctions Regulations 31 CFR Part 591

Executive Order 13692 of March 8, 2015

Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Venezuela

Executive Order 13808 of August 24, 2017

Imposing Additional Sanctions With Respect to the Situation in Venezuela

Executive Order 13827 of March 19, 2018

Taking Additional Steps To Address the Situation in Venezuela

Executive Order 13835 of May 21, 2018

Prohibiting Certain Additional Transactions With Respect to Venezuela

Executive Order 13850 of November 1, 2018

Blocking Property of Additional Persons Contributing to the Situation in Venezuela

Executive Order of August 5, 2019

Blocking Property of the Government of Venezuela

GENERAL LICENSE NO. 26

Emergency and Certain Other Medical Services Authorized

(a) *Emergency medical services.* The provision and receipt of nonscheduled emergency medical services prohibited by 31 CFR part 591, Executive Order (E.O.) of August 5, 2019, or E.O. 13850, E.O. 13835, E.O. 13827, E.O. 13808, or

E.O. 13692, each as amended by E.O. 13857 of January 25, 2019, or any further Executive orders relating to the national emergency declared in E.O. 13692, are authorized.

(b) *Other medical services.* (1) Except as provided in paragraph (b)(2) of this general license, the provision of medical services involving the Government of Venezuela prohibited by E.O. of August 5, 2019 is authorized.

(2) Paragraph (b)(1) of this general license does not authorize any transaction or dealing otherwise prohibited by E.O. 13850, E.O. 13835, E.O. 13827, E.O. 13808, or E.O. 13692, each as amended by E.O. 13857, or any part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the persons described in paragraph (b)(1) of this general license.

Note to paragraph (b): The authorization in paragraph (b)(1) of this general license authorizes transactions with Government of Venezuela persons blocked solely pursuant to E.O. of August 5, 2019.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: August 5, 2019.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 13692 of March 8, 2015

Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Venezuela

Executive Order 13850 of November 1, 2018

Blocking Property of Additional Persons Contributing to the Situation in Venezuela

Executive Order of August 5, 2019

Blocking Property of the Government of Venezuela

GENERAL LICENSE NO. 27

Certain Transactions Related to Patents, Trademarks, and Copyrights Authorized

(a) Except as provided in paragraph (c), all of the following transactions in connection with a patent, trademark, copyright or other form of intellectual property protection in the United States or Venezuela that would otherwise be prohibited by Executive Order (E.O.) 13692 or E.O. 13850, each as amended by E.O. 13857 of January 25, 2019, or E.O. of August 5, 2019, are authorized:

(1) The filing and prosecution of any application to obtain a patent, trademark, copyright, or other form of intellectual property protection;

(2) The receipt of a patent, trademark, copyright, or other form of intellectual property protection;

(3) The renewal or maintenance of a patent, trademark, copyright, or other form of intellectual property protection; and

(4) The filing and prosecution of any opposition or infringement proceeding with respect to a patent, trademark, copyright, or other form of intellectual property protection, or the entrance of a defense to any such proceeding.

(b) This general license authorizes the payment of fees to the United States Government or the Government of Venezuela, and of the reasonable and customary fees and charges to attorneys or representatives within the United States or Venezuela, in connection with the transactions authorized in paragraph (a) of this general license. Payment effected pursuant to the terms of this paragraph may not be made from a blocked account.

(c) This general license does not authorize any transaction that is otherwise prohibited by E.O. of August 5, 2019, or E.O. 13850, E.O. 13835 of May 21, 2018, E.O. 13827 of March 19, 2018, E.O. 13808 of August 24, 2017, or E.O. 13692, each as amended by E.O. 13857, or any part of 31 CFR chapter V.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: August 5, 2019.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order of August 5, 2019

Blocking Property of the Government of Venezuela

GENERAL LICENSE NO. 28

Authorizing Certain Activities Necessary to the Wind Down of Operations or Existing Contracts Involving the Government of Venezuela

(a) Except as provided in paragraph (b) of this general license, all transactions and activities prohibited by Executive Order (E.O.) of August 5, 2019 that are ordinarily incident and necessary to the wind down of operations, contracts, or other agreements involving the Government of Venezuela that were in effect prior to August 5, 2019 are authorized through 12:01 a.m. eastern daylight time, September 4, 2019.

Note to paragraph (a): The authorization in paragraph (a) of this general license authorizes transactions with Government of Venezuela persons blocked solely pursuant to E.O. of August 5, 2019.

(b) This general license does not authorize:

(l) Any debit to an account of the Government of Venezuela on the books of a U.S. financial institution; or

(2) Any transactions or dealings otherwise prohibited by E.O. of August 5, 2019, or E.O. 13850 of November 1, 2018, E.O. 13835 of May 21, 2018, E.O. 13827 of March 19, 2018, E.O. 13808 of August 24, 2017, or E.O. 13692 of March 8, 2015, each as amended by E.O. 13857 of January 25, 2019, or any part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the blocked persons identified in paragraph (a).

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: August 5, 2019.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2023–03289 Filed 2–15–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 5, 70, 80, 101, 104, 105, 106, 115, 117, 162, 165, and 174

46 CFR Parts 1, 96, 160, 161, 162, 163, 173, and 178

[Docket No. USCG–2022–0323]

Navigation and Navigable Waters, and Shipping; Technical, Organizational, and Conforming Amendments

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Final rule.

SUMMARY: This final rule makes non-substantive technical, organizational, and conforming amendments to existing Coast Guard regulations. This rule is a continuation of our practice of periodically issuing rules to keep our regulations up-to-date and accurate. This rule will have no substantive effect on the regulated public.

DATES: This final rule is effective February 16, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0323 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: For information about this document call or email Ms. Victoria Phoenix, Coast

Guard; telephone 202–372–3744, email *Victoria.Phoenix@uscg.mil.*

SUPPLEMENTARY INFORMATION:

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I. Abbreviations

CFR Code of Federal Regulations
CG–ENG Coast Guard Office of Design and Engineering Standards
DHS Department of Homeland Security
FR Federal Register
NVIC Navigation and Vessel Inspection Circular
OMB Office of Management and Budget
OMR Organization Modification Request
§ Section
URL Uniform Resource Locator
U.S.C. United States Code

II. Regulatory History

We did not publish a notice of proposed rulemaking for this rule. Under Title 5 of the United States Code (U.S.C.), Section 553(b)(A), the Coast Guard finds that this final rule is exempt from notice and public comment rulemaking requirements because these changes involve rules of agency organization, procedure, or practice. In addition, the Coast Guard finds that notice and comment procedures are unnecessary for this final rule under 5 U.S.C. 553(b)(B), as this rule consists of only technical and editorial corrections and these changes will have no substantive effect on the public. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that, for the same reasons, good cause exists for making this final rule effective upon publication in the **Federal Register**.

III. Basis and Purpose

This final rule, which becomes effective on February 16, 2023, makes technical and editorial corrections throughout titles 33 and 46 of the Code of Federal Regulations (CFR). These changes are necessary to update authority citations, correct errors, update contact information, and make other non-substantive amendments that improve the clarity of the CFR. This rule does not create or change any substantive requirements.

This final rule is issued under the authority of 5 U.S.C. 552(a) and 553; 14 U.S.C. 102 and 503; Department of Homeland Security (DHS) Delegation No. 00170.1, Revision No. 01.3; and authorities listed at the end of this rule for each CFR part this rule amends.

IV. Discussion of the Rule

The Coast Guard periodically issues technical, organizational, and conforming amendments to existing regulations in titles 33 and 46 of the CFR. These technical amendments provide the public with accurate and current regulatory information, but do not change the effect of any Coast Guard regulations on the public.

A. Authority Citation Updates

This rule updates the authority citations in 33 CFR parts 101, 104, 105, 106, 117, 162, and 174 and 46 CFR parts 1, 96, 160, 161, 162, 163, 173, and 178. Specifically, this rule implements the updates to DHS Delegation No. 00170.1, Revision No. 01.3 in 33 CFR parts 101, 104, 105, 106, 117, 162, and 174 and 46 CFR parts 1, 96, 160, 161, 162, 163, 173, and 178. It also reflects the repeal of 46 U.S.C. 5115 by removing that section from the authority citation for 46 CFR part 163. And this rule removes the repealed 46 U.S.C. 4104 from the authority citation for 46 CFR part 162.

B. Technical Amendments to Title 33 of the CFR

In § 5.9, this rule updates the website at which the public may obtain copies of the Auxiliary Manual (Commandant Instruction M16790.1(series)) and the Auxiliary Operations Policy Manual (Commandant Instruction M16798.3(series)). This rule revises the web address in this section to ''*https://www.dcms.uscg.mil/directives.*''

In §§ 70.01–1 and 70.05–20, this rule updates an outdated cross-reference from 33 CFR part 68 to 33 CFR part 118. This reflects the redesignation of 33 CFR part 68 (governing bridge lighting and other signals). On June 11, 1975, the Coast Guard determined that all bridge regulations be grouped in 33 CFR chapter I, subchapter J, ''Bridges,'' so 33 CFR part 68 was redesignated as 33 CFR part 118.

In § 80.135, this rule updates a reference to ''Canal Breakwater Light 4'' in the demarcation lines set by the Convention on the International Regulations for Preventing Collisions at Sea, 1972 for the Atlantic Coast from Hull, MA, to Race Point, MA. The reference now reads as ''Canal Breakwater Light 6'' to match the marker that was redesignated by the project to realign the Aids to Navigation channel.

In §§ 101.105 and 101.510, this rule updates references to Navigation and Vessel Inspection Circular (NVIC) 09–02. This rule replaces ''change 2'' in § 101.105 and ''change 3'' in § 101.510 with ''series'' to ensure that the public will always be directed to the most current version of this circular (which is currently on change 5). This rule also updates the link for the website that the public can use to obtain this or other NVICs.

In §§ 104.267, 105.257, and 106.262, this rule replaces the outdated link provided for the Coast Guard's Homeport website, ''*http://homeport.uscg.mil*'' with the new link, ''*https://homeport.uscg.mil.*''

In § 105.400, this rule removes irrelevant language that contained a broken website link for submitting facility security plans electronically. The link provided did not direct the user to a functioning web page, so both the link and the sentence containing it were removed.

In § 115.60(b)(2), this rule modernizes the language to include email addresses and more closely align regulations with the requirements for public meetings in 40 CFR 1506.6(b)(3). This rule also clarifies the Coast Guard's options for publishing and posting notices of public meetings.

In § 117.237(b)(2), this rule updates the phone number of the Harrisburg, PA Dispatcher's Office to ''470–463–1102.''

In § 117.664, this rule corrects the misspelled ''Rainer'' to ''Ranier.''

In § 162.75(b)(5)(vi), this rule updates the phone number for the Captain of the Port, New Orleans to ''504–365–2200 or 504–365–2545.''

In Table 5 to § 165.801, this rule replaces ''Riverfront Marketing Group'' in line 3 with ''Go 4th New Orleans'' to maintain consistency with a sponsor's submission on form CG–4423, Application for Approval of Marine Event.

In § 165.1334, this rule corrects ''BSU'' to ''Base'' in the section heading to reflect the proper name of the listed Coast Guard base.

In § 174.31(c), this rule removes the words ''The payment'' and adds the words ''Proof of payment'' to clarify and align with the wording in 46 U.S.C. 12307(2).

C. Technical Amendments to Title 46 of the CFR

In § 1.01–10(e)(1), this rule replaces the text to reflect changes brought on by the 2018 Organization Modification Request (OMR). The 2018 OMR resulted

in changes in which offices are responsible for specific functions, created the Coast Guard's Flag State Control Division (CG–CVC–4), and eliminated the Coast Guard's Human Element and Ship Design Division (CG–ENG–1). This rule's revision of § 1.01–10(e)(1) better defines the Coast Guard Office of Design and Engineering Standards (CG–ENG) and align the functional statement with CG–ENG's Strategic Business Plan.

In § 96.07–5(a), this rule replaces ''shall'' with ''must'' to fix a grammatical inaccuracy and to follow Federal plain language guidelines.

In §§ 160.051–5(a), 160.076–11(a), 160.077–5(a), 160.115–5(a), 160.132–5(a), 160.133–5(a), 160.135–5(a), 160.151–5(a), 160.156–5(a), 160.170–5(a), and 160.176–4(a), this rule removes outdated instructions and replaces it with updated locations, websites, and email addresses. These changes conform to the Office of the Federal Register's requirements for writing ''incorporation by reference'' sections.

In §§ 161.010–4(a), 162.017–6(a), 162.018–8(a), and 162.050–7(a), this rule corrects a mistake from a previous rulemaking and replaces ''submitting the VSP electronically'' with ''electronic submittals.'' ''VSP'' means ''vessel security plan,'' which is unrelated to approving floating electric water light, safety relief valve, pressure-vacuum valve, or pollution prevention equipment. In these same sections, this rule also updates the Uniform Resource Locator (URL) for submitting vessel security plans electronically to read as ''*https://www.uscg.mil/HQ/MSC.*''

In § 173.095(b) and (d), this rule updates the equation. The way that the equation is written in the CFR, it is unclear whether the quantity ''(P×D)'' is to be multiplied by ⅔ or raised to the power of ⅔, so this rule corrects ''⅔'' to ''^⅔''. The public regularly contacted the Marine Safety Center requesting clarification on how to calculate the equation. This rule clarifies that the quantity (P×D) is to be raised to the power of ⅔.

In § 178.450(a), this rule corrects the typo ''Basis Drainage'' to ''Basic Drainage'' to help clear confusion for readers and to match the rest of the text, which uses ''Basic Drainage.''

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on these statutes or Executive orders.

A. Regulatory Planning and Review

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

One additional Executive order was published to promote the goals of Executive Order 13610 (Identifying and Reducing Regulatory Burdens). Executive Order 13610 aims to modernize the regulatory systems and to reduce unjustified regulatory burdens and costs on the public.

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. A regulatory analysis follows.

This rule involves non-substantive technical amendments and internal agency practices and procedures; it will not impose any additional costs. The technical amendments in this rule fit into categories that involve (1) correcting inadvertent typographical errors in the CFR; (2) modifying existing language in the CFR by addition or subtraction to improve the readability or clarity of regulations; (3) removing irrelevant information, such as expired regulatory provisions or cancelled reference material, and replacing outdated regulatory information with current information where applicable; and (4) revising office contact information and mailing addresses. The Coast Guard does not expect that there will be any additional costs conferred on the public or the Federal Government because none of the technical and editorial changes included in this rule will change existing regulatory requirements. A summary of these amendments by category and by CFR title and section are presented below in table 1.

The unquantified benefits of the non-substantive technical amendments are increased accuracy of regulatory information by correcting erroneous information, and improved readability and clarity of regulations by removing redundant or confusing language and by removing expired or cancelled provisions that are no longer relevant. In addition, correcting technical items such as office contact details and location coordinates will improve the ability to reference and contact the correct entities.

TABLE 1—SUMMARY OF REGULATORY CHANGES BY CFR TITLE AND SECTION

CFR title	CFR section	Description of changes	Economic impact
33	§§ 70.01–1, 70.05–20, 80.135(b), 115.60(b)(2).	Adds clarifying language and removes redundant, confusing, or incorrect language.	Improves readability and clarity of regulations.
46	§§ 96.07–5(a), 161.010–4(a)	Adds clarifying language and removes redundant, confusing, or incorrect language.	Improves readability and clarity of regulations.
46	§§ 160.051–5(a), 160.076–11(a), 160.077–5(a), 160.115–5(a), 160.132–5(a), 160.133–5(a), 160.135–5(a), 160.151–5(a), 160.156–5(a), 160.170–5(a), 160.176–4(a).	Removes outdated instructions and replaces it with updated locations, websites, and email addresses.	Conforms to the Office of the Federal Register's requirements for wording centralized sections for incorporation by reference.
33	§§ 117.664, 165.1334, 174.31(c)	Improves the accuracy of regulatory information by correcting erroneous information.	Corrects various typographical errors.

TABLE 1—SUMMARY OF REGULATORY CHANGES BY CFR TITLE AND SECTION—Continued

CFR title	CFR section	Description of changes	Economic impact
46	§ 173.095(b) and (d)	Improves the accuracy of regulatory information by correcting erroneous information concerning an equation.	Corrects various typographical errors. And, reduces the public from contacting the Marine Safety Center requesting clarification on how to calculate the equation.
33	§ 165.801 Table 5, Row 3	Removes or replaces expired or cancelled references or provisions.	Improves readability by removing or replacing irrelevant and outdated information.
46	§ 1.01–10(e)(1)	Reflects changes brought on by the 2018 Organization Modification Request (OMR).	Improves readability by removing or replacing irrelevant and outdated information.
46	§§ 162.017–6(a), 162.018–8(a), 162.050–7(a).	Removes or replaces expired or cancelled references or provisions.	Improves readability by removing or replacing irrelevant and outdated information.

B. Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, we have considered whether this rule would have a significant economic impact on a substantial number of small entities. 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.

Therefore, 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.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we offer to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. 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.

D. Collection of Information

This rule calls for no new or revised collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

E. Federalism

A rule has implications for federalism under Executive Order 13132 (Federalism) if it has a substantial direct effect on 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 Executive Order 13132 and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

F. Unfunded Mandates

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. Although this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988 (Civil Justice Reform) to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this rule under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), because it will 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.

K. Energy Effects

We have analyzed this rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this rule under DHS Management 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 made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. 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. This rule is categorically excluded under paragraph L54 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev 1. Paragraph L54 pertains to regulations which are administrative or procedural, such as those updating addresses or establishing application procedures. This rule involves making non-substantive technical, organizational, and conforming amendments to existing Coast Guard regulations to keep our regulations up-to-date and accurate.

List of Subjects

33 CFR Part 5

Volunteers.

33 CFR Part 70

Navigation (water), Penalties.

33 CFR Part 80

Navigation (water), Treaties, Waterways.

33 CFR Part 101

Harbors, Maritime security, Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

33 CFR Part 104

Maritime security, Reporting and recordkeeping requirements, Security measures, Vessels.

33 CFR Part 105

Maritime security, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

33 CFR Part 106

Continental shelf, Maritime security, Reporting and recordkeeping requirements, Security measures.

33 CFR Part 115

Administrative practice and procedure, Bridges, Reporting and recordkeeping requirements.

33 CFR Part 117

Bridges.

33 CFR Part 162

Navigation (water), Waterways.

33 CFR Part 165

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

33 CFR Part 174

Intergovernmental relations, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 1

Administrative practice and procedure, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

46 CFR Part 96

Cargo vessels, Marine safety, Navigation (water).

46 CFR Part 160

Incorporation by reference, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 161

Fire prevention, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 162

Fire prevention, Marine safety, Oil pollution, Reporting and recordkeeping requirements.

46 CFR Part 163

Marine safety.

46 CFR Part 173

Marine safety, Vessels.

46 CFR Part 178

Marine safety, Passenger vessels.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 5, 70, 80, 101, 104, 105, 106, 115, 117, 162, 165, and 174 and 46 CFR parts 1, 96, 160, 161, 162, 163, 173, and 178 as follows:

Title 33—Navigation and Navigable Waters

PART 5—COAST GUARD AUXILIARY

■ 1. The authority citation for part 5 continues to read as follows:

Authority: 14 U.S.C. 503, 3901, 3902, 3903, 3904, 3905, 3907, 3908, 3909, 3910, 3911, 3912, 3913, 4102.

§ 5.9 [Amended]

■ 2. In § 5.9, remove the text ''*http://www.uscg.mil/auxiliary/publications/comdtinst/*'' and add, in its place, the text ''*https://www.dcms.uscg.mil/directives*''.

PART 70—INTERFERENCE WITH OR DAMAGE TO AIDS TO NAVIGATION

■ 3. The authority citation for part 70 continues to read as follows:

Authority: 33 U.S.C. 408, 411, 412; 14 U.S.C. 501, 503, 543, 545, 546.

§ 70.01–1 [Amended]

■ 4. In § 70.01–1, remove the text ''67, or 68 of this subchapter'' and add, in its place, the text ''67, or 118 of this chapter''.

§ 70.05–20 [Amended]

■ 5. In § 70.05–20, remove the text ''Part 64, 66, 67, or 68 of this subchapter'' and ''46 CFR 4'' and add, in their places, the text ''part 64, 66, 67, or 118 of this chapter'' and ''46 CFR part 4'', respectively.

PART 80—COLREGS DEMARCATION LINES

■ 6. The authority citation for part 80 continues to read as follows:

Authority: 14 U.S.C. 102, 503; 33 U.S.C. 151(a).

§ 80.135 [Amended]

■ 7. In § 80.135(b), remove the text ''Light 4'' and add, in its place, the text ''Light 6''.

PART 101—MARITIME SECURITY: GENERAL

■ 8. The authority citation for part 101 is revised to read as follows:

Authority: 46 U.S.C. 70034, 70051, 70052, Chapter 701; E.O. 12656, 53 FR 47491, 3 CFR, 1988 Comp., p. 585; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; DHS Delegation No. 00170.1, Revision No. 01.3.

§ 101.105 [Amended]

■ 9. In § 101.105, amend the definition of ''Area Maritime Security (AMS) Committee'' as follows:

■ a. Remove the text ''change 2'' and add, in its place, the text ''series''; and

■ b. Remove the text ''*http://www.uscg.mil/hq/cg5/nvic/*'' and add, in its place, the text ''*https://www.dco.uscg.mil/Our-Organization/NVIC/*''.

§ 101.510 [Amended]

■ 10. Amend § 101.510 as follows:

■ a. In the introductory text, remove the text ''*http://www.uscg.mil/hq/g-m/nvic*'' and add, in its place, the text ''*https://www.dco.uscg.mil/Our-Organization/NVIC/*''; and

■ b. In paragraph (a), remove the text ''change 3'' and add, in its place, the text ''series''.

PART 104—MARITIME SECURITY: VESSELS

■ 11. The authority citation for part 104 is revised to read as follows:

Authority: 46 U.S.C. 70051, 70116, Chapter 701; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; DHS Delegation No. 00170.1, Revision No. 01.3.

§ 104.267 [Amended]

■ 12. In § 104.267(b)(2) introductory text, remove the text ''*http://homeport.uscg.mil*'' and add, in its place, the text ''*https://homeport.uscg.mil*''.

PART 105—MARITIME SECURITY: FACILITIES

■ 13. The authority citation for part 105 is revised to read as follows:

Authority: 46 U.S.C. 70034, 70103, 70116; sec. 811, Pub. L. 111–281, 124 Stat. 2905 (46 U.S.C. 70103 note); 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; DHS Delegation No. 00170.1, Revision No. 01.3.

§ 105.257 [Amended]

■ 14. In § 105.257(b)(2) introductory text, remove the text ''*http://homeport.uscg.mil*'' and add, in its place, the text ''*https://homeport.uscg.mil*''.

§ 105.400 [Amended]

■ 15. In § 105.400(b), remove the second sentence.

PART 106—MARINE SECURITY: OUTER CONTINENTAL SHELF (OC) FACILITIES

■ 16. The authority citation for part 106 is revised to read as follows:

Authority: 46 U.S.C. 70051, 70116, Chapter 701; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; DHS Delegation No. 00170.1, Revision No. 01.3.

§ 106.262 [Amended]

■ 17. In § 106.262(b)(2) introductory text, remove the text ''*http://homeport.uscg.mil*'' and add, in its place, the text ''*https://homeport.uscg.mil*''.

PART 115—BRIDGE LOCATIONS AND CLEARANCES; ADMINISTRATIVE PROCEDURES

■ 18. The authority citation for part 115 continues to read as follows:

Authority: c. 425, sec. 9, 30 Stat. 1151 (33 U.S.C. 401); c. 1130, sec. 1, 34 Stat. 84 (33 U.S.C. 491); sec. 5, 28 Stat. 362, as amended (33 U.S.C. 499); sec. 11, 54 Stat. 501, as amended (33 U.S.C. 521); c. 753, title V, sec. 502, 60 Stat. 847, as amended (33 U.S.C. 525); 86 Stat. 732 (33 U.S.C. 535); 14 U.S.C. 503.

■ 19. In § 115.60, revise paragraph (b)(2) to read as follows:

§ 115.60 Procedures for handling applications for bridge permits.

* * * * *

(b) * * *

(2) Notice of the public meeting will be published in the **Federal Register**. Notice of the meeting is also emailed or mailed to State, county, municipal authorities, and all other known interested parties. It may also be posted in public places in the vicinity of the project or published in local publications and through local media channels, or both.

* * * * *

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 20. The authority citation for part 117 is revised to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; and DHS Delegation No. 00170.1, Revision No. 01.3.

§ 117.237 [Amended]

■ 21. In § 117.237(b)(2), remove the text ''(717) 541–2140'' and add, in its place, the text ''470–463–1102''.

§ 117.664 [Amended]

■ 22. In § 117.664, remove the word ''Rainer'' and add, in its place, the word ''Ranier''.

PART 162—INLAND WATERWAYS NAVIGATION REGULATIONS

■ 23. The authority citation for part 162 is revised to read as follows:

Authority: 46 U.S.C. 70034; DHS Delegation No. 00170.1, Revision No. 01.3.

§ 162.75 [Amended]

■ 24. In § 162.75(b)(5)(vi), remove the text ''504–846–5923'' and add, in its place, the text ''504–365–2200 or 504–365–2545''.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 25. 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.

■ 26. In § 165.801, revise row 3 in table 5 to read as follows:

§ 165.801 Annual fireworks displays and other events in the Eighth Coast Guard District requiring safety zones.

* * * * *

TABLE 5 OF § 165.801—SECTOR NEW ORLEANS ANNUAL AND RECURRING SAFETY ZONES

Date	Sponsor/name	Sector New Orleans location	Safety zone
*	*	*	*
3. July 4th	Go 4th New Orleans/Independence Day Celebration.	Mississippi River, New Orleans, LA	Mississippi River mile marker 94.3 to 95.3, New Orleans, LA.
*	*	*	*

* * * * *

§ 165.1334 [Amended]

■ 27. In § 165.1334, the heading is amended by removing the text ''BSU'' and adding, in its place, the text ''Base''.

PART 174—STATE NUMBERING AND CASUALTY REPORTING SYSTEMS

■ 28. The authority citation for part 174 is revised to read as follows:

Authority: 46 U.S.C. 6101 and 12302; DHS Delegation No. 00170.1, Revision No. 01.3.

§ 174.31 [Amended]

■ 29. In § 174.31(c), remove the words ''The payment'' and add, in its place, the words ''Proof of payment''.

Title 46—Shipping

PART 1—ORGANIZATION, GENERAL COURSE AND METHODS GOVERNING MARINE SAFETY FUNCTIONS

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

Authority: 5 U.S.C. 552; 6 U.S.C. 111, 468, 552; 14 U.S.C. 503; 46 U.S.C. 7701; 46 U.S.C. Chapter 93; DHS Delegation No. 00170.1, Revision No. 01.3; § 1.01–35 also issued under the authority of 44 U.S.C. 3507; and § 1.03–55 also issued under the authority of 46 U.S.C. 3306(j).

■ 31. In § 1.01–10, revise paragraph (e)(1) to read as follows:

§ 1.01–10 Organization.

* * * * *

(e) * * *

(1) The Chief, Office of Design and Engineering Standards (CG–ENG), at Headquarters, under the direction of the Assistant Commandant for Prevention Policy (CG–5P) and the Director of Commercial Regulations and Standards (CG–5PS), develops and maintains national regulations and standards that govern the safe design, engineering, and construction of ships and shipboard equipment; establishes policy, provides technical clarifications, and resolves appeals; and represents the United States at the International Maritime Organization (IMO) and is actively engaged in standards committees and classification society rules committees in support of marine safety, security and environmental stewardship.

* * * * *

PART 96—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

■ 32. The authority citation for part 96 is revised to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; DHS Delegation No. 00170.1, Revision No. 01.3.

§ 96.07–5 [Amended]

■ 33. In § 96.07–5(a), remove the text ''shall'' and ''Subpart 90.35 of this subchapter'' and add, in their places, the text ''must'' and ''46 CFR part 90, subpart 90.35'', respectively.

PART 160—LIFESAVING EQUIPMENT

■ 34. The authority citation for part 160 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3103, 3306, 3703, 4102, 4302, and 4502; and DHS Delegation No. 00170.1, Revision No. 01.3.

■ 35. In § 160.051–5, revise paragraph (a) to read as follows:

§ 160.051–5 Incorporation by reference.

(a) 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 Coast Guard Headquarters and at the National Archives and Records Administration (NARA). Contact the Coast Guard at: Commandant (CG–ENG–4), U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7509; or email *typeapproval@uscg.mil* or visit *https://www.dco.uscg.mil/CG-ENG-4/.* For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.* The material may be obtained from the source in the following paragraph of this section.

* * * * *

■ 36. In § 160.076–11, revise paragraph (a) to read as follows:

§ 160.076–11 Incorporation by reference.

(a) 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 Coast Guard Headquarters and at the National Archives and Records Administration (NARA). Contact the Coast Guard at: Commandant (CG–ENG–4), U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7509; or email *typeapproval@uscg.mil* or visit *https://www.dco.uscg.mil/CG-ENG-4/.* For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.* The material may be obtained from the source in the following paragraph of this section.

* * * * *

■ 37. In § 160.077–5, revise paragraph (a) to read as follows:

§ 160.077–5 Incorporation by reference.

(a) 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 Coast Guard Headquarters and at the National Archives and Records Administration (NARA). Contact the Coast Guard at: Commandant (CG–ENG–4), U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7509; or email *typeapproval@uscg.mil* or visit *https://www.dco.uscg.mil/CG-ENG-4/.* For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.* The material may be obtained from the sources in the following paragraphs of this section.

* * * * *

■ 38. In § 160.115–5, revise paragraph (a) to read as follows:

§ 160.115–5 Incorporation by reference.

(a) 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 Coast Guard Headquarters and at the National Archives and Records Administration (NARA). Contact the Coast Guard at: Commandant (CG–ENG–4), U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7509; or email *typeapproval@uscg.mil* or visit *https://www.dco.uscg.mil/CG-ENG-4/.* For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.* The material may be obtained from the source in the following paragraph of this section.

* * * * *

■ 39. In § 160.132–5, revise paragraph (a) to read as follows:

§ 160.132–5 Incorporation by reference.

(a) 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 Coast Guard Headquarters and at the National Archives and Records Administration (NARA). Contact the Coast Guard at: Commandant (CG–ENG–4), U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7509; or email *typeapproval@uscg.mil* or visit *https://www.dco.uscg.mil/CG-ENG-4/.* For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.* The material may be obtained from the

sources in the following paragraphs of this section.

* * * * *

■ 40. In § 160.133–5, revise paragraph (a) to read as follows:

§ 160.133–5 Incorporation by reference.

(a) 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 Coast Guard Headquarters and at the National Archives and Records Administration (NARA). Contact the Coast Guard at: Commandant (CG–ENG–4), U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7509; or email *typeapproval@uscg.mil* or visit *https://www.dco.uscg.mil/CG-ENG-4/.* For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.* The material may be obtained from the sources in the following paragraphs of this section.

* * * * *

■ 41. In § 160.135–5, revise paragraph (a) to read as follows:

§ 160.135–5 Incorporation by reference.

(a) 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 Coast Guard Headquarters and at the National Archives and Records Administration (NARA). Contact the Coast Guard at: Commandant (CG–ENG–4), U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7509; or email *typeapproval@uscg.mil* or visit *https://www.dco.uscg.mil/CG-ENG-4/.* For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.* The material may be obtained from the sources in the following paragraphs of this section.

* * * * *

■ 42. In § 160.151–5, revise paragraph (a) to read as follows:

§ 160.151–5 Incorporation by reference.

(a) 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 Coast Guard Headquarters and at the National Archives and Records Administration (NARA). Contact the Coast Guard at: Commandant (CG–ENG–4), U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7509; or email *typeapproval@uscg.mil* or visit *https://www.dco.uscg.mil/CG-ENG-4/.* For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.* The material may be obtained from the sources in the following paragraphs of this section.

* * * * *

■ 43. In § 160.156–5, revise paragraph (a) to read as follows:

§ 160.156–5 Incorporation by reference.

(a) 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 Coast Guard Headquarters and at the National Archives and Records Administration (NARA). Contact the Coast Guard at: Commandant (CG–ENG–4), U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7509; or email *typeapproval@uscg.mil* or visit *https://www.dco.uscg.mil/CG-ENG-4/.* For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.* The material may be obtained from the sources in the following paragraphs of this section.

* * * * *

■ 44. In § 160.170–5, revise paragraph (a) to read as follows:

§ 160.170–5 Incorporation by reference.

(a) 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 Coast Guard Headquarters and at the National Archives and Records Administration (NARA). Contact the Coast Guard at: Commandant (CG–ENG–4), U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7509; or email *typeapproval@uscg.mil* or visit *https://www.dco.uscg.mil/CG-ENG-4/.* For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.* The material may be obtained from the sources in the following paragraphs of this section.

* * * * *

■ 45. In § 160.176–4, revise paragraph (a) to read as follows:

§ 160.176–4 Incorporation by reference.

(a) 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 Coast Guard Headquarters and at the National Archives and Records Administration (NARA). Contact the Coast Guard at: Commandant (CG–ENG–4), U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7509; or email *typeapproval@uscg.mil* or visit *https://www.dco.uscg.mil/CG-ENG-4/.* For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.* The material may be obtained from the sources in the following paragraphs of this section.

* * * * *

PART 161—ELECTRICAL EQUIPMENT

■ 46. The authority citation for part 161 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; DHS Delegation No. 00170.1, Revision No. 01.3.

§ 161.010–4 [Amended]

■ 47. In § 161.010–4(a), remove the text ''submitting the VSP electronically'' and ''*http://www.uscg.mil/HQ/MSC*'' and add, in their places, the text ''electronic submittals'' and ''*https://www.uscg.mil/HQ/MSC*'', respectively.

PART 162—ENGINEERING EQUIPMENT

■ 48. The authority citation for part 162 is revised to read as follows:

Authority: 33 U.S.C. 1321(j), 1903; 46 U.S.C. 3306, 3703, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; DHS Delegation No. 00170.1, Revision No. 01.3.

§ 162.017–6 [Amended]

■ 49. In § 162.017–6(a), remove the text ''submitting the VSP electronically'' and ''*http://www.uscg.mil/HQ/MSC*'' and

add, in their places, the text ''electronic submittals'' and ''*https://www.uscg.mil/HQ/MSC*'', respectively.

§ 162.018–8 [Amended]

■ 50. In § 162.018–8(a), remove the text ''submitting the VSP electronically'' and ''*http://www.uscg.mil/HQ/MSC*'' and add, in their places, the text ''electronic submittals'' and ''*https://www.uscg.mil/HQ/MSC*'', respectively.

§ 162.050–7 [Amended]

■ 51. In § 162.050–7(a), remove the text ''submitting the VSP electronically'' and ''*http://www.uscg.mil/HQ/MSC*'' and add, in their places, the text ''electronic submittals'' and ''*https://www.uscg.mil/HQ/MSC*'', respectively.

PART 163—CONSTRUCTION

■ 52. The authority citation for part 163 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; DHS Delegation No. 00170.1, Revision No. 01.3.

PART 173—SPECIAL RULES PERTAINING TO VESSEL USE

■ 53. The authority citation for part 173 is revised to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 2113, 3306, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; DHS Delegation No. 00170.1, Revision No. 01.3.

■ 54. In § 173.095, revise the equations in paragraphs (b) and (d) to read as follows:

§ 173.095 Towline pull criterion.

* * * * *

(b) * * *

$$GM = \frac{(N)(P \times D)^{2/3}(s)(h)}{K\Delta(f/B)}$$

* * * * *

(d) * * *

$$HA = \frac{2\,(N)(P \times D)^{2/3}}{\frac{(s)(h)(\cos\theta)}{K\Delta}}$$

* * * * *

PART 178—INTACT STABILITY AND SEAWORTHINESS

■ 55. The authority citation for part 178 is revised to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; DHS Delegation No. 00170.1, Revision No. 01.3.

§ 178.450 [Amended]

■ 56. In § 178.450(a), remove the text ''Basis Drainage'' and add, in its place, the text ''Basic Drainage''.

Dated: January 25, 2023.

Michael Cunningham,

Chief, Office of Regulations and Administrative Law.

[FR Doc. 2023–01938 Filed 2–15–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 70

RIN 2900–AP89

Change in Rates VA Pays for Special Modes of Transportation

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) amends its beneficiary travel regulations to establish a new payment methodology for special modes of transportation. The new payment methodology will apply in the absence of a contract between VA and a vendor of the special mode of transportation. For transport by ambulance, VA will pay the lesser of the actual charge or the amount determined by the Medicare Part B Ambulance Fee Schedule established by the Centers for Medicare and Medicaid Services. For travel by modes other than ambulance, VA will establish a payment methodology based on States' posted rates or the actual charge.

DATES: The rule is effective February 16, 2024.

FOR FURTHER INFORMATION CONTACT: Ben Williams, Director, Veterans Transportation Program (15MEM), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (404) 828–5691. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Pursuant to section 111 of title 38 United States Code (U.S.C.), VA provides beneficiary travel benefits to eligible individuals who need to travel in connection with vocational rehabilitation, counseling required by the Secretary pursuant to chapter 34 or 35 of Title 38, U.S.C., or for the purpose of examination, treatment, or care. Regulations governing beneficiary travel benefits provided by the Veterans Health Administration (VHA) are in part 70 of title 38 Code of Federal Regulations (CFR). Under part 70, VA has established limiting criteria to pay for a

''special mode of transportation'' when that travel is medically required, the beneficiary is unable to defray the cost of that transportation, and VHA approved the travel in advance or the travel was undertaken in connection with a medical emergency. See 38 CFR 70.2 (defining the term ''[s]pecial mode of transportation''), and 38 CFR 70.4(d) (establishing criteria for approval of special mode travel).

On November 5, 2020, VA proposed amending its beneficiary travel regulations to implement the discretionary authority in 38 U.S.C. 111(b)(3)(C), which permits VA to pay the lesser of the actual charge for ambulance transportation or the amount determined by the Centers for Medicare and Medicaid (CMS) Medicare Part B Ambulance Fee Schedule (hereafter referred to the CMS ambulance fee schedule) established under section 1834(l) of the Social Security Act (42 U.S.C. 1395m(l)), unless VA has entered into a contract for that transportation. Additionally, VA proposed to establish a payment methodology for other types of special modes of transportation, including wheelchair and stretcher van services, which would be used while VA collects data for the purpose of developing a new payment methodology. See 85 FR 70551. We provided a 60-day comment period that ended on January 4, 2021, and we received six comments, five of which were substantive comments. Those five comments all raised similar concerns to 38 CFR 70.30(a)(4) introductory text and (a)(4)(i) and (ii) as proposed, related to using the CMS ambulance fee schedule or the posted rates from each State. We first clarify one aspect of the regulation for the commenters in general, and then address more specific concerns of the individual commenters as applicable (we note that we refer to issues raised by a ''commenter'' or ''commenters'' below). Based on the summary and responses below, we adopt the proposed rule as final with two nonsubstantive changes.

After the close of the comment period, VA received several Congressional letters that expressed some concerns also raised in comments. At Congress' request, VA also attended four meetings with members of Congress and their staff between December 20, 2022, and December 22, 2022, during which VA outlined the terms of the proposed rule.

General Clarification for Commenters

At the outset of our responses, we note that we read the commenters' assertions to rely on the assumption that the proposed rule would create a scenario where VA in all cases will shift from paying billed charges to instead paying amounts derived from the CMS ambulance fee schedule. We first clarify that § 70.30(a)(4)(i) as proposed would only provide that VA pay the lesser of actual charges or the rates determined under the CMS ambulance fee schedule if VA has not otherwise entered into a contract with a vendor of special mode transportation (to include ambulance transport) as provided in § 70.30(a)(4) as proposed. Therefore, VA's payment of rates as determined under the CMS ambulance fee schedule, to the extent they would be lesser than actual charges under § 70.30(a)(4)(i) as proposed, is only enabled if VA has not otherwise entered into a contract under § 70.30(a)(4) as proposed. If VA enters into a contract under § 70.30(a)(4), such contract could provide for an agreed rate that may be different than the CMS ambulance fee schedule. Therefore, it is not an accurate assumption that in all cases VA will pay rates that result from the CMS ambulance fee schedule. We make this clarification so that our additional responses below can be understood in that context.

Specific Concerns Raised by Individual Commenters

One commenter asserted that VA using Medicare rates for ambulance transports is a bad idea because those rates are below what it actually costs to transport patients, and subsequently that VA would receive horrible service and veterans would suffer. Further, the commenter asserted that if a patient is not Medicare covered or is under the age of 65, the rates for ambulance transports should be higher, and that each hospital (we assume the commenter was referring to each VA medical facility) should instead enter into contracts with agreed upon rates.

Regarding the assertion that Medicare rates are inadequate to cover the actual costs of ambulance transport, we do not make changes from the proposed rule. Congress granted VA the discretion in 38 U.S.C. 111(b)(3)(C) to use the CMS ambulance fee schedule as part of VA's methodology to calculate ambulance payments, ostensibly finding such schedule to be sufficient. Further, in its most recent ambulance report, the Medicare Payment Advisory Commission (MedPAC), *www.medpac.gov,* found that, in aggregate, Medicare ambulance margins were adequate, and VA has no cause or expertise to challenge that finding. Regarding the assertion that VA's use of the CMS ambulance fee schedule would result in bad service for VA and veterans, VA is not aware of, and the commenter did not provide evidence to demonstrate that veterans are currently receiving preferential treatment from ambulance providers by virtue of VA paying billed charges or that such preferential treatment would stop were VA to pay CMS ambulance fee schedule rates in the absence of a contract. Additionally, that assertion would assume that ambulance carriers and operators do not apply their professional certification or other standards and ethics in all cases regardless of whether an individual is a veteran, which VA does not believe to be the case. VA has no reason to doubt that the same level of ambulance services would be provided regardless of the payment source or amount of payment for ambulance services.

Regarding the assertion that there should be higher rates paid for ambulance for individuals who are not covered by Medicare or who are below the age of 65, we do not make any changes from the proposed rule. VA does not adopt multiple rate structures or schedules that are dependent on age or other health insurance coverage as VA health care benefits are not private insurance. Rather, VA benefits are created by statute and administered by regulations, through which VA pays for certain services provided to individuals who meet the administrative eligibility and other clinical criteria, without regard to factors such as age. Regarding the assertion that VA medical facilities should contract for adequate rates, we do not make any changes from the proposed rule and reiterate from our responses above that VA will retain the authority in this final rule to enter into contracts with ambulance providers and pay the agreed-upon negotiated rate. We make no changes to the regulation based on this comment.

One commenter, a provider of air ambulance transport, asserted that VA's proposed change to use the CMS ambulance fee schedule would hinder their ability to continue to serve rural areas because the CMS ambulance fee schedule reimburses less than 50 percent of their operational costs, which would cause a loss of several millions of dollars for their company and would impact the rest of emergency air medical services provided throughout the United States. This commenter further asserted that, although they have submitted comments to CMS to review and adjust air ambulance rates under the CMS ambulance fee schedule, such adjustments have not occurred in a manner to keep up with increased costs in providing this transport. The commenter opined that this lack of adjustment in CMS ambulance fee schedule rates, combined with the

effects that COVID–19 has had in increasing transport costs and deteriorating their payer mix, make their provision of services less sustainable.

Regarding the commenter's assertions that the rates determined under the CMS ambulance fee schedule are inadequate and would hinder their ability to serve rural areas, and that CMS should adjust their ambulance fee schedule in any particular manner, we are not making any changes from the proposed rule. VA cannot modify or increase the CMS ambulance fee schedule rates. We further reiterate that § 70.30(a)(4) as proposed would provide VA the option to enter into a contract with a vendor of special mode transportation (to include air ambulance transport), and the terms of that contract would govern the payment rates for such transport. Such contracts could provide for a different rate as agreed, in the event that VA determined it may be justified based on local considerations, such as for rural areas, or to include any additional consideration of difficulties presented during the COVID–19 pandemic. Regarding the assertion that changes in the final rule to permit VA to pay the lesser or the billed charges or the CMS ambulance fee schedule rates would have a detrimental effect on their business we do not make changes from the proposed rule but rely on the Regulatory Flexibility Act section of the proposed rule where VA has estimated there will not be a significant economic impact on vendors of ambulance services because the potential impact per vendor has been estimated to be less than 1 percent of their annual reported receipts, using North American Industry Classification System (NAICS) Code 62910. Therefore, in addition to the ability for ambulance providers to contract with VA for potentially different rates under the final rule, VA has analyzed that any potential effect on ambulance providers would not be significant. We make no changes to the regulation based on this comment.

One commenter, also a provider of air ambulance transport, more specifically asserted that indexing government reimbursement to the CMS ambulance fee schedule was a gross miscalculation that is poorly timed, as this fee schedule is flawed and cutting reimbursement rates during a global pandemic is unconscionable. This commenter urged that, rather than cutting reimbursements for air ambulance care for veterans, VA should work with the Department of Health and Human Services (HHS) to reform the CMS ambulance fee schedule to bring rates closer to actual costs of providing the service. We do not make any changes to the rule as proposed based on this comment. We restate from our responses above that we believe VA's use of this schedule is appropriate. Regarding the assertion that it is poor timing for VA to implement this change during the COVID–19 pandemic, we reiterate that § 70.30(a)(4) as proposed would provide VA the option to enter into a contract with a vendor of special mode transportation to provide for different rates as VA determines may be justified based on local considerations (for instance, to address any difficulties due to the COVID–19 pandemic). Regarding the assertion that CMS should adjust their ambulance fee schedule in any particular manner, or that VA should engage with HHS to reform this schedule, we do not make changes from the proposed rule as those subjects are beyond the scope of the proposed rule.

One commenter, a trade association representing providers of air ambulance services, offered more specific data regarding the background of air ambulance transport in support of establishing actual costs, as well as background on the establishment of the CMS ambulance fee schedule in support of the assertion that the schedule has not been adjusted appropriately to keep up with actual costs. This commenter also more specifically asserted that, should VA move to parity with the CMS ambulance fee schedule, the cost of uncompensated care will only increase, furthering the increased costs shifted to commercial payors or, should those costs not be covered, leading to the increased closure of air ambulance bases, which would increasingly impact low-volume rural areas and other areas with a higher portion of Medicare and Medicaid beneficiaries, as well as VA beneficiaries. This commenter also expressed concern that any effort by the government to limit payments during the global health crisis presented by COVID–19 may be disastrous and have far-reaching consequences for the healthcare and emergency medical systems. Ultimately, this commenter urged VA to delay the implementation of this proposal and revisit the proposed changes only after appropriate data has been collected and analyzed by CMS to determine a fair reimbursement rate, and to otherwise delay any decision to limit payments to providers until the end of the COVID–19 pandemic.

We do not make any changes from the proposed rule based on this commenter's assertions. Regarding the assertions that CMS rates are inadequate, we restate that Congress granted VA the discretion in 38 U.S.C. 111(b)(3)(C) to use the CMS ambulance fee schedule as part of VA's methodology to calculate ambulance payments (ostensibly finding such schedule to be sufficient), and VA has no cause to question the most recent MedPAC report finding that Medicare ambulance margins were adequate.

Regarding the assertion that VA should delay implementation of § 70.30(a)(4) until more data can be collected by CMS to adjust their ambulance fee schedule, the comment alluded to ''recent legislation passed by Congress'' that ''will create a federal database of air ambulance costs which we hope will allow for CMS to modernize the current'' ambulance fee schedule. We believe the comment may be referencing provisions of title I (No Surprises Act) and title II (Transparency) of Division BB of the Consolidated Appropriations Act (CAA), 2021 (Pub. L. 116–260). We are aware of a notice of proposed rulemaking published on September 16, 2021 (86 FR 51730), that would implement certain provisions of title I (No Surprises Act) and title II (Transparency) of Division BB of the CAA. Among other things, this proposed rule would increase transparency by requiring group health plans and health insurance issuers in the group and individual markets, and Federal Employee Health Benefits carriers, to submit certain information about air ambulance services to the Secretaries of Health and Human Services (HHS), Labor, and the Treasury, and the Director of the Office of Personnel Management, as applicable, and by requiring providers of air ambulance services to submit certain information to the Secretaries of HHS and Transportation. The information submitted under this proposed rule will include specific elements outlined in law that are necessary for HHS, along with the Department of Transportation, to develop a comprehensive public report on air ambulance services. VA does not have a clear understanding as to how this public report would be used, or whether HHS or CMS may use the report or any product of the required reporting under the proposed rule to determine (as we believe is suggested by the commenter) whether changes to the ambulance fee schedule are warranted.

Because VA does not have a sense of whether changes to the CMS ambulance fee schedule could be pending as suggested by the commenter, VA will not delay the implementation of this final rule until such time as any changes to CMS ambulance rates may occur. We note that because VA is referencing the CMS fee schedule in general in this regulation and not the specific amount

that is currently established in the CMS fee schedule, any changes to the CMS rates will be automatically applicable without the need for future rulemaking. VA will, however, delay the effective date of this final rule until February 16, 2024, to ensure that ambulance providers have adequate time to adjust to VA's new methodology for calculating ambulance rates. Such adjustment could include ambulance providers entering into negotiations with VA to contract for payment rates different than those under the CMS fee schedule.

Regarding the assertion that VA should delay implementation of § 70.30(a)(4) until the end of the COVID–19 pandemic, VA is not in a position to know when that time may be, although as stated above VA will delay the implementation of the final rule to provide additional time for vendors of special mode transportation who are concerned with the CMS fee schedule to enter into a contract with VA. Such contracts could provide for a different rate, in the event that VA determined different rates may be justified based on local considerations (to include any additional difficulties presented during the COVID–19 pandemic, or for rural areas as the commenter asserted such areas could be disproportionately affected).

One commenter asserted that some of the information presented in the proposed rule would make it more difficult for patients to access transportation assistance, and specifically opposed the payment methodology in proposed § 70.30(a)(4) for travel by modes other than ambulance. The commenter noted that the problem with this methodology was that the resulting rates (given that they were available for each State) are often quoted as lower than what the actual transportation cost may be. The commenter further inquired as to what happens with any remaining balance, and whether the patient is responsible for the payment of transportation services. Ultimately, the commenter asserted that there needed to be further clarification regarding this methodology for modes of transportation other than ambulance, and that VA should continue to pay for the total cost of non-ambulance transport until more data can be collected and another proposed rule submitted regarding a different methodology.

Regarding the assertions of the commenter that the quoted rates per State for non-ambulance transports are lower than actual costs of such transportation, we do not make any changes from the proposed rule. Similar to our responses regarding adequacy of rates for ambulance transport, we believe it is reasonable and appropriate to rely on posted rates as available per State. Using the rates posted by States ensures consistency and predictability for how much VA will pay to vendors in each State. Section 70.30(a)(4) as proposed would provide VA the option to enter into a contract with a vendor of special mode transportation (to travel by modes other than ambulance under § 70.30(a)(4)(ii) as proposed), and the terms of that contract would govern the payment rates for such transport. Such contracts could provide for a different rate in the event that VA determines that may be justified based on local considerations. We further note that, based on the Regulatory Flexibility Act section of proposed rule, VA has estimated there will not be a significant economic impact on non-ambulance vendors within NAICS Code 621999 (All Other Miscellaneous Ambulatory Health Care Services) or NAICS Code 485991 (Special Needs Transportation) because VA estimates that over 99 percent of its payments to vendors potentially covered within these NAICS Codes are made pursuant to a contract.

Regarding the commenter's inquiry related to billing by non-ambulance providers of veterans for any remaining balance after VA payment for the transport, over 99 percent of these non-ambulance transports are paid for by VA under contract, and the terms of such contracts indicate that payment by VA constitutes payment in full and extinguishes any liability on the part of the individual transported. For the remaining 1 percent of non-ambulance providers that we estimate are not covered by a contract, we do not have knowledge that such providers bill veterans for any remaining balance after receipt of VA's payment. However, if VA becomes aware of such billing of veterans for any remaining balance, we could propose an additional regulatory revision to address that issue in a future rulemaking. We do not make any changes from the proposed rule.

Regarding the commenter's request that VA delay implementation of the methodology for non-ambulance transports until more data can be collected, we will be delaying implementation of the final rule until February 16, 2024, and additional data will be obtained once this rule is implemented. We stated in the proposed rule that after utilizing this methodology for an initial 90 calendar day period after this rule becomes final in the **Federal Register**, VA will analyze the payments made to vendors for travel by modes other than ambulance and determine whether we have enough payment data (*e.g.,* arithmetic average of actual charges, locality rates, or posted rates) to develop a new payment methodology. If VA determines that it has enough payment data, then VA will develop a payment methodology using the lowest possible rate. If VA does not have enough payment data to create a new methodology after the initial 90 calendar day period, then VA would continue to collect data for as many 90 calendar day intervals as VA would deem necessary to gather sufficient payment data, which we do not anticipate exceeding 18 months from the effective date of the final rule. Subsequently, VA would propose a new methodology for travel by modes other than ambulance in a separate rulemaking in the **Federal Register**.

Technical Changes Not Based on Comments

VA makes technical changes not based on comments. The first is to move the last sentence from § 70.30(a)(4) as proposed to instead be placed in § 70.30(a)(4)(ii)(B), which occurs after § 70.30(a)(4)(ii)(A)(*3*) (§ 70.30(a)(4)(ii)(C) as proposed). The new language in § 70.30(a)(4)(ii)(B) will provide that the term ''posted rate'' refers to the applicable Medicaid rate for the special mode transport in the State or States where the vendor is domiciled or where transport occurred (''involved States''). And, in the absence of a posted rate for an involved State, VA will pay the lowest among the available posted rates or the vendor's actual charge. This is not a substantive change, but rather moving language into one location so that all interpretation of the meaning of the term ''posted rate'' in § 70.30(a)(4)(ii) is located in one place.

Second, we are amending the language to capitalize the word ''State'' in the regulations affected by the proposed rule to be consistent with how VA capitalizes the word ''State'' throughout our regulations.

Based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposed rule as final with the changes noted above.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity).

Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *https://www.regulations.gov.*

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. VA estimates that this final rule will potentially impact 2,979 small entities within NAICS Code 621910 (Ambulance Services), which represents 97 percent of the total entities covered by NAICS Code 621910. However, VA assumes that all entities within NAICS Code 621910 would bear VA's cost avoidance equally. The per entity burden is estimated to be less than 1 percent of preliminary receipts for all entities in NAICS Code 621910.

VA does not believe the impact on vendors within NAICS Code 621999 (All Other Miscellaneous Ambulatory Health Care Services) or NAICS Code 485991 (Special Needs Transportation) will be significant because we do not typically pay for non-contract wheelchair or stretcher van services. Because VA estimates that over 99 percent of its payments to vendors potentially covered within NAICS Codes 621999 and 485991 are made pursuant to a contract, less than 1 percent of small entities within these NAICS Codes are estimated to be impacted by this final rule. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

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

Paperwork Reduction Act

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

Catalog of Federal Domestic Assistance

The catalog of Federal Domestic Assistance numbers and titles affected by this document are 64.040,VHA Inpatient Medicine (C, D), 64.041, VHA Outpatient Specialty Care (C), 64.042, VHA Inpatient Surgery (C), 64.043, VHA Mental Health Residential (C), 64.044, VHA Home Care (C), 64.045, VHA Outpatient Ancillary Services (C), 64.046, VHA Inpatient Psychiatry (C), 64.047, VHA Primary Care (C), 64.048, VHA Mental Health clinics (C), 64.049, VHA Community Living Center (C), 64.050, VHA Diagnostic Care (C).

Congressional Review Act

Pursuant to the Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act) (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

List of Subjects in 38 CFR Part 70

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on February 6, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Consuela Benjamin,

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

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 70 as follows:

PART 70—VETERANS TRANSPORTATION PROGRAMS

■ 1. The authority citation for part 70 is revised to read as follows:

Authority: 38 U.S.C. 101, 111, 111A, 501, 1701, 1714, 1720, 1728, 1782, and 1783; E.O. 11302, 31 FR 11741, 3 CFR, 1966–1970 Comp., p. 578; and E.O. 13520, 74 FR 62201, 3 CFR, 2009 Comp., p. 274.

■ 2. In § 70.2, add a definition for ''Ambulance'' in alphabetical order to read as follows:

§ 70.2 Definitions.

* * * * *

Ambulance, as used in this subpart, means advanced life support, level 1 (ALS1); advanced life support, level 2 (ALS2); basic life support (BLS); fixed wing air ambulance (FW); rotary wing air ambulance (RW); and specialty care transport (SCT), as those terms are defined in 42 CFR 414.605.

* * * * *

■ 3. In § 70.30 revise paragraph (a)(4) to read as follows:

§ 70.30 Payment principles.

(a) * * *

(4) VA payments for special modes of transportation will be made in accordance with this section, unless VA has entered into a contract with the vendor in which case the terms of the contract will govern VA payments. This section applies notwithstanding 38 CFR 17.55 and 17.56 for purposes of 38 CFR 17.120.

(i) *Travel by ambulance.* VA will pay the lesser of the actual charge for ambulance transportation or the amount determined by the fee schedule established under section 1834(l) of the Social Security Act (42 U.S.C. 1395m(l)).

(ii) *Travel by modes other than ambulance.* (A) VA will pay the lesser of:

(*1*) The vendor's actual charge.

(*2*) The posted rate in the State where the vendor is domiciled. If the vendor is domiciled in more than one State, the lowest posted rate among all involved States.

(*3*) The posted rate in the State where transport occurred. If transport occurred in more than one State, the lowest posted rate among all involved States.

(B) The term ''posted rate'' refers to the applicable Medicaid rate for the special mode transport in the State or States where the vendor is domiciled or where transport occurred (''involved States''). In the absence of a posted rate for an involved State, VA will pay the lowest among the available posted rates or the vendor's actual charge.

* * * * *

§§ 70.1, 70.2, 70.3, 70.4, 70.10, 70.20, 70.21, 70.30, 70.31, 70.32, 70.40, 70.41, 70.42, 70.50, 70.70, 70.71, 70.72, 70.73 [Amended]

■ 4. Part 70 is further amended in the following sections by removing the parenthetical authority citation at the end of the section:

■ a. Section 70.1.
■ b. Section 70.2.
■ c. Section 70.3.
■ d. Section 70.4.
■ e. Section 70.10.
■ f. Section 70.20.
■ g. Section 70.21.
■ h. Section 70.30.
■ i. Section 70.31.
■ j. Section 70.32.
■ k. Section 70.40.
■ l. Section 70.41.
■ m. Section 70.42.
■ n. Section 70.50.
■ o. Section 70.70.
■ p. Section 70.71.
■ q. Section 70.72.
■ r. Section 70.73.

[FR Doc. 2023–03013 Filed 2–15–23; 8:45 am]

BILLING CODE 8320–01–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3055

[Docket No. RM2022–7; Order No. 6439]

RIN 3211–AA32

Reporting of Service Performance

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: This Commission adopts rules which revise the Postal Service's service performance reporting requirements and includes additions required by recent postal legislation.

DATES: This rule is effective March 20, 2023.

ADDRESSES: For additional information, Order No. 6439 can be accessed electronically through the Commission's website at *https://www.prc.gov.*

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Relevant Statutory Requirements

Section 3652(e)(1) of title 39 of the United States Code requires the Commission to prescribe the content and form of the public reports that the Postal Service files with the Commission. 39 U.S.C. 3652(e)(1). In doing so, the Commission must attempt to provide the public with timely information that is adequate to allow it to assess the lawfulness of Postal Service rates, should attempt to avoid unnecessary or unwarranted Postal Service effort and expense, and must endeavor to protect the confidentiality of commercially sensitive information. *See id.* The Commission may initiate proceedings to improve the quality, accuracy, or completeness of Postal Service reporting whenever it determines that the service performance data have become significantly inadequate, could be significantly improved, or otherwise require revision as necessitated by the public interest. 39 U.S.C. 3652(e)(2).

Additionally, section 3692 directs the Postal Service to develop and maintain a publicly available online ''dashboard'' that provides weekly service performance data for Market Dominant products and mandates that the Commission provide reporting requirements for this Postal Service dashboard as well as ''recommendations for any modifications to the Postal Service's measurement systems necessary to measure and publish the performance information'' located on the dashboard. 39 U.S.C. 3692(b)(2), (c). The Postal Service is also authorized to provide certain nonpostal services to the public and other Governmental agencies and consequently required to periodically report the quality of service for these nonpostal services. *See* 39 U.S.C. 3703–3705.

II. Background

Pursuant to 39 U.S.C. 503, 3652, 3653, 3692 and 3705, the Commission initiated Docket No. RM2022–7 to update the service performance reporting requirements codified in 39 CFR part 3055 and make the aforementioned additions for dashboard and nonpostal product reporting. On April 26, 2022, the Commission issued Order No. 6160, proposing several modifications to the reporting requirements, providing an opportunity for interested persons to comment, and appointing a Public Representative.[1] Included among these suggested modifications were proposals to require the Postal Service to report average actual days to delivery and point impact data, information regarding the performance for each national operating plan target, and data about mail excluded from measurement. Order No. 6160 at 5–6. The Commission also solicited comments on how best to effectuate the statutes requiring the Postal Service to report on nonpostal products and implement a performance dashboard. *Id.* at 6–8.

The Commission received a wide range of comments in response to Order No. 6160, both discussing the suggested revisions and proposing additional amendments to the reporting requirements. In response, on September 21, 2022, the Commission issued Order No. 6275, revising the previously-proposed reporting requirements, presenting the requirements as draft regulations, and providing another opportunity for interested persons to comment.[2] Again, the Commission received a variety of comments in response.

III. Basis and Purpose of Final Rules

After reviewing the commenters' suggestions and analysis, the Commission issues the following revisions to the rules proposed in Order No. 6275. Most rules have not been changed substantively; those that have are addressed below.

First, proposed § 3055.2(m)—which relates to required annual reporting on the Postal Service's Site-Specific Operating Plan (SSOP)—is revised to state that the Postal Service must provide a description of each SSOP, including operation completion time performance for each SSOP measurement category.

Second, proposed § 3055.21—which specifies the annual service performance reporting requirements for the Postal Service—is revised so that proposed § 3055.21(b) specifies that the Postal Service need not identify point impact data for USPS Marketing Mail Every Door Direct Mail or USPS Marketing Mail Destination Delivery Unit Entry Saturation Flats.

Third, proposed § 3055.25—which describes the reporting requirements for nonpostal services—is revised to specify that the Postal Service provide the measure of the quality of service for nonpostal service products annually. Additionally, paragraph (b) is added to specify that the Postal Service may report service performance in a qualitative manner where the quality of nonpostal service itself cannot be measured using on-time service performance. Paragraph (c) is also added to specify that quality of service performance for interagency agreements shall be reported for the program as a

[1] Advance Notice of Proposed Rulemaking to Revise Periodic Reporting of Service Performance, April 26, 2022 (Order No. 6160).

[2] Notice of Proposed Rulemaking to Revise Periodic Reporting of Service Performance, September 21, 2022 (Order No. 6275).

whole. Paragraph 3055.25(d) is added to set an effective date for nonpostal services reporting as the beginning of FY 2024.

Fourth, proposed § 3055.30—which describes the Postal Service's periodic service performance reporting obligations—is revised to reflect the fact that the Postal Service is not required to report on a quarterly basis for nonpostal services. As previously-proposed, the existing text is revised to indicate that reporting is not required where exempted by the Commission.

Fifth, proposed § 3055.31—which describes the contents of the Postal Service's Quarterly Report on service performance—is revised so that paragraph (g) states that the Postal Service must provide a description of each SSOP, including operation completion time performance for each SSOP measurement category.

Sixth, the proposed addition of § 3055.70 described in Order No. 6275—which required quarterly reporting for nonpostal services—is withdrawn.

Seventh, proposed § 3055.102—which details the specific requirements for the Postal Service's Public Performance Dashboard—is revised to indicate that the Postal Service is not required to report ZIP Code-level data. Proposed § 3055.102 is also revised to indicate that a query initiated by a user will provide District-level (rather than ZIP Code-level) results. Proposed § 3055.102(d) is revised to indicate that National scores need only date back to FY 2021, and Area and District scores need only date back to FY 2022. Proposed § 3055.102(f), (g), and (i) are revised to specify that processing scores are required for identifiable Political Mail, identifiable Election Mail, and identifiable Nonprofit Mail. Paragraph (j) is also added to require the Postal Service to distinguish non-political NPMM from Political Mail and Election Mail that is sent via NPMM. Paragraph (k) is added to specify that the point impact data for the top ten root causes of on-time service performance failures is required at the Postal Administrative Area and National levels, but not for Nonprofit Mail. Paragraph (o) is added to require the Postal Service to include with the Dashboard an explanation of the underlying methodology and data. Paragraph (p) is added to provide reporting deadlines for certain data on the Dashboard.

Finally, proposed § 3055.103—which describes the format for the data in the Postal Service's Public Performance Dashboard—is revised to specify that the Postal Service shall provide the results of user-initiated queries on the Public Performance Dashboard in a machine-readable format.

List of Subjects in 39 CFR Part 3055

Administrative practice and procedure, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Commission amends 39 CFR part 3055 as follows:

PART 3055—SERVICE PERFORMANCE AND CUSTOMER SATISFACTION REPORTING

■ 1. The authority citation for part 3055 is revised to read as follows:

Authority: 39 U.S.C. 503; 3652; 3653; 3692(b) and (c); 3705.

Subpart A—Annual Reporting of Service Performance Achievements

■ 2. Revise § 3055.1 to read as follows:

§ 3055.1 Annual Reporting of service performance achievements.

For each Market Dominant product specified in the Mail Classification Schedule in part 3040, appendix A to subpart A of part 3040 of this chapter (and for each competitive nonpostal service product specified in the Mail Classification Schedule in part 3040, appendix B to subpart A of part 3040 of this chapter), the Postal Service shall file a report as part of the section 3652 report addressing service performance achievements for the preceding fiscal year.

■ 3. Amend § 3055.2 by revising paragraphs (a) and (j) and by adding paragraphs (l) through (n) to read as follows:

§ 3055.2 Contents of the annual report of service performance achievements.

(a) The items in paragraphs (b) through (n) of this section shall be included in the annual report of service performance achievements.

* * * * *

(j) Documentation showing how data reported at a given level of aggregation were derived from data reported at greater levels of disaggregation. Such documentation shall be in electronic format with all data links preserved. It shall show all formulas used, including volumes and other weighting factors. Any graphical representation of data provided shall also be accompanied by the underlying data presented in spreadsheet form.

* * * * *

(l) For each Market Dominant product, the average time in which the product was delivered, measured by actual delivery days, during the previous fiscal year, provided at the District, Postal Administrative Area, and National levels. ''Actual delivery days'' shall include all days in which Market Dominant products are eligible for delivery, excluding Sundays and holidays. The report shall include the following information on dispersion around the average:

(1) The percent of mailpieces delivered within +1 day of the applicable service standard;

(2) The percent of mailpieces delivered within +2 days of the applicable service standard; and

(3) The percent of mailpieces delivered within +3 days of the applicable service standard.

(m) A description of each Site-Specific Operating Plan, including operation completion time performance (as a percentage rounded to one decimal place) for each Site-Specific Operating Plan measurement category during the previous fiscal year. Such information shall be at the National level and disaggregated by Division and Region.

(n) A description of the total mail volumes measured and excluded from measurement. Such description shall include:

(1) For each class of Market Dominant products (except Special Services), a report of the reasons that mailpieces were excluded from measurement during the previous fiscal year. The report shall include:

(i) The exclusion reason;

(ii) The exclusion description;

(iii) The number of mailpieces excluded from measurement, which is the sum of all mailpieces excluded from measurement for the individual exclusion reason; and

(iv) The exclusion reason as a percent of total mailpieces excluded from measurement, which is the number of mailpieces excluded from measurement (*i.e.,* provided in paragraph (n)(1)(iii) of this section) divided by the sum of all mailpieces excluded from measurement across all exclusion reason categories (*i.e.,* the sum of all values provided in paragraph (n)(1)(iii) of this section).

(2) The report described in paragraph (n)(1) of this section shall follow the format as shown below:

TABLE 1 TO PARAGRAPH (n)(2)—EXCLUSION REASONS REPORT FOR FISCAL YEAR

Exclusion reason	Exclusion description	Number of mailpieces excluded from measurement	Exclusion reason as a percent of total exclusions

(3) For each class of Market Dominant products and for each Market Dominant product (except Special Services), a description of the mail volumes measured and un-measured during the previous fiscal year. The description shall explain in detail any notations regarding the Postal Service's inability to collect any data. Corresponding data shall also be provided for the same period last year (SPLY).

(4) The report described in paragraph (n)(3) of this section shall follow the format as shown below:

TABLE 2 TO PARAGRAPH (n)(4)—TOTAL MAIL MEASURED/UNMEASURED VOLUMES REPORT FOR FISCAL YEAR

Class/product	^^		^^		^^	
	Prior FY	SPLY	Prior FY	SPLY	Prior FY	SPLY
Total Number of Pieces (RPW–ODIS).						
Total Number of Pieces in Measurement.						
Total Number of Pieces Eligible for Full-Service IMb.						
Total Number of Full-Service IMb Pieces Included in Measurement.						
Total Number of Full-Service IMb Pieces Excluded from Measurement.						
Total Number of Pieces Not in Measurement.						
% of Pieces in Measurement Compared to Total Pieces.						
% of Pieces Not in Measurement Compared to Total Pieces.						
% of Full-Service IMb Pieces in Measurement Compared to Total IMb Full-Service Pieces.						
% of Full-Service IMb Pieces Not in Measurement Compared to Total IMb Full-Service Pieces.						

(5) Descriptions of the current methodologies used to verify the accuracy, reliability, and representativeness of service performance data for each service performance measurement system.

§ 3055.7 [Removed and Reserved].

■ 4. Remove and reserve § 3055.7.

■ 5. Revise § 3055.20 to read as follows:

§ 3055.20 First-Class Mail.

(a) For each of the Single-Piece Letters/Postcards, Presorted Letters/Postcards, and Flats products within the First-Class Mail class, report the on-time service performance (as a percentage rounded to one decimal place), disaggregated by mail subject to the overnight, 2-day, 3-day, 4-day, and 5-day service standards, as well as in the aggregate for the 3-to-5-day service standards.

(b) For each of the Outbound Single-Piece First-Class Mail International and Inbound Letter Post products within the First-Class Mail class, report the on-time service performance (as a percentage rounded to one decimal place), disaggregated by mail subject to the 2-day, 3-day, 4-day, and 5-day service standards, as well as in the aggregate for the 3-to-5-day service standards and in the aggregate for all service standards combined.

(c) For each product that does not meet its service goal during the reporting period, report the point impact data for the top ten root causes of on-time service performance failures, at the Postal Administrative Area and National levels, during the previous fiscal year. ''Point impact data'' means the number of percentage points by which on-time performance decreased due to a specific root cause of failure. Identification and a description of all potential root causes of failure assigned during the previous fiscal year and any changes to the Postal Service's methodology for calculating point impact data shall be included.

■ 6. Revise § 3055.21 to read as follows:

§ 3055.21 USPS Marketing Mail.

(a) For each product within the USPS Marketing Mail class, report the on-time service performance (as a percentage rounded to one decimal place).

(b) For each product within the USPS Marketing Mail class that does not meet its service goal during the reporting period, report the point impact data for the top ten root causes of on-time service performance failures, at the National level, during the previous fiscal year. ''Point impact data'' means the number of percentage points by which on-time performance decreased due to a specific root cause of failure. Identification and a description of all potential root causes of failure assigned during the previous fiscal year and any changes to the Postal Service's methodology for calculating point impact data shall be included. This requirement shall not apply to USPS Marketing Mail Every Door Direct Mail or USPS Marketing Mail Destination Delivery Unit Entry Saturation Flats.

■ 7. Revise § 3055.22 to read as follows:

§ 3055.22 Periodicals.

(a) For each product within the Periodicals class, report the on-time service performance (as a percentage rounded to one decimal place).

(b) For each product within the Periodicals class that does not meet its service goal during the reporting period, report the point impact data for the top ten root causes of on-time service performance failures, at the National level, during the previous fiscal year. ''Point impact data'' means the number of percentage points by which on-time performance decreased due to a specific root cause of failure. Identification and a description of all potential root causes of failure assigned during the previous fiscal year and any changes to the Postal Service's methodology for calculating point impact data shall be included.

■ 8. Revise § 3055.23 to read as follows:

§ 3055.23 Package Services.

(a) For each product within the Package Services class, report the on-time service performance (as a percentage rounded to one decimal place).

(b) For each product within the Package Services class that does not meet its service goal during the reporting period, report the point impact data for the top ten root causes of on-time service performance failures, at the National level, during the previous fiscal year. ''Point impact data'' means the number of percentage points by which on-time performance decreased due to a specific root cause of failure. Identification and a description of all potential root causes of failure assigned during the previous fiscal year and any changes to the Postal Service's methodology for calculating point impact data shall be included.

■ 9. Revise § 3055.25 to read as follows:

§ 3055.25 Nonpostal Products.

(a) For each product that is a nonpostal service authorized pursuant to 39 U.S.C. chapter 37, the Postal Service shall report the measure of the quality of service.

(b) If practicable, quantitative measurement (such as on-time service performance) along with identification of the underling metric(s) shall be provided. If quantitative measurement is not practicable, the Postal Service shall so state, explain why it is not practicable, and provide qualitative analysis.

(c) For the Postal Service's program to provide property and nonpostal service to other Government agencies under 39 U.S.C. 3704, the Postal Service shall report the quality of service for the program as a whole.

(d) The effective date of this section is October 1, 2023.

Subpart B—Periodic Reporting of Service Performance Achievements

■ 10. Revise § 3055.30 to read as follows:

§ 3055.30 Periodic reporting of service performance achievements.

For each Market Dominant product specified in the Mail Classification Schedule in part 3040, appendix A to subpart A of part 3040 of this chapter, the Postal Service shall file a Quarterly Report with the Commission addressing service performance achievements for the preceding fiscal quarter (within 40 days of the close of each fiscal quarter, except where otherwise specified by the Commission), except where otherwise specified by the Commission.

■ 11. Amend § 3055.31 by revising paragraphs (a) and (d) and by adding paragraphs (f) through (i) to read as follows:

§ 3055.31 Contents of the Quarterly Report of service performance achievements.

(a) The items in paragraphs (b) through (h) of this section shall be included in the quarterly report of service performance achievements.

* * * * *

(d) Documentation showing how data reported at a given level of aggregation were derived from data reported at greater levels of disaggregation. Such documentation shall be in electronic format with all data links preserved. It shall show all formulas used, including volumes and other weighting factors. Any graphical representation of data provided shall also be accompanied by the underlying data presented in spreadsheet form.

* * * * *

(f) For each Market Dominant product, the average time in which the product was delivered, measured by actual delivery days, during the previous fiscal quarter, provided at the District, Postal Administrative Area, and National levels. ''Actual delivery days'' shall include all days in which Market Dominant products are eligible for delivery, excluding Sundays and holidays. The report shall include the following information on dispersion around the average:

(1) The percent of mailpieces delivered within +1 day of the applicable service standard;

(2) The percent of mailpieces delivered within +2 days of the applicable service standard; and

(3) The percent of mailpieces delivered within +3 days of the applicable service standard.

(g) A description of each Site-Specific Operating Plan, including operation completion time performance (as a percentage rounded to one decimal place) for each Site-Specific Operating Plan measurement category during the previous fiscal quarter. Such information shall be at the National level and disaggregated by Division and Region.

(h) A description of the total mail volumes measured and excluded from measurement. Such description shall include:

(1) For each class of Market Dominant products (except Special Services), a report of the reasons that mailpieces were excluded during the previous fiscal quarter. The report shall include:

(i) The exclusion reason;

(ii) The exclusion reason description;

(iii) The number of mailpieces excluded from measurement, which is the sum of all mailpieces excluded from measurement for the individual exclusion reason; and

(iv) The exclusion reason as a percent of total mailpieces excluded from measurement, which is the number of mailpieces excluded from measurement (*i.e.,* provided in paragraph (h)(1)(iii) of this section) divided by the sum of all mailpieces excluded from measurement across all exclusion reason categories (*i.e.,* the sum of all values provided in paragraph (h)(1)(iii) of this section).

(v) The report shall include information for each quarter in the applicable fiscal year.

(2) The report described in paragraph (h)(1) of this section shall follow the format as shown below:

TABLE 1 TO PARAGRAPH (h)(2)—EXCLUSION REASONS REPORT FOR FISCAL QUARTER

Exclusion reason	Exclusion description	Number of mailpieces excluded from measurement				Exclusion reason as a percent of total exclusions			
		Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4

(3) For each class of Market Dominant products and for each Market Dominant product (except Special Services), a description of the mail volumes measured and unmeasured during the previous fiscal quarter. The description shall explain in detail any notations regarding the Postal Service's inability to collect any data. Corresponding data shall also be provided for the same period last year (SPLY). Each report is due within 60 days of the close of each fiscal quarter.

(4) The report described in paragraph (h)(3) of this section shall follow the format as shown below:

TABLE 2 TO PARAGRAPH (h)(4)—TOTAL MAIL MEASURED/UNMEASURED VOLUMES REPORT FOR FISCAL QUARTER

Class/product	^^		^^		^^	
	Prior FQ	SPLY	Prior FQ	SPLY	Prior FQ	SPLY
Total Number of Pieces (RPW–ODIS).						
Total Number of Pieces in Measurements.						
Total Number of Pieces Eligible for Full-Service IMb.						
Total Number of Full-Service IMb Pieces Included in Measurement.						
Total Number of Full-Service IMb Pieces Excluded from Measurement.						
Total Number of Pieces Not in Measurement.						
% of Pieces in Measurement Compared to Total Pieces.						
% of Pieces Not in Measurement Compared to Total Pieces.						
% of Full-Service IMb Pieces in Measurement Compared to Total IMb Full-Service Pieces.						
% of Full-Service IMb Pieces Not in Measurement Compared to Total IMb Full-Service Pieces.						

(i) A report of quarterly third-party audit results of its internal service performance measurement system for Market Dominant products. This report shall include a description of the audit measures used and the audit results specific to inbound and outbound single-piece First-Class Mail International and the Green Card option of the Return Receipt service. For any measure deemed by the auditor to be not achieved or only partially achieved, the Postal Service shall include in its report an explanation of its plan to achieve said measure in the future. Each report is due within 60 days of the close of each fiscal quarter.

■ 12. Revise § 3055.45 to read as follows:

§ 3055.45 First-Class Mail.

(a) *Single-Piece Letters/Postcards, Presorted Letters/Postcards, and Flats.* For each of the Single-Piece Letters/Postcards, Presorted Letters/Postcards, and Flats products within the First-Class Mail class, report the:

(1) On-time service performance (as a percentage rounded to one decimal place), disaggregated by mail subject to the overnight, 2-day, 3-day, 4-day, and 5-day service standards, as well as in the aggregate for the 3-to-5-day service standards, provided at the District, Postal Administrative Area, and National levels; and

(2) Service variance (as a percentage rounded to one decimal place) for mail

delivered within +1 day, +2 days, and +3 days of its applicable service standard, disaggregated by mail subject to the overnight, 2-day, 3-day, 4-day, and 5-day service standards, as well as in the aggregate for the 3-to-5-day service standards, provided at the District, Postal Administrative Area, and National levels.

(b) *Outbound Single-Piece First-Class Mail International and Inbound Letter Post.* For each of the Outbound Single-Piece First-Class Mail International and Inbound Letter Post products within the First-Class Mail class, report the:

(1) On-time service performance (as a percentage rounded to one decimal place), disaggregated by mail subject to the 2-day, 3-day, 4-day, and 5-day service standards, as well as in the aggregate for the 3-to-5-day service standards and in the aggregate for all service standards combined, provided at the Postal Administrative Area and National levels; and

(2) Service variance (as a percentage rounded to one decimal place) for mail delivered within +1 day, +2 days, and +3 days of its applicable service standard, disaggregated by mail subject to the overnight, 2-day, 3-day, 4-day, and 5-day service standards, as well as in the aggregate for the 3-to-5-day service standards and in the aggregate for all service standards combined, provided at the Postal Administrative Area and National levels.

■ 13. Revise § 3055.50 to read as follows:

§ 3055.50 USPS Marketing Mail.

(a) For each product within the USPS Marketing Mail class, report the on-time service performance (as a percentage rounded to one decimal place), disaggregated by the Destination Entry (2-day), Destination Entry (3-day through 4-day), Destination Entry (5-day through 10-day), End-to-End (3-day through 5-day), End-to-End (6-day through 10-day), and End-to-End (11-day through 22-day) entry mail/service standards, provided at the District, Postal Administrative Area, and National levels.

(b) For each product within the USPS Marketing Mail class, report the service variance (as a percentage rounded to one decimal place) for mail delivered within +1 day, +2 days, and +3 days of its applicable service standard, disaggregated by the Destination Entry (2-day), Destination Entry (3-day through 4-day), Destination Entry (5-day through 10-day), End-to-End (3-day through 5-day), End-to-End (6-day through 10-day), and End-to-End (11-day through 22-day) entry mail/service standards, provided at the District, Postal Administrative Area, and National levels.

■ 14. Amend § 3055.55 by revising paragraph (a) introductory text to read as follows:

§ 3055.55 Periodicals.

(a) *In-County Periodicals.* For the In-County Periodicals product within the Periodicals class, report the:

* * * * *

■ 15. Revise § 3055.60 to read as follows:

§ 3055.60 Package Services.

(a) For each product within the Package Services class, report the-on-time service performance (as a percentage rounded to one decimal place), disaggregated by the Destination Entry and End-to-End entry mail, provided at the District, Postal Administrative Area, and National levels.

(b) For each product within the Package Services class, report the service variance (as a percentage rounded to one decimal place) for mail delivered within +1 day, +2 days, and +3 days of its applicable service standard, disaggregated by the Destination Entry and End-to-End entry mail, provided at the District, Postal Administrative Area, and National levels.

§ 3055.65 [Amended]

■ 16. Amend § 3055.65 by removing paragraph (b)(1) and redesignating paragraphs (b)(2) through (5) as paragraphs (b)(1) through (4).

■ 17. Add subpart D to read as follows:

Subpart D—Public Performance Dashboard

Sec.

3055.100 Definitions applicable to this subpart.
3055.101 Public Performance Dashboard.
3055.102 Contents of the Public Performance Dashboard.
3055.103 Format for data provided in the Public Performance Dashboard.

§ 3055.100 Definitions applicable to this subpart.

(a) *Actual delivery days* refers to all days in which Market Dominant products are eligible for delivery, excluding Sundays and holidays.

(b) *Election mail* refers to items such as ballots, voter registration cards, and absentee applications that an authorized election official creates for voters.

(c) *Nonprofit mail* refers to USPS Marketing Mail mailpieces that qualify for reduced rates pursuant to 39 U.S.C. 3626(a)(6) and the regulations promulgated thereunder and Periodicals mailpieces that qualify for reduced rates pursuant to 39 U.S.C. 3626(a)(4) and the regulations promulgated thereunder.

(d) *Political mail* refers to any mailpiece sent for political campaign purposes by a registered candidate, a campaign committee, or a committee of a political party to promote candidates, referendums, or campaigns.

§ 3055.101 Public Performance Dashboard.

The Postal Service shall develop and maintain a publicly available website with an interactive web-tool that provides performance information for Market Dominant products. This website shall be updated on a weekly basis, no later than one month from the date of data collection. The website shall include, at a minimum, the reporting requirements specified in § 3055.102 and adhere to the formatting requirements specified in § 3055.103.

§ 3055.102 Contents of the Public Performance Dashboard.

(a) The items in paragraphs (b) through (p) of this section shall be included in the Public Performance Dashboard.

(b) Within each class of Market Dominant products, for each Market Dominant product and each service standard applicable to each Market Dominant product:

(1) The on-time service performance (as a percentage rounded to one decimal place) for the Nation;

(2) The on-time service performance (as a percentage rounded to one decimal place) for each Postal Administrative Area; and

(3) The on-time service performance (as a percentage rounded to one decimal place) for each District.

(c) Within each class of Market Dominant products, for each Market Dominant product and each applicable service standard:

(1) The average time in which the product was delivered, measured by actual delivery days, for the Nation;

(2) The average time in which the product was delivered, measured by actual delivery days, for each Postal Administrative Area; and

(3) The average time in which the product was delivered, measured by actual delivery days, for each District.

(d) Within each class of Market Dominant products, for each Market Dominant product and each applicable service standard:

(1) the on-time service performance (as a percentage rounded to one decimal place) for any given time period that can be selected by a Dashboard user within the previous two fiscal years (but no

earlier than FY 2021 for National data and FY 2022 for Area- and District data); and

(2) the average time in which the product was delivered, measured by actual delivery days, for any given time period that can selected by the Dashboard user within the previous two fiscal years (but no earlier than FY 2021 for National data and FY 2022 for Area- and District data).

(e) Within each class of Market Dominant products, for each Market Dominant product and each applicable service standard:

(1) The on-time service performance (as a percentage rounded to one decimal place) for any given pair of origin/destination Districts that can be selected by a Dashboard user; and

(2) The average time in which the product was delivered, measured by actual delivery days, for any given pair of origin/destination Districts to be selected by the Dashboard user.

(f) For identifiable Political mail:

(1) The processing scores for service performance (as a percentage rounded to one decimal place) for the Nation;

(2) The processing scores for service performance (as a percentage rounded to one decimal place) for each Postal Administrative Area; and

(3) The processing scores for service performance (as a percentage rounded to one decimal place) for each District.

(g) For identifiable Election mail:

(1) The processing scores for service performance (as a percentage rounded to one decimal place) for the Nation;

(2) The processing scores for service performance (as a percentage rounded to one decimal place) for each Postal Administrative Area; and

(3) The processing scores for service performance (as a percentage rounded to one decimal place) for each District.

(h) For the First-Class Mail that the Postal Service identifies as Single-Piece Reply Mail:

(1) The on-time service performance (as a percentage rounded to one decimal place) for the Nation;

(2) The on-time service performance (as a percentage rounded to one decimal place) for each Postal Administrative Area;

(3) The on-time service performance (as a percentage rounded to one decimal place) for each District;

(4) The average time in which the mailpieces were delivered, measured by actual delivery days, for the Nation;

(5) The average time in which the mailpieces were delivered, measured by actual delivery days, for each Postal Administrative Area; and

(6) The average time in which the mailpieces were delivered, measured by actual delivery days, for each District.

(i) For identifiable Nonprofit mail (within Periodicals and USPS Marketing Mail classes of mail):

(1) The processing scores for service performance (as a percentage rounded to one decimal place) for the Nation;

(2) The processing scores for service performance (as a percentage rounded to one decimal place) for each Postal Administrative Area; and

(3) The processing scores for service performance (as a percentage rounded to one decimal place) for each District.

(j) For identifiable Nonprofit mail (within the Periodicals and USPS Marketing Mail classes of mail) that does not also qualify as Political Mail or Election Mail:

(1) The processing scores for service performance (as a percentage rounded to one decimal place) for the Nation;

(2) The processing scores for service performance (as a percentage rounded to one decimal place) for each Postal Administrative Area; and

(3) The processing scores for service performance (as a percentage rounded to one decimal place) for each District

(k) The point impact data for the top ten root causes of on-time service performance failures, at the Postal Administrative Area and National levels. ''Point impact data'' means the number of percentage points by which on-time performance decreased due to a specific root cause of failure. Identification and a description of all potential root causes of failure assigned during the previous fiscal year and any changes to the Postal Service's methodology for calculating point impact data shall be included.

(l) For each Market Dominant product and applicable service standard, the on-time service performance target currently in effect, as well as the on-time service performance target for the previous fiscal year.

(m) A summary of the methodology used to group 5-Digit ZIP Codes into the Postal Administrative Areas and Districts with links to more detailed explanations if applicable.

(n) An application that would allow a Dashboard user to initiate a query in order to access, for each Market Dominant product and applicable service standard, the on-time service performance (as a percentage rounded to one decimal place) and average time in which a mailpiece is delivered for a District by inputting the user's street address, 5-Digit ZIP Code, or post office box.

(o) Supporting documentation underlying the results presented in the Dashboard, including:

(1) Data sources for each service performance parameter presented in the Dashboard, as well as links to each such source;

(2) Explanations of how the information in the data sources are transformed and summarized for presentation on the Dashboard; and

(3) Exceptions and detailed explanations for each exception, such as missing service performance data for a specific product or geographic division.

(p) The items in paragraphs (b) through (o) shall be included within the following periods of time.

(1) Within 60 days after the effective date of this section, the Dashboard shall include the required data for each Market Dominant product;

(2) Within 150 days after the effective date of this section, the Dashboard shall include the required data for each Market Dominant class;

(3) Within 210 days after the effective date of this section, the Dashboard shall include the required data for each service standard, for identifiable Nonprofit Mail, and for the First-Class Mail that the Postal Service identifies as Single-Piece Reply Mail; and

(4) Within 300 days after the effective date of this section, the Dashboard shall include all other data required by this section.

§ 3055.103 Format for data provided in the Public Performance Dashboard.

(a) The results of a user-initiated query and the data underlying the query results should be exportable via a machine-readable format. Such data should be made accessible to any person or entity utilizing tools and methods designed to facilitate access to and extraction of data in bulk, such as an Application Programming Interface (API).

(b) When there is a negative deviation from service performance standards, the Dashboard should clearly indicate such deviation from expected performance and present the service performance from the prior week and the same period last year.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2023–03229 Filed 2–15–23; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2022–0704; FRL–10224–02–R9]

Partial Approval, Conditional Approval, and Partial Disapproval of Air Quality State Implementation Plans; Nevada; Infrastructure Requirements for Fine Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving in part, conditionally approving in part, and disapproving in part a state implementation plan (SIP) revision submitted by the State of Nevada pursuant to the requirements of the Clean Air Act (CAA or ''Act'') for the implementation, maintenance, and enforcement of the 2012 national ambient air quality standards (NAAQS) for particulate matter less than 2.5 micrometers in diameter ($PM_{2.5}$). As part of this action, we are reclassifying certain regions of the State for emergency episode planning purposes with respect to $PM_{2.5}$. We are also approving an exemption from emergency episode planning requirements for $PM_{2.5}$ for the Nevada Division of Environmental Protection (NDEP) and Washoe County. Finally, we are approving two new definitions and four regulatory revisions into the Nevada SIP.

DATES: This rule is effective March 20, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2022–0704. 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: Tom Kelly, Air Planning Office (AIR–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3247, or by email at *kelly.thomasp@epa.gov.*

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

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I. Background

A. Statutory Requirements

Section 110(a)(1) of the CAA requires each state to submit to the EPA, within three years after the promulgation of a primary or secondary NAAQS or any revision thereof, a SIP revision that provides for the implementation, maintenance, and enforcement of such NAAQS.

Section 110(a)(2) of the CAA contains the infrastructure SIP requirements, which generally relate to the information, authorities, compliance assurances, procedural requirements, and control measures that constitute the ''infrastructure'' of a state's air quality management program. These infrastructure SIP requirements (or ''elements'') required by section 110(a)(2) are as follows:

- Section 110(a)(2)(A): Emission limits and other control measures.
- Section 110(a)(2)(B): Ambient air quality monitoring/data system.
- Section 110(a)(2)(C): Program for enforcement of control measures and regulation of new and modified stationary sources.
- Section 110(a)(2)(D)(i): Interstate pollution transport.
- Section 110(a)(2)(D)(ii): Interstate pollution abatement and international air pollution.
- Section 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local and regional government agencies.
- Section 110(a)(2)(F): Stationary source monitoring and reporting.
- Section 110(a)(2)(G): Emergency episodes.
- Section 110(a)(2)(H): SIP revisions.
- Section 110(a)(2)(J): Consultation with government officials, public notification, prevention of significant deterioration (PSD), and visibility protection.
- Section 110(a)(2)(K): Air quality modeling and submittal of modeling data.
- Section 110(a)(2)(L): Permitting fees.
- Section 110(a)(2)(M): Consultation/participation by affected local entities.

Two elements identified in section 110(a)(2) are not governed by the three-year submittal deadline of section 110(a)(1) and are therefore not addressed in this action. These two elements are: (i) section 110(a)(2)(C), to the extent it refers to permit programs required under part D (nonattainment new source review (NSR)), and (ii) section 110(a)(2)(I), pertaining to the nonattainment planning requirements of part D. As a result, this action does not address requirements for the nonattainment NSR portion of section 110(a)(2)(C) or the whole of section 110(a)(2)(I).

B. NAAQS Addressed by This Final Rule

On January 15, 2013, the EPA promulgated a revised primary NAAQS for $PM_{2.5}$, triggering a requirement for states to submit infrastructure SIPs by December 15, 2015. The revised standard lowered the annual $PM_{2.5}$ NAAQS to 12.0 micrograms per cubic meter ($\mu g/m^3$) to provide increased protection against health effects associated with long- and short-term exposures (including premature mortality, increased hospital admissions and emergency department visits, and development of chronic respiratory disease).[1]

The NDEP made a submittal addressing the infrastructure SIP requirements for the 2012 $PM_{2.5}$ NAAQS on December 11, 2015 (''Nevada's Infrastructure SIP Submittal'').[2] It included separate sections for Clark County[3] and Washoe County.[4] We refer

[1] 78 FR 3086 (January 15, 2013).

[2] Letter and enclosures from David Emme, Administrator, NDEP, to Jared Blumenfeld, Regional Administrator, EPA Region IX, RE: The Nevada State Implementation Plan for the 2012 Annual Primary Fine Particulate Matter NAAQS, dated December 11, 2015, with enclosures including the Nevada Division of Environmental Protection Portion of the Nevada State Implementation Plan for the 2012 Annual Primary Fine Particulate Matter NAAQS, dated December 11, 2015.

[3] Letter from Lewis Wallenmeyer, Director, Clark County Department of Air Quality, to David Emme, Administrator, NDEP, Subject: ''the Clark County Portion of the $PM_{2.5}$ State Implementation Plan,'' dated August 20, 2015, including the enclosed Clark County Portion of the State Implementation Plan to Meet the $PM_{2.5}$ SIP Requirements of the Clean Air Act Section 110(a)(2), dated August 2015.

[4] Letter from Charlene Albee, Director, Washoe County Health District, to Dave Emme, Administrator, Nevada Division of Environmental Protection, Subject: ''$PM_{2.5}$ State Implementation Plan for the 2012 Annual NAAQS,'' dated December 4, 2015, with enclosures, including: the Washoe County Portion of the Nevada State Implementation Plan to Meet the $PM_{2.5}$

to each individual section as that agency's or County's portion of the submittal. In accordance with CAA section 110(k)(1)(B), Nevada's Infrastructure SIP Submittal became complete by operation of law on June 11, 2016.

C. EPA's Proposal

1. Approvals and Partial Approvals

(a) Infrastructure SIP Requirements

On October 20, 2022, we proposed to approve and partially approve Nevada's Infrastructure SIP Submittal for the requirements of the following sections of the CAA: [5]

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C) (in part): Program for enforcement of control measures (full approval), and regulation of new stationary sources (approval for Clark County only) and minor sources (full approval).
- 110(a)(2)(D) (in part): Interstate Pollution Transport.
  - o 110(a)(2)(D)(i)(I)—significant contribution to a nonattainment area (prong 1).
  - o 110(a)(2)(D)(i)(I)—interference with a maintenance area (prong 2).
  - o 110(a)(2)(D)(i)(II) (in part)—interference with PSD (prong 3) (approval for Clark County only).
  - o 110(a)(2)(D)(ii) (in part)—interstate pollution abatement (approval for Clark County only) and international air pollution.
- 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local governments and regional agencies.
- 110(a)(2)(F): Stationary source monitoring and reporting.
- 110(a)(2)(G): Emergency episodes.
- 110(a)(2)(H): SIP revisions.
- 110(a)(2)(J) (in part): Consultation with government officials, public notification (conditional approval for NDEP and Washoe County, approval for Clark County), and PSD and visibility protection (approval for Clark County only).
- 110(a)(2)(K): Air quality modeling and submission of modeling data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

(b) Proposed Approval of State Provisions Into the Nevada SIP

As part of our proposed action of Nevada's Infrastructure SIP Submittal, we proposed approval of several state regulations into the Nevada SIP. Two provisions, NAC 445B.1349 and NAC 445B.1355, define ''$PM_{2.5}$ emissions'' and ''PM_{10} emissions,'' respectively, to include vapors that can condense to form $PM_{2.5}$ and PM_{10}. Three provisions are revisions to NAC 445B.2203, NAC 445B.2207, and NAC 445B.22096 and replace the term ''emissions of PM_{10}'' with ''PM_{10} emissions,'' Finally, NAC 445B.22097 revises the State annual $PM_{2.5}$ emissions standard from 15.0 μg/m³ to 12.0 μg/m³ to be consistent with the 2012 $PM_{2.5}$ NAAQS.

2. Conditional Approvals

The EPA proposed to conditionally approve of the portions of the NDEP and Washoe County Infrastructure SIP Submittals addressing the public notification requirements of CAA section 110(a)(2)(J) for the 2012 $PM_{2.5}$ NAAQS.

3. Partial Disapprovals

The EPA proposed to partially disapprove Nevada's Infrastructure SIP Submittal with respect to the following infrastructure SIP requirements:

- 110(a)(2)(C) (in part): Regulation of new and modified stationary sources (disapproval for the NDEP and Washoe County).
- 110(a)(2)(D)(i)(II) (in part): interference with PSD (prong 3) (disapproval for the NDEP and Washoe County).
- 110(a)(2)(D)(ii) (in part): interstate pollution abatement (disapproval for the NDEP and Washoe County).
- 110(a)(2)(J) (in part): PSD (disapproval for the NDEP and Washoe County).

Although the NDEP and Washoe County portions of the SIP remain deficient with respect to PSD requirements, the EPA noted that the proposed disapproval, if finalized, would have no consequences, as both agencies implement the Federal PSD program at 40 CFR 52.21 for all regulated NSR pollutants, pursuant to delegation agreements with the EPA.

3. Reclassification and Exemption

We proposed to retain the Priority I classification for the Las Vegas Intrastate and Northwest Nevada Intrastate Air Quality Control Regions (AQCR) and reclassify the Nevada Intrastate AQCR to Priority III. Priority I regions are required to have SIP approved emergency episode plans, also called contingency plans. We proposed to exempt the Northwest Nevada Intrastate AQCR, which includes areas regulated by the NDEP and Washoe County, from this requirement pursuant to 40 CFR 51.152(d)(1) due to the AQCR's attainment status.

4. Deferred Action

The EPA did not propose action on the interstate transport visibility requirements of 110(a)(2)(D)(i)(II), which is also called Prong 4 of the interstate transport requirements. On August 12, 2022, NDEP and Clark County withdrew the Prong 4 element in the Nevada's Infrastructure SIP Submittal and submitted a revised Prong 4 element with the State's Regional Haze Plan for the 2nd Planning Period.[6] The EPA intends to act on the revised Prong 4 element when we act on Nevada's Regional Haze Plan for the 2nd Planning Period.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period that ended on November 16, 2020. During this period, the EPA received three separate anonymous comments. The full text of all three comments is available in the docket for this rulemaking.

One commenter stated that the rulemaking was a good idea but noted that Reno had bad air quality a few months ago and suggested that stricter air quality standards would improve air quality. After reviewing the comment, the EPA has determined that the comment is supportive of our action and does not necessitate a substantive response. However, we also note that the purpose of infrastructure SIP submittals is to provide for the implementation, maintenance, and enforcement of each primary or secondary NAAQS. The requirement to develop control measures to improve air quality typically occurs as part of the EPA's nonattainment plan review under Part D of title I of the CAA when an area is not attaining the NAAQS.[7] Here,

Infrastructure SIP Requirements of Clean Air Act Section 110(a)(2), dated October 22, 2015.

[5] 87 FR 63744 (October 20, 2022).

[6] See letter dated August 12, 2022, from Greg Lovato, Administrator, Nevada Department of Environmental Protection, to Martha Guzman, Regional Administrator, EPA Region IX, re: The Nevada State Implementation Plan for the Regional Haze Rule for the Second Planning Period; Withdrawal and Replacement of Elements of the 2012 $PM_{2.5}$ NAAQS and 2015 Ozone NAAQS Infrastructure SIPs.

[7] As noted in section I.A. of this document and in the EPA's 2013 guidance on infrastructure SIPs, two elements identified in section 110(a)(2) are not governed by the three-year submittal deadline of section 110(a)(1) and are therefore not addressed in this action. These two elements are: (i) section 110(a)(2)(C) to the extent it refers to permit programs required under part D (nonattainment NSR), and (ii) section 110(a)(2)(I), pertaining to the nonattainment planning requirements of part D. As a result, this action does not address requirements for the nonattainment NSR portion of section 110(a)(2)(C) or the whole of section 110(a)(2)(I). See

Continued

however, the entire State of Nevada is designated attainment for the 2012 $PM_{2.5}$ NAAQS and our action has merely evaluated whether the state meets CAA ''infrastructure'' requirements under section 110(a)(2) of the Act.

Another commenter recommended that the EPA hold states accountable for not meeting air quality standards and suggested a causal link between political party affiliation and death rates among young people. After reviewing the comment, the EPA has determined that the comment fails to raise issues germane to our proposed finding that the State of Nevada largely meets the infrastructure SIP requirements of section 110(a)(2) of the Act, which only evaluated the State's ability to implement, maintain, and enforce the 2012 $PM_{2.5}$ NAAQS. Therefore, we have determined that this comment does not necessitate a response, and the EPA will not provide a specific response to the comment in this document.

The final comment recommended that the Federal Government impose strict air quality standards on the State of Utah and proposed a variety of measures the State of Utah should take to improve environmental quality. After reviewing the comment, the EPA has determined that the comment fails to raise issues germane to our proposed finding that the State of Nevada largely meets the infrastructure SIP requirements of section 110(a)(2) of the Act, which only evaluated the State's ability to implement, maintain, and enforce the 2012 $PM_{2.5}$ NAAQS. Therefore, we have determined that this comment does not necessitate a response, and the EPA will not provide a specific response to the comment in this document.

III. Final Action

A. Partial Approvals, Conditional Approvals, and Partial Disapprovals

Under CAA section 110(a), we are partially approving and partially disapproving Nevada's Infrastructure SIP submittal for the 2012 $PM_{2.5}$ NAAQS. Specifically, we are fully approving the submittal for the requirements of CAA sections:

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C) (in part): Program for enforcement of control measures (full approval), and regulation of new stationary sources (approval for Clark County only) and minor sources (full approval).
- 110(a)(2)(D) (in part): Interstate Pollution Transport.
  - 110(a)(2)(D)(i)(I)—significant contribution to a nonattainment area (prong 1).
  - 110(a)(2)(D)(i)((I)—interference with a maintenance area (prong 2).
  - 110(a)(2)(D)(i)(II) (in part)—interference with PSD (prong 3) (approval for Clark County only) and visibility transport (prong 4) (deferred).
  - 110(a)(2)(D)(ii) (in part)—interstate pollution abatement (approval for Clark County only) and international air pollution.
- 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local governments and regional agencies.
- 110(a)(2)(F): Stationary source monitoring and reporting.
- 110(a)(2)(G): Emergency episodes.
- 110(a)(2)(H): SIP revisions.
- 110(a)(2)(J) (in part): Consultation with government officials, public notification (conditional approval for NDEP and Washoe County, approval for Clark County), and PSD and visibility protection (approval for Clark County only).
- 110(a)(2)(K): Air quality modeling and submission of modeling data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

The EPA is taking final action to conditionally approve of the portions of the NDEP and Washoe County portions of Nevada's Infrastructure SIP Submittal addressing the public notification requirements of CAA section 110(a)(2)(J) for the 2012 $PM_{2.5}$ NAAQS.

We are taking final action to disapprove Nevada's Infrastructure SIP Submittal with respect to the following infrastructure SIP requirements:

- 110(a)(2)(C) (in part): Regulation of new and modified stationary sources (disapproval for the NDEP and Washoe County).
- 110(a)(2)(D)(i)(II) (in part): interference with PSD (prong 3) (disapproval for the NDEP and Washoe County).
- 110(a)(2)(D)(ii) (in part): interstate pollution abatement (disapproval for the NDEP and Washoe County).
- 110(a)(2)(J) (in part): PSD (disapproval for the NDEP and Washoe County).

Although the NDEP and Washoe County portions of the SIP remain deficient with respect to PSD requirements, this final disapproval action has no consequences, as both agencies implement the Federal PSD program at 40 CFR 52.21 for all regulated NSR pollutants, pursuant to delegation agreements with the EPA.

B. Approval of Updated Nevada State-Wide Provisions

In this final action, the EPA is also approving in the Nevada SIP revisions to the Nevada Administrative Code (NAC). The EPA is approving into the SIP two new provisions, NAC 445B.1349 and NAC 445B.1355, to define ''$PM_{2.5}$ emissions'' and ''PM_{10} emissions'' to include vapors that can condense to form $PM_{2.5}$ and PM_{10}. In addition, the EPA is approving revisions to NAC 445B.2203, NAC 445B.2207, and NAC 445B.22096 and replace the term ''emissions of PM_{10}'' with ''PM_{10} emissions.'' Finally, the EPA is approving into the Nevada SIP NAC 445B.22097 to revise the State annual $PM_{2.5}$ emissions standard from 15.0 $\mu g/m^3$ to 12.0 $\mu g/m^3$ to be consistent with the 2012 $PM_{2.5}$ NAAQS. These new and updated provisions strengthen the SIP or clarify certain terms in the SIP, as discussed in the proposed rule, and meet the requirements of CAA sections 110(a)(2), 110(l), and 193. Therefore, the EPA is approving the submitted new and revised rules into the Nevada SIP as proposed.

C. Reclassification and Exemption of AQCRs for Emergency Episode Planning

This final rule retains the classification of the Las Vegas Intrastate and Northwest Nevada Intrastate AQCRs as Priority I for emergency episodes and reclassifies the Nevada Intrastate AQCR to Priority III. This approval also exempts the Northwest Nevada Intrastate AQCR, which includes areas regulated by the NDEP and Washoe County, from the emergency episode plan requirement pursuant to 40 CFR 51.152(d)(1) due to the AQCR's attainment status.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference as described in Section III.B. and set forth below in the amendments to 40 CFR part 52. The EPA has made, and will continue to make, these documents available through *https://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

Additional information about these statutes and Executive orders can be

''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),'' Memorandum from Stephen D. Page, September 13, 2013.

found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because 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 and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

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 E.O 12898 of achieving environmental justice for people of color, low-income populations, and indigenous peoples.

K. Congressional Review Act (CRA)

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

L. Petitions for Judicial Review

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 17, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. 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, Reporting and recordkeeping requirements.

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

Dated: February 6, 2023.

Martha Guzman Aceves,

Regional Administrator, Region IX.

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 DD—Nevada

■ 2. Amend § 52.1470 as follows:
■ a. In paragraph (c), table 1:
■ i. Under the table heading ''Nevada Administrative Code, Chapter 445B, Air Controls, Air Pollution; Nevada Administrative Code, Chapter 445, Air Controls, Air Pollution; Nevada Air Quality Regulations—Definitions'', add an entry for ''445B.1349'' after the entry ''445.565'' and an entry for ''445B.1355'' after the entry ''445B.135''.
■ ii. Under the table heading ''Nevada Administrative Code, Chapter 445B, Air Controls, Air Pollution; Nevada Administrative Code, Chapter 445, Air Controls, Air Pollution; Nevada Air Quality Regulations—General Provisions'':
■ A. Revise the entries for ''445B.2203'' and ''445B.2207''.
■ B. Remove the entry ''445B.22096, excluding the NO_X averaging time and control type for units 1, 2 and 3 and the NO_X emission limit for unit 3 in sub-paragraph (1)(c), all of which EPA has disapproved'' and add the entry ''445B.22096'' in its place.
■ C. Revise the entry for ''445B.22097''.
■ b. In paragraph (e), in the table under the heading ''AIR QUALITY IMPLEMENTATION PLAN FOR THE STATE OF NEVADA'', add the entries ''The Nevada Division of Environmental Protection Portion of the Nevada State Implementation Plan for the 2012

Annual Primary Fine Particulate Matter NAAQS, excluding the cover letter; the part addressing the visibility requirements of CAA 110(a)(2)(D)(i)(II) on page 9; and Appendices A–D and F–I'', ''The Clark County Portion of the State Implementation Plan to meet the $PM_{2.5}$ SIP Requirements of the Clean Air Act Section 110(a)(2), excluding the cover letter to NDEP; the part of the submittal addressing the visibility requirements of CAA 110(a)(2)(D)(i)(II) on page 8; and Attachments A, B, and D'', and ''The Washoe County Portion of the Nevada State Implementation Plan to Meet the $PM_{2.5}$ Infrastructure SIP Requirements of Clean Air Act Section 110(a)(2), excluding the cover letter to NDEP and all Attachments and Appendices'' after the entry ''Nevada's Clean Air Act § 110(a)(1) and (2) State Implementation Plan for the 2010 sulfur dioxide NAAQS, excluding the cover letter and appendices A–E for NDEP; excluding the cover letter to NDEP and attachments A–C for Clark County; and excluding the cover letter to NDEP, attachments A–C, and public notice information for Washoe County''.

The revisions and additions read as follows:

§ 52.1470 Identification of plan.

* * * * *

(c) * * *

TABLE 1—EPA-APPROVED NEVADA REGULATIONS AND STATUTES

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
*	*	*	*	*
Nevada Administrative Code, Chapter 445B, Air Controls, Air Pollution; Nevada Administrative Code, Chapter 445, Air Controls, Air Pollution; Nevada Air Quality Regulations—Definitions			
*	*	*	*	*
445B.1349	''$PM_{2.5}$ emissions'' defined	10/27/2015	[INSERT **Federal Register** CITATION], 2/16/2023.	Submitted on 12/11/15.
*	*	*	*	*
445B.1355	''PM_{10} emissions'' defined	10/27/2015	[INSERT **Federal Register** CITATION], 2/16/2023.	Submitted on 12/11/15.
*	*	*	*	*
Nevada Administrative Code, Chapter 445B, Air Controls, Air Pollution; Nevada Administrative Code, Chapter 445, Air Controls, Air Pollution; Nevada Air Quality Regulations—General Provisions				
*	*	*	*	*
445B.2203	Emissions of particulate matter: Fuel-burning equipment.	10/27/2015	[INSERT **Federal Register** CITATION], 2/16/2023.	Most recently approved version was submitted on 12/11/15.
*	*	*	*	*
445B.2207	Incinerator burning	10/27/2015	[INSERT **Federal Register** CITATION], 2/16/2023.	Most recently approved version was submitted on 12/11/15.
*	*	*	*	*
445B.22096	Control measures constituting BART; limitations on emissions.	10/27/2015	[INSERT **Federal Register** CITATION], 2/16/2023.	Most recently approved version was submitted on 12/11/15.
445B.22097	Standards of quality for ambient air.	05/16/2018	[INSERT **Federal Register** CITATION], 2/16/2023.	Most recently approved version was submitted on 12/11/15.
*	*	*	*	*

* * * * *

(e) * * *

EPA-APPROVED NEVADA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Additional explanation
Air Quality Implementation Plan for the State of Nevada [1]				
* * *	*		* *	*
The Nevada Division of Environmental Protection Portion of the Nevada State Implementation Plan for the 2012 Annual Primary Fine Particulate Matter NAAQS, excluding the cover letter; the part addressing the visibility requirements of CAA 110(a)(2)(D)(i)(II) on page 9; and Appendices A–D and F–I.	State-wide within NDEP jurisdiction.	12/11/15	[INSERT **Federal Register** CITATION], 2/16/2023.	NDEP "Infrastructure" SIP for the 2012 $PM_{2.5}$ NAAQS.
The Clark County Portion of the State Implementation Plan to meet the $PM_{2.5}$ SIP Requirements of the Clean Air Act Section 110(a)(2), excluding the cover letter to NDEP; the part of the submittal addressing the visibility requirements of CAA 110(a)(2)(D)(i)(II) on page 8; and Attachments A, B, and D.	Clark County	12/11/15	[INSERT **Federal Register** CITATION], 2/16/2023.	Clark County "Infrastructure" SIP for the 2012 $PM_{2.5}$ NAAQS.
The Washoe County Portion of the Nevada State Implementation Plan to Meet the $PM_{2.5}$ Infrastructure SIP Requirements of Clean Air Act Section 110(a)(2), excluding the cover letter to NDEP and all Attachments and Appendices.	Washoe County	12/11/15	[INSERT **Federal Register** CITATION], 2/16/2023.	Washoe County "Infrastructure" SIP for the 2012 $PM_{2.5}$ NAAQS.
* * *	*		*	*

* * * * * * *

[1] The organization of this table generally follows from the organization of the State of Nevada's original 1972 SIP, which was divided into 12 sections. Nonattainment and maintenance plans, among other types of plans, are listed under Section 5 (Control Strategy). Lead SIPs and Small Business Stationary Source Technical and Environmental Compliance Assistance SIPs are listed after Section 12 followed by nonregulatory or quasi-regulatory statutory provisions approved into the SIP. Regulatory statutory provisions are listed in 40 CFR 52.1470(c).

■ 3. Section 52.1472 is amended by adding paragraph (l) to read as follows:

§ 52.1472 Approval status.

* * * * *

(l) *2012 24-hour $PM_{2.5}$ NAAQS.* The Nevada state implementation plan (SIP) submittal on December 11, 2015 is partially disapproved for the prevention of significant deterioration-related portions of Clean Air Act (CAA) elements 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J) for the NDEP and Washoe County portions of the Nevada SIP. CAA element 110(a)(2)(J) for public notification is conditionally approved for NDEP and Washoe County.

[FR Doc. 2023–02999 Filed 2–15–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2022–0503; FRL–9936–02–R9]

Air Plan Approval; California; Innovative Clean Transit Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the California State Implementation Plan (SIP) consisting of State rules intended to reduce particulate matter (PM) and oxides of nitrogen (NO_X) emissions from public transit buses. The EPA is approving the SIP revision because the regulations meet the applicable requirements of the Clean Air Act. Approval of the regulations as part of the California SIP makes them federally enforceable.

DATES: This rule is effective on March 20, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA–R09–OAR–2022–0503. 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 a disability 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: Jeffrey Buss, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947–4152 or by email at *buss.jeffrey@epa.gov.*

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

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II. Public Comments and EPA Responses
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I. Proposed Action

On October 14, 2022 (87 FR 62337) (herein referred to as the proposed rule), the EPA proposed to approve a SIP revision submitted by the California Air Resources Board (CARB) on February

13, 2020 consisting of certain state regulations (known as the Innovative Clean Transit (ICT) regulation) adopted to transition California public transit bus fleets to zero-emission technologies by 2040 and thereby to provide reductions in NO_X and PM emissions to support regional air quality plans and improve air quality along public transit routes. Table 1 lists the specific sections of Title 13, Division 3, Chapter 1, Article 4.3 of the California Code of Regulations (CCR) that comprise the ICT regulation.

TABLE 1—SUBMITTED RULES

Agency	Section No. 13 CCR	Rule title	State effective date	Submission date
CARB	2023	Innovative Clean Transit Regulations Applicability and Scope	10/01/2019	02/13/2020
CARB	2023.1	Zero-Emission Bus Requirements	10/01/2019	02/13/2020
CARB	2023.2	Compliance Option for Joint Zero-Emission Bus Groups	10/01/2019	02/13/2020
CARB	2023.3	Zero-Emission Bus Bonus Credits	10/01/2019	02/13/2020
CARB	2023.4	Provisions for Exemption of a Zero-Emission Bus Purchase	10/01/2019	02/13/2020
CARB	2023.5	Zero-Emission Mobility Option	10/01/2019	02/13/2020
CARB	2023.6	Low-NO_X Engine Purchase Requirements	10/01/2019	02/13/2020
CARB	2023.7	Requirements to Use Renewable Fuels	10/01/2019	02/13/2020
CARB	2023.8	Reporting Requirements for Transit Agencies	10/01/2019	02/13/2020
CARB	2023.9	Record Keeping Requirements	10/01/2019	02/13/2020
CARB	2023.10	Authority to Suspend, Revoke or Modify	10/01/2019	02/13/2020
CARB	2023.11	Severability	10/01/2019	02/13/2020

On August 11, 2022, CARB supplemented the February 13, 2020, SIP submission by submitting certain additional definitions codified in the CCR or California Health & Safety Code (CH&SC) that are relied upon in the ICT regulation. The specific definitions submitted on August 11, 2022, are listed in table 2.

TABLE 2—SUBMITTED ADDITIONAL DEFINITIONS RELIED UPON BY THE ICT REGULATION

Agency	CCR or CH&SC section	Title	State effective date
CARB	CH&SC 39012	Air Basin	01/01/1976
CARB	17 CCR 95481(a)(27) [1]	Untitled but defines the term "compressed natural gas (CNG)"	01/04/2019
CARB	13 CCR 2208(c)(18)	Untitled but defines the term "Low-NO_X engine"	10/16/2017
CARB	17 CCR 60100(e)	Untitled but defines the Sonoma County portion of the North Coast Basin	07/05/1978
CARB	17 CCR 60113 [2]	Lake Tahoe Air Basin	01/30/1976
CARB	17 CCR 95481(a)(123) [3]	Untitled but defines the term "Renewable hydrocarbon diesel"	01/04/2019
CARB	17 CCR 95481(a)(20) [4]	Untitled but defines the term "Biomethane"	01/04/2019
CARB	13 CCR 2020(b)	Definitions	01/02/2010

On pages 62339–62341 of our proposed rule, we described how we evaluated the ICT regulation and how we determined that the regulation meets all applicable CAA requirements. In short, we determined that:

- CARB provided adequate public notice of a comment period and a hearing on the draft ICT regulation prior to adoption and submission to the EPA, and thereby complied with the applicable procedural requirements for SIP revisions under the CAA section 110(l) and 40 CFR 51.102;
- CARB has adequate legal authority to implement the ICT regulation because state law so provides; and because the requirements relate to transit bus purchases directed at public transit agencies (*i.e.,* not private fleet operators), the regulations are not preempted under the CAA; and because CARB is not otherwise prohibited by any provision of federal or state law from carrying out the regulation;
- The regulation includes all of the elements necessary to provide for practical enforceability, including clear applicability and exemption provisions, requirements that are sufficiently specific so that the persons affected by the regulation are fairly on notice as to what the requirements and related compliance dates are, and recordkeeping and reporting provisions, and thereby establish an enforceable control measure as required under CAA section 110(a)(2)(A);
- The ICT regulation is an outgrowth of a committal measure for further deployment of zero-emission bus (ZEB) technologies in the public transit sector that was adopted by CARB in the 2016 State SIP Strategy, and the ICT regulation would achieve incremental emissions reductions needed to attain the NAAQS, particularly in the South Coast and San Joaquin Valley air quality planning areas. Thus, we found that the ICT regulation would not interfere with reasonable further progress (RFP), attainment or any other applicable CAA requirement for the purposes of CAA section 110(l); and
- The ICT regulation would require only one additional person-year for developing a reporting system and updating fleet information prior to initial reporting in 2020, assisting transit agencies with compliance and

[1] Erroneously listed in the proposed rule as 17 CCR 95481(a)(30) with a state effective date of 7/1/2020.

[2] Erroneously listed in the proposed rule as 17 CCR 60013.

[3] Erroneously listed in the proposed rule as 17 CCR 95481(a)(130) with a state effective date of 7/1/2020.

[4] Erroneously listed in the proposed rule as 17 CCR 95481(a)(22) with a state effective date of 7/1/2020.

annual reporting, and thus CARB has adequate personnel and funding to carry out the ICT regulation.

For additional detail on the SIP submission itself, and our evaluation, please see our proposed rule.

II. Public Comments and EPA Responses

The EPA's proposed rule provided for a 30-day comment period. The EPA received a total of seven comment letters in response to the proposed rule. Four of the comment letters express general support for our proposed action. The three other comment letters include objections to our proposed action: (1) a comment letter from the Center for Community Action and Environmental Justice (CCAEJ); [5] (2) a comment letter from the American Fuel & Petroleum Manufacturers (AFPM); and (3) a comment letter from an individual member of the public. All the comments letters can be found in the docket for this rulemaking. In the paragraphs below, we summarize the comments and provide responses for the three comment letters that include objections to our proposed action.

CCAEJ Comment #1: CCAEJ submits these comments in support of the EPA's proposed approval of the ICT regulation. CCAEJ strongly supports ZEBs as an air quality and environmental justice solution in the Inland Empire and in other communities. However, a recent ICT regulation implementation update disclosed the financial challenges facing transit agencies to fully transition to 100 percent ZEBs as required by the regulation.

CCAEJ has concerns that transit agencies will seek to avoid the transition to ZEBs by claiming financial infeasibility. Accordingly, CCAEJ calls on the EPA to partially disapprove the ICT regulation due to the unenforceability of the exemption for ''financial hardship.'' The Clean Air Act requires that measures are enforceable, and the EPA should require CARB to amend the regulation to ensure enforceability. The financial hardship exemption at 13 Cal. Code Regs. § 2023.4(c)(5) lacks enforceability. The exemption provision requires the CARB Executive Officer to grant a transit agency an exemption if the agency meets certain criteria. 13 Cal. Code Regs. § 2023.4(a). A transit agency may claim the financial hardship exemption request when the transit agency adopts a resolution declaring a ''fiscal emergency.'' Cal. Code Reg. § 2023.4(c)(5)(B)(1). This exemption is not enforceable. A transit agency can claim the exemption by adopting nothing more than a resolution declaring a ''fiscal emergency.'' 13 Cal. Code Regs. § 2023.4(c)(5)(B)(1). However, the ICT regulation does not define ''fiscal emergency.'' See 13 Cal. Code Regs. § 2023(b). And CARB has not submitted any other regulations that define ''fiscal emergency'' to the EPA for approval into the SIP. See 87 FR at 62338 and Table 2. The ICT regulation further requires no supporting documentation for the resolution to justify the undefined ''fiscal emergency.'' See 13 Cal. Code Regs. § 2023.4(c)(5)(B)(1). A transit agency, relying on this provision, could adopt a simple resolution finding a fiscal emergency without any supporting documentation and without reference to any enforceable standard for what constitutes a ''fiscal emergency.'' This provision begs for abuse and could allow transit agencies to avoid the regulation's purchase mandate for claimed fiscal emergencies. Without a defined standard and supporting documentation, citizens and the EPA will be unable to hold transit agencies accountable for their duty to purchase ZEBs.

EPA response to CCAEJ Comment #1: The EPA does not have the authority to disapprove the exemption for ''financial hardship'' but approve the rest of the ICT regulation because the exemption is not severable from the rest of the regulation, and because the EPA cannot render a SIP more stringent than intended by the state through a partial SIP approval.[6] This principle was first established in the Seventh Circuit Court of Appeal's decision in *Bethlehem Steel,* a case in which the EPA approved a state opacity limitation but disapproved the allowance for violations of the limitation for a certain number of minutes within a 24-hour period.[7] The court held that the EPA cannot, in the guise of a partial approval, remove words of limitation and thereby make the regulation stricter than the state had intended.[8] If the EPA determines that a stricter rule is required, then the CAA provides that the EPA must disapprove the state regulation and promulgate a Federal Implementation Plan (FIP) in its place. In this instance, too, the EPA is not authorized to approve the ICT regulation but disapprove the financial hardship exemption included therein because doing so would make the regulation stricter than the state had intended. Moreover, we believe the ICT regulation need not be made stricter by removal of this exemption to meet applicable CAA requirements.

In addition, we do not view the ''financial hardship'' exemption as making the ICT regulation unenforceable. We agree that the provision does not have a specific definition for the term ''fiscal emergency,'' but the EPA believes that the requirements for public process and involvement will serve to assure that a public transit agency would not assert a fiscal emergency inappropriately or for purposes of invoking the exemption except when actually necessary. With respect to the specific provisions regarding fiscal emergencies, we note that the ICT regulation specifies that, to claim the exemption, a transit agency would need to declare a fiscal emergency under a resolution by a transit agency's governing body following a public hearing.[9] Moreover, under California law, a public hearing conducted by a public transit agency to consider declaration of a fiscal emergency will be governed by the Brown Act, which as a general matter requires California public agencies to conduct their business publicly.[10] Under the Brown Act, such a hearing will be subject to minimum requirements regarding posting of notice of the hearing, posting of agendas and providing opportunities for public comment.[11] As such, the public will have knowledge of, and the opportunity to participate in, the decision by a transit agency to declare a fiscal emergency. Given the procedure safeguards established in the Brown Act, we do not expect public transit agencies to abuse the financial hardship exemption to unduly delay the process under the ICT regulation for full transition to zero-emission buses.

However, while, we do not view the financial hardship exemption as making the ICT regulation unenforceable, we do

[5] The letter from CCAEJ included six exhibits: American Lung Association's State of the Air 2022 report; Progress Report and Technical Submittal for the 2012 $PM_{2.5}$ Standard San Joaquin Valley (citing Appendix L, Emissions Inventory Methods and Results for the Proposed Innovative Clean Transit Regulation) (October 19, 2021); Innovative Clean Transit (ICT) Regulation Fact Sheet; CARB, Board Meeting, September 22, 2022, Board Item Summary; National Renewable Energy Laboratory, Comprehensive Review of California's Innovated Clean Transit Regulation: Phase 1 Summary Report; and CARB, Board Meeting, September 22, 2022, transcript.

[6] *Bethlehem Steel Corp.* v. *Gorsuch,* 742 F.2d 1028, 1036 (7th Cir. 1984) (*Bethlehem Steel*).

[7] *Id,* at 1032.

[8] *Id.,* at 1036.

[9] 13 CCR 2023.4(c)(5).

[10] Title 5, division 2, part 1, chapter 9 of the California Government Code. The Brown Act is referred to as one of the State of California's ''sunshine'' laws.

[11] California Government Code sections 54954(a) (meeting notice), 54954.2(a) (meeting agenda), and 54954.3(a) (public comment opportunity).

agree that the exemption, if granted frequently, could delay the expected schedule for full transition to ZEBs and delay the timing of the associated emissions reductions. As discussed further below in the EPA response to CCAEJ Comment #2, we expect that CARB will take into account the actual transition to ZEBs and related emissions reductions in future updates to the EMFAC model, and the EPA will assess the accuracy of emissions projections reflecting emissions reductions from the ICT regulation when the Agency takes action on SIP submissions of regional air quality plans.

CCAEJ Comment #2: Given several exemptions provided in the ICT regulation, the financial challenges of implementation, and CARB's claim that the regulation will achieve zero NO_X and $PM_{2.5}$ emissions, the EPA should not grant full SIP credit. CARB has claimed significant reductions from the ICT regulation, including 100% reductions by 2045. The EPA should only grant partial SIP credit because the regulation allows for transit agencies to claim several exemptions and continue to purchase internal combustion engine buses. A transit agency may claim exemptions for delays in ZEB infrastructure, when ZEBs cannot meet daily mileage needs, when ZEBs do not have adequate gradeability performance, when a ZEB for the applicable weight class is not available, and for financial hardship provided the agency demonstrates that the agency cannot offset the initial capital costs of ZEBs and associated infrastructure. Given these offramps for transit agencies, and the recent implementation update showing the substantial financial challenges transit agencies face with implementation beyond the initial 25 percent target, the EPA should decline to grant full SIP credit.

EPA response to CCAEJ Comment #2: While, in the proposed rule, the EPA acknowledged CARB's estimates for the reductions associated with the ICT regulation,[12] the EPA is not approving a specific numerical credit for the ICT regulation in this rulemaking. The emissions reductions associated with the ICT regulation are reflected in the most recently-approved version of CARB's on-road motor vehicle emissions model, EMFAC2021, and in the EPA-approved adjustment factors for the previous version of the model, EMFAC2017.[13]

CARB updates its EMFAC model every three or four years and each successive version reflects update vehicle mixes and vehicle types and also changes in circumstances that affect assumptions regarding emissions reductions from regulatory initiatives such as the ICT regulation. Thus, if the transition to ZEBs in public transit fleets proves to be slower than assumed by EMFAC2021 and the adjustment factors to EMFAC2017, then CARB will take that circumstance into account in updating the model. The EPA, for its part, will assess the accuracy of emissions projections reflecting emissions reductions from the ICT regulation when the Agency takes action on SIP submissions, such as RFP and attainment demonstrations, that rely on emissions estimates made using EMFAC2021 or EMFAC2017 (with the adjustment factors).

Moreover, at this time, we do not find that CARB's emission reduction projections for the transition to zero emission buses under the ICT regulation are overly optimistic. First, at the CARB Board hearing on September 22, 2022, CARB reported that, based on the reported data for year 2021, California transit agencies collectively have 510 zero-emission buses in fleet and an addition 424 ZEBs on order, which is a total increase of over 250 zero-emission buses compared to year 2020.[14] Second, CARB reports that funding has been awarded for nearly 750 additional zero-emission buses to be ordered.[15] When the ICT regulation was proposed, CARB had estimated that, by 2027, approximately 1,350 zero-emission bus purchases would be required to comply with the regulation,[16] but that number of bus purchases has already been surpassed when taking into account the number of zero-emission buses in service, or on order, or for which funding has been awarded. As such, we expect the anticipated emissions reductions estimated by CARB due to the ICT regulation and reflected in EMFAC to be achieved at least through the end of this decade. Beyond 2030, there is greater uncertainty as to the emissions reductions from the ICT regulation, but as noted above, future updates to the EMFAC model will take into account updated forecasts for the transition to zero-emission buses by the various public transit agencies.

AFPM Comment #1: The Clean Air Act provides states with a limited authority to establish emissions standards for government-owned fleets; however, that authority is constrained by the statute. In litigation challenging an earlier set of fleet regulations in California,[17] the Ninth Circuit Court of Appeals explained the limitations to the provisions of CAA section 209(a). Although states are free to set more stringent standards for state-owned fleets, the ICT regulation fails to respect these statutory limits. The ICT regulation that the EPA is proposing to approve as part of the California SIP are not emissions standards because they are not performance standards, but rather a mandate to purchase an increasing percentage of specific technologies, and only vehicles powered by electricity or fuel cells qualify. The regulation is not applied uniformly to all vehicles in the class and, therefore, is not a standard.

EPA response to AFPM Comment #1: States do not derive their authority to set emission standards under the CAA, rather they do so pursuant to their respective state law authority. However, CAA section 209(a) prohibits states and political subdivisions from adopting or attempting to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines. As set forth in AFPM Comment #3 and EPA's response, the ICT regulation is an emission standard that would generally be preempted by section 209(a). The *EMA* decision noted by AFPM was the result of remand from the United States Supreme Court to the United States District Court and then on appeal to the Ninth Circuit.[18] The

[12] 87 FR 62337, at 62338–62339.

[13] 87 FR 68483 (November 15, 2022).

[14] CARB, Board Meeting, September 22, 2022, transcript, page 19.

[15] Email communication, Pippin Brehler, Senior Attorney, CARB, to Jefferson Wehling, EPA Region IX, December 15, 2022.

[16] CARB; Public Hearing to Consider the Proposed Innovative Clean Transit Regulation, a Replacement of the Fleet Rule for Public Agencies; Staff Report: Initial Statement of Reasons; Date of Release: August 7, 2018, Table VIII–10 on page VIII–24.

[17] AFPM cites *Engine Mfrs. Ass'n* v. *S. Coast Air Quality Mgmt. Dist.,* 498 F.3d 1031 (9th Cir. 2007) (referred to herein by its full name or as *EMA*).

[18] In *Engine Mfrs. Ass'n* v. *S. Coast Air Quality Mgmt. Dist.,* 541 U.S. 246 (2004), the Supreme Court reversed an earlier decision by the Ninth Circuit affirming a District Court ruling that upheld certain SCAQMD fleet rules from a preemption challenge, and in doing so, rejected the argument that the Rules ''escape[d] pre-emption under § 209(a) . . . because they address the purchase of vehicles, rather than their manufacture or sale.'' *Id.* However, the Supreme Court did not decide whether the SCAQMD fleet rules were actually preempted. See *id.* at 258. The Court stated that it was ''likely that at least certain aspects of the Fleet Rules are preempted,'' but allowed that ''[i]t does not necessarily follow . . . that the Fleet Rules are pre-empted in toto.'' *Id.* On remand in the District Court in the wake of the Supreme Court's decision, the District Court concluded that the SCAQMD fleet rules were not preempted as applied to state and local governmental entities, and in the *EMA* case cited by AFPM, the Ninth Circuit agreed, stating that ''the Clean Air Act does not preempt the Fleet Rules insofar as they direct the procurement behavior of state and local governmental entities.'' *Engine Mfrs. Ass'n* v. *S. Coast Air Quality Mgmt. Dist,* 498 F.3d 1031, 1039 (9th Cir. 2007).

Supreme Court noted: ''The criteria referred to in § 209(a) relate to the emission characteristics of a vehicle or engine. To meet them the vehicle or engine must not emit more than a certain amount of a given pollutant, must be equipped with a certain type of pollution-control device, or must have some other design feature related to the control of emissions. This interpretation is consistent with the use of 'standard' throughout Title II of the CAA (which governs emissions from moving sources) to denote requirements such as numerical emission levels with which vehicles or engines must comply, *e.g.,* 42 U.S.C. 7521(a)(3)(B)(ii), or emission-control technology with which they must be equipped, *e.g.,* 42 U.S.C. 7521(a)(6).'' [19] The EPA need not decide whether CARB's ICT zero-emission technology requirements are performance requirements or design technology requirements, as either relates to the emission characteristics of the vehicle and is designed to address emissions from the vehicle. Further, the commenter provides no authority for the claim that a requirement is only a ''standard'' if it applies uniformly. As addressed by the Supreme Court in *Engine Mfrs. Ass'n* v. *S. Coast Air Quality Mgmt. Dist,* a set of rules that require a specific emission performance be met (among a broader list of emission-certified vehicles) by fleet purchasers will still be considered a standard under section 209(a).[20]

Lastly, we acknowledge that, in our proposed rule on page 62340, we stated that, in adopting the ICT regulation, CARB has not adopted or attempted to enforce a ''standard'' relating to the control of emissions from new motor vehicles for the purposes of CAA section 209(a). However, in so stating, we did not mean that the ICT regulation does not establish an emission standard in the sense considered preempted by the Supreme Court, but rather, that, because the requirements only apply to purchases by public entities, the regulation is not preempted under CAA section 209(a). This is discussed further in AFPM Comment #3 and EPA's response thereto.

AFPM Comment #2: In the *EMA* case, the Ninth Circuit found ''nothing to indicate a congressional intent to bar states from choosing to use their own money to acquire or use vehicles that exceed the federal standards.'' However, the California standards do not exceed federal standards. California (and the EPA) has not shown that the ICT standards will reduce life-cycle greenhouse gas, $PM_{2.5}$, or NO_X emissions. California has not conducted any analysis that compares the costs and benefits of alternative options, such as using the same amount of funding on new diesel or CNG busses that would speed progress towards NAAQS attainment compared to EV purchase requirements and may yield more significant reductions in life-cycle greenhouse gas. Such an analysis is particularly relevant because electric buses routinely do not operate on long bus routes and travel fewer miles per bus compared to diesel and CNG busses. California also needs to evaluate the significant increase in $PM_{2.5}$ emissions associated with the higher tire wear from heavier electric buses.

EPA response to AFPM Comment #2: First, we disagree that the ICT regulation does not exceed federal standards. The ICT regulation establishes more stringent numerical emission requirements that are beyond those established under other state or federal regulations applicable to emissions from buses.[21] In other words, the requirements under the ICT regulation do not supplant or replace any existing emission control requirements applicable to buses.

Second, we evaluate emissions impacts associated with SIP revisions, such as the ICT regulation, under CAA section 110(l), which prohibits EPA approval of SIP revisions that would interfere with any applicable requirement concerning attainment or RFP or any other applicable requirement of the CAA. In this regard, we note that CARB conducted an environmental analysis of the proposed ICT regulation that evaluated the emissions changes under the proposed regulations relative to several alternative scenarios included the ''Business-as-Usual'' (BAU) scenario. The BAU scenario represents the projected emission reductions under the current level of compliance with the Fleet Rule for Transit Agencies.[22] Relative to the BAU scenario, CARB concluded that the tailpipe emissions of NO_X and $PM_{2.5}$ would be lower under the proposed ICT regulation [23] as would well-to-wheel greenhouse gas (GHG) emissions.[24] CARB's environmental analysis acknowledges that the proposed ICT regulation would place additional demand on the existing electricity grid; however; the ICT regulation would be implemented in conjunction with other statewide regulatory programs aimed at improving the State's per capita energy consumption, decreasing reliance on fossil fuels, and increasing reliance of renewable energy sources.[25] In light of CARB's environmental analysis, we find sufficient evidence that the ICT regulation would result in net emissions reductions of NO_X and $PM_{2.5}$, and that, as such, approval of the ICT regulation as a SIP revision would not interfere with attainment or RFP of any NAAQS, or any other applicable requirement of the CAA. Moreover, as noted in the proposed rule,[26] the ICT regulation is an outgrowth of a committal measure for further deployment of zero-emission bus technologies in the public transit sector that was adopted by CARB in the 2016 State SIP Strategy, and for that reason also, we find that the ICT regulation is consistent with CAA section 110(l) and would not interfere with attainment, RFP or any other applicable requirement of the CAA.

Third, California is not obligated to conduct any analysis that compares the costs and benefits of alternative options, such as using the same amount of funding on new diesel or CNG busses. Such considerations are not relevant to the EPA's review of SIP submissions under CAA section 110. The EPA's role is to review and approve state choices if they meet applicable CAA requirements. See 42 U.S.C. 7410(k) and 40 CFR 52.02(a); see also *Union Elec. Co.* v. *EPA,* 427 U.S. 246, 256–266 (1976) (holding that the EPA may not disapprove a state implementation plan that meets the requirements of CAA section 110(a)(2) on the basis of technological or economic infeasibility). In this instance, perhaps the state could have chosen an alternative to the gradual transition to a zero-emissions fleet for public transit buses, but the approach the state ultimately selected through adoption of the ICT regulation meets all applicable CAA requirements, and that is a sufficient basis for the EPA

[19] *Engine Mfrs. Ass'n* v. *S. Coast Air Quality Mgmt. Dist.,* 541 U.S. 246, 253 (2004).

[20] *Id.,* at 250 and footnote 2.

[21] 87 FR at 62340.

[22] As described on page 62338 if the proposed rule, CARB originally adopted the Fleet Rule for Transit Agencies in 2000, and amended the rule in 2004 and 2006. Under the Fleet Rule for Transit Agencies, public transit agencies operating urban bus fleets were required to select either the diesel bus path or the alternative-fuel bus path. The diesel bus path required retrofitting existing buses with diesel particulate filters, while transit agencies utilizing the alternative-fuel path had to ensure that eighty-five percent of urban bus purchases were alternative fueled buses. In the 2006 amendment to the Fleet Rule for Transit Agencies, there was a 15 percent ZEB purchase requirement for larger transit agencies with more than 200 urban buses to purchase ZEBs starting in 2011.

[23] CARB, Final Environmental Analysis for the Proposed Innovative Clean Transit Regulation, A Replacement to the Fleet Rule for Transit Agencies, Date of Release: December 7, 2018, pages 33–37.

[24] *Id.,* pages 53–55.

[25] *Id.,* page 48.

[26] Proposed rule, page 62340.

to approve the ICT regulation as a SIP revision under CAA section 110.

Lastly, with respect to PM emissions from tire wear, we first note that tire wear is caused by contact between tires and the road surface, with the rate of tire wear dependent on a variety of factors, including the roughness of the road surface; activity factors such as route and style of driving, and seasonal influences; and vehicle characteristics, such as weight, suspension, steering geometry, and tire material and design.[27] Moreover, most of the PM emissions from tire wear are coarse particles, *i.e.,* larger than particles considered PM_{10} or $PM_{2.5}$. The EPA estimates that approximately 8.0 percent and 1.2 percent of tire wear PM emissions are emitted as PM_{10} and $PM_{2.5}$, respectively.[28] While the various factors that influence tire wear are known, the current state of knowledge does not provide a basis to quantify the relationship between tire wear and vehicle weight within the various regulatory classes of vehicles. As such, the EPA's most recent version of the Agency's mobile source estimation model, MOVES3,[29] applies the same tire wear emission rate for all vehicle fuel types (gasoline, diesel, flex-fuel, CNG or electric) within a MOVES regulatory class.[30] Thus, while the hypothetical incremental increase in PM emissions from heavier buses (due to the weight of batteries) as suggested by AFPM cannot reasonably be quantified, there is no evidence (and AFPM provides no evidence) to suggest that the incremental increase would result in PM emissions in great enough quantities to offset the documented decrease in tailpipe $PM_{2.5}$ emissions.[31]

AFPM Comment #3: California's new rule is a purchase mandate for which California has not sought a waiver from the EPA, as required prior to their inclusion in a SIP submittal to the EPA. In the above-referenced litigation, upon its remand to the 9th Circuit, the Supreme Court rejected California's argument that their rules did not need an EPA waiver and ''escape[d] pre-emption under § 209(a) . . . because they address the purchase of vehicles, rather than their manufacture or sale.'' The Court held that ''standard-enforcement efforts that are proscribed by § 209 can be directed to manufacturers or purchasers.'' *Engine Mfrs. Assn.* v. *S. Coast Air Quality Mgmt. Dist.,* 541 U.S. 246 (2004). The Court remanded the case back to the 9th Circuit for further proceedings consistent with its opinion, which stated that it is ''likely that at least certain aspects of the Fleet Rules are preempted.''

The reason that the California rules do not qualify as being excluded from the waiver requirements is that they are not a ''state proprietary action.'' Such an exception can only be applied to the efficient procurement of needed goods and services that also lack the effect of broader social regulation. On the contrary, California's rules mandate the inefficient procurement of goods for the purpose of implementing broader social regulation. The inefficiency of California's rule is clear because if California instead required the same amount of money to be invested in more cost-effective and proven bus technology, such as new diesel buses and new CNG buses, instead of electric buses and all of the associated costs to install and interconnect charging equipment, California would achieve greater emission reductions and achieve the NAAQS in a more expeditious timeframe than its so-called 'Clean Transit' regulations in the proposed SIP. California must seek a waiver, and must receive approval from the EPA, prior to including its bus purchase mandates in a SIP submittal to the EPA.

EPA response to AFPM Comment #3: In this comment, AFPM refers to a Ninth Circuit decision, *Engine Mfrs. Assn.* v. *S. Coast Air Quality Mgmt. Dist.,* 498 F.3d 1031 (9th Cir. 2007) (referred to herein by its full name or as *EMA*), issued in the wake of the Supreme Court's decision in *Engine Mfrs. Assn.* v. *S. Coast Air Quality Mgmt. Dist.,* 541 U.S. 246 (2004). In *EMA,* the Ninth Circuit held that the market participant doctrine applied to preemption under CAA section 209(a) and that fleet rules governing procurement decisions by state and local governments fell within scope of market participant doctrine and thus were saved from CAA preemption.[32] The ICT regulation is not subject to preemption under CAA section 209(a), and CARB does not need a waiver under CAA section 209(b) for the ICT regulation to enforce the regulation. Further, nothing in CAA section 209(a) could be read as barring states from using their purchasing power for motor vehicles with more stringent standards than federal standards. Such a reading ''would also run afoul of [CAA section 116's] express reservation to the states of primary authority over and responsibility for controlling air pollution.'' [33] In any event, the ICT regulation is analogous to the fleet rules that were the subject of the *EMA* decision to the extent they apply to fleets of vehicles purchased by the government for government purposes, which in this case is public transit services.

APFM counters that the ICT regulation does not qualify as an exception to CAA section 209(a) preemption under the market participant doctrine because the ''exception can only be applied to the efficient procurement of needed goods and services that also lack the effect of broader social regulation,'' and ''California's rules mandate the inefficient procurement of goods for the purpose of implementing broader social regulation.'' However, APFM's formulation of the exception under the market participant doctrine conflates the two different circumstances cited by the Ninth Circuit in *EMA* under which state action qualifies as ''proprietary,'' and thus saved from preemption, as opposed to ''regulatory,'' and thus subject to preemption.[34] In the first circumstance, state action is considered proprietary where the action essentially reflects the governmental entity's own interest in its efficient procurement of needed goods and services, as measured by comparison with the typical behavior of private parties in similar circumstances.[35] Under these circumstances, the market participant doctrine protects comprehensive state policies from preemption so long as the type of state action is essentially proprietary.[36] Under the second circumstance, state action is considered proprietary where the state action may not reflect the efficient procurement of needed good and services but is so limited in scope as to lack to effect of broader social regulation.[37]

In this instance, we find that the state action through the ICT regulation is proprietary in that it reflects the State of California's own interest in the efficient procurement of needed goods and services. *Engine Mfrs. Assn* v. *S. Coast Air Quality Mgmt. Dist.,* 498 F.3d 1031,

[27] EPA Office of Transportation and Air Quality, ''Brake and Tire Wear Emissions from Onroad Vehicles in MOVES3,'' EPA–420–R–20–014, November 2020, page 22.

[28] *Id.,* page 29.

[29] The EPA published the MOVES3 notice of availability at 86 FR 1106 (January 7, 2021).

[30] EPA Office of Transportation and Air Quality, ''Brake and Tire Wear Emissions from Onroad Vehicles in MOVES3,'' EPA–420–R–20–014, November 2020, page 29.

[31] See California Air Resources Board, Brake & Tire Wear Emissions, *https://ww2.arb.ca.gov/resources/documents/brake-tire-wear-emissions* (last visited Dec. 22, 2022).

[32] *EMA,* at 1044, 1048.

[33] *Id.,* at 1043.

[34] *Id.,* at 1041.

[35] *Id.*

[36] *Id.*

[37] *Id.*

1046 (9th Cir. 2007) (''That a state or local governmental entity may have policy goals that it seeks to further through its participation in the market does not preclude the doctrine's application, so long as the action in question is the state's own market participation.'') Like the fleet rules that were the subject of *EMA,* one purpose of the ICT regulation is to reduce air pollution, and ''efficient procurement'' must be viewed with an eye toward ''procurement that serves the state's purposes—which may include purposes other than saving money—just as private entities serve their purposes by taking into account factors other than price in their procurement decisions.'' [38] In the case of the ICT regulation, the purposes include more than just reducing air pollution, and include reducing energy consumption and leading zero-emissions technology in the heavy-duty vehicle sector.[39] *Engine Mfrs. Assn* v. *S. Coast Air Quality Mgmt. Dist.,* 498 F.3d 1031, 1046 (9th Cir. 2007) (''Efficient' does not merely mean 'cheap.' In context, 'efficient procurement' means procurement that serves the state's purposes—which may include purposes other than saving money—just as private entities serve their purposes by taking into account factors other than price in their procurement decisions.'') In light of these state purposes, the ICT regulation's requirement for purchase of zero-emission buses, rather than diesel buses or CNG buses, can properly be characterized as ''efficient procurement'' of needed goods and services and thus is not preempted under CAA section 209(a) under the market participant doctrine.

Individual Member of the Public Comment #1: While generally supportive, the commenter remains concerned about whether the reduction in emissions from buses will increase costs to run the buses.

EPA response to Individual Member of the Public Comment #1: In developing the ICT regulation, CARB too was concerned about the potential for increased costs to transit agencies affecting transit service, and thus, included in the regulation a number of provisions intended to provide the transit agencies with flexibility in meeting the requirements of the regulation and reduce the potential for impacts to transit service. Among the built-in flexibilities are a phase-in schedule and exemptions that would be granted by CARB under certain specific circumstances. The exemptions are broadly available, and the criteria for granting them are clearly set forth in the regulatory text.

III. Final Action

Under section 110(k)(3) of the CAA, and for the reasons given above, we are taking final action to approve a SIP revision submitted by CARB on February 3, 2020 that includes certain sections of title 13 of the California Code of Regulations that comprise the Innovative Clean Transit regulation and that was supplemented by CARB on August 11, 2022 with certain definitions relied upon by the regulation. Tables 1 and 2 above list the regulations and related supplemental definitions we are approving in this action. We are approving the SIP revision because the regulation fulfills all relevant CAA requirements. This final action incorporates by reference the regulation and related supplemental definitions into the federally enforceable SIP for the State of California.

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 one section of the California Health and Safety Code and certain sections of titles 13 and 17 of the California Code of Regulations described in the amendments to 40 CFR part 52 set forth below which pertain to the transition of California public transit bus fleets to zero-emission technologies by 2040. Therefore, these materials have been approved by the EPA for inclusion in the State implementation plan, 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 EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.[40] The EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov* and/or 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 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 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

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 proposed 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).

Executive Order 12898 (59 FR 7629 (February 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs

[38] *Id.,* at 1046.

[39] CARB, Public Hearing to Consider the Proposed Innovative Clean Transit Regulation, A Replacement of the Fleet Rule for Transit Agencies, Staff Report: Initial Statement of Reasons, Date of Release: August 7, 2018, pages II–1—II–6.

[40] 62 FR 27968 (May 22, 1997).

federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health effects of their programs, policies, and activities on minority populations and low-income populations in the United States. The EPA notes that, in adopting the ICT regulation, the state found that it furthers state environmental justice goals by transitioning to clean transportation modes in low-income and disadvantaged communities and does not disproportionately impact people of any race, culture, or income.[41] We agree that, by transitioning to clean transportation modes in low-income and disadvantaged communities, the ICT regulation will serve to reduce adverse human health effects in all communities and thereby help to achieve environmental justice.

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 17, 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 dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: February 10, 2023.

Martha Guzman Aceves,

Regional Administrator, Region IX.

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. In § 52.220a, paragraph (c), Table 1 is amended by:

■ a. Adding an entry for ''39012'' after the heading ''Health and Safety Code'';

■ b. Adding a heading for ''Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 1 (Motor Vehicle Pollution Control Devices), Article 4 (Diesel Particulate Matter Control Measures)'' after the entry for ''1978''; and under the new heading, adding an entry for ''2020 (paragraph (b) (''Transit Agency''), only)'';

■ c. Adding a heading for ''Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 1 (Motor Vehicle Pollution Control Devices), Article 4.3 (Innovative Clean Transit)'' after the new entry for ''2020 (paragraph (b) (''Transit Agency''), only)'' and under the new heading, adding entries for ''2023'', ''2023.1'', ''2023.2'', ''2023.3'', ''2023.4'', ''2023.5'', ''2023.6'', ''2023.7'', ''2023.8'', ''2023.9'', ''2023.10'' and ''2023.11'';

■ d. Adding a heading for ''Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 4 (Criteria for the Evaluation of Motor Vehicle Pollution Control Devices and Fuel Additives), Article 1 (Fuel Additives and Prototype Emission Control Devices)'' after the entry for ''2194''; and under the new heading, adding an entry for ''2208 (paragraph (c)(18) (''Low-NO_X engine''), only)'';

■ e. Adding a heading for ''Title 17 (Public Health), Division 3 (Air Resources), Chapter 1 (Air Resources Board), Subchapter 1.5 (Air Basins and Air Quality Standards), Article 1 (Description of California Air Basins)'' after the entry for ''3394.6''; and under the new heading, adding entries for ''60100 (paragraph (e), only)'' and ''60113''; and

■ f. Adding a heading for ''Title 17 (Public Health), Division 3 (Air Resources), Chapter 1 (Air Resources Board), Subchapter 10 (Climate Change), Article 4 (Regulations to Achieve Greenhouse Gas Emission Reductions), Subarticle 7 (Low Carbon Fuel Standard)'' after the entry for ''94701''; and under the new heading, adding an entry for ''95481 (paragraphs (a)(20) (''Biomethane''), (a)(27) (''Compressed Natural Gas (CNG)''), and (a)(123) (''Renewable Hydrocarbon Diesel''), only)''.

The additions read as follows:

§ 52.220a Identification of plan—in part.

* * * * *

(c) * * *

TABLE 1—EPA-APPROVED STATUTES AND STATE REGULATIONS [1]

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
*	*	*	*	*
39012	Air Basin	1/1/1976	[Insert **Federal Register** citation], 2/16/2023.	Definition of ''Air Basin'' is relied upon by CARB's Innovative Clean Transit regulation.

[41] CARB, Resolution 18–60, December 14, 2018, pages 8 and 9. Also, see CARB; Public Hearing to Consider the Proposed Innovative Clean Transit Regulation, a Replacement of the Fleet Rule for Public Agencies; Staff Report: Initial Statement of Reasons; Date of Release: August 7, 2018, chapter VII (''Environmental Justice'').

TABLE 1—EPA-APPROVED STATUTES AND STATE REGULATIONS [1]—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
* *	*	*	*	* *
Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 1 (Motor Vehicle Pollution Control Devices), Article 4 (Diesel Particulate Matter Control Measures)				
2020 (paragraph (b) (''Transit Agency''), only).	Purpose and Definitions of Diesel Particulate Matter Control Measures.	1/2/2010	[Insert **Federal Register** citation], 2/16/2023.	The definition of ''Transit Agency'' is relied upon by CARB's Innovative Clean Transit regulation.
Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 1 (Motor Vehicle Pollution Control Devices), Article 4.3 (Innovative Clean Transit)				
2023	Innovative Clean Transit Regulations Applicability and Scope.	10/1/2019	[Insert **Federal Register** citation], 2/16/2023.	Submitted on February 13, 2020.
2023.1	Zero-Emission Bus Requirements	10/1/2019	[Insert **Federal Register** citation], 2/16/2023.	Submitted on February 13, 2020.
2023.2	Compliance Option for Joint Zero-Emission Bus Groups.	10/1/2019	[Insert **Federal Register** citation], 2/16/2023.	Submitted on February 13, 2020.
2023.3	Zero-Emission Bus Bonus Credits	10/1/2019	[Insert **Federal Register** citation], 2/16/2023.	Submitted on February 13, 2020.
2023.4	Provisions for Exemption of a Zero-Emission Bus Purchase.	10/1/2019	[Insert **Federal Register** citation], 2/16/2023.	Submitted on February 13, 2020.
2023.5	Zero-Emission Mobility Option	10/1/2019	[Insert **Federal Register** citation], 2/16/2023.	Submitted on February 13, 2020.
2023.6	Low-NO_X Engine Purchase Requirements.	10/1/2019	[Insert **Federal Register** citation], 2/16/2023.	Submitted on February 13, 2020.
2023.7	Requirements to Use Renewable Fuels.	10/1/2019	[Insert **Federal Register** citation], 2/16/2023.	Submitted on February 13, 2020.
2023.8	Reporting Requirements for Transit Agencies.	10/1/2019	[Insert **Federal Register** citation], 2/16/2023.	Submitted on February 13, 2020.
2023.9	Record Keeping Requirements	10/1/2019	[Insert **Federal Register** citation], 2/16/2023.	Submitted on February 13, 2020.
2023.10	Authority to Suspend, Revoke, or Modify.	10/1/2019	[Insert **Federal Register** citation], 2/16/2023.	Submitted on February 13, 2020.
2023.11	Severability	10/1/2019	[Insert **Federal Register** citation], 2/16/2023.	Submitted on February 13, 2020.
* *	*	*	*	* *
Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 4 (Criteria for the Evaluation of Motor Vehicle Pollution Control Devices and Fuel Additives), Article 1 (Fuel Additives and Prototype Emission Control Devices)				
2208 (paragraph (c)(18) (''Low-NO_X engine''), only).	Purpose, Applicability, Definitions, and Reference Documents.	10/16/2017	[Insert **Federal Register** citation], 2/16/2023.	The definition of ''Low-NO_X engine'' is relied upon by CARB's Innovative Clean Transit regulation.

TABLE 1—EPA-APPROVED STATUTES AND STATE REGULATIONS [1]—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
* *	*	*	*	* *
Title 17 (Public Health), Division 3 (Air Resources), Chapter 1 (Air Resources Board), Subchapter 1.5 (Air Basins and Air Quality Standards), Article 1 (Description of California Air Basins)				
60100 (paragraph (e), only)	North Coast Basin	7/5/1978	[Insert **Federal Register** citation], 2/16/2023.	Paragraph (e) of 17 CCR 60100 defines the Sonoma County portion of the North Coast Basin and is relied upon by CARB's Innovative Clean Transit regulation.
60113	Lake Tahoe Air Basin	1/30/1976	[Insert **Federal Register** citation], 2/16/2023.	The definition of ''Lake Tahoe Air Basin'' is relied upon by CARB's Innovative Clean Transit regulation.
* *	*	*	*	* *
Title 17 (Public Health), Division 3 (Air Resources), Chapter 1 (Air Resources Board), Subchapter 10 (Climate Change), Article 4 (Regulations to Achieve Greenhouse Gas Emission Reductions), Subarticle 7 (Low Carbon Fuel Standard)				
95481 (paragraphs (a)(20) (''Biomethane''), (a)(27) (''Compressed Natural Gas (CNG)''), and (a)(123) (''Renewable Hydrocarbon Diesel''), only).	Definitions and Acronyms	1/4/2019	[Insert **Federal Register** citation], 2/16/2023.	Certain definitions in 17 CCR 95481 are relied upon by CARB's Innovative Clean Transit regulation.
* *	*	*	*	* *

[1] Table 1 lists EPA-approved California statutes and regulations incorporated by reference in the applicable SIP. Table 2 of paragraph (c) lists approved California test procedures, test methods and specifications that are cited in certain regulations listed in table 1. Approved California statutes that are nonregulatory or quasi-regulatory are listed in paragraph (e).

[FR Doc. 2023–03275 Filed 2–15–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 2

[FAC 2023–02; Item III; Docket No. FAR–2023–0052; Sequence No.1]

Federal Acquisition Regulation; Technical Amendments

Correction

In rule document 2023–02427, appearing on page 9739, in the issue of Tuesday, February 14, 2023, make the following correction:

On page 9739, in the first column, in the **DATES** section, ''February 14, 2023'' should read ''March 16, 2023''.

[FR Doc. C1–2023–02427 Filed 2–15–23; 8:45 am]

BILLING CODE 0099–10–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 220919–0193; RTID 0648–XC720]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; Closure of the General Category January Through March Fishery for 2023

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the General category fishery for large medium and giant (*i.e.,* measuring 73 inches (185 centimeters) curved fork length or greater) Atlantic bluefin tuna (BFT) for the January through March subquota time period. This action applies to Atlantic Tunas General category (commercial) permitted vessels and highly migratory species (HMS) Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT. Fishermen aboard General category permitted vessels and HMS Charter/Headboat permitted vessels may tag-and-release BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs. On June 1, 2023, the fishery will reopen automatically.

DATES: Effective 11:30 p.m., local time, February 14, 2023, through March 31, 2023.

FOR FURTHER INFORMATION CONTACT: Larry Redd, Jr., *larry.redd@noaa.gov,* 301–427–8503, Ann Williamson, *ann.williamson@noaa.gov,* 301–427–8503, or Nicholas Velseboer, *nicholas.velseboer@noaa.gov,* 978–281–9260.

SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries, including BFT fisheries, are managed under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27 divides the U.S. BFT

quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated HMS FMP and its amendments. NMFS is required under the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements, such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

Under § 635.28(a)(1), NMFS files a closure action with the Office of the Federal Register for publication when a BFT quota (or subquota) is reached or is projected to be reached. Retaining, possessing, or landing BFT under that quota category is prohibited on or after the effective date and time of a closure notice for that category until the opening of the relevant subsequent quota period or until such date as specified.

The current baseline quota for the General category is 710.7 metric tons (mt). The General category baseline quota is suballocated to different time periods. Relevant to this action, the baseline subquota for the January through March time period is 37.7 mt. As a result of a prior adjustment, the adjusted subquota for the January through March time period is 58.2 mt (88 FR 786, January 5, 2023).

Closure of the January Through March 2023 General Category Fishery

To date, reported landings for the General category January through March subquota time period total approximately 60.6 mt. Based on these landings, NMFS has determined that the adjusted 2023 subquota of 58.2 mt has been reached and exceeded. Therefore, retaining, possessing, or landing large medium or giant (*i.e.,* measuring 73 inches (185 cm) curved fork length or greater) BFT by persons aboard vessels permitted in the Atlantic Tunas General category and HMS Charter/Headboat permitted vessels (while fishing commercially) must cease at 11:30 p.m. local time on February 14, 2023. This action applies to Atlantic Tunas General category (commercial) permitted vessels and HMS Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT and is taken consistent with the regulations at § 635.28(a)(1). The General category will automatically reopen June 1, 2023, for the June through August 2023 subquota time period.

Fishermen aboard General category permitted vessels and HMS Charter/Headboat permitted vessels may catch-and-release and tag-and-release BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs at § 635.26. All BFT that are released must be handled in a manner that will maximize their survival, and without removing the fish from the water, consistent with requirements at § 635.21(a)(1). For additional information on safe handling, see the ''Careful Catch and Release'' brochure available at *https://www.fisheries.noaa.gov/resource/outreach-and-education/careful-catch-and-release-brochure/.*

Monitoring and Reporting

NMFS will continue to monitor the BFT fisheries closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers' compromises NMFS' ability to timely implement actions such as quota and retention limit adjustment, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General and HMS Charter/Headboat category vessel owners are required to report the catch of all BFT retained or discarded dead within 24 hours of the landing(s) or end of each trip, by accessing *www.hmspermits.noaa.gov,* using the HMS Catch Reporting app, or calling 888–872–8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

After the fishery reopens on June 1, depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional adjustments are necessary to ensure available subquotas are not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at 978–281–9260, or access *www.hmspermits.noaa.gov,* for updates on quota monitoring and inseason adjustments.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act and regulations at 50 CFR part 635 and is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS (AA) finds that pursuant to 5 U.S.C. 553(b)(B), it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons. Specifically, the regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments and fishery closures to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Providing for prior notice and an opportunity to comment is impracticable and contrary to the public interest. This fishery is currently underway and, based on landings information, delaying this action could result in BFT landings further exceeding the adjusted January through March 2023 General category subquota. Taking this action does not raise conservation and management concerns. NMFS notes that the public had an opportunity to comment on the underlying rulemakings that established the U.S. BFT quota and the inseason adjustment criteria.

For all of the above reasons, the AA also finds that pursuant to 5 U.S.C. 553(d), there is good cause to waive the 30-day delay in effectiveness.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: February 13, 2023.

Jennifer M. Wallace,

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

[FR Doc. 2023–03280 Filed 2–13–23; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 88, No. 32

Thursday, February 16, 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0167; Project Identifier MCAI–2022–00762–T]

RIN 2120–AA64

Airworthiness Directives; MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all MHI RJ Aviation ULC Model CL–600–2B19 (Regional Jet Series 100 & 440); CL–600–2C10 (Regional Jet Series 700, 701, & 702); CL–600–2C11 (Regional Jet Series 550); CL–600–2D15 (Regional Jet Series 705); CL–600–2D24 (Regional Jet Series 900); and CL–600–2E25 (Regional Jet Series 1000) airplanes. This proposed AD was prompted by a determination that aircraft maintenance manual (AMM) tasks and certification maintenance requirement (CMR) tasks are necessary. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive AMM and CMR tasks. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by April 3, 2023.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–0167; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this NPRM, contact MHI RJ Aviation Group, Customer Response Center, 3655 Ave. des Grandes-Tourelles, Suite 110, Boisbriand, Québec J7H 0E2 Canada; North America toll-free telephone 833–990–7272 or direct-dial telephone 450–990–7272; fax 514–855–8501; email *thd.crj@mhirj.com;* website *mhirj.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.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–0167; Project Identifier MCAI–2022–00762–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Gabriel Kim, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

Transport Canada, which is the aviation authority for Canada, has issued Transport Canada AD CF–2022–32, dated June 13, 2022, (Transport Canada AD CF–2022–32) (also referred to after this as the MCAI), to correct an unsafe condition for all MHI RJ Aviation ULC Model CL–600–2B19 (Regional Jet Series 100 & 440); CL–600–2C10 (Regional Jet Series 700, 701, & 702); CL–600–2C11 (Regional Jet Series 550); CL–600–2D15 (Regional Jet Series 705); CL–600–2D24 (Regional Jet Series 900); and CL–600–2E25 (Regional Jet Series 1000) airplanes. The MCAI states that it was discovered that the 10-year (120 months) periodic hydrostatic tests of the engine and auxiliary power unit (APU)

fire extinguishing bottles on Model CL–600–2B19 airplanes and of the engine, APU, and cargo compartment fire extinguishing bottles for Model CL–600–2C10; CL–600–2C11; CL–600–2D15; CL–600–2D24; and CL–600–2E25 airplanes were not performed. This could mean that the functional test of the pressure switch, which should be performed as part of the hydrostatic tests, may have been omitted on several airplanes in service. Failure to perform the pressure switch test and the 10-year overhaul or restoration of the FIREX bottles could result in a dormant loss of fire extinguishing capability.

The FAA is proposing this AD to address undetected loss of fire extinguishing capability for the engine, APU, or cargo compartment. The unsafe condition, if not addressed, could result in an inability to put out a fire in the engine, APU, or cargo compartment area. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–0167.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Bombardier Temporary Revisions 2A–73 and 2A–74, both dated June 5, 2020. This service information specifies new or more restrictive CMR tasks.

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**.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed Requirements of This NPRM

This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive AMM and CMR tasks.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (j)(1) of this proposed AD.

Differences Between This AD and the MCAI or Service Information

Transport Canada AD CF–2022–32 introduces new candidate certification maintenance requirement (CCMR) intervals that the FAA cannot mandate as CCMRs as specified in the MCAI. Therefore, the FAA proposes to mandate two AMM tasks as specified in Figure 1 to paragraph (h)(1) of this proposed AD and four AMM tasks as specified in Figure 2 to paragraph (h)(2) of this proposed AD.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 1,114 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

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).

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.): Docket No. FAA–2023–0167; Project Identifier MCAI–2022–00762–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by April 3, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all MHI RJ Aviation ULC (Type Certificate previously held by Bombardier, Inc.) airplanes identified in paragraphs (c)(1) through (6) of this AD, certificated in any category.

(1) Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes.

(2) Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes.

(3) Model CL–600–2C11 (Regional Jet Series 550) airplanes.

(4) Model CL–600–2D15 (Regional Jet Series 705) airplanes.

(5) Model CL–600–2D24 (Regional Jet Series 900) airplanes.

(6) Model CL–600–2E25 (Regional Jet Series 1000) airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 26, Fire Protection.

(e) Reason

This AD was prompted by a determination that new or more restrictive aircraft maintenance manual (AMM) tasks and certification maintenance requirement (CMR) tasks are necessary. The FAA is issuing this AD to address undetected loss of fire extinguishing capability for the engine, APU, or cargo compartment. The unsafe condition, if not addressed, could result in an inability to put out a fire in the engine, APU, or cargo compartment area.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision for Model CL–600–2B19 Airplanes

For Model CL–600–2B19 airplanes: Within 60 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Bombardier Temporary Revisions 2A–73 and 2A–74, both dated June 5, 2020. The initial compliance time for doing the tasks is at the time specified in Bombardier Temporary Revisions 2A–73 and 2A–74, both dated June 5, 2020, or within 60 days after the effective date of this AD, whichever occurs later.

(h) Maintenance or Inspection Program Revision for Other Model Airplanes

For airplanes identified in paragraphs (c)(2) through (6) of this AD:

(1) Within 60 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Figure 1 to paragraph (h)(1) of this AD. The initial compliance time for doing the task is at the applicable time specified in paragraph (h)(1)(i) or (ii) of this AD.

FIGURE 1 TO PARAGRAPH (h)(1)—AMM TASK FOR THE CARGO FIRE EXTINGUISHER BOTTLE

Effectivity	Interval limitation	AMM task Nos.
All	10 years	26–25–01–610–801–A01 26–25–01–610–801–A02

(i) If a restoration (previously called a hydrostatic test) of any cargo compartment fire extinguisher bottle was accomplished on or before June 5, 2014, do the applicable maintenance task on that bottle within 48 months after the effective date of this AD, whichever occurs later.

(ii) If a restoration (previously called a hydrostatic test) of any cargo compartment fire extinguisher bottle was accomplished after June 5, 2014, do the applicable maintenance task on that bottle within 10 years after the most recent restoration was accomplished.

(2) Within 60 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Figure 2 to paragraph (h)(2) of this AD. The initial compliance time for doing the task is at the applicable time specified in paragraph (h)(2)(i) or (ii) of this AD.

FIGURE 2 TO PARAGRAPH (h)(2)—AMM TASKS FOR THE ENGINE AND APU FIRE EXTINGUISHER BOTTLES

Effectivity	Interval limitation	AMM task Nos.
All	10 years	26–21–07–610–801–A01 26–21–07–610–801–A02 26–22–07–610–801–A01 26–22–07–610–801–A02

(i) If a restoration (previously called a hydrostatic test) of any engine or auxiliary power unit (APU) fire extinguisher bottle was accomplished on or before June 5, 2014, do the applicable maintenance task on that bottle within 48 months after the effective date of this AD.

(ii) If a restoration (previously called a hydrostatic test) of any engine or APU fire extinguisher bottle was accomplished after June 5, 2014, do the applicable maintenance task on that bottle within 10 years after the most recent restoration was accomplished.

(i) No Alternative Actions, or Intervals

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

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(k) Additional Information

(1) Refer to Transport Canada AD CF–2022–32, dated June 13, 2022, for related information. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–0167.

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

(l) Material Incorporated by Reference

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

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

(i) Bombardier Temporary Revision 2A–73, dated June 5, 2020.

(ii) Bombardier Temporary Revision 2A–74, dated June 5, 2020.

(3) For service information identified in this AD, contact MHI RJ Aviation Group, Customer Response Center, 3655 Ave. des Grandes-Tourelles, Suite 110, Boisbriand, Québec J7H 0E2 Canada; North America toll-free telephone 833–990–7272 or direct-dial telephone 450–990–7272; fax 514–855–8501; email *thd.crj@mhirj.com;* website *mhirj.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 February 10, 2023.

Christina Underwood,

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

[FR Doc. 2023–03298 Filed 2–15–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0114]

RIN 1625–AA87

Security Zone; San Francisco Bay, Oakland Estuary, Alameda, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to amend the established security zone extending 50 yards into the navigable waters of the Oakland Estuary, Alameda, California, surrounding the Coast Guard Island Pier. The proposed security zone change would include the entire perimeter of Coast Guard Island and 50 yards on either side of the Coast Guard Island causeway (Dennison Street Bridge). This action is necessary to provide for the continued security of the military service members on board vessels moored at the pier, as well as all military members and government property on Coast Guard Island. This security zone would prohibit all persons and vessels from entering, transiting through or anchoring within a portion of the Oakland Estuary surrounding Coast Guard Island, and prohibit all persons and vessels from loitering within 50 yards of the Coast Guard Island causeway, unless authorized by the Captain of the Port (COTP) or his designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before March 20, 2023.

ADDRESSES: You may submit comments identified by docket number USCG–2023–0114 using the Federal Decision Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LT William Harris, Sector San Francisco Waterways Management Division, U.S. Coast Guard; telephone 415–399–7443, email *SFWaterways@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, Purpose, and Legal Basis

The Captain of the Port (COTP) San Francisco has identified a need to amend the existing security zone to address the security concerns to the military base on Coast Guard Island and the Coast Guard Island causeway. Over the past three years, Coast Guard Island has had over 20 security incidents. Additionally, the Coast Guard no longer uses the Security barrier around the pier and this proposed rulemaking will account for that change.

The purpose of this rulemaking is to ensure the security of Coast Guard facilities, personnel, and vessels, at all times within the navigable waters of the Oakland Estuary surrounding Coast Guard Island and the Coast Guard Island causeway. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70051 and 70124.

III. Discussion of Proposed Rule

The Coast Guard is proposing to amend the currently established security zone at Coast Guard Island, 33 CFR 165.1190, to cover all navigable waters of the Oakland Estuary beginning at 37°46′42.5″ N, 122°14′51.4″ W; thence to 37°46′46.6″ N, 122°14′59.7″ W; thence to 37°46′51.8″ N, 122°15′7.4″ W; thence to 37°46′56.3″ N, 122°15′12.1″ W; thence to 37°47′2.2″ N, 122°15′16.4″ W; thence to 37°47′8″ N, 122°15′16.6″ W; thence to 37°47′10″ N, 122°15′12.8″ W; thence to 37°47′10.1″ N, 122°15′5.7″ W; thence to 37°47′7.8″ N, 122°15′0.1″ W; thence to 37°47′5.2″ N, 122°14′53.7″ W; thence to 37°47′2.1″ N, 122°14′49.5″ W; thence to 37°46′58.9″ N, 122°14′46.2″ W; thence to 37°46′57.1″ N, 122°14′44.6″ W; thence to 37°46′52.9″ N, 122°14′42.6″ W; thence to 37°46′50.2″ N, 122°14′42.9″ W; thence to 37°46′47.9″ N, 122°14′43.6″ W; thence to 37°46′42.3″ N, 122°14′44.1″ W; thence to the beginning, and all navigable waters of the Oakland Estuary 50 yards on either side of a line beginning at 37°46′48.1″ N, 122°14′45.8″ W; thence to 37°46′46.1″ N, 122°14′41.5″ W; thence to 37°46′45.4″ N, 122°14′36.6″ W.

The purpose of the proposed change to the security zone is to adapt to the current security needs of the military facilities on Coast Guard Island, and to provide the level of security and protection for national interest with all U.S. Coast Guard personnel, facilities, vessels located on and within the waters surrounding Coast Guard Island. Additionally, the proposed change would also include the Coast Guard Island causeway, a bridge, that facilitates pedestrian and vehicle access to Coast Guard Island, and therefore is considered critical infrastructure. Recent increases to the illegal anchoring of vessels in the vicinity of the bridge represent a serious risk for U.S. Coast Guard members and physical security of Coast Guard Island.

No vessel or person would be permitted to enter the security zone surrounding Coast Guard Island, and no vessel or person would be permitted to loiter in the zone surrounding the causeway bridge, unless authorized by the COTP. Vessel operators and persons would be able to transit the waters surrounding the causeway bridge without COTP permission, but they would not be allowed to loiter in those waters without the COTP permission. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed 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 NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size and location of the security zone. The effect of this rule will not be significant because vessel traffic will still be permitted to transit around Coast Guard Island, and this rule will encompass only a small portion of the waterway.

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 proposed rule would not have a significant economic impact on a substantial number of small entities.

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed rule. If the proposed 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

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 proposed rule would not result in such an expenditure, we do discuss the potential effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed 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 made a preliminary determination 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 proposed rule involves a security zone covering all navigable waters of the Oakland Estuary, which would exclude vessels from entering the regulated area unless authorized by the COTP. Normally such actions are categorically excluded from further review under paragraph L[60(a)] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary 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. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

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.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2023–0114 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select

''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

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 is proposing to amend 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. Revise § 165.1190 to read as follows:

§ 165.1190 Security Zone; San Francisco Bay, Oakland Estuary, Alameda, CA.

(a) Locations. The following areas are security zones: (1) Coast Guard Island. All waters of the Oakland Estuary, from surface to bottom, encompassed by a line connecting the following points beginning at 37°46′42.5″ N, 122°14′51.4″ W; thence to 37°46′46.6″ N, 122°14′59.7″ W; thence to 37°46′51.8″ N, 122°15′7.4″ W; thence to 37°46′56.3″ N, 122°15′12.1″ W; thence to 37°47′2.2″ N, 122°15′16.4″ W; thence to 37°47′8″ N, 122°15′16.6″ W; thence to 37°47′10″ N, 122°15′12.8″ W; thence to 37°47′10.1″ N, 122°15′5.7″ W; thence to 37°47′7.8″ N, 122°15′0.1″ W; thence to 37°47′5.2″ N, 122°14′53.7″ W; thence to 37°47′2.1″ N, 122°14′49.5″ W; thence to 37°46′58.9″ N, 122°14′46.2″ W; thence to 37°46′57.1″ N, 122°14′44.6″ W; thence to 37°46′52.9″ N, 122°14′42.6″ W; thence to 37°46′50.2″ N, 122°14′42.9″ W; thence to 37°46′47.9″ N, 122°14′43.6″ W; thence to 37°46′42.3″ N, 122°14′44.1″ W; and back to the beginning point. These coordinates are based on North American Datum (NAD) 83.

(2) Coast Guard Island Causeway. All waters of the Oakland Estuary, from surface to bottom, 50 yards on either side of a line beginning at 37°46′48.1″ N, 122°14′45.8″ W; thence to 37°46′46.1″ N, 122°14′41.5″ W; thence to 37°46′45.4″ N, 122°14′36.6″ W. These coordinates are based on North American Datum (NAD) 83.

(b) *Regulations.* (1) Under the general security zone regulations in subpart D of this part, you may not enter the security zone described in paragraph (a)(1) of this section unless authorized by the COTP. The security zone described in paragraph (a)(1) of this section is closed to all vessel traffic, except as may be permitted by the COTP. To seek permission to enter the security zone in paragraph (a)(1) of this section, contact the COTP by VHF Marine Radio channel 16 or through the 24-hour Command Center at telephone (415) 399–3547. Those in the security zone must comply with all lawful orders or directions given to them by the COTP.

(2) Under the general security zone regulations in subpart D of this part, you may not loiter in the security zone described in paragraph (a)(2) of this section unless authorized by the COTP.

(c) *Enforcement.* The Captain of the Port will enforce this security zone and may be assisted in the patrol and enforcement of this security zone by any Federal, State, county, municipal, or private agency.

Dated: February 10, 2023.

Taylor Q. Lam,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2023–03296 Filed 2–15–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 38

RIN 2900–AR80

Persons Eligible for Burial

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to revise its regulations regarding persons eligible for interment in a national cemetery, documentation associated with requests for interment, and eligibility for headstones or markers to implement new authorities provided in the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY22). Section 6601 of NDAA FY22 expanded eligibility for interment in national cemeteries to include certain individuals who served with a special guerrilla unit or irregular forces operating from a base in Laos in support of the Armed Forces during a specified time period. VA proposes to amend its regulations to reflect this expanded eligibility.

DATES: Comments must be received by VA on or before April 17, 2023.

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

FOR FURTHER INFORMATION CONTACT: Michelle Myers, Management and Program Analyst, Legislative and Regulatory Service, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC, 20420. Telephone: (202) 717–2979. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

Background

The National Cemetery Administration (NCA) honors Veterans and their eligible family members with final resting places in national shrines and with lasting tributes that commemorate their service and sacrifice to our Nation. VA operates 155 national cemeteries and 34 soldiers' lots and monument sites in 42 states and Puerto Rico. More than 4 million Americans, including Veterans of every war and conflict, are buried in VA's national cemeteries. Section 2402 of title 38, United States Code (U.S.C.), specifies in law persons who are eligible for

interment in national cemeteries under NCA control.

On March 23, 2018, the Consolidated Appropriations Act, 2018, Public Law 115–141, div. J, tit. II, section 251 (CAA), amended 38 U.S.C. 2402(a) to establish eligibility for burial in a VA national cemetery for certain individuals naturalized pursuant to section 2(1) of the Hmong Veterans' Naturalization Act of 2000, Public Law 106–207 (2000 Act). Section 2(1) of the 2000 Act specified that an individual who served with a special guerilla unit or irregular forces, operating from a base in Laos in support of the United States (U.S.) military during a specified period was temporarily eligible for an exemption from the English language requirement for naturalization. *See also id.* at section 6. Individuals who were granted naturalization under this authority, who died on or after March 23, 2018, and resided in the U.S. at the time of death are eligible for burial in a national cemetery pursuant to the CAA. In 2021, VA implemented this authority by amending its regulations to reflect the expanded eligibility for interment in a national cemetery. 86 FR 43091.

New Authority

On December 27, 2021, the National Defense Authorization Act for Fiscal Year 2022, Public Law 117–81, section 6601 (NDAA FY22), further amended 38 U.S.C. 2402(a) to expand eligibility for interment in NCA national cemeteries to additional individuals who served honorably with a special guerrilla unit or irregular forces operating from a base in Laos in support of the Armed Forces at any time during the period beginning on February 28, 1961, and ending on May 7, 1975. Those individuals must be, at the time of death, residing in the U.S. and either a U.S. citizen or an alien lawfully admitted for permanent residence in the U.S.

This change provides burial eligibility to affected individuals who were not eligible under the CAA because they may have become U.S. citizens prior to the 2000 Act or were naturalized after the English language exemption provision of the 2000 Act expired. This change also expands eligibility to individuals who were lawfully admitted for permanent residency but are not naturalized U.S. citizens.

To implement this new authority, VA proposes to revise § 38.620(j) to include this new category of individuals. Paragraphs (j)(1) and (2) would address the date of death and residency requirements; paragraph (j)(3)(i) would address those individuals covered by the CAA, and paragraph (j)(3)(ii) would address those covered by the NDAA FY22.

Additionally, VA proposes to revise § 38.619(a) by inserting a new paragraph (a)(2) to provide more specific information regarding documentation supporting interment requests for persons eligible for interment in a national cemetery under 38 CFR 38.620(j). Under § 38.619(a)(1), VA requires certain information from a decedent's personal representative at the time of the request for interment to determine eligibility and ascertain other details to allow for scheduling the interment. Proposed new paragraph (a)(2)(i)(A) would require, for decedents who were naturalized under the English language exemption provided in section 2(1) of the 2000 Act, a copy of the official U.S. Certificate of Naturalization. VA would then obtain verification from the U.S. Citizenship and Immigration Services that naturalization was pursuant to section 2(1) of the 2000 Act. Neither this requirement nor the process is new, but the paragraph would codify in regulation the policy and process VA has been using to verify eligibility for this category of individuals since eligibility was first established on March 23, 2018.

Proposed new paragraph (a)(2)(i)(B) would address documentation requirements for decedents who served honorably with a special guerilla unit or irregular forces operating from a base in Laos in support of the Armed Forces at any time between February 28, 1961, and May 7, 1975, and are U.S. citizens, but were not naturalized under section 2(1) of the 2000 Act. VA would verify citizenship and review evidence of service in order to confirm eligibility.

Proposed new paragraph (a)(2)(i)(C) would address documentation requirements for decedents who served honorably with a special guerilla unit or irregular forces operating from a base in Laos in support of the Armed Forces at any time between February 28, 1961, and May 7, 1975, and were not U.S. citizens but were lawfully admitted for permanent residence in the U.S. VA would verify permanent residence status and review evidence of service.

Proposed new paragraph (a)(2)(i)(D) would require that all interment requests pursuant to § 38.620(j) include evidentiary support substantiating that the decedent resided in the U.S. at the time of death.

Proposed new paragraph (a)(2)(ii) would describe the type of documentation VA will accept as evidence of service. This type of documentation is consistent with the type of documentation used by U.S. Citizenship and Immigration Services to determine eligibility for citizenship under section 2(1) of the 2000 Act. *See* Public Law 106–207, section 4.

Proposed new paragraph (a)(2)(iii) would provide clarification that Department of Defense (DD) Form 214, Certificate of Release or Discharge from Active Duty, is not an appropriate document of service for purposes of paragraphs (a)(2)(i)(B) or (C) of this section.

Finally, VA proposes to revise § 38.630(a)(1)(ii)(F) and 38.630(a)(2)(i)(F), which address eligibility for burial headstones and markers for unmarked graves and marked graves. Because the individuals described in § 38.620(j) are by law eligible for burial in a national cemetery, they are also eligible for a government furnished headstone or marker under 38 U.S.C. 2306(a)(1) and (2) and (d)(1). VA's regulation governing eligibility for headstones and markers must be updated to include this group of individuals who are newly eligible. These revisions will ensure that VA regulations related to burial and headstone eligibility are updated for consistency with NDAA FY22.

Executive Orders 12866 and 13563

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

The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). The factual basis for this certification is based on the fact that the proposed rule would simply describe a new category of persons eligible for interment in

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

Unfunded Mandates

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

Paperwork Reduction Act

This proposed rule includes provisions constituting a revised collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) that require approval by the Office of Management and Budget (OMB). Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review and approval.

OMB assigns control numbers to collections of information it approves. VA 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. If OMB does not approve the collection of information as requested, VA will immediately remove the provisions containing the collection of information or take such other action as is directed by OMB.

Comments on the revised collection of information contained in this rulemaking should be submitted through *www.regulations.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AR80, Persons Eligible for Burial'' and should be sent within 60 days of publication of this rulemaking. The collection of information associated with this rulemaking can be viewed at: *www.reginfo.gov/public/do/PRAMain.*

OMB is required to make a decision concerning the collection of information contained in this rulemaking between 30 and 60 days after publication of this rulemaking in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the provisions of this rulemaking.

The Department considers comments by the public on a revised collection of information in—

- Evaluating whether the revised collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the revised collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing 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.

The collection of information associated with this rulemaking contained in 38 CFR 38.619 is described immediately following this paragraph, under its respective title.

Title: Verification of Eligibility for Burial in a National Cemetery, VA Form 40–4962.

OMB Control No: 2900–0232.

CFR Provision: 38 CFR 38.619(a)(2).

- *Summary of collection of information:* Proposed 38 CFR 38.619(a)(2) would require the submission of specific documents to support the interment eligibility of persons who were naturalized under section 2(1) of the Hmong Veterans Naturalization Act of 2000 or served with a special guerilla unit or irregular forces operating from a base in Laos in support of the Armed Forces at any time between February 28, 1961, and May 7, 1975, such as a copy of the U.S. Certificate of Naturalization or a copy of the official documentation of status as a lawful permanent resident; evidence that the decedent resided in the U.S. at the time of death; and (in some circumstances) evidence of service. VA typically uses the DD214 to verify service in the U.S. Armed Forces; however, since these individuals did not serve in the U.S. Armed Forces, there is no official U.S. Government documentation of military service. Thus, in enumerated circumstances, one of the following types of evidence of service would be required:
  - Original documentation issued by a government agency officially documenting the service type, location and dates served;
  - An affidavit of the decedent's superior officer attesting to the type of service, location, and dates served;
  - Two affidavits from other individuals who were also serving with such a special guerilla unit or irregular forces and who personally knew of the decedent's service; or
  - Other appropriate evidence that factually documents the service, location and dates served.
- *Description of need for information and proposed use of information:* The information will be used by NCA to determine whether the decedent meets the statutory requirements for eligibility for burial in a national cemetery, which would be enumerated at proposed 38 CFR 38.620(j).
- *Description of likely respondents:* Respondents will be personal representatives of decedents who seek burial in a national cemetery. With respect to this rulemaking, this may be family members of the decedent, funeral directors, or other designated representatives.
- *Estimated number of respondents:* VA estimates an average of 85 such respondents per year providing the information requested in the revised collection.
- *Estimated frequency of responses:* This is one time per personal representative of decedent.
- *Estimated average burden per response:* 15 minutes per response.
- *Estimated total annual reporting and recordkeeping burden:* VA estimates the total annual reporting and recordkeeping burden to be 21.25 burden hours (85 respondents × 15 minutes ÷ 60 minutes).
- *Estimated cost to respondents per year:* VA estimates the annual cost to respondents to be $595.21. Using VA's average annual number of 85 respondents, VA estimates the respondents' total information collection burden cost to be $595.21 per year*. (21.25 burden hours for respondents × $28.01 mean hourly wage)].

* To estimate the respondents' total information collection burden cost, VA uses the Bureau of Labor Statistics (BLS) mean hourly wage for ''All Occupations'' of $28.01. This information is available at *https://www.bls.gov/oes/2021/may/oes_nat.htm#00-0000.*

Assistance Listing

The Assistance Listing numbers and titles for the program affected by this document are 64.201, National Cemeteries; 64.203, Veterans Cemetery Grants Program; and 64.206, VA Outer Burial Receptacle Allowance Program.

List of Subjects in 38 CFR Part 38

Administrative practice and procedure, Cemeteries, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on February 7, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

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

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

PART 38—NATIONAL CEMETERIES OF THE DEPARTMENT OF VETERANS AFFAIRS

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

Authority: 38 U.S.C. 107, 501, 512, 531, 2306, 2400, 2402, 2403, 2404, 2407, 2408, 2411, 7105.

■ 2. Amend § 38.619 by adding paragraph (a)(2) to read as follows:

§ 38.619 Requests for interment, committal services or memorial services, and funeral honors.

(a) * * *

(2) *Interment requests pursuant to § 38.620(j).* (i) Consistent with paragraph (a)(1)(i) of this section, interment requests pursuant to § 38.620(j) must include the following:

(A) For decedents who were naturalized under section 2(1) of the Hmong Veterans Naturalization Act of 2000 (the Act), a copy of the official U.S. Certificate of Naturalization. (VA will retrieve naturalization records from the U.S. Citizenship and Immigration Services to verify that the naturalization was pursuant to section 2(1) of the Act.)

(B) For decedents who were otherwise naturalized, a copy of the U.S. Certificate of Naturalization and documentation of the decedent's honorable service with a special guerilla unit or irregular forces operating from a base in Laos in support of the Armed Forces at any time between February 28, 1961, and May 7, 1975.

(C) For decedents who were not naturalized but were lawfully admitted for permanent residence in the U.S., a copy of the official documentation of status as a lawful permanent resident, and documentation of the decedent's honorable service with a special guerilla unit or irregular forces operating from a base in Laos in support of the Armed Forces at any time between February 28, 1961, and May 7, 1975.

(D) Evidence that the decedent resided in the U.S. at the time of death.

(ii) VA will accept the following types of documentation as evidence of service described in paragraphs (a)(2)(i)(B) and (C) of this section:

(A) Original documentation issued by a government agency officially documenting the service type, location and dates served;

(B) An affidavit of the decedent's superior officer attesting to the type of service, location, and dates served;

(C) Two affidavits from other individuals who were also serving with such a special guerilla unit or irregular forces and who personally knew of the decedent's service; or

(D) Other appropriate evidence that factually documents the service, location and dates served.

(iii) The DD Form 214, Certificate of Release or Discharge from Active Duty, is not an appropriate documentation of service for purposes of paragraphs (a)(2)(i)(B) and (C) of this section.

* * * * *

■ 3. Amend § 38.620 by revising paragraph (j) to read as follows:

§ 38.620 Persons eligible for burial.

* * * * *

(j) Any individual who:

(1) Died on or after March 23, 2018; and

(2) Resided in the United States at the time of their death; and

(3) Either:

(i) Was naturalized pursuant to section 2(1) of the Hmong Veterans' Naturalization Act of 2000 (Pub. L. 106–207, 114 Stat. 316; 8 U.S.C. 1423 note); or

(ii) Served honorably with a special guerilla unit or irregular forces operating from a base in Laos in support of the Armed Forces at any time between February 28, 1961, and May 7, 1975; and was, at the time of the individual's death, a citizen of the United States or an alien lawfully admitted for permanent residence in the United States.

■ 4. Amend § 38.630 by revising paragraphs (a)(1)(ii)(F) and (a)(2)(i)(F) to read as follows:

§ 38.630 Burial headstones and markers; medallions.

(a) * * *

(1) * * *

(ii) * * *

(F) Individuals who were naturalized pursuant to section 2(1) of the Hmong Veterans' Naturalization Act of 2000, or who served honorably with a special guerilla unit or irregular forces operating from a base in Laos in support of the Armed Forces, as described in and subject to § 38.620(j).

(2) * * *

(i) * * *

(F) Individuals who were naturalized pursuant to section 2(1) of the Hmong Veterans' Naturalization Act of 2000, or who served honorably with a special guerilla unit or irregular forces operating from a base in Laos in support of the Armed Forces, as described in and subject to § 38.620(j).

[FR Doc. 2023–03052 Filed 2–15–23; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 111

Counterfeit Postage

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: The Postal Service is proposing to amend *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) in various sections to clarify the handling of items found in the mail bearing counterfeit postage.

DATES: Submit comments on or before March 20, 2023.

ADDRESSES: Mail or deliver written comments to the manager, Product Classification, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 4446, Washington, DC 20260–5015. If sending comments by email, include the name and address of the commenter and send to *PCFederalRegister@usps.gov,* with a subject line of ''Counterfeit Postage''. Faxed comments are not accepted.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

You may inspect and photocopy all written comments, by appointment only, at USPS® Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor North, Washington, DC 20260. These records are available for review on Monday through Friday, 9 a.m.–4 p.m., by calling 202–268–2906.

FOR FURTHER INFORMATION CONTACT: Jane Quenk at (202) 268–7098 or Garry Rodriguez at (202) 268–7281.

SUPPLEMENTARY INFORMATION:

Background

In recent years, the use of counterfeit postage has increased substantially, especially on packages. Use of counterfeit postage is a crime; it reflects an intentional effort to defraud the Postal Service; and it has resulted in a significant loss of revenue to the Postal Service. Typically, such mail does not have an accurate return address. The Postal Service proposes to amend current regulations to distinguish counterfeit postage from mail without any postage affixed and to address the use of counterfeit postage more effectively.

Mail deposited without any postage affixed is endorsed ''Returned for Postage'' and is returned to the sender without any attempt at delivery (DMM 604.8.2.1). Counterfeit postage differs from the absence of any postage, however, as the former is a criminal attempt to defraud the Postal Service, while the absence of any postage may reflect an inadvertent failure to affix postage. Also, mail with counterfeit postage often does not have an accurate return address, or it has a return address not related to the mailer. To address the problems posed by counterfeit mailings, the Postal Service is amending its regulations to provide public notice that mailings with counterfeit postage will be treated as abandoned; consequently, such mail may be opened and disposed of at the Postal Service's discretion.

Proposal

The Postal Service seeks to distinguish the handling of articles entered without postage under subsection 604.8.2 from those that contain counterfeit postage.

Therefore, the Postal Service is proposing to revise subsection 604.8.4 to provide that when all articles with counterfeit postage are found they will be considered abandoned and disposed of at the discretion of the Postal Service, rather than be returned to the sender as the affixing of counterfeit postage reflects a refusal to pay postage or an intentional effort to avoid paying postage.

The Postal Service is proposing to implement this change effective April 1, 2023.

We believe this proposed revision will provide customers with clarity on the handling of items bearing counterfeit postage.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revisions 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 proposed to be 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

1.0 Treatment of Mail

1.1 Nondelivery of Mail

Mail can be undeliverable for these reasons:

* * * * *

[Renumber items b through g as c through h and add new item b to read as follows:]

b. Counterfeit Postage (see 604.8.4).

* * * * *

604 Postage Payment Methods and Refunds

1.0 Stamps

* * * * *

1.4 Imitations of Stamps

[Revise the text of 1.4 to read as follows:]

Matter bearing imitations of postage stamps, in adhesive or printed form, or private seals or stickers resembling a postage stamp in form and design, is not acceptable for mailing (See 8.4.2 for handling items with counterfeit postage.).

* * * * *

4.0 Postage Meters and PC Postage Products (''Postage Evidencing Systems'')

* * * * *

4.4 Postage Discrepancies

4.4.1 Definitions

[Revise the text of 4.4.1 by deleting the last sentence.]

* * * * *

8.0 Insufficient or Omitted Postage

* * * * *

8.2 Omitted Postage

8.2.1 Handling Mail With Omitted Postage

[Revise the first sentence of 8.2.1 to read as follows:]

Except under 8.4 matter of any class, including that for which extra services are indicated, received at either the office of mailing or office of address without postage, is endorsed ''Returned for Postage'' and is returned to the sender without an attempt at delivery.

* * *

* * * * *

[Revise the heading and text of 8.4 to read as follows:]

8.4 Counterfeit Postage

8.4.1 Definition

Counterfeit postage is any marking or indicia that has been made, printed, or otherwise created without authorization from the Postal Service that is printed or applied, or otherwise affixed, on an article placed in the mails that indicates or represents that valid postage has been paid to mail the article.

8.4.2 Handling Items With Counterfeit Postage

Items found in the mail bearing counterfeit postage will be considered abandoned and disposed of at the discretion of the Postal Service.

* * * * *

Tram T. Pham,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2023–03195 Filed 2–15–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 423

[Docket No. BOR–2022–0001;RR83570000, 21XR0680A4, RX.19520003.920D502]

RIN 1006–AA58

Public Conduct on Bureau of Reclamation Facilities, Lands, and Waterbodies

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: We, the Bureau of Reclamation (Reclamation), are proposing to revise regulations that govern public access to and conduct on Reclamation facilities, lands, and waterbodies. The proposed changes clarify the regulations that are intended to maintain law and order and protect persons and property on Reclamation facilities, lands, and waterbodies while bringing the rulemaking into compliance with updated laws and regulations.

DATES: Comments on the proposed rulemaking must be submitted on or before April 17, 2023.

ADDRESSES: You may submit comments, identified by Docket No. BOR–2022–0001 by either of the methods listed below.

1. *Electronically:* Go to the Federal eRulemaking Portal at *https://www.regulations.gov.* In the Search box, enter BOR–2022–0001, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment Now!''

2. *By hard copy:* Submit by U.S. mail or hand-delivery to James Bingham, Bureau of Reclamation, Security Division, 84–57000, P.O. Box 25007, Denver, Colorado 80225.

See Public Comments under **SUPPLEMENTARY INFORMATION**, below, for more information about submitting comments.

FOR FURTHER INFORMATION CONTACT: Brian Cornell, Security Division, Bureau of Reclamation, at (303) 445–3694, or via email at *bcornell@usbr.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.

SUPPLEMENTARY INFORMATION:

Background

On November 12, 2001, Congress enacted Public Law 107–69, which provides for law enforcement authority within Reclamation projects and on Reclamation lands. Section 1(a) of this law requires the Secretary of the Interior to ''issue regulations necessary to maintain law and order and protect persons and property within Reclamation projects and on Reclamation lands.'' The Secretary of the Interior delegated this authority to the Commissioner of Reclamation.

On April 17, 2002, Reclamation published 43 CFR part 423, *Public Conduct on Bureau of Reclamation Lands and Projects* (67 FR 19092) as an interim final rule. In the preamble to that rule, Reclamation stated its intent to replace the interim final rule with a more comprehensive public conduct rule and set April 17, 2003, as the interim final rule's expiration date. In order to provide more time to develop the comprehensive public conduct rule, Reclamation extended the expiration of the interim final rule to April 17, 2005 (68 FR 16214, April 3, 2003), and again to April 17, 2006 (70 FR 15778, March 29, 2005).

On September 13, 2005, Reclamation published a proposed public conduct rule (70 FR 54214) and asked the public to comment on that proposed rule. The final rule, 43 CFR part 423, was published in the **Federal Register** on April 17, 2006 (71 FR 19790).

On September 24, 2008, Reclamation published an interim final public conduct rule (73 FR 54977) that made minor amendments to the existing part 423 and asked the public to comment on that rule. In response to those public comments, the final rule made minor changes to the interim final rule (73 FR 75347, December 11, 2008).

Since the 2008 amendments, technology, especially of unmanned aircraft systems (UAS) commonly referred to as ''drones,'' has developed rapidly. With this technology came new regulations from the Federal Aviation Administration, specifically regarding the use of UAS (14 CFR Chapter 1, Subchapter F, Part 107 *Small Unmanned Aircraft Systems*). Reclamation's intent in revising this part is to apply consistency with the Federal Aviation Administration's regulations. Reclamation is also seeking to modernize and update regulations impacting firearms possession, animal control, and access and occupancy of Reclamation facilities, lands, and waterbodies. The intent is to allow local, State, and other managing recreation partners to manage their facilities and sites using their regulations, and not be burdened with conflicting Federal regulations they have no jurisdiction to enforce. And finally, Reclamation seeks to ease the absolute prohibition regarding reburials and allow an application process to obtain permits for this activity along with other existing activities allowed by permit.

Development of the Proposed Rule

Reclamation is proposing to make the following revisions to 43 CFR part 423:

Authorities Section. We are updating this section to simplify the authorities for this part based on what exists in law. Public Law 107–69, codified at 43 U.S.C. 373(b)(a) states: ''The Secretary of the Interior shall issue regulations necessary to maintain law and order and protect persons and property within Reclamation projects and on Reclamation lands.''

Subpart A, Section 423.2, Definitions of terms used in this part. We are proposing to update the definitions of aircraft, firearms, and off-road vehicle, and add a definition of model aircraft to align with other existing Federal statutes. The term firearm will be updated to make it consistent with what exists in 18 U.S.C. 921(a)(3).

Subpart C, 423.21 Responsibilities. We are proposing to add paragraph (f) to this section. In most recreation sites and visitor centers where fees are charged, the managing partner or contractor, such as a state park, collects and manages fees. Most of these managing partners have a means of enforcement such as park rangers with law enforcement powers. However, there are a few sites where a managing partner does not have an enforcement capability such as an irrigation district. This clarifies the responsibilities of all to pay camping and other recreation fees where applicable when at Reclamation facilities, lands and waterbodies.

Section 423.27, Advertising and Solicitation. Reclamation recognizes the use of its facilities, lands, and waterbodies is not usually an appropriate place to conduct advertising or solicitations. However, there are certain circumstances where the activity may be permitted but only under the issuance of authorization. This section will be revised to clarify these circumstances. We are also proposing to add a new paragraph to this section prohibiting the sale and purchase of private goods and personal property on Reclamation property unless specifically authorized under a permit or use authorization as defined in Subpart D of the proposed rule.

Section 423.28, Memorials and Native American Graves Protection and Repatriation Act (NAGPRA) Reburials. We are proposing to add paragraph (b) to this section to address reburials. Currently, 43 CFR part 423 has an absolute prohibition on burying human remains. The proposed rule would address the circumstance of reburials for Tribal cultures and communities, especially when human remains of Native American ancestors are inadvertently discovered through Reclamation operations such as the drawdown of a reservoir or naturally eroding from their original burial locations, or previously collected during earlier project construction. Our proposed amendments add reburials of Native American ancestors or cultural items as defined in NAGPRA, including funerary objects, sacred objects, and objects of cultural patrimony, to the list of prohibited activities for which an application for a permit may be submitted. Under the proposed rule, reburial of NAGPRA human remains or cultural items may be allowed in some circumstances which would require a permit as described in Subpart D of this rulemaking.

Section 423.30, Weapons, Firearms, Explosives, and Fireworks. We are updating our regulation regarding the possession of firearms to be consistent with firearms possession in units of the National Park Service and National Wildlife Refuge System. Title 16 U.S.C. 1a–7b(b) prohibits the enforcement or creation of regulations that prohibit the possession of firearms in units of the National Park Service or National Wildlife Refuge System, such as national historic parks and recreational areas. Reclamation has 11 national recreation areas and 12 national wildlife refuges overlayed across our projects or associated with our facilities. We are seeking consistency with 16 U.S.C. 1a–7b(b) for Reclamation-operated recreation facilities.

In addition, the proposed rule would clarify firearms possession in recreation areas or facilities operated by other Governmental agencies such as state parks. Like camping, local recreation managing partners or jurisdictions may have different regulations regarding firearms. We are seeking to give more local control of recreation sites to the entities who operate and manage them. The managing partners would benefit by having consistent regulations for all their managed sites, including those laid across Reclamation lands and waters through a cooperative agreement or contract.

Section 423.33, Camping. We are proposing to update camping stay limits to address the practicalities of our project lands. Currently, this rule prohibits camping over 14 days at any single Reclamation project. We recognize some Reclamation projects can span hundreds of miles and in multiple states. We are proposing to amend this rule to make the 14-day prohibition for a single Reclamation facility in a single location.

In addition, we are proposing to amend this rule to address the responsibilities of managing recreation partners. We recognize many of our managing partners such as state or county parks may have their own rules regarding camping. We are seeking to give more local control of recreation sites to the entities who operate and manage them. The managing partners would benefit by having consistent regulations for all their managed sites, including those laid across Reclamation lands and waters through a cooperative agreement or contract.

Section 423.35, Animals. Currently, 43 CFR part 423 has no prohibition for unrestrained animals and pets. This poses a risk to visitors and staff. We are proposing to add the requirement to have animals restrained while at a Reclamation facility. This is consistent with most local animal control laws and regulations. Like camping, local recreation managing partners or jurisdictions may have different regulations regarding animals and pets. We are seeking to give more local control of recreation sites to the entities who operate and manage them.

Section 423.36, Swimming. We are proposing to revise our regulations regarding access and recreation near some of our facilities to address the practicalities of their locations. In some cases, smaller reservoirs are no larger than 300 yards in length, making swimming or other water activities prohibited as they are within 300 yards of a dam. Removing the 300-yard standoff distance and using signage and barriers gives the public better direction as to where they can and cannot swim.

Section 423.37, Winter Activities. We are proposing to revise this section of the rule regarding access and recreation near some of our facilities, specifically during winter conditions to address the practicalities of their locations. In some cases, smaller reservoirs are no larger than 300 yards in length, making winter recreation activities prohibited as they are within 300 yards of a dam. Removing the 300-yard standoff distance and using signage and barriers gives the public better direction as to where they can and cannot enjoy winter recreation activities.

Section 423.41, Aircraft. We are proposing to revise and update the definition for aircraft and add a definition for model aircraft to reflect the modern reality of the rise in UAS and to become consistent with the definitions in regulations issued by the Federal Aviation Administration. Aircraft landing and taking off from Reclamation waters, flying too close to our infrastructure, such as hydro-electric power plants, and flying over recreation facilities presents security and safety risks. We are proposing to revise our regulations to be consistent with those of the Federal Aviation Administration, while allowing permits to be sought for certain aviation activities, such as for scientific research. A departure from the Federal Aviation Administration's definitions could add confusion and an inconsistent application of laws and regulations for pilots and the general public.

Subpart D, Section 423.50, How can I obtain permission for prohibited or restricted uses and activities? We are revising this section to add a new subsection § 428.28(b). In paragraph (a), authorized officials may give authorization or issue permits for certain activities on Reclamation facilities, lands, and waterbodies otherwise prohibited or restricted by subsections 423.16(a)(3), 423.26, 423.27, 423.28(b), 423.29,(f), 423.30(c), 423.33(d), and 423.35(d)(1), and may terminate, revoke, or limit such authorization or permit for non-use or non-compliance with the terms of the authorization or permit, or for violation of any applicable law, or to protect the health, safety, or security of persons, Reclamation assets, or natural or cultural resources.

Subpart E, Sections 423.60 and 423.63. The reference to § 423.28 in both of these sections is being revised to read § 423.28(a) as it relates to the memorials portion only of § 423.28.

Public Comments

You may submit comments on this proposed rule by any one of the methods listed in the **ADDRESSES** section of this proposed rulemaking. We will not accept comments sent by email or fax or to an address not listed in **ADDRESSES**.

We will post your entire comment on *https://www.regulations.gov.* Before including personal identifying information in your comment, you should be aware that we may make your entire comment—including your personal identifying information—publicly available at any time. While you can ask us in your comment to withhold your personal identifying

information from public review, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *https://www.regulations.gov.*

Compliance With Other Laws, Executive Orders, and Department Policy

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this proposed rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

Regulatory Flexibility Act

This proposed rule will not have a significant regulatory effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Congressional Review Act

The Congressional Review Act defines a rule as major if it meets any of three criteria. The three criteria are:

(a) Does the proposed rule have an annual effect on the economy of $100 million or more?

(b) Will the proposed rule cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions?

(c) Does the proposed rule have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises? This proposed rule is not anticipated to be a major rule under the Congressional Review Act.

Unfunded Mandates Reform Act (UMRA)

This proposed rule would not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. This proposed rule would not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630. This proposed rule is not a government action capable of interfering with constitutionally protected property rights. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. It does not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the levels of Government. A federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This proposed rule complies with the requirements of Executive Order 12988. Specifically, this proposed rule:

(a) meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation, and

(b) meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (Executive Order 13175)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this proposed rule under the Department of the Interior's consultation policy and under the criteria in Executive Order 13175 and although there are no substantial direct effects on Federally recognized Indian Tribes, Reclamation chooses to engage in Tribal consultation and will fully consider Tribal views in the final rule. With the unique relationship between Federal Government and Indian Tribal governments, Reclamation aims to ensure Tribal governments are engaged, particularly in the discussion about potential permitting for reburial of their ancestors and NAGPRA cultural items on Reclamation managed lands.

Paperwork Reduction Act of 1995

This proposed rule does not contain information collection requirements and does not require a submission to the Office of Management and Budget under the Paperwork Reduction Act.

National Environmental Policy Act

This proposed rule is categorically excluded from National Environmental Policy Act of 1969 (NEPA) analysis under Department of the Interior categorical exclusion 43 CFR 46.210(i), which covers ''Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively, or case-by-case.'' This proposed rule would not change the existing allowances regarding public access to and conduct on Reclamation facilities, lands, and waterbodies except in instances where additional permits may be needed that could be subject to NEPA. Pursuant to 43 CFR 46.205(c), Reclamation has reviewed its reliance upon this categorical exclusion against the list of extraordinary circumstances at 43 CFR 46.215 and has found that none are applicable for this proposed rule. Therefore, neither an environmental assessment nor an environmental impact statement is required for this proposed rulemaking.

Effects on the Energy Supply (Executive Order 13211)

This proposed rule is not a significant energy action under the definition in Executive Order 13211 and does not require a Statement of Energy Effects.

Clarity of This Regulation

We are required by Executive Orders 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) be logically organized,

(b) use the active voice to address readers directly,

(c) use common, everyday words and clear language rather than jargon,

(d) be divided into short sections and sentences, and

(e) use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section of this proposed rulemaking. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

List of Subjects in 43 CFR Part 423

Law enforcement, Public conduct, Reclamation lands, and Reclamation projects.

Proposed Regulation Promulgation

For the reasons stated in the preamble, Reclamation proposes to amend part 423 of title 43 of the Code of Federal Regulations as follows:

PART 423—PUBLIC CONDUCT ON BUREAU OF RECLAMATION FACILITIES, LANDS AND WATERBODIES

■ 1. Revise the authority citation for part 423 to read as follows:

Authority: Public Law 107–69 (November 12, 2001) (Law Enforcement Authority) (43 U.S.C. 373a).

■ 2. Amend § 423.2 by revising the definitions of the terms *Aircraft, Firearm, Off-road vehicle,* and adding the term *Model Aircraft* in alphabetical order to read as follows:

§ 423.2 Definitions of terms used in this part.

Aircraft means a device that is:

(1) Used or intended to be used for flight in the air;

(2) Capable of carrying a pilot, cargo, and/or passengers;

(3) Controlled either by onboard crew or remotely; and

(4) Identified by the Federal Aviation Administration as: general aviation aircraft, bush planes, seaplanes, float planes, ski planes, gliders, and helicopters, including those that are float/ski-equipped and variations of model aircraft.

* * * * *

Firearm means:

(1) Any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive;

(2) The frame or receiver of any such weapon; and

(3) Any firearm muffler or firearm silencer.

* * * * *

Model aircraft means a device that is an unmanned aircraft that is:

(1) Capable of sustained flight in the atmosphere;

(2) Typically flown within visual line of sight of the person operating the device;

(3) Flown for hobby or recreational purposes;

(4) Incapable of carrying a pilot, passengers, or significant cargo; and

(5) Is remotely controlled.

* * * * *

Off-road vehicle means any motorized vehicle (including the standard automobile) designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or natural terrain. The term excludes all of the following:

* * * * *

(8) *Electric bikes* as defined and codified at 43 CFR part 420.

■ 3. Revise § 423.21 by adding paragraph (f) to read as follows:

§ 423.21 Responsibilities.

* * * * *

(f) You must pay applicable fees established by Federal, State, or local government recreation management entities, or contracted vendors for activities on Reclamation facilities, lands, and waterbodies such as, but not limited to, camping, boating, parking, day-use, or visitor tours.

■ 4. Revise § 423.27 to read as follows:

§ 423.27 Advertising and public solicitation.

(a) You must not engage in advertising or solicitation on Reclamation facilities, lands, or waterbodies except as allowed under valid contract with Reclamation, or as allowed by a permit issued pursuant to Subpart D of this part 423.

(b) It is prohibited to sell private goods, including personal property, or represent others in the selling of personal property, on Reclamation property unless specifically authorized under permit issued pursuant to Subpart D of this part 423.

■ 5. Revise § 423.28 to read as follows:

§ 423.28 Memorials and Native American Graves Protection and Repatriation Act (NAGPRA) reburials.

(a) Memorials. You must not bury, deposit, or scatter animal or human remains (except as noted in paragraph (b) of this section), or place memorials, markers, vases, or plaques on Reclamation facilities, lands, or waterbodies. This section does not apply to the burial of parts of fish or wildlife taken in legal hunting, fishing, or trapping.

(b) NAGPRA Reburials. You must not rebury human remains on Reclamation facilities, lands, or waterbodies unless permitted under Subpart D of this part 423. An Indian Tribe official or the lineal descendants of Federally recognized Tribes may apply for a permit issued pursuant to Subpart D of this part 423 to rebury NAGPRA (25 U.S.C. 3001–3013) human remains or cultural items (funerary objects, sacred objects, or objects of cultural patrimony) on Reclamation facilities, lands, or waterbodies.

■ 6. Amend § 423.30 by adding paragraph (d) to read as follows:

§ 423.30 Weapons, firearms, explosives, and fireworks.

* * * * *

(d) In recreation facilities or areas operated through contracts or other agreements by a managing recreation partner agency from another Federal, State, local, or Tribal governmental entity, such as a State or county park unit, the laws, ordinances, and regulations pertaining to possession and use of firearms shall be enforced by those partner agencies.

■ 7. Amend § 423.33 by revising paragraph (b) and adding paragraph (f) to read as follows:

§ 423.33 Camping.

* * * * *

(b) Camping stay limits:

(1) You must not camp on Reclamation lands at any single Reclamation recreation facility such as a campground for more than 14 days during any period of 30 consecutive days, except as allowed by permit issued under Subpart D of this part.

(2) You must not camp in a single location on Reclamation lands, including undeveloped project lands or open range for more than 14 days during any period of 30 consecutive days, and must move at least 10 miles after each 14-day period is reached, except as allowed by permit issued under Subpart D of this part.

* * * * *

(f) Where recreation facilities or other areas of Reclamation lands and waterbodies are operated through a contract or other agreement by a managing recreation partner of another Federal, State, local or Tribal governmental entity, such as a State or county park unit, the laws, ordinances,

and regulations pertaining to camping shall be enforced by those agencies.

■ 8. Amend § 423.35 by adding paragraphs (e) and (f) to read as follows:

§ 423.35 Animals.

* * * * *

(e) Animals must always be controlled on leashes, in cages or other methods of confinement or control when at or in a Reclamation facility.

(f) Where recreation facilities or other areas of Reclamation lands and waterbodies are operated through a contract or other agreement by a managing recreation partner of another Federal, State, local, or Tribal governmental entity, such as a State or county park unit, the laws, ordinances, and regulations pertaining to animals and pets shall be enforced by those agencies.

■ 9. Amend § 423.36 by revising paragraph (a) to read as follows:

§ 423.36 Swimming.

(a) * * *

(1) You may not swim past signs, fences, buoys, or barriers marking public access limits to, or within 100 yards of Reclamation structures including, but not limited to, dams, powerplants, pumping plants, spillways, water conveyance gates, intake structures, stilling basins, and outlet works,

(2) In canals, laterals, siphons, tunnels, and drainage works;

(3) At public docks, launching sites, and designated mooring areas; or

(4) As otherwise delineated by signs or other markers.

* * * * *

■ 10. Amend § 423.37 by revising paragraph (b) to read as follows:

§ 423.37 Winter activities.

* * * * *

(b) You must not drive past buoys or barriers marking public access limits to, or come within 100 yards of, Reclamation structures including, but not limited to, dams, powerplants, pumping plants, spillways, water conveyance gates, intake structures, stilling basins, and outlet works.

* * * * *

■ 11. In § 423.41, revise paragraphs (b), (c), (e), and (f), and remove paragraph (g). The revisions read as follows.

§ 423.41 Aircraft.

* * * * *

(b) Aircraft flight altitudes must include the following:

(1) You must not operate any aircraft within 400 feet near or over dams, powerplants, electrical switchyards, pumping plants, spillways, stilling basins, gates, intake structures, outlet works, warehouses, offices, maintenance facilities, campgrounds, gate houses, control houses, or other occupied recreation or operations facilities without prior approval by an authorized official.

(2) You must not operate any aircraft on or above Reclamation facilities, lands, and waterbodies in a careless, negligent, or reckless manner so as to endanger or harass persons or wildlife or pose a risk to infrastructure or natural or cultural resources.

(c) Temporary flight restrictions must include the following:

(1) You must not operate an aircraft on or above Reclamation facilities, lands, and waterbodies in violation of a temporary flight restriction established by the Federal Aviation Administration without prior approval by an authorized officer.

(2) This section does not provide authority to deviate from Federal or State regulations, or prescribed standards, including, but not limited to, regulations and standards concerning pilot certifications or ratings and airspace requirements.

(d) * * *

(e) You must comply with all applicable U.S. Coast Guard rules when operating a float/ski-equipped aircraft, including seaplanes, on Reclamation waterbodies.

(f) You must securely moor any float/ski-equipped aircraft, including seaplanes, remaining on Reclamation waterbodies in excess of 24 hours at mooring facilities and locations designated by an authorized official. Float/ski-equipped aircraft, including seaplanes, may be moored for periods of less than 24 hours on Reclamation waterbodies, except in special use areas otherwise designated by an authorized official, provided:

(1) * * *

(2) The operator remains in the vicinity of the float/ski-equipped aircraft, including seaplanes, and is reasonably available to relocate the aircraft if necessary.

■ 12. Amend § 423.50 by revising paragraph (a) to read as follows:

§ 423.50 How can I obtain permission for prohibited or restricted uses and activities?

(a) Authorized officials may issue permits to authorize activities on Reclamation facilities, lands, and waterbodies otherwise prohibited or restricted by §§ 423.16(a)(3), 423.26, 423.27, 423.28(b), 423.29(f), 423.30(c), 423.33(d), and 423.35(d)(1), and may terminate or revoke such permits for non-use; noncompliance with the terms of the permit; violation of any applicable law; or to protect the health, safety, or security of persons, Reclamation assets, or natural or cultural resources.

* * * * *

■ 13. Revise § 423.60(a)(1) to read as follows:

§ 423.60 How special use areas are designated.

(a) * * *

(1) Establish special use areas within Reclamation facilities, lands, or waterbodies for application of reasonable schedules of visiting hours; public use limits; and other conditions, restrictions, allowances, or prohibitions on particular uses or activities that vary from the provisions of Subpart C of this part 423, except § 423.28(a); and

* * * * *

■ 14. Revise § 423.63 to read as follows:

§ 423.63 Existing special use areas.

Areas where rules were in effect on April 17, 2006, that differ from the rules set forth in Subpart C are considered existing special use areas, and such differing rules remain in effect to the extent allowed by Subpart A, and to the extent they are consistent with § 423.28(a). For those existing special use areas, compliance with §§ 423.60 through 423.62 is not required until the rules applicable in those special use areas are modified or terminated.

Tanya Trujillo,

Assistant Secretary for Water and Science.

[FR Doc. 2023–03151 Filed 2–15–23; 8:45 am]

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Notices

Federal Register
Vol. 88, No. 32
Thursday, February 16, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Delegation of Authority Under Section 6501(b)(2) of the National Defense Authorization Act for Fiscal Year 2022

AGENCY: Agency for International Development.

ACTION: Notice.

SUMMARY: On January 17, 2023, President Biden delegated authority of approval vested in the President by the National Defense Authorization Act for Fiscal Year 2022 to designate an employee of the relevant Federal department or agency with fiduciary responsibility for United States contributions to the Coalition for Epidemic Preparedness Innovations (CEPI) to serve on the CEPI Investors Council and, if nominated, on the CEPI Board of Directors, as a representative of the United States. The President authorized and directed the Agency for International Development to publish this memorandum in the **Federal Register**. The text of the memorandum is set out below.

FOR FURTHER INFORMATION CONTACT: Allison Walker (*alwalker@usaid.com,* +1(202)368–1985).

SUPPLEMENTARY INFORMATION:

Memorandum for the Administrator of the United States Agency for International Development

SUBJECT: Delegation of Authority Under Section 6501(b)(2) of the National Defense Authorization Act for Fiscal Year 2022

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to the Administrator of the United States Agency for International Development the authority vested in the President by section 6501(b)(2) of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117–81) (22 U.S.C. 276c–5(b)) to designate an employee of the relevant Federal department or agency with fiduciary responsibility for United States contributions to the Coalition for Epidemic Preparedness Innovations (CEPI) to serve on the CEPI Investors Council and, if nominated, on the CEPI Board of Directors, as a representative of the United States. The delegation in this memorandum shall apply to any provision of any future public law that is the same or substantially the same as the provision referenced in this memorandum.

You are authorized and directed to publish this memorandum in the **Federal Register**.

Joseph R. Biden, Jr., and Allison Walker,
USAID Global Health Security Technical Advisor.

[FR Doc. 2023–03246 Filed 2–15–23; 8:45 am]
BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

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

Comments regarding this information collection received by March 20, 2023 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

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

Food and Nutrition Service

Title: Understanding the Relationship Between Poverty, Well-Being, and Food Security.

OMB Control Number: 0584–NEW.

Summary of Collection: The Supplemental Nutrition Assistance Program (SNAP) is the nation's largest federal program aimed at reducing food insecurity and increasing access to healthy food. SNAP is administered by the U.S. Department of Agriculture's (USDA), Food and Nutrition Service (FNS) and provides nutrition assistance benefits to program participants, the majority of whom are children, the elderly, or people with disabilities. Through this data collection effort, FNS seeks to understand the interrelated factors that lead to household food insecurity. Data will be collected in six counties experiencing persistent intergenerational poverty through a study titled *Understanding the Relationship Between Poverty, Well-Being, and Food Security.* The Food and Nutrition Act of 2008, as amended through Public Law 116–94, enacted December 20, 2019, provides the legislative authority for the USDA's FNS to administer SNAP. Section 17 of the Food and Nutrition Act of 2008 provides the authority to FNS to conduct research to help improve the administration and effectiveness of SNAP.

Need and Use of the Information: Understanding the Relationship Between Poverty, Well-Being, and Food Security will allow FNS to gain a deeper understanding of the interrelated factors that affect the food security status of SNAP beneficiaries and SNAP-eligible nonparticipants, information which has not previously collected in persistently poor counties. The USDA's Economic

Research Service (ERS) defines counties as being persistently poor if 20 percent or more of county residents were poor at each of several points in time over a 30-year period, measured by the 1980, 1990, and 2000 censuses and the 2007–2011 American Community Survey. Examining food insecurity and poverty in these populations will help FNS better understand the association between SNAP, other USDA-administered programs, and community-based assistance with well-being and the food environment. Study objectives include:

Objective 1: Produce descriptive statistics on key sociodemographic and economic variables, including household food security in a representative sample of all residents in each of six persistent-poverty counties.

Objective 2: Produce descriptive statistics on key sociodemographic and economic variables, including household food insecurity in two representative stratified subsamples of low and very low food-secure residents, in each county of six persistent-poverty counties.

Objective 3: Produce descriptive statistics for each subgroup in each county on key social, geospatial, and other policy-actionable elements of well-being and material deprivation associated with both household food security and SNAP participation.

Objective 4: Characterize the social context and the life course of individuals, within a multigenerational family unit, as they define their experiences with food insecurity through In-Depth Interviews (IDIs).

Description of Respondents: State and Local Government, Individuals and Households, Businesses or other For-Profit and Not-for-Profit.

Number of Respondents: 20,349.

Frequency of Responses: Reporting: On Occasion.

Total Burden Hours: 7,792.

Food and Nutrition Service

Title: Servicing SNAP Applicants and Participants with Limited English Proficiency (LEP).

OMB Control Number: 0584–NEW.

Summary of Collection: The Supplemental Nutrition Assistance Program (SNAP) provides a monthly benefit to eligible households to spend on food so that households and individuals with low incomes have access to enough nutritious food to lead healthy, active lives. The U.S. Department of Agriculture's (USDA) Food and Nutrition Service (FNS) administers SNAP in partnership with 53 State agencies (the 50 States, the District of Columbia [DC], Guam, and the U.S. Virgin Islands [USVI]). In three U.S. Territories—American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI), and Puerto Rico—nutrition assistance to low-income individuals and households is provided through the Nutrition Assistance Program (NAP).

As Federally assisted programs, both SNAP and NAP are required to comply with Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulations for the USDA at 7 CFR 15. (U.S. Department of Justice Civil Rights Division n.d.). Title VI prohibits entities that receive Federal financial assistance from discriminating against or otherwise excluding individuals on the basis of race, color, or national origin. In order to avoid discrimination against LEP persons on the ground of national origin, administrators of Federal financial assistance programs must take reasonable steps to ensure that LEP persons receive the language assistance necessary to afford them meaningful access to SNAP or NAP as applicable, free of charge. LEP individuals are defined as those who do not speak English as their primary language and have a limited ability to read, speak, write, or understand English (USDA 2014, p. 70775). Meaningful access requires that State agencies provide language assistance services that allow equal participation in and access to the benefits of a given program. To support meaningful access, language assistance must be provided at a time and place that avoids the effective denial of the service, benefit, or right at issue or the imposition of an undue burden on or delay in important rights, benefits, or services to the LEP person (USDA 2014, p. 70779–70780).

Need and Use of the Information: As the agency responsible for providing oversight and monitoring for both SNAP and NAP, it is critical that FNS understands whether and how SNAP and NAP agencies are complying with LEP requirements. The LEP study will provide FNS with actionable insights about how States and Territories operate language access policies and requirements. The study will gather detailed data from all 53 State SNAP agencies via a web-based survey, the three Territories that operate NAP via in-depth interviews, and will conduct case studies in four States. The study will provide FNS with a comprehensive summary of findings on policies and practices related to LEP access. It will increase FNS' understanding of SNAP LEP access policies and practices across the nation, including how States make decisions about these policies and practices, how they train staff on them, and their perceptions of Federal regulations. The findings from the study will help inform policymakers efforts to provide more meaningful access to SNAP and NAP.

Description of Respondents: State, Local, and Tribal Governments.

Number of Respondents: 100.

Frequency of Responses: Reporting: On Occasion.

Total Burden Hours: 238.

Food and Nutrition Service

Title: Rapid Cycle Evaluation of Operational Improvements in Supplemental Nutrition Assistance Program (SNAP) Employment & Training (E&T) Programs.

OMB Control Number: 0584–NEW.

Summary of Collection: Section 17 of the Food and Nutrition Act of 2008, as amended in March 2022, authorizes the Secretary of Agriculture to contract with private organizations and conduct research to improve the administration and effectiveness of SNAP. In addition to providing nutrition assistance benefits to millions of low-income individuals experiencing economic hardship, the Supplemental Nutrition Assistance Program (SNAP) provides work supports through Employment and Training (E&T) programs that help SNAP participants gain skills and find work. State agencies are required to operate an E&T program and have considerable flexibility to determine the services they offer and populations they serve. The U.S. Department of Agriculture's Food and Nutrition Service (FNS) seeks to ensure the quality of the services and activities offered through SNAP E&T programs by investing resources and providing technical assistance to help States build capacity, create more robust services, and increase engagement in their programs.

Need and Use of the Information: The Rapid Cycle Evaluation of Operational Improvements in SNAP E&T Programs (SNAP E&T RCE) evaluation will use rapid cycle evaluation (RCE) to test small-scale interventions in SNAP E&T operations or service delivery to determine their effectiveness in improving program engagement and service take-up. RCE is an approach that involves cycles of identifying, testing, and refining small scale, low-cost operational interventions to determine their effectiveness.

Description of Respondents: State and Local Government, Individuals and Households, Businesses or other For-Profit and Not-for-Profit.

Number of Respondents: 61,783.

Frequency of Responses: Reporting: On Occasion.

Total Burden Hours: 16,216.

Food and Nutrition Service

Title: Supplemental Nutrition Assistance Program: Trafficking Controls and Investigations (Card Replacement Revision).

OMB Control Number: 0584–0587.

Summary of Collection: The Food and Nutrition Service (FNS) requires States agencies to issue a warning notice to withhold replacement electronic benefit transfer (EBT) cards or a warning notice for excessive EBT card replacements for individual members of a Supplemental Nutrition Assistance Program (SNAP) household requesting four EBT cards in a 12-month period. These notices are being issued to educate SNAP recipients on use of the EBT card and to deter fraudulent activity.

Need and Use of the Information: The data collected will be used for a variety of purposes, mainly statutory and regulatory compliance. The data is gathered at various times, ranging from monthly, quarterly, annual or final submissions. Without the information, FNS would be unable to ensure integrity or effectively monitor any over-issued, under-issued, or trafficking.

Description of Respondents: 372,285 Individuals/Households and 53 State, Local or Tribal Government.

Number of Respondents: 372,338.

Frequency of Responses: Reporting: Quarterly, Semi-annually, Monthly; Annually.

Total Burden Hours: 35,863.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–03273 Filed 2–15–23; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Seek Reinstatement of an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to seek reinstatement of an information collection, the 2023 Census of Aquaculture. Revision to previous burden hours may be needed due to changes in the size of the target population, sampling design, and/or questionnaire length.

DATES: Comments on this notice must be received by April 17, 2023 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0237, by any of the following methods:

- *Email: ombofficer@nass.usda.gov.* Include the docket number above in the subject line of the message.
- *E-fax:* (855) 838–6382.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: Richard Hopper, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: Richard Hopper, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Kevin L. Barnes, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–2707. Copies of this information collection and related instructions can be obtained without charge from Richard Hopper, NASS—OMB Clearance Officer, at (202) 720–2206 or at *ombofficer@nass.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: 2023 Census of Aquaculture.

OMB Control Number: 0535–0237.

Type of Request: Statement to Seek Reinstatement of an Information Collection.

Abstract: The population for the 2023 Census of Aquaculture will include any farm or operation from which $1,000 or more of aquaculture products were produced and sold, or produced and distributed for restoration, conservation, enhancement, or recreational purposes in 2023. The aquaculture census will provide data on the number of farms, acreage, method of production, production and sales by aquaculture species, and sales outlets. Census data are used by the farmers, their representatives, the government, and many other groups of people concerned with the aquaculture industry. The census will provide a comprehensive inventory of aquaculture farms and their production. Results from the census will be used to evaluate new programs, disburse Federal funds, analyze market trends, and help determine the economic impact aquaculture has on the economy. The aquaculture census will provide the only source of dependable, comparable data by State.

Authority: The census of agriculture and subsequent follow-on censuses are required by law under the ''Census of Agriculture Act of 1997,'' Public Law 105–113, 7 U.S.C. 2204(g). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501, *et seq.*) and Office of Management and Budget regulations at 5 CFR part 1320.

All NASS employees and NASS contractors must also fully comply with all provisions of the Confidential Information Protection and Statistical Efficiency Act (CIPSEA) of 2018, Title III of Public Law 115–435, codified in 44 U.S.C. Ch. 35. CIPSEA supports NASS's pledge of confidentiality to all respondents and facilitates the agency's efforts to reduce burden by supporting statistical activities of collaborative agencies through designation of NASS agents, subject to the limitations and penalties described in CIPSEA. NASS uses the information only for statistical purposes and publishes only tabulated total data.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 minutes per positive response, 2 minutes per screen-out, and 2 minutes per refusal. The sample will equal the number of respondents who reported positive aquaculture data in the 2022 Census of Agriculture.

Respondents: Farmers and Farm Managers.

Estimated Number of Respondents: 6,000.

Estimated Total Annual Burden on Respondents: 3,400 hours.

Comments: 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 will 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 through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be

summarized in the request for OMB approval.

Signed at Washington, DC, January 9, 2023.

Kevin L. Barnes,

Associate Administrator.

[FR Doc. 2023–03291 Filed 2–15–23; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Seek Approval To Reinstate an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to seek reinstatement of an information collection, the 2023 Irrigation and Water Management Survey. Revision to previous burden hours will be needed due to changes in the size of the target population, sampling design, and questionnaire length.

DATES: Comments on this notice must be received by April 17, 2023 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0234, by any of the following methods:

- *Email: ombofficer@nass.usda.gov.* Include the docket number above in the subject line of the message.
- *E-fax:* (855) 838–6382.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: Richard Hopper, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: Richard Hopper, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Kevin Barnes, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–2707. Copies of this information collection and related instructions can be obtained without charge from Richard Hopper, NASS–OMB Clearance Officer, at (202) 720–2206 or at *ombofficer@nass.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: 2023 Irrigation and Water Management Survey.

OMB Control Number: 0535–0234.

Type of Request: Statement to Seek Reinstatement of an Information Collection.

Abstract: The 2023 Irrigation and Water Management Survey is conducted every 5 years as authorized by the Census of Agriculture Act of 1997 (Pub. L. 105–113). The 2023 Irrigation and Water Management Survey will use a combined probability sample of all farms and horticultural operations that reported irrigation and/or irrigation equipment on the 2022 Census of Agriculture. This irrigation survey aims to provide a comprehensive inventory of farm irrigation practices with detailed data relating to acres irrigated by category of land use, acres and yields of irrigated and non-irrigated crops, quantity of water applied, and method of application to selected crops. Also included will be 2023 expenditures for maintenance and repair of irrigation equipment and facilities; purchase of energy for on-farm pumping of irrigation water; investment in irrigation equipment, facilities, and land improvement; cost of water received from off-farm water supplies; and questions related to water reuse and security. The irrigation questions for horticultural specialties will provide the area irrigated in the open and under protection, source of water, and the irrigation method used at the State level and by 20 Water Resource Regions (WRR). A table will be published showing the total estimated quantity of water applied for crops including horticultural specialties. Irrigation data are used by the farmers, their representatives, government agencies, and many other groups concerned with the irrigation industry and water use issues. This survey will provide the only source of dependable, comparable irrigation data by State and Water Resources Region (WRR). The National Agricultural Statistics Service will use the information collected only for statistical purposes and will publish the data only as aggregate totals.

Authority: The census of agriculture and subsequent follow-on censuses are required by law under the ''Census of Agriculture Act of 1997,'' Public Law 105–113, 7 U.S.C. 2204(g). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501, *et seq.*) and Office of Management and Budget regulations at 5 CFR part 1320.

All NASS employees and NASS contractors must also fully comply with all provisions of the Confidential Information Protection and Statistical Efficiency Act (CIPSEA) of 2018, Title III of Public Law 115–435, codified in 44 U.S.C. Ch. 35. CIPSEA supports NASS's pledge of confidentiality to all respondents and facilitates the agency's efforts to reduce burden by supporting statistical activities of collaborative agencies through designation of NASS agents, subject to the limitations and penalties described in CIPSEA. NASS uses the information only for statistical purposes and publishes only tabulated total data.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 45–60 minutes per response. Publicity materials and instruction sheets will account for about 15 minutes of additional burden per respondent. Respondents who refuse to complete the survey will be allotted 2 minutes of burden per attempt to collect the data.

Respondents: Farmers, Ranchers, Farm Managers, and producers of Nursery, Greenhouse and Floricultural Products.

Estimated Number of Respondents: 35,000.

Estimated Total Annual Burden on Respondents: 28,000 hours.

Comments: 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 will 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 through the use of appropriate automated, electronic, mechanical, technological, or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, January 26, 2023.

Kevin L. Barnes,

Associate Administrator.

[FR Doc. 2023–03290 Filed 2–15–23; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket No. NRCS–2023–0002]

Notice of Intent To Prepare an Environmental Impact Statement for the Graveyard Wash Flood Retarding Structure Assessment, Graham County, Arizona

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of intent (NOI) to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Natural Resources Conservation Service (NRCS) Arizona State Office announces its intent to prepare an EIS for the Graveyard Wash Flood Retarding Structure Assessment located within the Frye Creek—Stockton Wash Watershed in Graham County, Arizona. NRCS will examine alternative solutions through the EIS to bring the Graveyard Wash flood retarding structure (FRS) into compliance with current Federal and State standards. The EIS will also serve as the necessary environmental documentation for any cooperating agencies and contact with potential cooperating agencies will be initiated. NRCS is requesting comments to identify significant issues, potential alternatives, information, and analyses relevant to the Proposed Action from all interested individuals, Federal and State agencies, and Tribes.

DATES: We will consider comments that we receive by March 20, 2023. Comments received after close of comment period will be considered to the extent possible.

ADDRESSES: We invite you to submit comments in response to this notice. You may submit your comments through one of the methods below:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov* and search for docket ID NRCS–2023–0002. Follow the online instructions for submitting comments; or
- *Mail or Hand Delivery:* Jones and DeMille Engineering, Attn: Jenna Jorgensen, 1535 S 100 W, Richfield, UT 84701. In your comment, specify the docket ID NRCS–2023–0002.

All comments received will be posted and made publicly available on *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Greg Wahl; telephone: (928) 864–5533; email: *greg.wahl@usda.gov.* Individuals who require alternative means for communication should contact USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Purpose and Need

The primary purpose for watershed planning is to preserve flood protection downstream of the Graveyard Wash FRS. Specifically, to reduce the risk of flooding to residences, commercial buildings, schools, the hospital, shopping centers, and agricultural areas, canals and irrigation systems, and transportation corridors (road and railway) in the Frye Creek—Stockton Wash Watershed in Graham County, Arizona. Watershed planning is authorized under the Watershed Protection and Flood Prevention Act of 1954 (Pub. L. 83–566), as amended, and the Flood Control Act of 1944 (Pub. L. 78–534).

Recent assessments indicate that the dam and appurtenances do not meet current NRCS and Arizona Dam Safety standards. Action is needed to bring the dam and spillway facilities into compliance with current standards and to continue to protect property from flooding. Estimated Federal funds required for the construction of the proposed action (described below) would exceed $25 million and the proposed action will therefore require an EIS as specified in 7 CFR 650.7(a)(2).

Preliminary Proposed Action and Alternatives

The Frye Creek—Stockton Wash Watershed-focused planning area is approximately 240 square miles. NRCS will provide technical and financial assistance for the proposed project (described below) through the NRCS Watershed Protection and Flood Prevention Program. NRCS will also design and implement a selected alternative. The EIS is expected to evaluate three alternatives: two action alternatives or no action alternative. The alternatives we intend to carry forward in the analysis are:

Alternative 1—No Action: Taking no action would consist of activities carried out if no Federal action or funding were provided. The sponsor's course of action would be to bring the dam into compliance with Arizona Dam Safety requirements, but not necessarily NRCS standards.

Alternative 2—Full Dam Rehabilitation with Structural Spillway Alternative (Proposed Action). The proposed action is to rehabilitate the dam to maintain flood prevention below the dam and to bring the dam into compliance with NRCS and Arizona Dam Safety standards for a 100-year design life. Rehabilitation will consist of raising the embankment crest and lengthening the embankment to meet minimum design storm requirements. Segments of the embankment with unsuitable soils will be reconstructed. The principal spillway will also be lengthened, which may require reconstruction of the inlet, outlet, or both of the spillway. The existing auxiliary spillway will be replaced with a structural spillway and stilling basin designed to pass minimum design storm requirements and to improve flood protection for the 100-year storm event.

Alternative 3—Full Dam Rehabilitation with Earthen Spillway Alternative. The proposed action is to rehabilitate the dam as described in Alternative 2. The difference will be the existing earthen auxiliary spillway will be reconstructed to a width of 400 feet, regraded, and reinforced as needed to pass minimum design storm requirements and to improve flood protection for the 100-year storm event.

Also, the proposed action that would occur, any cooperating agencies could adopt this EIS as their NEPA.

Summary of Expected Impacts

An NRCS evaluation of this federally assisted action indicates that proposed alternatives may have local, regional, or national impacts on the environment. Potential impacts include flood plain alteration due to the construction of a new dam. Potential realignment of roads or utilities could occur, depending on the chosen alternative. Long-term beneficial impacts will occur with flood protection mitigating loss of life and property within the community. An NRCS evaluation of this federally assisted action indicates that proposed alternatives may trigger NRCS cost share policies when the Federal share of the construction costs exceed $25 million dollars.

Anticipated Permits and Authorizations

The following permits and other authorizations are anticipated to be required:

- *CWA Section 404 Permit.* Implementation of the proposed Federal action may require a Clean Water Act (CWA) section 404 permit from the U.S. Army Corps of Engineers. Permitting with the U.S. Army Corps of Engineers regarding potential impacts will be finalized prior to final design and construction.
- *CWA Section 401 Permit.* The project may also require water quality certification under section 401 of the CWA and permitting under Section 402 of the CWA (National Pollutant Discharge Elimination System Permit).
- *Dam Safety and Floodplain Permit.* Local dam safety and floodplain permits will be required.

• *NHPA Section 106 Consultation.* Consultation with Tribal Nations and interested parties will be conducted as required by the National Historic Preservation Act of 1966 (as amended) (16 U.S.C. 470f).

• *Endangered Species Act (ESA) Consultation.* Consultation with the USFWS is being conducted as required by the Endangered Species Act of 1973.

Schedule of Decision-Making Process

A Draft EIS will be prepared and circulated for review and comment by agencies and the public for at least 45 days as required by 40 CFR 1503.1, 1502.20, 1506.11, and 1502.17, and 7 CFR 650.13. The Draft EIS is anticipated to be published in the **Federal Register** approximately 6 months after publication of this NOI; notices will also be published using local media outlets. A Final EIS is anticipated to be published within 4 months of completion of the public comment period for the Draft EIS.

NRCS will decide whether to implement one of the alternatives as evaluated in the EIS. A Record of Decision will be completed after the required 30-day waiting period and will be publicly available. The responsible Federal official for the NRCS is Keisha Tatem, Arizona State Conservationist.

Public Scoping Process

Public scoping meetings were held virtually on April 20, 2022, when the project was being considered under an Environmental Assessment (EA). Public notice of the project and scoping meetings were distributed widely prior to the meetings. Scoping meeting presentation materials, including a video recording of the meeting, are available on the project website at *https://graveyardwash.com/.*

The meeting consisted of a presentation on the PL–566 Program,[1] the dam deficiencies, and the NEPA process, and included a question-and-answer session. Public scoping meetings provide an opportunity to review and evaluate the project alternatives, express concern or support, and gain further information regarding the project. Comments received, including the names and addresses of those who comment, will be part of the public record.

Identification of Potential Alternatives, Information, and Analyses

NRCS invites agencies, Tribes, and individuals who have special expertise, legal jurisdiction, or interest in the Frye Creek—Stockton Wash Watershed in Graham County, Arizona, to provide comments concerning the scope of the analysis and identification of potential alternatives, information, and analyses relevant to the Proposed Action in writing.

Authorities

This document is published pursuant to the National Environmental Policy Act (NEPA) regulations regarding publication of a notice of intent to issue an environmental impact statement (40 CFR 1501.9(d)). This EIS will be prepared to evaluate potential environmental impacts as required by section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality regulations (40 CFR parts 1500 through 1508); and NRCS regulations that implement NEPA in 7 CFR part 650. Watershed planning is authorized under the Watershed Protection and Flood Prevention Act of 1954, as amended, (Pub. L. 83–566) and the Flood Control Act of 1944 (Pub. L. 78–534).

Federal Assistance Program

The title and number of the Federal Assistance Programs, as found in the Assistance Listing,[2] to which this document applies is 10.904, Watershed Protection and Flood Prevention.

Executive Order 12372

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' requires consultation with State and local officials that would be directly affected by proposed Federal financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance and direct Federal development. This program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

USDA Non-Discrimination Policy

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

Individuals who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720–2600 (voice and text telephone) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any phone). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at: *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410 or email: *OAC@usda.gov.*

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

Keisha Tatem,

Arizona State Conservationist, Natural Resources Conservation Service.

[FR Doc. 2023–03268 Filed 2–15–23; 8:45 am]

BILLING CODE 3410–16–P

[1] NRCS manages the Watershed Protection and Flood Prevention Program (also known as Watershed Operations, Public Law 83–566, or just PL–566.

[2] See *https://sam.gov/content/assistance-listings.*

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket No. NRCS–2021–0007]

Response to Western Water Quantity (WWQ) Listening Session

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice.

SUMMARY: The Natural Resources Conservation Service (NRCS) hosted a virtual, open, public listening session,

on December 17, 2020, with remote participation only, for public input about water quantity in the western United States as it relates to existing NRCS programs. NRCS provided stakeholders both an opportunity to give oral testimony during the listening session and a 30-day public comment period for additional input. NRCS received comments from 66 stakeholders, including representatives from national organizations, individuals or organizations from 13 western States, and one Indian Tribe. This notice responds to comments received during the listening session and the subsequent public comment period, which closed on January 19, 2021, and identifies the actions that NRCS has taken and will be taking in the months ahead.

FOR FURTHER INFORMATION CONTACT: Martha Joseph; phone: (814) 203–5562; email: *martha.joseph@usda.gov.* Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Background

On December 17, 2020, NRCS hosted a virtual, open, public listening session, with remote participation only, for public input about water quantity in the western United States as it relates to existing NRCS programs. NRCS provided stakeholders both an opportunity to give oral testimony during the listening session and a 30-day public comment period for additional input. NRCS requested input about the challenges, needed breakthroughs, and priorities, and identified that it would consider this information in its evaluation of existing programs and efforts to position these programs to achieve positive outcomes.

NRCS is taking this opportunity to provide a summary of the comments it received, responses to questions and comments made, and describe the actions NRCS is currently taking. In particular, NRCS charged its State Conservationists to work with its stakeholders to identify the priority water quantity issues in their State, the current agency response to addressing them, and the key barriers, challenges, or gaps that stakeholders may be able to help fill. NRCS evaluated this information to develop western water quantity strategies through a framework for conservation.

Discussion of WWQ Comments

The **Federal Register** notice for the WWQ listening session, which was published on December 3, 2020 (85 FR 78114–78115), included a 30-day comment period that ended January 19, 2021. NRCS received comments from 66 stakeholders, including representatives from national organizations, individuals, or organizations from 13 western States, and one Indian Tribe. These organizations represented State and national conservation partners, State and local governments, one Federal agency, one Tribal government, NGOs, and several individuals. NRCS received comments as follows:

- 40 speakers provided testimony during the listening session; 12 of these speakers also sent in written comments during the comment period; and
- 26 additional commenters provided written comments outside of the listening session.

NRCS did not receive any comments from Missouri River Basin States. Additionally, while most of the 574 Federally-recognized Indian Tribes, including Alaska Native Corporations, are in the West, NRCS only received one comment from an Indian Tribe. NRCS has identified this as a particular area of concern to increase its outreach specific to assistance for water resources.

The **Federal Register** notice for the Public Listening Session encouraged the stakeholders to provide feedback on any of the following questions:

1. *For agricultural producers:* What is your most pressing water related issue that may constrain or currently constrains your operations?

Response: Overall, NRCS received responses from producer groups which represent thousands of producers and individual producers. These producer groups expressed interest in a range of topics, but surface water availability and water rights spurred the most interest. The topics of groundwater, interagency collaboration, locally-led conservation, climate and weather variability, funding, irrigation, programs, soil health, and wildlife habitat were each mentioned.

2. *For non-producers and organizations:* What is your most pressing water related issue that is needed by the agricultural community you assist?

Response: While these comments spanned the complete range of administrative and natural resource topics, there was significant interest around funding, NRCS standards and specifications, interagency collaboration, and program eligibility. Other areas of particular interest included: irrigation; climate and weather variability; groundwater; locally-led conservation; related water quality issues; planning assistance; and surface water.

3. *For producers and organizations:* What is your most pressing water related issue with which NRCS can help you through a technical or financial assistance program or through facilitating and engaging in a collaboration or partnership?

Response: The comments identified that groundwater, irrigation, climate and weather variability, and surface water were the most pressing water-related natural resource issues for which NRCS could provide assistance. The comments also identified related water quality issues, water rights, wildlife habitat, soil health, source water, aquifer recharge, and snow survey and water supply forecasting as issues with which NRCS could provide assistance.

4. How can NRCS best coordinate with other Federal, State, and local efforts to address water related issues?

Response: NRCS received significant interest for greater interagency collaboration and coordination, particularly with respect to implementation under the National Environmental Policy Act (NEPA). NRCS received comments that focused specifically on interagency coordination in Oregon, which recommended an interagency working group.

5. How can State Technical Committees assist in addressing your most pressing water related issues?

Response: NRCS received comments identifying the State Technical Committees in three topic areas: locally-led conservation, ground water, and source water. These comments broadly sought realignment of State Technical Committee priorities to favor practices that increase water use efficiency, reduce evapotranspiration loss, and the use of cover crops to address groundwater supply and aquifer recharge. Some comments focused on nursery and container operations. A recommendation was made that representatives from water utilities be on the State Technical Committees.

6. What additional issues do you confront about which NRCS should have awareness?

Response: NRCS received comments identifying issues associated with cloud-seeding, increased partnerships with drinking water utilities, and whether NRCS can play a role in the retirement of water rights. The comments recommended that NRCS be given additional authority to engage with the Department of the Interior's Bureau of Reclamation (BOR) and the Department of the Army's Corps of Engineers to support and complement their programs to promote water conservation and increased water use efficiency.

Comments Summarized by Topic

In this notice, the comments have been organized and summarized alphabetically by topic. The topics include aquifer recharge, climate and weather variability, funding, general comments, groundwater, initiatives, interagency coordination, irrigation, locally-led conservation, NRCS standards and specifications, planning assistance, program eligibility, related water quality issues, snow survey and water supply forecasting, soil health, source water, water rights, and wildlife habitat.

Aquifer Recharge

Comment: Comments related to aquifer recharge focused on the Ogallala aquifer and made calls for increased funding for efforts to conserve in this area.

Response: NRCS is supporting innovative technology for aquifer and groundwater recharge through two interim conservation practice standards, Managed Aquifer Recharge, and Groundwater Recharge Basin or Trench. NRCS—California will evaluate their effectiveness as part of their fiscal year (FY) 2022 conservation program delivery. Through the new framework for conservation, NRCS has identified strategies that land owners and managers can take, and assistance they may receive, to reduce groundwater withdrawals and support aquifer recharge.

Climate and Weather Variability

Comment: Comments expressed concern about how weather variability is causing their livestock and crops to suffer, harming their bottom lines, creating discontent, and causing litigation between neighbors. The comments requested additional research and solutions for addressing climate change, specifically in terms of adaptation, such as cloud seeding, reduced water use, runoff control, stormwater collection, and aquifer recharge. The comments also supported mitigation efforts, such as carbon sequestration.

Response: NRCS helps farmers and ranchers understand the vulnerabilities of natural resources that changing climatic conditions exacerbate. NRCS provides financial and technical assistance to improve conservation of natural resources for the benefit of the production system and surrounding landscape. NRCS also focuses on information delivery and assistance to producers and landowners to increase conservation practices on private lands that help agricultural operations and their communities build resilience to variable climatic conditions and extreme weather. Many of these same practices also provide opportunities to sequester carbon or reduce greenhouse gas emissions. Categories of conservation practices for climate smart agriculture and forestry include soil health, nitrogen management, grazing and pastures, agroforestry, forestry, and upland wildlife habitat.

Funding

Comment: A wide range of comments related to funding. Most comments can be summarized as requests to fund repairs or improvements to aging infrastructure. Comments also related to the types or rates for NRCS payments, such as funding for practices that maintain streamflow and use of local economic analysis when establishing payment rates. There were recommendations that NRCS provide financial incentives for incorporating voluntary, rotational fallowing with cover crop to support basin-wide water conservation, including developing financial incentives that adequately compensate for the costs of taking land out of production on a temporary or longer rotation to conserve water.

Response: NRCS will continue to improve its outreach efforts to ensure producers in local areas are aware of their options. NRCS has a variety of programs that are used to address aging infrastructure, including Watershed and Flood Prevention Operations, the Watershed Rehabilitation Program, the Regional Conservation Partnership Program, and the Environmental Quality Incentives Program (EQIP).

The Infrastructure Investment and Jobs Act also known as ''the Bipartisan Infrastructure Law'' (BIL), Public Law 117–58, see Division J, Title I) provides $918 million for implementation of projects through NRCS watershed programs. In particular, BIL provides $500 million for the Watershed and Flood Prevention Operations Program, which helps entities of state, local, and Tribal governments (project sponsors) protect and restore watersheds up to 250,000 acres by cooperating with them to plan and install projects for a range of water-related purposes including rural, municipal, and industrial water supply, and use and disposal of water. BIL also provides $118 million for the Watershed Rehabilitation Program, which helps project sponsors rehabilitate aging dams constructed with NRCS assistance. Finally, BIL provides $300 million for the Emergency Watersheds Program to address impairment to watersheds caused by natural disasters such as floods, drought, and wildfires.

Through the Regional Conservation Partnership Program, NRCS co-invests in public-private partnerships to expand collective conservation efforts to address drought, poor water quality, and other natural resource concerns. Eligible farmers and ranchers located in an EQIP priority area for the WaterSMART Initiative (WSI) are automatically ranked for funding improvements to managing soil moisture, irrigation water use efficiency, and protecting irrigation water sources from depletion. These targeted EQIP–WSI investments are coordinated with investments made by the BOR's WSI Program in water conservation and drought resilience projects carried out by water suppliers in the same area.

General Comments

Comment: Several comments expressed general support for NRCS activities and suggested that NRCS should do more to address water quantity issues in the West.

Response: NRCS appreciates the feedback. NRCS has developed western water quantity strategies through its framework for conservation and is currently rolling out guidance for implementing them. NRCS charged its State Conservationists to work with its stakeholders to identify the priority water quantity and related issues in their state, the current agency response to addressing them, and the key barriers, challenges, or gaps that stakeholders may be able to help fill. These issues, actions, and needs have been evaluated by NRCS subject matter experts and NRCS will share its findings resulting from this evaluation in its new framework.

Groundwater

Comment: Comments acknowledged that NRCS programs currently address groundwater protection but recommend that NRCS should increase program funding and partnership input on setting priorities.

Response: State Technical Committees, including local work groups, provide NRCS an avenue for direct stakeholder input to each State Conservationist, and NRCS strives to be responsive to stakeholder input. Through its framework for conservation action with respect to western water quantity and related issues, NRCS encourages stakeholders to continue to engage with local workgroups and State Technical Committees to identify priorities, such as groundwater depletion, to target with NRCS programs, funding, and activities.

Initiatives

Comment: Comments recommended that the agency develop a specific program or targeted funding effort that focuses funding for groundwater depletion in the western region where applicants compete only against other groundwater projects.

Response: NRCS acknowledges the suggestion to target funds specifically towards addressing groundwater depletion in the western region. NRCS currently has multiple initiatives in-place that address the complex challenges of preventing groundwater depletion across a vast region. These include the WaterSMART initiative, National Water Quality Initiative (expanded in FY 2019 to include source water protection), and others. NRCS believes that an additional program initiative could create undue complexity and reduce state-level flexibility.

Inter-Agency Coordination

Comment: Comments about inter-agency coordination related to overall coordination of activities, including comments recommending that NRCS coordinate its program implementation with other Federal agencies, especially BOR.

Response: NRCS has long recognized the importance of Federal agency coordination on water quantity and related issues, and USDA is a member of the Water Subcabinet, the Drought Resilience Interagency Working Group, has a liaison to the Western States Federal Agency Support Team (WestFAST) of the Western States Water Council (WSWC) of the Western Governors' Association, and is permanent co-chair of the National Drought Resilience Partnership. NRCS and the United States Army Corps of Engineers (USACE) recently renewed their agreement to coordinate on infrastructure projects and natural resources conservation in watersheds to benefit communities across the landscape. NRCS facilitates coordination of its program delivery in each State with other federal agencies through its State Technical Committee meetings. Additionally, NRCS participates in meetings held by other Federal or State agencies to ensure that there is high level coordination between the State and regional agency heads of other resource agencies and the broader State Conservation partnership.

Irrigation

Comment: There were multiple comments supporting current efforts from NRCS to address irrigation issues in the West. Several stakeholders requested financial assistance for aging infrastructure such as conveyance systems, municipal and industrial water supplies, and recreational areas. Comments requested that NRCS and other Federal agencies align their timelines more closely. Comments referred directly to irrigation efficiency and recommended the adoption of advanced conservation technology.

Response: NRCS has several programs that help support the repair or replacement of aging water infrastructure, including through the EQIP assistance to water management entities, the Regional Conservation Partnership Program Alternative Funding Arrangements, and the Watershed Rehabilitation Program under Watershed Operations. NRCS coordinates the assistance available through these programs, targeting different aspects of surface water and conveyance systems. Further, NRCS field offices work with producers on a daily basis to assist them with increasing their irrigation efficiency. Irrigation efficiency is addressed by almost every irrigation-related conservation practice available to our producers.

NRCS furthers the availability of innovative and advanced conservation technologies through an appropriate vetting process to ensure that producers receive a technically sound and operation-appropriate system. NRCS encourages innovators to consider applying for funding opportunities through Conservation Innovation Grants and On-Field Conservation Innovation Trials authorized under the Agriculture Improvement Act of 2018 (2018 Farm Bill, Pub. L. 115–334).

There were also multiple comments about financial assistance through NRCS that seem to fall outside of our authority.

Locally-Led Conservation

Comment: Comments related to the locally-led conservation process in regards to the 2018 Farm Bill program administration. These comments identified issues related to interaction with the State Technical Committee, local work group functions, and staffing concerns.

Response: NRCS continues to value coordination at the local level to help solve western water quantity issues, which is why NRCS regularly engages local and State stakeholders through State Technical Committee and local work group meetings. This approach has proven effective by empowering State leaders and coalitions to establish funding priorities that ensure critical resource concerns are allocated proportionate resources.

NRCS supports the installation of site-specific conservation practices that help farmers manage moisture, reduce drought susceptibility, efficiently use irrigation water, and conserve ground and surface water by providing technical and financial assistance towards:

- Installing on-farm irrigation water delivery systems and structures, for example, irrigation ditch lining, irrigation pipelines, micro-irrigation systems, reservoirs, sprinklers, and subsurface systems; and
- Establishing vegetation and improving land management practices, for example, crop row arrangement, drainage and irrigation water management, forage harvest management, nutrient management, crop rotations, residue and tillage management, and cover crops.

NRCS uses interim conservation practices as a mechanism for field testing new technology for addressing water conservation and drought not addressed by the existing NRCS suite of conservation practice standards. For example, two new groundwater recharge practices are being tested in California as described above.

NRCS uses a multitude of tools to document staffing needs by field, area, and State offices. These tools are used to help target staff resources to those areas suffering multiple years of drought to assist producers who wish to install practices that address water quantity and related natural resource concerns.

NRCS Standards and Specifications

Comment: Comments related to NRCS standards and specifications, including coordination of NRCS standards with those of BOR.

Response: NRCS technical leadership will compare NRCS and BOR standards and will identify if there are any potential conflicts. If so, NRCS will work with BOR to identify criteria allowances that are mutually acceptable to NRCS and BOR.

Planning Assistance

Comment: Comments related to planning assistance identified issues related to ground water depletion, water budgets, funding local water supply conservation projects, and coordination with public agencies on regulations and permits.

Response: Through the Watershed and Flood Prevention Operations Program, NRCS provides planning assistance and feasibility studies directly to entities of State and local governments and Tribes in need of help

with protecting and restoring small watersheds for multiple purposes including agricultural water management. Agricultural water management may include water supply structures, ground water recharge, and other large infrastructure works of improvement in the community. Such locally-sponsored projects are highly coordinated between sponsoring and regulatory agencies and involve detailed studies before design and implementation can begin. NRCS also provides conservation planning assistance and technical expertise to individual farmers, ranchers, and forest managers wanting to make conservation improvements to the land they manage.

Program Eligibility

Comment: Comments related to NRCS conservation program eligibility as it relates to western water quantity concerns. Comments encourage NRCS to prioritize water quantity more in its programs.

Response: NRCS appreciates the comments and recognizes that addressing drought stress and the need to support drought resilience is increasing the priority that may be placed on water quantity resource concerns. NRCS encourages partners to participate in the locally led process and State Technical Committees to influence where NRCS places priorities. In addition, these needs are incorporated within the new-framework for conservation action described below.

Related Water Quality Issues

Comment: Comments identified issues related to water quality including funding on and off farm irrigation systems, funding community-based organizations, considering the effects of irrigation systems on both surface and ground water resources, flexibility at local and state levels, prioritizing large scale projects, interstate coordination, outcome estimation, final program rules, water infrastructure, climate change impacts, Strike Force areas, the importance of healthy soil and soil moisture management to efficient irrigation water use and water conservation, and the impact of non-native vegetation on watershed hydrology caused by threats to the landscape such as wildfire and feral hogs.

Response: NRCS appreciates the suggestions for fully utilizing its authorities to help communities and individuals across the West address issues related to the supply and quality of water. Specific suggestions for each watershed and conservation program have been received by appropriate national and State level program managers for consideration.

NRCS has developed a framework for conservation as described below to coordinate its programs' resources more effectively with those of other public agencies and private stakeholders in each water resource region and State. Communication strategies will be included to inform the public more effectively about available program resources to achieve desired outcomes for ground and surface waters.

NRCS works in partnership with State Conservation Agencies, State Associations of Conservation Districts, and other types of partners in each State or territory, and with Indian Tribes to expand our reach and put more conservation on the land. NRCS coordinates with other Federal agencies who help States, Tribes, local governments, and other water resource managers to leverage Federal resources available for achieving water resource conservation outcomes from delivering its programs.

Snow Survey and Water Supply Forecasting

Comment: Comments related to snow survey and water supply forecasting. In general, the comments relate to improving the sharing of information between agencies and entities involved with water supply data collection and having a unified focus on addressing the issues in eastern Oregon.

Response: The NRCS State Conservationist for Oregon has worked in cooperation with Federal and State agency partners to develop and provide water supply condition and data reports. The reports are generated bi-weekly each year to assist in identifying flood potential in near-real-time in the Umatilla River and McKay Creek watersheds in eastern Oregon. These reports can be accessed at the NRCS Oregon Snow Survey website at the following link: *https://www.nrcs.usda.gov/wps/portal/nrcs/detailfull/or/snow/?cid=nrcseprd854607.* Interested parties can sign up (subscribe) to receive the reports at the link as well.

At the request of the Oregon State Climatologist, the NRCS Oregon Snow Survey Supervisory Hydrologist serves as a lead technical consultant to provide guidance for Oregon's input to the National Drought Monitor (DM). The goal of these efforts is to make Oregon's drought designation mimic the national model so that a unified message is provided by the State of Oregon, relating drought to partners and stakeholders.

NRCS Oregon is a lead technical member of the Governor's Drought Readiness Council and Water Supply Availability Committee. The Drought Readiness Council and Water Supply Availability Committee members include Federal and State agency representatives that review drought and water supply conditions monthly to provide input to the Governor's office and to make decisions based upon critical water supply conditions across Oregon.

Soil Health

Comment: Comments expressed that soil health is important, especially in a rangeland setting.

Response: NRCS appreciates this comment supporting soil health and agrees that soil health is very important in rangelands to improve water infiltration and retention.

Source Water

Comment: Comments suggested source water considerations should be a part of the western water quantity strategy. The comments recommended that NRCS consider involving drinking water providers or other source water stakeholders in setting priorities, including in the State Technical Committees.

Response: Protecting drinking water sources is a priority for NRCS and partners and is incorporated into our program implementation as identified by the 2018 Farm Bill. NRCS will continue to address this priority and agrees that having source water stakeholders participating in State Technical Committee meetings is a good idea. Interested stakeholders should contact their NRCS State Conservationists to receive information about State Technical Committee participation.

Water Rights

Comment: Comments suggested that NRCS needs to have greater involvement in processes related to State determinations of water rights, such as a curtailment by a State engineer.

Response: NRCS does not have a role with the purchase, sale, enforcement, or adjudication of water rights under State law.

Wildlife Habitat

Comment: Comments addressed a multitude of wildlife habitat issues.

Response: NRCS has strong relationships with its Federal and State wildlife partners, and greatly appreciates the coordination of its programs with these partners under the Working Lands for Wildlife (WLFW) partnership. Through WLFW, USDA uses a win-win approach to

systematically target conservation efforts to improve agricultural and forest productivity which enhances wildlife habitat on working landscapes. Target species are used as barometers for success because their habitat needs are representative of healthy, functioning ecosystems where conservation efforts benefit a much broader suite of species. NRCS recognizes that water availability is a need for wildlife as well as agriculture, and partners help NRCS to identify mutually beneficial solutions for both.

Framework for Conservation

In January 2021, NRCS convened a working group of State and national subject matter experts to review input received from the public listening session and written comment period. Based on the working group's analysis, NRCS developed a western-focused strategic framework to address challenges posed by water scarcity and guide program delivery at the State and local level. Referred to as NRCS's Western Water and Working Lands Framework for Conservation Action, the broad planning guidance will help NRCS leaders in each State improve their business plans to better address cross-cutting issues related to protecting water resources in their State.

The first step of developing the new framework was completed in the summer of 2021 when State Conservationists briefed State Technical Committees with a summary of input received during the listening session and provided them an opportunity to advise further. NRCS experts reviewed all the input received and formulated strategies for increasing conservation opportunities that address challenges related to managing water resources across western landscapes. The next step will be for NRCS leaders in each State to use the framework to develop targets for increased conservation actions over the next few years.

Terry Cosby,

Chief, Natural Resources Conservation Service.

[FR Doc. 2023–03278 Filed 2–15–23; 8:45 am]

BILLING CODE 3410–16–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the South Carolina Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the South Carolina Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a business meeting via web conference. The purpose of the meeting is to hear from advocates on topical civil rights.

DATES: Thursday, March 2, 2023, at 12:00 p.m. Eastern Time.

ADDRESSES: The meeting will be held via Zoom.

Zoom Link (Audio/Visual): https://tinyurl.com/htv52waw.

Join by Phone (Audio Only): 1–833–435–1820 US Toll-Free; Meeting ID: 160 437 1491#.

FOR FURTHER INFORMATION CONTACT: Barbara Delaviez, DFO, at *ero@usccr.gov* or 1–202–529–8246.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the conference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Individuals who are deaf, deafblind, and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and meeting ID.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Barbara Delaviez at *ero@usccr.gov.*

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, South Carolina Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at the above email or street address.

Agenda

I. Welcome and Roll Call
II. Presentations: Civil Rights Issues in South Carolina
III. Other Business
IV. Next Steps
V. Public Comment
VI. Adjournment

Dated: February 13, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–03295 Filed 2–15–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Office of the Secretary

U.S.-EU Trade and Technology Council (TTC) Talent for Growth Task Force Solicitation of Nominations for Membership

AGENCY: Office of the Secretary, U.S. Department of Commerce.

ACTION: Solicitation of nominations.

SUMMARY: The Department of Commerce seeks nominations for immediate consideration for the TTC Talent for Growth Task Force (Task Force). The Task Force was established on December 5, 2022 in the U.S.-EU Joint Statement of the TTC following its 3rd TTC Ministerial meeting and announced by U.S.-EU TTC Co-Chairs U.S. Secretary of Commerce Gina Raimondo and European Commission (EC) Executive Vice-President Margrethe Vestager. The Task Force will help position the United States and EU to achieve the well-trained workforce critical to maintaining leadership in emerging and existing technologies. The Commerce Department is seeking nominations for the U.S. members of the Task Force.

DATES: Nominations for immediate consideration for appointment must be received on or before 5:00 p.m. EST on February 27, 2023.

ADDRESSES: Jana Juginovic, Senior Policy Advisor, Office of the Secretary, Room 5039, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; email: *jjuginovic@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Jana Juginovic, Senior Policy Advisor, Office of the Secretary, Room 5039, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; email: *jjuginovic@doc.gov;* telephone: 202.288.5238. For additional information about the Task Force, please visit the Talent for Growth Task Force Press Release and Fact Sheet at:

https://www.commerce.gov/news/press-releases/2022/12/us-secretary-commerce-gina-raimondo-and-european-commission-executive and *https://www.commerce.gov/news/fact-sheets/2022/12/fact-sheet-us-eu-trade-and-technology-council-ttc-talent-growth-task-force.* The U.S.-EU Joint Statement of the TTC can be found at *https://www.whitehouse.gov/briefing-room/statements-releases/2022/12/05/u-s-eu-joint-statement-of-the-trade-and-technology-council/.*

SUPPLEMENTARY INFORMATION: The Task Force has a maximum of 14 members: 6 private sector Members from the U.S.; 6 private sector Members from the EU; 1 U.S. government Chair; and 1 EU government Chair. The Department of Commerce is seeking nominations for immediate consideration to fill the 6 private sector U.S. positions on the Task Force for a one-year term. These 6 private sector Members will be selected based on the following criteria:

(1) Two Members representing the business sector. Candidates must be a CEO or in an executive leadership position of a U.S. company headquartered in the United States. For purposes of Task Force eligibility, a U.S. company is at least 51 percent owned by U.S. persons.

(2) Two Members representing organizations that support training (*i.e.,* foundation, community college, university, not-for-profit). Candidates must be the President or equivalent of a U.S. organization that is headquartered in the United States. For purposes of Task Force eligibility, a U.S. organization is majority controlled by U.S. persons as determined by its board of directors (or comparable governing body), membership, and funding sources, as applicable.

(3) Two Members representing Labor Unions. Candidates must be the President or in an executive leadership position of a U.S. Labor Union organization that is headquartered in the United States. For purposes of Task Force eligibility, a U.S. Labor Union organization is majority controlled by U.S. persons as determined by its board of directors (or comparable governing body), membership, and funding sources, as applicable.

Members will work closely with the U.S. and EU Executive Directors, who are responsible for the day-to-day management of the Task Force. The Executive Directors are government officials and report to their respective government Chairs.

Members will be selected based upon their knowledge and experience with training for jobs in or impacted by technology. Members may also be selected for their knowledge and experience that will help the Task Force share best practices, showcase training opportunities, and communicate the benefits of participating in careers in the technology sector.

The Task Force will provide recommendations collectively to the U.S. and EU TTC Co-Chairs and undertake actions to showcase training opportunities and increase public understanding of the promise of these careers. Drawing on best practices, the Task Force will serve as a catalyst for innovative skills approaches.

After a review of the applicants, the Secretary will appoint the U.S. members to the Task Force. All members shall serve in a representative capacity, expressing the views and interests of a U.S. company or U.S. organization, as well as its particular sector. Members serving in such a representative capacity are not Special Government Employees.

Each U.S. member of the Task Force must be a U.S. citizen or lawful permanent resident of the United States and not registered as a foreign agent under the Foreign Agents Registration Act. All appointments are made without regard to political affiliation. Self-nominations will be accepted.

Members of the Task Force will not be compensated for their services or reimbursed for their travel expenses. The Task Force shall meet approximately quarterly, or as determined by the Chairs of the Task Force, either in person in the United States or the EU or using a virtual or hybrid format.

U.S. members shall serve at the pleasure of the Secretary.

All nominations for membership on the Task Force should provide the following information:

(1) Name, title, and relevant contact information (including phone, fax, and email address) of the individual requesting consideration;

(2) An affirmative statement that the applicant is not required to register as a foreign agent under the Foreign Agents Registration Act of 1938;

(3) Short biography of nominee including credentials; and

(4) An affirmative statement that the applicant meets all Task Force eligibility requirements for representative members, including that the applicant represents a U.S. company or U.S. organization.

Please do not send company or organization brochures.

Nominations may be emailed to *jjuginovic@doc.gov,* or mailed to Jana Juginovic, Senior Policy Advisor, Office of the Secretary, Room 5039, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; and must be received on or before 5:00 p.m. EST on *February 27, 2023.*

Nominees selected for appointment to the Task Force will be notified.

Privacy Act Statement

The collection, maintenance, and disclosure of this information is governed by the Privacy Act of 1974 (5 U.S.C. 552a). The Department of Commerce is authorized to collect this information pursuant to authorities that include but are not limited to: 15 U.S.C. 1512. The principal purposes for which the Department will use the information is to assist in selecting the six U.S. private sector members of the Task Force. Information received will be maintained in COMMERCE/DEPT–11, Candidates for Membership, Members, and Former Members of Department of Commerce Advisory Committees. A complete set of routine disclosures is included in the system of records notice, published both in the **Federal Register** and on the Department's website at: *https://osec.doc.gov/opog/PrivacyAct/PrivacyAct_SORNs.html.* Disclosing this information to the Department of Commerce is voluntary. However, if you do not provide this information, or only provide part of the information requested, you may not be considered for membership on the Talent for Growth Task Force.

Authority: 15 U.S.C. 1512.

Dated: February 14, 2023.

David Langdon,

Deputy Director, Office of Policy and Strategic Planning, Department of Commerce.

[FR Doc. 2023–03390 Filed 2–15–23; 8:45 am]

BILLING CODE 3510–20–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Non-Infrastructure Metrics

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before April 17, 2023.

ADDRESSES: Interested persons are invited to submit written comments via email to Aminata Kamara, Program Analyst, U.S. Department of Commerce, at *akamara2@eda.gov* or *PRAcomments@doc.gov.* Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Aminata Kamara, Program Analyst, U.S. Department of Commerce, at *akamara2@eda.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Economic Development Administration (EDA) leads the Federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. Guided by the basic principle that sustainable economic development should be locally driven, EDA works directly with communities and regions to help them build the capacity for economic development based on local business conditions and needs. The Public Works and Economic Development Act of 1965 (PWEDA) (42 U.S.C. 3121 *et seq.*) is EDA's establishing authority and is the primary legal authority under which EDA awards financial assistance. Under PWEDA, EDA provides financial assistance to both rural and urban distressed communities by fostering entrepreneurship, innovation, and productivity through investments in infrastructure development, capacity building, and business development to attract private capital investments and new and better-quality jobs to regions experiencing economic distress. Further information on EDA programs and financial assistance opportunities can be found at *www.eda.gov.*

EDA's expansive portfolio of programs, the changing economy, and advances in the field of program evaluation require comprehensive and relevant data collection to increase EDA's transparency, accountability, and inform the effectiveness of its investments. Thus, EDA proposes extending forms ED–915, ED–916, ED–917, and ED–918, which are currently used to collect performance information from EDA grantees. These data collection instruments cover EDA's infrastructure and non-infrastructure program portfolios thereby helping EDA tell a better, more wholistic story of its investments and impact in the communities and regions it serves.

The purpose of this notice is to seek comments from the public and other Federal agencies on a request for an extension without changes on the ED–916, ED–917 and ED–918 non-infrastructure metrics for recipients of awards under EDA's non-infrastructure portfolio of programs and the ED–915 construction metrics for recipients under EDA's construction portfolio of programs. EDA will require award recipients to submit this data at predetermined intervals (ED–916: semiannually throughout the period of performance for their award; ED–917/18: annually for 5 years; ED–915 at 3-, 6-, 9-year intervals after the award) to determine the activities grantees were able to undertake because of the EDA award and the outcomes from those activities attributable to the EDA grants for both grantee organizations and the clients they serve.

II. Method of Collection

Data will be collected electronically.

III. Data

OMB Control Number: 0610–0098.

Form Number(s): ED–915, ED–916, ED–917, ED–918.

Type of Review: Regular submission (extension of a currently approved information collection).

Affected Public: EDA-funded grantees: State, local and tribal governments; community organizations; non-profit organizations; Indian Tribes; Institution of Higher Education or a consortium of institutions of higher education.

Estimated Number of Respondents:

Data collection form	Estimated number of respondents	Estimated time per response	Estimated total burden hours
ED–915 (3–6–9 years)	742	1 hour	742
ED–916 (semi-annual)	1,067	1.5 (× 2)	3,201
ED–917 (annual)	416	8	3,328
ED–918 (annual)	1,285	6	7,710
Total	3,510		14,981

Estimated Total Annual Cost to Public: $XXX.

Respondent's Obligation: Mandatory for all non-infrastructure award recipients.

Legal Authority: The Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 *et seq.*).

IV. Request for Comments

EDA is soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of the estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that are submitted in response to this notice are a matter of public record. EDA will include or summarize each comment in its request to OMB to approve this ICR. Before including an address, phone number, email address, or other personal identifying information in a comment, please be aware that the entire comment—including personal identifying information— may be made publicly available at any time. EDA will attempt to honor requests to it hold personal identifying information from public review, however EDA cannot guarantee that it will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2023–03292 Filed 2–15–23; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

International Trade Adminstration

[A–351–858, A–791–827]

Certain Lemon Juice From Brazil and the Republic of South Africa: Antidumping Duty Orders

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

SUMMARY: Based on affirmative final determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC), Commerce is issuing antidumping duty orders on certain lemon juice (lemon juice) from Brazil and the Republic of South Africa (South Africa).

DATES: Applicable February 16, 2023.

FOR FURTHER INFORMATION CONTACT: Dakota Potts (Brazil) or Elizabeth Bremer and Zachary Shaykin (South Africa), AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0223, (202) 482–4987, or (202) 482–2638, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 735(d) and 777(i) of the Tariff Act of 1930, as amended (the Act), on December 23, 2022, Commerce published its affirmative final determinations in the less-than-fair-value (LTFV) investigations of lemon juice from Brazil and South Africa.[1] On February 6, 2023, the ITC notified Commerce of its final determinations, pursuant to section 735(d) of the Act, that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of LTFV imports of lemon juice from Brazil and South Africa.[2]

Scope of the Orders

The product covered by these orders is lemon juice from Brazil and South Africa. For a complete description of the scope of the orders, *see* the appendix to this notice.

Antidumping Duty Orders

Based on the above-referenced affirmative final determinations by the ITC that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of LTFV imports of lemon juice from Brazil and South Africa,[3] in accordance with sections 735(c)(2) and 736 of the Act, Commerce is issuing these antidumping duty orders. Moreover, because the ITC determined that imports of lemon juice from Brazil and South Africa are materially injuring a U.S. industry, unliquidated entries of such merchandise from Brazil and South Africa, entered or withdrawn from warehouse for consumption, are subject to the assessment of antidumping duties.

Therefore, in accordance with section 736(a)(1) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of lemon juice from Brazil and South Africa. With the exception of entries occurring after the expiration of the provisional measures period and before publication of the ITC's final affirmative injury determinations, as further described below, antidumping duties will be assessed on unliquidated entries of lemon juice from Brazil and South Africa entered, or withdrawn from warehouse, for consumption, on or after August 4, 2022, the date of publication of the *Preliminary Determinations* in the **Federal Register**.[4]

Continuation of Suspension of Liquidation and Cash Deposits

Except as noted in the ''Provisional Measures'' section of this notice, in accordance with section 736 of the Act, Commerce will instruct CBP to continue to suspend liquidation on all relevant entries of lemon juice from Brazil and South Africa. These instructions suspending liquidation will remain in effect until further notice.

Commerce will also instruct CBP to require cash deposits equal to the amounts indicated below. Accordingly, effective on the date of publication in the **Federal Register** of the notice of the ITC's final affirmative injury determination, CBP will require, at the same time as importers would normally deposit estimated duties on this subject merchandise, a cash deposit equal to the cash deposit rates listed in the table below. The all-others rate applies to all producers or exporters not specifically listed, as appropriate.

Estimated Weighted-Average Dumping Margins

The estimated weighted-average dumping margins are as follows:

Brazil

Exporter/producer	Estimated weighted-average dumping margin (percent)
Citrus Juice Eireli	22.31
Louis Dreyfus Company Sucos S.A	[5] 0.00
All Others	22.31

South Africa

Exporter/producer	Estimated weighted-average dumping margin (percent)
Cape Fruit Processors Pty. Ltd	47.89
Granor Passi (Pty.) Ltd	73.69
All Others	47.89

Provisional Measures

Section 733(d) of the Act states that suspension of liquidation pursuant to an affirmative preliminary determination may not remain in effect for more than four months, except where exporters representing a significant proportion of exports of the subject merchandise request that Commerce extend the four-month period to no more than six months. At the request of exporters that account for a significant proportion of exports of lemon juice from Brazil and South Africa, Commerce extended the four-month period to six months in

[1] *See Certain Lemon Juice from Brazil: Final Affirmative Determination of Sales at Less Than Fair Value,* 87 FR 78939 (December 23, 2022); *see also Certain Lemon Juice from the Republic of South Africa: Final Affirmative Determination of Sales at Less Than Fair Value,* 87 FR 78928 (December 23, 2023).

[2] *See* ITC's Letter, Investigation Nos. 731–TA–1578–1579 (Final), dated February 6, 2023; *see also Lemon Juice from Brazil and South Africa,* 88 FR 8912 (February 10, 2023).

[3] *Id.*

[4] *See Certain Lemon Juice from Brazil: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 87 FR 47697 (August 4, 2022) (*Brazil Preliminary Determination*); *see also Certain Lemon Juice from the Republic of South Africa: Preliminary Affirmative Determination of Sales at Less Than Fair Value,* 87 FR 47707 (August 4, 2022) (*South Africa Preliminary Determination*); and *Certain Lemon Juice from the Republic of South Africa: Postponement of Final Determination and Extension of Provisional Measures,* 87 FR 56631 (September 15, 2022) (*South Africa Postponement Notice*).

[5] Merchandise produced and exported by Louis Dreyfus Company Sucos S.A. (LDC) is excluded from the Brazil order. This exclusion does not apply to merchandise produced by LDC and exported by any other company or merchandise produced by any other company and exported by LDC. Resellers of merchandise produced by LDC are also not entitled to this exclusion.

these investigations.[6] Commerce published the *Preliminary Determinations* on August 4, 2022.[7]

The extended provisional measures period, beginning on the date of publication of the *Preliminary Determinations,* ended on January 30, 2023. Therefore, in accordance with section 733(d) of the Act and our practice,[8] Commerce will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of lemon juice from Brazil and South Africa entered, or withdrawn from warehouse, for consumption after January 30, 2023, the final day on which the provisional measures were in effect, until and through the day preceding the date of publication of the ITC's final affirmative injury determinations in the **Federal Register**. Suspension of liquidation and the collection of cash deposits will resume on the date of publication of the ITC's final determinations in the **Federal Register**.

Establishment of the Annual Inquiry Service Lists

On September 20, 2021, Commerce published the final rule titled ''*Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*'' in the **Federal Register**.[9] On September 27, 2021, Commerce also published the notice titled ''*Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*'' in the **Federal Register**.[10] The *Final Rule* and *Procedural Guidance* provide that Commerce will maintain an annual inquiry service list for each order or suspended investigation, and any interested party submitting a scope ruling application or request for circumvention inquiry shall serve a copy of the application or request on the persons on the annual inquiry service list for that order, as well as any companion order covering the same merchandise from the same country of origin.[11]

In accordance with the *Procedural Guidance,* for orders published in the **Federal Register** after November 4, 2021, Commerce will create an annual inquiry service list segment in Commerce's online e-filing and document management system, Antidumping and Countervailing Duty Electronic Service System (ACCESS), available at *https://access.trade.gov,* within five business days of publication of the notice of the order. Each annual inquiry service list will be saved in ACCESS, under each case number, and under a specific segment type called ''AISL-Annual Inquiry Service List.''[12]

Interested parties who wish to be added to the annual inquiry service list for an order must submit an entry of appearance to the annual inquiry service list segment for the order in ACCESS within 30 days after the date of publication of the order. For ease of administration, Commerce requests that law firms with more than one attorney representing interested parties in an order designate a lead attorney to be included on the annual inquiry service list. Commerce will finalize the annual inquiry service list within five business days thereafter. As mentioned in the *Procedural Guidance,* the new annual inquiry service list will be in place until the following year, when the *Opportunity Notice* for the anniversary month of the order is published.

Commerce may update an annual inquiry service list at any time as needed based on interested parties' amendments to their entries of appearance to remove or otherwise modify their list of members and representatives, or to update contact information. Any changes or announcements pertaining to these procedures will be posted to the ACCESS website at *https://access.trade.gov.*

Special Instructions for Petitioners and Foreign Governments

In the *Final Rule,* Commerce stated that, ''after an initial request and placement on the annual inquiry service list, both petitioners and foreign governments will automatically be placed on the annual inquiry service list in the years that follow.''[13] Accordingly, as stated above, the petitioners and foreign governments should submit their initial entry of appearance after publication of this notice in order to appear in the first annual inquiry service list. Pursuant to 19 CFR 351.225(n)(3), the petitioners and foreign governments will not need to resubmit their entries of appearance each year to continue to be included on the annual inquiry service list. However, the petitioners and foreign governments are responsible for making amendments to their entries of appearance during the annual update to the annual inquiry service list in accordance with the procedures described above.

Notification to Interested Parties

This notice constitutes the antidumping duty orders with respect to lemon juice from Brazil and South Africa pursuant to section 736(a) of the Act. Interested parties can find a list of antidumping duty orders currently in effect at *https://www.trade.gov/data-visualization/adcvd-proceedings.*

These orders are published in accordance with section 736(a) of the Act and 19 CFR 351.211(b).

Dated: February 10, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Orders

The product covered by these orders is certain lemon juice. Lemon juice is covered: (1) with or without addition of preservatives, sugar, or other sweeteners; (2) regardless of the GPL (grams per liter of citric acid) level of concentration, brix level, brix/acid ratio, pulp content, clarity; (3) regardless of the grade, horticulture method (*e.g.,* organic or not), processed form (*e.g.,* frozen or not-from-concentrate), the size of the container in which packed, or the method of packing; and (4) regardless of the U.S. Department of Agriculture Food and Drug Administration (FDA) standard of identity (as defined under 19 CFR 146.114 *et seq.*) (*i.e.,* whether or not the lemon juice meets an FDA standard of identity).

Excluded from the scope are: (1) lemon juice at any level of concentration packed in retail-sized containers ready for sale to consumers; and (2) beverage products, such as lemonade, that contain 20 percent or less lemon juice as an ingredient by actual volume. ''Retail-sized containers'' are defined as lemon juice products sold in ready-for-sale packaging (*e.g.,* clearly visible branding,

[6] *See Brazil Preliminary Determination; see also South Africa Postponement Notice.*

[7] *See Brazil Preliminary Determination; see also South Africa Preliminary Determination.*

[8] *See, e.g., Certain Corrosion-Resistant Steel Products from India, 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, 48392 (July 25, 2016).

[9] *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 86 FR 52300 (September 20, 2021) (*Final Rule*).

[10] *See Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions,* 86 FR 53205 (September 27, 2021) (*Procedural Guidance*).

[11] *Id.*

[12] This segment will be combined with the ACCESS Segment Specific Information (SSI) field which will display the month in which the notice of the order or suspended investigation was published in the **Federal Register**, also known as the anniversary month. For example, for an order under case number A–000–000 that was published in the **Federal Register** in January, the relevant segment and SSI combination will appear in ACCESS as ''AISL-January Anniversary.'' Note that there will be only one annual inquiry service list segment per case number, and the anniversary month will be pre-populated in ACCESS.

[13] *See Final Rule,* 86 FR at 52335.

nutritional facts listed, *etc.*) containing up to 128 ounces of lemon juice by actual volume.

The scope also includes certain lemon juice that is blended with certain lemon juice from sources not subject to these orders. Only the subject lemon juice component of such blended merchandise is covered by the scope of these orders. Blended lemon juice is defined as certain lemon juice with two distinct component parts of differing country(s) of origin mixed together to form certain lemon juice where the component parts are no longer individually distinguishable.

The product subject to these orders is currently classifiable under subheadings 2009.31.4000, 2009.31.6020, 2009.31.6040, 2009.39.6020, and 2009.39.6040 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these orders is dispositive.

[FR Doc. 2023–03282 Filed 2–15–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–886]

Polyethylene Retail Carrier Bags From the People's Republic of China: Preliminary Determination of No Shipments and Rescission of Review in Part; 2021–2022

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that Dongguan Nozawa Plastics Products Co., Ltd. and United Power Packaging, Ltd. (collectively, Nozawa) had no shipments of polyethylene retail carrier bags (PRCBs) from the People's Republic of China (China) during the period of review (POR), August 1, 2021, through July 31, 2022. In addition, Commerce is rescinding this administrative review, in part, for Crown Polyethylene Products (International) Ltd. (Crown), for which the review request was withdrawn. We invite interested parties to comment on these preliminary results of review.

DATES: Applicable February 16, 2023.

FOR FURTHER INFORMATION CONTACT: Christopher Williams, 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) 482–5166.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 2004, Commerce published in the **Federal Register** the antidumping duty order on PRCBs from China.[1] On August 2, 2022, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order.*[2] On August 31, 2022, the petitioners[3] timely requested an administrative review of the *Order* with respect to Nozawa and Crown.[4] Commerce received no other requests for an administrative review of the *Order.* On October 11, 2022, pursuant to section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.221(c)(1)(i), Commerce initiated this administrative review.[5] On November 29, 2022, the petitioners timely withdrew their request for an administrative review of Crown.[6]

Scope of the Order

The products covered by the *Order* are PRCBs which may be referred to as t-shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non-sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than 0.035 inch (0.889 mm) and no less than 0.00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches but not longer than 40 inches (101.6 cm).

PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, *e.g.,* grocery, drug, convenience, department, specialty retail, discount stores, and restaurants, to their customers to package and carry their purchased products. The scope of the *Order* excludes (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end-uses other than packaging and carrying merchandise from retail establishments, *e.g.,* garbage bags, lawn bags, trash-can liners.

Imports of the subject merchandise are currently classifiable under statistical category 3923.21.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). This subheading also covers products that are outside the scope of the *Order.* Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the *Order* is dispositive.

Rescission of Administrative Review, in Part

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested a review withdraws its request within 90 days of the date of publication of the notice of initiation. Because the petitioners timely withdrew their review request for Crown, and no other party requested an administrative review of Crown, we are rescinding the administrative review of Crown, pursuant to 19 CFR 351.213(d)(1).

Preliminary Determination of No Shipments

On November 9, 2022, Nozawa timely filed a letter certifying that it had no U.S. exports, sales, or entries of subject merchandise to the United States during the POR.[7] We requested that U.S. Customs and Border Protection (CBP) report any information contradicting Nozawa's claim of no shipments[8] and in response to our query, CBP confirmed Nozawa's claim of no shipments of subject merchandize during the POR.[9] Therefore, we preliminarily determine that Nozawa had no shipments of subject merchandise to the United States during the POR. Consistent with Commerce's practice, we will complete the review of Nozawa and issue

[1] *See Antidumping Duty Order: Polyethylene Retail Carrier Bags from the People's Republic of China,* 69 FR 48201 (August 9, 2004) (*Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 87 FR 47187 (August 2, 2022).

[3] The petitioners are the Polyethylene Retail Carrier Bag Committee and its individual members, Hilex Poly Co., LLC and Superbag Corporation.

[4] *See* Petitioners' Letter, ''Polyethylene Retail Carrier Bags from the People's Republic of China: Request for Administrative Review,'' dated August 31, 2022.

[5] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 61278 (October 11, 2022).

[6] *See* Petitioners' Letter, ''Polyethylene Retail Carrier Bags from the People's Republic of China: Partial Withdrawal of Request for Administrative Review,'' dated November 29, 2022.

[7] *See* Nozawa's Letter, ''Polyethylene Retail Carrier Bags from the People's Republic of China: No Shipment Certification,'' dated November 9, 2022.

[8] *See* CBP message number 2334401 dated November 28, 2022, available at *https://aceservices.cbp.dhs.gov/adcvdweb/.*

[9] *See* Memorandum, ''Polyethylene Retail Carrier Bags from the People's Republic of China; No Shipment Inquiry for Dongguan Nozawa Plastics Products Co., Ltd. and United Power Packaging, Ltd. during the Period 08/01/2021 through 07/31/2022,'' dated January 30, 2023.

appropriate instructions to CBP based on the final results of review.[10]

China-Wide Entity

Commerce's policy regarding conditional review of the China-wide entity applies to this administrative review.[11] Under this policy, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the China-wide entity, and because we did not self-initiate a review, the China-wide entity rate (*i.e.,* 77.57 percent) [12] is not subject to change as a result of this review.

Disclosure and Public Comment

Normally, Commerce discloses to interested parties the calculations performed in connection with the preliminary results within five days of the public announcement, or if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). However, because Commerce did not calculate a weighted-average dumping margin for any company in this review, nor for the China-wide entity, there are no calculations to disclose.

Pursuant to 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs, filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), no later than 30 days after the date of publication of this notice. ACCESS is available to registered users at *https://access.trade.gov*. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than seven days after the date for filing case briefs.[13] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[14] Parties submitting case or rebuttal briefs are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[15]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case or rebuttal briefs. An electronically filed hearing request must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.

Unless extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not 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).

Assessment Rates

Upon issuance of the final results of this review, Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[16] Because Commerce is rescinding this administrative review with respect to Crown, Commerce will instruct CBP to assess antidumping duties on all appropriate entries of PRCBs from China from Crown during the POR at rates equal to the cash deposit rate of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i).

With respect to Nozawa if we continue to find that Nozawa had no shipments of subject merchandise in the final results, then following the issuance of the final results of review, Commerce will instruct CBP to liquidate any suspended entries that entered under Nozawa's case number (*i.e.,* at the rate applicable to Nozawa) at the China-wide rate.[17]

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

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) for previously investigated or reviewed Chinese and non-Chinese exporters that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (2) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the China-wide entity (*i.e.,* 77.57 percent); and (3) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter(s) that supplied that non-Chinese exporter (or, if unidentified, that of the China-wide entity). These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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

Notification to Interested Parties

Commerce is issuing and publishing these preliminary results in accordance

[10] *See, e.g., Certain Frozen Warmwater Shrimp from Thailand; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012–2013,* 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012–2013,* 79 FR 51306, 51307 (August 28, 2014).

[11] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[12] *See Order,* 69 FR at 48203.

[13] *See* 19 CFR 351.309(d)(1); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006, 17007 (March 26, 2020) (''To provide adequate time for release of case briefs via ACCESS, {Enforcement and Compliance} intends to schedule the due date for all rebuttal briefs to be 7 days after case briefs are filed (while these modifications remain in effect).'').

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

[15] *See* 19 CFR 351.309(c)(2) and (d)(2).

[16] *See* 19 CFR 351.212(b)(1).

[17] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65695 (October 24, 2011).

with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h)(1) and 351.221(b)(4).

Dated: February 10, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–03300 Filed 2–15–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–857]

Certain Freight Rail Couplers and Parts Thereof From Mexico: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation

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

DATES: Applicable February 16, 2023.

FOR FURTHER INFORMATION CONTACT: Jonathan Hall-Eastman or Samuel Brummitt, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1468 or (202) 482–7851, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 18, 2022, the U.S. Department of Commerce (Commerce) initiated a less-than-fair-value (LTFV) investigation of imports of certain freight rail couplers and parts thereof (freight rail couplers) from Mexico.[1] Currently, the preliminary determination is due no later than March 7, 2023.

Postponement of Preliminary Determination

Section 733(b)(l)(A) of the Tariff Act of 1930, as amended (the Act) requires Commerce to issue the preliminary determination in a LTFV investigation within 140 days after the date on which Commerce initiated the investigation. However, if Commerce concludes that the parties concerned in the investigation are cooperating and determines that the investigation is extraordinarily complicated, sections 733(c)(1)(B)(i) and (ii) of the Act allow Commerce to postpone the preliminary determination until no later than 190 days after the date on which Commerce initiated the investigation.

Commerce has determined that the parties involved in the proceeding are cooperating and that the investigation is extraordinarily complicated.[2] Specifically, Commerce requires additional time to analyze the questionnaire responses and issue appropriate requests for clarification and additional information, particularly regarding the question of whether the respondent Amsted Rail Company, Inc. and its affiliate, ASF–K de Mexico S. de R.L. de C.V., have a viable home market. Therefore, in accordance with section 733(c)(1)(B) of the Act, Commerce is postponing the due date for the preliminary determination of this investigation by 50 days. As a result, Commerce will issue its preliminary determination no later than April 26, 2023. Pursuant to section 735(a)(l) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determination will continue to be 75 days after the date of the preliminary determination, unless postponed at a later date.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: February 10, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–03283 Filed 2–15–23; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China and Mexico: Initiation of Less-Than-Fair-Value Investigations,* 87 FR 64444 October 25, 2022).

[2] *See* section 733(c)(1)(B) of the Act.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Manufacturing Extension Partnership Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of open meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) announces that the Manufacturing Extension Partnership (MEP) Advisory Board will hold an open meeting on Tuesday, March 7–Wednesday, March 8, 2023.

DATES: The meeting will be held for two half days on Tuesday, March 7, 2023 from 1 p.m. to 5:30 p.m. and Wednesday, March 8, 2023, from 9 a.m. to 12 p.m. Eastern time.

ADDRESSES: The meeting will be held in person and via webinar from the Information Technology and Innovation Foundation (ITIF), 700 K St NW, Suite 600, Washington, DC 20001. Please note admittance instructions in the **SUPPLEMENTARY INFORMATION** section below. Interested parties should be sure to check the NIST MEP Advisory Board website for the most up-to-date information at *http://www.nist.gov/mep/about/advisory-board.cfm.*

FOR FURTHER INFORMATION CONTACT: Cheryl L. Gendron, Hollings Manufacturing Extension Partnership Program, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 4800, Gaithersburg, Maryland 20899–4800; telephone number (301) 975–2785; email: *cheryl.gendron@nist.gov.*

SUPPLEMENTARY INFORMATION: The MEP Advisory Board is authorized under 15 U.S.C 278k(m), in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. The Hollings Manufacturing Extension Partnership Program (Program) is a unique program consisting of Centers in all 50 states and Puerto Rico with partnerships at the federal, state and local levels. By statute, the MEP Advisory Board provides the NIST Director with: (1) advice on the activities, plans and policies of the Program; (2) assessments of the soundness of the plans and strategies of the Program; and (3) assessments of current performance against the plans of the Program.

Background information on the MEP Advisory Board is available at *http://www.nist.gov/mep/about/advisory-board.cfm.*

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the MEP Advisory Board will hold an open meeting for two half days on Tuesday, March 7, 2023 from 1:00 p.m. to 5:30 p.m. and Wednesday, March 8, 2023, from 9 a.m. to 12 p.m. Eastern time. The meeting agenda will include an update on the MEP programmatic operations, as well as provide guidance and advice on current activities related to the current MEP National Network™ 2023–2027 Strategic Plan. The agenda may change to accommodate Board business. The final agenda will be posted on the MEP Advisory Board website at *http://www.nist.gov/mep/about/advisory-board.cfm.*

Individuals and representatives of organizations who would like to offer comments and suggestions related to the MEP Advisory Board's business are invited to request a place on the agenda. Approximately 20 minutes will be reserved for public comments at the end of the meeting. Speaking times will be assigned on a first-come, first-served

basis. The amount of time per speaker will be determined by the number of requests received but is likely to be no more than three to five minutes each. Requests must be submitted by email to *cheryl.gendron@nist.gov* and must be received by Tuesday, February 28, 2023, to be considered. The exact time for public comments will be included in the final agenda that will be posted on the MEP Advisory Board website at *http://www.nist.gov/mep/about/advisory-board.cfm.* Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who wished to speak but could not be accommodated on the agenda or those who are/were unable to attend the meeting are invited to submit written statements electronically by email to *cheryl.gendron@nist.gov.*

Admittance Instructions: All wishing to attend the MEP Advisory Board meeting must submit their name, organization, email address and phone number to Cheryl Gendron (*Cheryl.Gendron@nist.gov* or 301–975–2785) no later than Tuesday, February 28, 2023, 5:00 p.m. Eastern time. Participants may choose to observe the meeting via webinar or in person. In person seating is limited and will be available on a first-come, first-served basis. Detailed instructions on how to join the meeting via webinar or in-person will be sent to registered attendees.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2023–03311 Filed 2–15–23; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC778]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of hybrid meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) Scallop Plan Team will meet on March 6, 2023.

DATES: The meeting will be held on Monday, March 6, 2023, from 9 a.m. to 5 p.m., AK time.

ADDRESSES: The meeting will be a hybrid meeting. Attend in person at the Kodiak Fisheries Research Center at 301 Research Cr., Kodiak, AK 99615, or join online through the link at *https://meetings.npfmc.org/Meeting/Details/2981.*

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave., Anchorage, AK 99501–2252; telephone: (907) 271–2809. Instructions for attending the meeting via video conference are given under **SUPPLEMENTARY INFORMATION**, below.

FOR FURTHER INFORMATION CONTACT: Sarah Rheinsmith, Council staff; phone; (907) 271–2809; email: *sarah.rheinsmith@noaa.gov.* For technical support, please contact our admin Council staff, email: *npfmc.admin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Agenda

Monday, March 6, 2023

The agenda will include (a) 2022 state dredge and trawl survey results; (b) Statewide fishery performance; (c) Retained-not landed meats; (d) Kodiak Shelikof stock synthesis analysis; (e) Socioeconomic considerations; (f) EFH update; (g) Stock status update and OFL; and (h) FMP amendment analysis on assessment interval. The agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/2981* prior to the meeting, along with meeting materials.

Connection Information

You can attend the meeting online using a computer, tablet, or smart phone, or by phone only. Connection information will be posted online at: *https://meetings.npfmc.org/Meeting/Details/2981.*

Public Comment

Public comment letters will be accepted and should be submitted electronically to *https://meetings.npfmc.org/Meeting/Details/2981.*

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

Dated: February 13, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–03317 Filed 2–15–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC774]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold meetings of the following: Snapper Grouper Committee; Southeast Data, Assessment and Review (SEDAR) Committee, Mackerel Cobia Committee; and Habitat Protection and Ecosystem-Based Management Committee. The meeting week will also include a formal public comment session, public hearing, and a meeting of the Full Council.

DATES: The Council meeting will be held from 8:30 a.m. on Monday, March 6, 2023, until 12 p.m. on Friday, March 10, 2023.

ADDRESSES: *Meeting address:* The meeting will be held at the Westin Jekyll Island, 110 Ocean Way, Jekyll Island, GA 31527; phone: (912) 635–4545. The meeting will also be available via webinar. Registration is required. See **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 302–8440 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: Meeting information, including agendas, overviews, and briefing book materials will be posted on the Council's website at: *http://safmc.net/safmc-meetings/council-meetings/.* Webinar registration links for the meeting will also be available from the Council's website.

Public comment: Public comment on agenda items may be submitted through the Council's online comment form available from the Council's website at: *http://safmc.net/safmc-meetings/council-meetings/.* Comments will be accepted from February 17, 2023, until March 10, 2023. These comments are accessible to the public, part of the Administrative Record of the meeting, and immediately available for Council consideration. A formal public comment session will also be held during the Council meeting.

The items of discussion in the individual meeting agendas are as follows:

Council Session I, Monday, March 6, 2023, 8:30 a.m. Until 10 a.m. (Closed Session)

The Council will meet in Closed Session to receive a litigation brief, review changes to the Council's Advisory Panel Policy and Handbook, discuss participants for appointment to Blueline and Tilefish topical working groups, and discuss appointments to the SEDAR Pool and the Council's Scientific and Statistical Committee (SSC).

Council Session I, Monday, March 6, 2023, 10 a.m.–12 p.m. (Open Session)

The Council will receive reports from state agencies, Council liaisons, NOAA Office of Law Enforcement, and the U.S. Coast Guard. The Council will review the Commercial Electronic Logbook Amendment and consider approving the joint amendment for public hearing. The Council will also discuss the outcomes of the 2023 Climate Change Scenario Planning Summit Meeting and next steps.

Snapper Grouper Committee, Monday, March 6, 2023, 1:30 p.m. Until 5 p.m., Tuesday, March 7, 2023, 8:30 a.m. Until 5 p.m., and Wednesday, March 8, 2023, From 8:30 a.m. Until 12 p.m.

The Committee will receive an update on amendments under formal review and a presentation on a Management Strategy Evaluation (MSE) for the Snapper Grouper Fishery. The Committee will get an update from NOAA Fisheries on the 2023 Red Snapper recreational season and review public hearing comments on Snapper Grouper Regulatory Amendment 35 (Release Mortality Reduction and Red Snapper Catch Levels) and consider approving the amendment for Secretarial review. The Committee will also receive updates on Best Fishing Practices outreach and the South Atlantic Red Snapper Research Program (SARSRP).

The Committee will review public scoping comments and discuss the Recreational Permitting Amendment (Snapper Grouper Amendment 46). Committee members will receive a presentation from NOAA Fisheries and SSC recommendations for the SEDAR 68 stock assessment for scamp and yellowmouth grouper. The Committee will review public hearing comments for Snapper Grouper Amendment 53 addressing management measures gag grouper and black grouper and consider approving the amendment for Secretarial review. The Committee will review Snapper Grouper Amendment 48 addressing wreckfish management measures and approve topics for the Spring 2023 meeting of the Snapper Grouper Advisory Panel.

SEDAR Committee, Wednesday, March 8, 2023, 1:30 p.m. Until 2:30 p.m.

The Committee will consider Terms of Reference for blueline tilefish and tilefish (golden), receive a report from the SEDAR Steering Committee, an update on SEDAR projects, and discuss 2026 South Atlantic SEDAR schedule recommendations.

Mackerel Cobia Committee, Wednesday, March 8, 2023, 2:30 p.m. Until 3:45 p.m.

The Committee will receive an update on the status of amendments under review, receive SSC recommendations and discuss management of Spanish mackerel, discuss options for conducting port meetings for the mackerel fishery, and approve topics for the Spring 2023 meeting of the Mackerel Cobia Advisory Panel.

Formal Public Comment, Wednesday, March 8, 2023, 4 p.m.—Public comment will be accepted from individuals attending the meeting in person and via webinar on all items on the Council meeting agenda. The Council Chair will determine the amount of time provided to each commenter based on the number of individuals wishing to comment.

A public hearing for Snapper Grouper Amendment 48 addressing proposed wreckfish management measures will be held during the public comment period.

Habitat Protection and Ecosystem-Based Management Committee, Thursday, March 9, 2023, 8:30 a.m. Until 12 p.m.

The Committee will receive an update on the status of the Council's Habitat Blueprint, review the Council's Beach Dredging and Energy Policies, and discuss the 5-year review of Essential Fish Habitat designations. The Committee will also receive a report from the Council Coordinating Committee's Area-Based Management Subcommittee, discuss coral management items, and approve topics for the Spring 2023 meeting of the Habitat and Ecosystem-Based Management Advisory Panel.

Council Session II, Thursday, March 9, 2023, 1:30 p.m. Until 5 p.m. and Friday, March 10, 2023, 8:30 a.m. Until 12 p.m.

The Council will receive a litigation brief if needed, a staff report, and a report from the Shrimp Advisory Panel. The Council will receive a presentation on an update of the Florida Keys National Marine Sanctuary's Protocol for Cooperative Fisheries Management, and reports from NOAA Fisheries' Southeast Regional Office and the Southeast Fisheries Science Center. The Council will receive Committee reports, review its workplan for the next quarter, upcoming meetings, and take action as necessary. The Council will discuss any other business as needed.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

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 Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the council office (see **ADDRESSES**) 5 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: February 13, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–03315 Filed 2–15–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC703;

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the U.S. Navy Training Activities in the Gulf of Alaska Study Area

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

ACTION: Notice of issuance of Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that a Letter of Authorization (LOA) has been issued to the U.S. Navy (Navy) for the take of marine mammals incidental to military

readiness activities conducted in the Gulf of Alaska (GOA) Study Area.

DATES: Effective from February 3, 2023 to February 2, 2030.

ADDRESSES: The LOA and supporting documentation are available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Leah Davis, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

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 proposed or, if the taking is limited to harassment, the public is provided with notice of the proposed incidental take authorization and provided the opportunity to review and 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''); and 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 National Defense Authorization Act (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.

Summary of Request

On January 4, 2023, we issued a final rule responding to a request from the Navy for authorization to take marine mammals incidental to military readiness activities conducted in the GOA Study Area (88 FR 604, January 4, 2023). The following types of training, which are classified as military readiness activities pursuant to the MMPA, as amended by the 2004 NDAA, are covered under the final rule: surface warfare (detonations at or above the water surface) and anti-submarine warfare (sonar and other transducers). The Navy is also conducting Air Warfare, Electronic Warfare, Naval Special Warfare, Strike Warfare, and Support Operations, but these activities do not involve sonar and other transducers, detonations at or above the water surface, or any other stressors that could result in the take of marine mammals.

Authorization

In accordance with the final rule, we have issued a LOA to Navy authorizing the take of marine mammals incidental to training activities in the GOA Study Area, as described above. Take of marine mammals will be minimized through the implementation of the following planned mitigation measures: (1) use of defined powerdown and shutdown zones (based on activity), which are designed to minimize the number and severity of takes; (2) measures to reduce the likelihood of ship strikes, including the use of trained Lookouts to observe for marine mammals in designated zones on underway vessels and issuance of pre-event awareness messages to alert vessels and aircraft participating in training activities within the TMAA to the possible presence of concentrations of large whales on the continental shelf and slope; and (3) operational limitations in certain areas and times that are biologically important (*i.e.,* for foraging) for marine mammals. Additionally, the rule includes an adaptive management component that allows for timely modification of mitigation or monitoring measures based on new information, when appropriate. The Navy will submit reports as required.

Based on the findings and information discussed in the preamble to the final rule, the activities described under this LOA will have a negligible impact on marine mammal stocks and will not have an unmitigable adverse impact on the availability of the affected marine mammal stock for subsistence uses.

Dated: February 13, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–03274 Filed 2–15–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC775]

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory bodies will meet March 4–10, 2023, in Seattle, WA, in person and via webinar. The Council meeting will be live streamed with the opportunity to provide public comment remotely. The following groups will meet in person in Seattle: Scientific and Statistical Committee, Salmon Technical Team,

Salmon Advisory Subpanel, Enforcement Consultants, Habitat Committee, Groundfish Management Team, Groundfish Advisory Subpanel, Ecosystem Workgroup, and Ecosystem Advisory Subpanel. The Highly Migratory Species Management Team and Highly Migratory Species Management Subpanel will meet by webinar only.

DATES: The Pacific Council meeting will begin on Sunday, March 5, 2023, at 9 a.m. Pacific Standard Time (PST), reconvening at 8 a.m. on Monday, March 6 through Friday, March 10, 2023. The ancillary meetings will begin on Saturday, March 4, 2023. All meetings are open to the public, except for a Closed Session held from 8 a.m. to 9 a.m., Sunday, March 5, to address litigation and personnel matters. The Pacific Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES:

Meeting address: Meetings of the Pacific Council and its advisory entities will be held at the Doubletree by Hilton Seattle Airport, 18740 International Boulevard, Seattle, WA; telephone: (206) 246–8600.

Specific meeting information, including directions on joining the meeting, connecting to the live stream broadcast, 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: Mr. Merrick Burden, Executive Director, Pacific Council; telephone: (503) 820–2280 or (866) 806–7204 toll-free, or access the Pacific Council website, *www.pcouncil.org,* for the proposed agenda and meeting briefing materials.

SUPPLEMENTARY INFORMATION: The March 4–10, 2023 meeting of the Pacific Council will be streamed live on the internet. The broadcasts begin initially at 9 a.m. PST Sunday, March 5, 2023, and 8 a.m. PST Monday, March 6 through Friday, March 10, 2023. Broadcasts end when business for the day is complete. Only the audio portion and presentations displayed on the screen at the Pacific Council meeting will be broadcast. The audio portion for the public is listen-only except that an opportunity for oral public comment will be provided prior to Council Action on each agenda item. Additional information and instructions on joining or listening to the meeting can be found on the Pacific Council's website (see *www.pcouncil.org*).

The following items are on the Pacific Council agenda, but not necessarily in this order. Agenda items noted as ''Final Action'' refer to actions requiring the Council to transmit a proposed fishery management plan, proposed plan amendment, or proposed regulations to the U.S. Secretary of Commerce, under Sections 304 or 305 of the Magnuson-Stevens Fishery Conservation and Management Act. Additional detail on agenda items, Council action, and advisory entity meeting times, are described in Agenda Item A.3, Proposed Council Meeting Agenda, and will be in the advance March 2023 briefing materials and posted on the Pacific Council website at *www.pcouncil.org* no later than Friday, February 17, 2023.

A. Call to Order
1. Opening Remarks
2. Roll Call
3. Approve Agenda
4. Executive Director's Report

B. Open Comment Period
1. Comments on Non-Agenda Items

C. Pacific Halibut Management
1. Annual Report of the International Pacific Halibut Commission (IPHC)
2. Incidental Catch Recommendations: Options for Salmon Troll and Final Action on Recommendations for Fixed Gear Sablefish Fisheries

D. Salmon Management
1. National Marine Fisheries Service Report
2. Review of 2022 Fisheries and Summary of 2023 Stock Forecasts
3. Identify Management Objectives and Preliminary Definition of 2023 Management Alternatives
4. Recommendations for 2023 Management Alternative Analysis
5. Further Direction for 2023 Management Alternatives
6. Further Direction for 2023 Management Alternatives
7. Adopt 2023 Management Alternatives for Public Review
8. Appoint Salmon Hearing Officers

E. Habitat Issues
1. Current Habitat Issues

F. Groundfish Management
1. National Marine Fisheries Service Report
2. Implementation of the 2023 Pacific Whiting Fishery Under the U.S./Canada Agreement
3. Sablefish Pot Gear Marking—Feasibility Report
4. Non-Trawl Area Management—Final Preferred Alternative
5. Electronic Monitoring Program Changes—Final Preferred Alternative
6. Final Assessment Methodologies
7. Amendment 31 Groundfish Stock Definitions
8. Workload and New Management Measure Priorities
9. Inseason Adjustments—Final Action

G. Administrative Matters
1. United States Coast Guard (USCG) Annual Report
2. Report of the Office of National Marine Sanctuaries (ONMS)
3. Marine Planning
4. Approval of Council Meeting Record
5. Membership Appointments and Council Operating Procedures
6. Future Council Meeting Agenda and Workload Planning

H. Ecosystem
1. California Current Ecosystem Annual Report
2. Fishery Ecosystem Plan Initiative Workplan

I. Highly Migratory Species Management
1. National Marine Fisheries Service Report
2. International Management Activities
3. Drift Gillnet Hard Caps Update

Advisory Body Agendas

Advisory body agendas will include discussions of relevant issues that are on the Pacific Council agenda for this meeting and may also include issues that may be relevant to future Council meetings. Proposed advisory body agendas for this meeting will be available on the Pacific Council website, *www.pcouncil.org,* no later than Friday, February 17, 2023.

SCHEDULE OF ANCILLARY MEETINGS

Day 1—Saturday, March 4, 2023	
Groundfish Advisory Subpanel.	8 a.m.
Groundfish Management Team.	8 a.m.
Habitat Committee	8 a.m.
Salmon Advisory Subpanel.	8 a.m.
Salmon Technical Team	8 a.m.
Scientific and Statistical Committee.	8 a.m.
Enforcement Consultants	2 p.m.
Tribal Policy Group Breakout.	As Necessary.
Tribal and Washington Technical Group.	As Necessary.
Day 2—Sunday, March 5, 2023	
California State Delegation.	7 a.m.
Oregon State Delegation	7 a.m.

SCHEDULE OF ANCILLARY MEETINGS—Continued

Washington State Delegation.	7 a.m.
Ecosystem Advisory Subpanel.	8 a.m.
Groundfish Advisory Subpanel.	8 a.m.
Groundfish Management Team.	8 a.m.
Habitat Committee	8 a.m.
Salmon Advisory Subpanel.	8 a.m.
Salmon Technical Team	8 a.m.
Scientific and Statistical Committee.	8 a.m.
Enforcement Consultants	As Necessary.
Tribal Policy Group Breakout.	As Necessary.
Tribal and Washington Technical Group.	As Necessary.
Day 3—Monday, March 6, 2023	
California State Delegation.	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation.	7 a.m.
Ecosystem Advisory Subpanel.	8 a.m.
Ad Hoc Ecosystem Workgroup.	8 a.m.
Groundfish Advisory Subpanel.	8 a.m.
Groundfish Management Team.	8 a.m.
Salmon Advisory Subpanel.	8 a.m.
Salmon Technical Team	8 a.m.
Enforcement Consultants	As Necessary.
Tribal Policy Group Breakout.	As Necessary.
Tribal and Washington Technical Group.	As Necessary.
Day 4—Tuesday, March 7, 2023	
California State Delegation.	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation.	7 a.m.
Groundfish Advisory Subpanel.	8 a.m.
Groundfish Management Team.	8 a.m.
Highly Migratory Species Advisory Subpanel.	8 a.m. Online Only.
Highly Migratory Species Management Team.	8 a.m. Online Only.
Salmon Advisory Subpanel.	8 a.m.
Salmon Technical Team	8 a.m.
Enforcement Consultants	As Necessary.
Tribal Policy Group Breakout.	As Necessary.
Tribal and Washington Technical Group As Necessary.	
Day 5—Wednesday, March 8, 2023	
California State Delegation.	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation.	7 a.m.

SCHEDULE OF ANCILLARY MEETINGS—Continued

Groundfish Advisory Subpanel.	8 a.m.
Groundfish Management Team.	8 a.m.
Highly Migratory Species Advisory Subpanel.	8 a.m. Online Only.
Highly Migratory Species Management Team.	8 a.m. Online Only.
Salmon Advisory Subpanel.	8 a.m.
Salmon Technical Team	8 a.m.
Enforcement Consultants	As Necessary/Online Only.
Tribal Policy Group Breakout.	As Necessary.
Tribal and Washington Technical Group.	As Necessary.
Day 6—Thursday, March 8, 2023	
California State Delegation.	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation.	7 a.m.
Highly Migratory Species Advisory Subpanel.	8 a.m. Online Only.
Highly Migratory Species Management Team.	8 a.m. Online Only.
Salmon Advisory Subpanel.	8 a.m.
Salmon Technical Team	8 a.m.
Enforcement Consultants	As Necessary/Online Only.
Tribal Policy Group Breakout.	As Necessary.
Tribal and Washington Technical Group.	As Necessary.
Day 7—Friday, March 10, 2023	
California State Delegation.	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation.	7 a.m.
Salmon Technical Team	8 a.m.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during these meetings. 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 business days prior to the meeting date.

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

Dated: February 13, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–03316 Filed 2–15–23; 8:45 am]

BILLING CODE 3510–22–P

COUNCIL ON ENVIRONMENTAL QUALITY

[CEQ–2022–0005]

RIN 0331–AA06

National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change

AGENCY: Council on Environmental Quality.

ACTION: Notice of extension for request for comments.

SUMMARY: On January 9, 2023, the Council on Environmental Quality (CEQ) issued guidance to assist agencies in analyzing greenhouse gas and climate change effects of their proposed actions under the National Environmental Policy Act and requested public comment on the guidance. This notice extends the deadline date for receiving public comments for an additional 30 days, until April 10, 2023.

DATES: The comment period for the interim guidance published January 9, 2023, at 88 FR 1196, is extended. Comments should be received on or before by April 10, 2023.

ADDRESSES: You may submit comments, identified by docket number CEQ–2022–0005, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–456–6546.
- *Mail:* Council on Environmental Quality, 730 Jackson Place NW, Washington, DC 20503.

All submissions received must include the agency name, ''Council on Environmental Quality,'' and the docket number, CEQ–2022–0005. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. Do not submit electronically any information you consider to be private, Confidential Business Information (CBI), or other information, the disclosure of which is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Jomar Maldonado, Director for NEPA, 202–395–5750 or *Jomar.MaldonadoVazquez@ceq.eop.gov.*

SUPPLEMENTARY INFORMATION: On January 9, 2023, CEQ issued National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, interim guidance to assist agencies in analyzing greenhouse gas and climate change effects of their proposed actions under the National Environmental Policy Act and requested public comment for 60 days on the guidance. 88 FR 1196. This notice extends the period for receiving public comments by 30 days to provide the public with additional time to provide feedback. CEQ is providing this additional time in response to public requests for an extension of the response period. Public comments should be submitted on or before April 10, 2023.

Matthew G. Lee-Ashley,

Chief of Staff.

[FR Doc. 2023–03257 Filed 2–15–23; 8:45 am]

BILLING CODE 3325–F3–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces; Notice of Federal Advisory Committee Meeting

AGENCY: General Counsel of the Department of Defense, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC–IPAD) will take place.

DATES: Day One: Tuesday, February 21, 2023—Open to the Public from 1 p.m. to 4:50 p.m. EST. Day Two: Wednesday, February 22, 2023—Open to the Public from 8:55 a.m. to 3:30 p.m. EST.

ADDRESSES: Renaissance Arlington Capital View, 2800 Potomac Ave., Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Dwight Sullivan, 703–695–1055 (Voice), 703–693–3903 (Facsimile), *dwight.h.sullivan.civ@mail.mil* (Email). Mailing address is DACIPAD, One Liberty Center, 875 N Randolph Street, Suite 150, Arlington, Virginia 22203. Website: *http://dacipad.whs.mil/.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of chapter 10 of title 5 of the United States Code (U.S.C.) (formerly the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C. App.)), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Due to circumstances beyond the control of the Designated Federal Officer (DFO), the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces was unable to provide public notification required by 41 CFR 102–3.150(a) concerning its February 21–22, 2023 meeting. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Purpose of the Meeting: In section 546 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113–291), as modified by section 537 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114–92), Congress tasked the DAC–IPAD to advise the Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces. This will be the twenty-sixth public meeting held by the DAC–IPAD. On Day 1, the DAC–IPAD will receive an overview of the National Defense Authorization Act for Fiscal Year 2023 and hear from representatives from the Military Departments and Coast Guard trial defense organizations. The Committee will receive public comment and then receive an update from the Special Projects Subcommittee. On Day 2, the Committee will receive an update on military sentencing, hear from former military judges, and receive updates from the Policy Subcommittee and Case Review Subcommittee. The Committee will close Day 2 with discussions and deliberations on DAC–IPAD's annual report due March 30, 2023, and adjourn the meeting.

Agenda: Day 1, February 21, 2023: 1 p.m.–1:05 p.m. Welcome and Introduction to Public Meeting; 1:05 p.m.–1:50 p.m. Fiscal Year 2023 National Defense Authorization Act Review; 1:50 p.m.–2 p.m. Break; 2 p.m.–3:30 p.m. Trial Defense Organizations; 3:40 p.m.–3:45 p.m. Break; 3:45 p.m.–4 p.m. Public Comment; 4 p.m.–4:05 p.m. Break; 4:05 p.m.–4:50 p.m. Special Projects Subcommittee Update and Annual Report; 4:50 p.m. Public Meeting Adjourned. Day 2, February 22, 2023: 8:55 a.m.–9 a.m. Welcome and Overview of Day; 9 a.m.–9:45 a.m. Military Sentencing Update; 9:45 a.m.–10 a.m. Break; 10 a.m.–11:30 a.m. Former Military Judges; 11:30 a.m.–12:30 p.m. Lunch; 12:30 p.m.–1:15 p.m. Policy Subcommittee Update and Annual Report; 1:15 p.m.–2 p.m. Case Review Subcommittee Update and Annual Report; 2 p.m.–2:15 p.m. Break; 2:15 p.m.–3:15 p.m. 5th Annual Report Deliberations; 3:15 p.m.–3:30 p.m. Meeting Wrap-up/Preview of Next Meeting; 3:30 p.m. Public Meeting Adjourned.

Meeting Accessibility: Pursuant to 41 CFR 102–3.140 and 5 U.S.C. 1009(a)(1), the public or interested organizations may submit written comments to the DAC–IPAD about its mission and topics pertaining to this public meeting. Written comments must be received by the DAC–IPAD at least five (5) business days prior to the meeting date so that they may be made available to the DAC–IPAD members for their consideration prior to the meeting. Written comments should be submitted via email to the DAC–IPAD at *whs.pentagon.em.mbx.dacipad@mail.mil* in the following formats: Adobe Acrobat or Microsoft Word. Please note that since the DAC–IPAD operates under the provisions of the FACA, all written comments will be treated as public documents and will be made available for public inspection. Oral statements from the public will be permitted, though the number and length of such oral statements may be limited based on the time available and the number of such requests. Oral statement requests must be received by the DAC–IPAD at least five (5) business days prior to the meeting date by submitting them via email at *whs.pentagon.em.mbx.dacipad@mail.mil.* Oral presentations by members of the public will be permitted from 4 p.m.–4:15 p.m. EST on February 21, 2023.

Written Statements: Pursuant to 41 CFR 102–3.140, and 5 U.S.C. 1009(a)(3), interested persons may submit a written statement to the DAC–IPAD. Individuals submitting a statement must submit their statement no later than 5:00 p.m. EST, Monday, February 20, 2023 to Dwight Sullivan, 703–695–1055 (Voice), 703–693–3903 (Facsimile), *dwight.h.sullivan.civ@mail.mil* (Email). If a statement pertaining to a specific topic being discussed at the planned meeting is not received by Monday, February 20, 2023, prior to the meeting, then it may not be provided to, or considered by, the Committee during the February 21, 2023 meeting. The DFO will review all timely submissions with the DAC–IPAD Chair and ensure such submissions are provided to the members of the DAC–IPAD before the

meeting. Any comments received by the DAC–IPAD prior to the stated deadline will be posted on the DAC–IPAD website (*http://dacipad.whs.mil/*).

Dated: February 10, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–03258 Filed 2–15–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board Meeting

AGENCY: National Assessment Governing Board, Department of Education.

ACTION: Notice of open and closed meetings.

SUMMARY: This notice sets forth the agenda, time, and instructions to access or participate in the National Assessment Governing Board (hereafter referred to as Governing Board or Board) meetings scheduled for March 2–3, 2023, in Alexandria, VA. This notice provides information about the meetings to members of the public who may be interested in attending the meetings and/or providing written comments related to the work of the Governing Board.

ADDRESSES: Westin Alexandria Old Town, 400 Courthouse Square, Alexandria, VA 22314.

DATES: March 2–3, 2023.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Executive Officer/Designated Federal Official for the Governing Board, 800 North Capitol Street NW, Suite 825, Washington, DC 20002, telephone: (202) 357–6906, fax: (202) 357–6945, email: *Munira.Mwalimu@ed.gov.*

SUPPLEMENTARY INFORMATION: Notice of the meetings is required under Section 1009(a)(2) of 5 U.S.C. Chapter 10 (Federal Advisory Committees).

Statutory Authority and Function: The Governing Board is established under the National Assessment of Educational Progress Authorization Act, Title III of Public Law 107–279 (20 U.S.C. 9621). Information on the Governing Board and its work can be found at *www.nagb.gov.*

The Governing Board formulates policy for the National Assessment of Educational Progress (NAEP) administered by the National Center for Education Statistics (NCES). The Governing Board's responsibilities include:

''(1) selecting the subject areas to be assessed; (2) developing appropriate student achievement levels; (3) developing assessment objectives and testing specifications that produce an assessment that is valid and reliable, and are based on relevant widely accepted professional standards; (4) developing a process for review of the assessment which includes the active participation of teachers, curriculum specialists, local school administrators, parents, and concerned members of the public; (5) designing the methodology of the assessment to ensure that assessment items are valid and reliable, in consultation with appropriate technical experts in measurement and assessment, content and subject matter, sampling, and other technical experts who engage in large scale surveys; (6) measuring student academic achievement in grades 4, 8, and 12 in the authorized academic subjects; (7) developing guidelines for reporting and disseminating results; (8) developing standards and procedures for regional and national comparisons; (9) taking appropriate actions needed to improve the form, content use, and reporting of results of an assessment; and (10) planning and executing the initial public release of NAEP reports.''

Standing Committee Meetings

The Governing Board's standing committees will meet to conduct regularly scheduled work planned for the quarterly board meeting and any items undertaken by standing committees for consideration by the full Governing Board. (Please see standing committee meeting minutes for previous meetings, available at *https://www.nagb.gov/governing-board/quarterly-board-meetings.html*). Standing committee meeting agendas and meeting materials for the March 2–3, 2023, quarterly board meeting will be posted on the Governing Board's website, *www.nagb.gov,* no later than five business days prior to the meetings.

Standing Committee Meetings

Wednesday, March 1, 2023

Nominations Committee (Closed Session)

5:30–6:45 p.m.

The Nominations Committee will meet in closed session on March 1, 2023, from 5:30 to 6:45 p.m. to review and discuss the committee member ratings for finalists in open categories for Governing Board 2024 vacancies and finalize recommendations for submission to the Board for action. These discussions pertain solely to internal personnel rules and practices of an agency and information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions 2 and 6 of the Government Sunshine Act, 5 U.S.C. 552b(c).

Thursday, March 2, 2023

Executive Committee Meeting

8:30–10 a.m. (Closed Session)

The Executive Committee will meet in closed session on March 2, 2023, from 8:30 to 10 a.m. to discuss the NAEP and Governing Board's budgets, planned procurements and the NAEP Assessment Schedule. These discussions must be kept confidential to maintain the integrity of the federal budgeting and acquisition processes. Public disclosure of this confidential information would significantly impede implementation of the NAEP assessment program if conducted in open session. Such matters are protected by exemption 9(B) of the Government Sunshine Act, 5 U.S.C. 552b(c).

Thursday, March 2, 2023

Assessment Development Committee

3:45–5:15 p.m. (Open Session)

5:15–6 p.m. (Closed Session)

The Assessment Development Committee will meet in open session on March 2, 2023, to receive a project update on the 2028 NAEP Science Assessment Framework, to discuss the next steps for 2030 Writing Assessment Framework and discuss recommendations for future NAEP assessment updates. The Assessment Development Committee will meet in closed session on March 2, 2023, from 5:15 to 6 p.m. to preview initial results from pretesting of NAEP Mathematics and Reading Items assessment items. These items have not been released to the public. Public disclosure of this confidential information would significantly impede implementation of the NAEP assessment program if conducted in open session. Such matters are protected by exemption 9(B) of the Government Sunshine Act, 5 U.S.C. 552b(c).

Thursday, March 2, 2023

Committee on Standards, Design and Methodology

3:45–4:20 p.m. (Closed Session)

4:20–5 p.m. (Open Session)

5–6 p.m. (Open Joint Session with Reporting & Dissemination Committee)

The Committee on Standards, Design and Methodology (COSDAM) will meet in closed session on March 2, 2023, from 3:45–4:20 p.m., to receive an update and discuss Adaptive Testing for NAEP. The session will include preliminary data from recently completed pilot studies that are not yet available to the public. Public disclosure of this confidential information would significantly impede implementation of the NAEP assessment program if conducted in open session. Such matters are protected by exemption 9(B) of the Government Sunshine Act, 5 U.S.C. 552b(c).

COSDAM will then meet in open session from 4:20–5 p.m. and discuss next steps for NAEP State Sampling. The committee will then convene in an open joint session with the Reporting and Dissemination Committee to discuss strategies for disseminating Achievement Levels findings.

Thursday, March 2, 2023

Reporting and Dissemination Committee (R&D)

3:45–5 p.m. (Open Session)

5–6 p.m. (Open Joint Session with Committee on Standards, Design and Methodology)

The Reporting and Dissemination Committee will meet on March 2, 2023, to discuss release plans for results from the NAEP Civics and NAEP U.S. History assessments as well as general communications strategies. The Committee then will convene in a joint session with the Committee on Standards, Design and Methodology to discuss dissemination of Achievement Levels descriptions.

Quarterly Governing Board Meeting

The plenary sessions of the Governing Board's March 2023 quarterly meeting will be held on the following dates and times:

Thursday, March 2, 2023

Open Meeting: 10:10 a.m.–2:15 p.m.

Closed Meeting: 2:15–3:30 p.m.

Friday, March 3, 2023

Open Meeting: 9 a.m.–12 p.m.

Closed Meeting: 12:15–1:30 p.m.

Open Meeting: 1:45–3:30 p.m.

March 2, 2023, Meeting

On Thursday, March 2, 2023, the plenary session of the Governing Board meeting will convene in open session from 10:10 a.m. to 2:15 p.m. The meeting will start with welcome remarks from Beverly Perdue, Chair of the Governing Board, followed by a motion to approve the meeting agenda for the March 2–3, 2023, quarterly Governing Board meeting and minutes from the November 17–18, 2022, quarterly Governing Board meeting. Thereafter, from 10:15 a.m. to 10:45 a.m., Lesley Muldoon, Executive Director of the Governing Board, will update members on ongoing work followed by an update from Peggy Carr, Commissioner, NCES, on NAEP activities from 10:45 to 11:15 a.m.

From 11:15 to 11:45 a.m., members will receive a briefing on Ensuring Fair and Unbiased NAEP Assessments. From 11:45 a.m. to 1:15 p.m. members will meet in small groups to discuss strategies to assure commitment to all students in administering fair and unbiased NAEP assessments. The members will debrief on the small group discussions from 1:30 to 2:15 p.m.

NCES Commissioner Peggy Carr, will then provide an update on the NAEP Budget and Assessment Schedule in closed session from 2:15 to 3:30 p.m. These discussions must be kept confidential to maintain the integrity of the federal budgeting and acquisition processes. Public disclosure of this confidential information would significantly impede implementation of the NAEP assessment program if conducted in open session. Such matters are protected by exemption 9(B) of the Government Sunshine Act, 5 U.S.C. 552b(c).

Following a 15-minute break, members will convene in standing committee meetings from 3:45 to 6 p.m., as described above. The March 2, 2023, session of the Board meeting will adjourn at 6 p.m.

Friday, March 3, 2023

On March 3, 2023, the plenary session of the Governing Board will begin in closed session from 8 to 9 a.m. to receive a briefing from the Nominations Committee on its recommendations for candidates to fill Governing Board vacancies. Members will review the Nominations Committee's recommendations for the final slate of candidates for submission to the Secretary of Education for appointments that begin October 1, 2023. These discussions pertain solely to internal personnel rules and practices of an agency and information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions 2 and 6 of § 552b(c) of Title 5 of the United States Code.

The Governing Board will then transition to an open session from 9 to 9:05 a.m. to vote on the 2023–2024 slate of candidates that will be submitted to the Secretary of Education for consideration.

After a 10-minute break, members will convene in open session to receive updates on the NAEP Science Assessment Framework from 9:15 to 10:45 a.m. followed by a discussion and vote on reporting achievement level descriptions for Civics, U.S. History, and Science from 10:45 to 11:30 a.m. Thereafter members will have open discussion time from 11:30 a.m. to 12:00 p.m.

Following a 15-minute break, the Board will convene in closed session from 12:15 to 1:30 p.m. to receive a briefing on results from the 2022 NAEP Civics and U.S. History Report Cards from 12:15 until 1:30 p.m. These items have not been released to the public. Public disclosure of this confidential information would significantly impede implementation of the NAEP assessment program if conducted in open session. Such matters are protected by exemption 9(B) of the Government Sunshine Act, 5 U.S.C. 552b(c).

After a 15-minute break, from 1:45 to 2:15 p.m. members will convene in open session to discuss and vote on the release plans for the 2022 NAEP Civics and U.S. History Report Cards. From 2:15 to 3:15 p.m. members will discuss their experiences with engagement and outreach with members of Congress. The final session of the March 3, 2023, meeting will take place from 3:15 to 3:30 p.m. with a preview of the May 2023 Quarterly Board meeting.

The March 3, 2023, session of the Governing Board meeting will adjourn at 3:30 p.m.

The quarterly board meeting and standing committee meeting agendas, along with the meeting materials, will be posted on the Governing Board's website at *www.nagb.gov* no later than five working days prior to each meeting.

Instructions for Participating in the Meetings

Registration: Members of the public may attend in-person to all open sessions of the Governing Board's March 2–3, 2023, meetings. A link to register for virtual attendance for the open sessions and instructions for how to register will be posted on the Governing Board's website at *www.nagb.gov* no later than 5 business days prior to the meeting. Registration is required to join the meeting virtually.

Public Comment: Written comments related to the work of the Governing Board and its committees may be submitted electronically or in hard copy to the attention of the Executive Officer/Designated Federal Official (DFO) via email at *Munira.Mwalimu@ed.gov* no later than 10 business days prior to the meeting. Written comments should be directed to the DFO as they relate to committee and Board meeting work and should reference the relevant agenda item.

Access to Records of the Meeting: Pursuant to 5 U.S.C. 1009(b), the public may inspect the meeting materials at *www.nagb.gov,* which will be made available no later than five business days prior to each meeting. The public may also inspect the meeting materials and other Governing Board records at 800 North Capitol Street NW, Suite 825, Washington, DC 20002, by emailing *Munira.Mwalimu@ed.gov* to schedule an appointment. The official verbatim transcripts of the open meeting sessions will be available for public inspection no later than 30 calendar days following each meeting and will be posted on the Governing Board's website. Requests for the verbatim transcriptions may be made via email to the DFO noted above.

Reasonable Accommodations: The meeting location is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the DFO listed in this notice no later than ten working days prior to each meeting date.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* 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 Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the Adobe website. 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.

Authority: Pub. L. 107–279, Title III, section 301—National Assessment of Educational Progress Authorization Act (20 U.S.C. 9621).

Lesley Muldoon,

Executive Director, National Assessment Governing Board (NAGB), U.S. Department of Education.

[FR Doc. 2023–02838 Filed 2–15–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0027]

Agency Information Collection Activities; Comment Request; Grant Application Form for Project Objectives and Performance Measures Information; Correction

AGENCY: Office of Finance and Operation (OFO), Department of Education (ED).

ACTION: Correction notice.

SUMMARY: On February 13, 2023, the U.S. Department of Education published a 60-day comment period notice in the **Federal Register** with FR DOC# 2023–02979 (Page 9268, Column 1, Page 9269, Column 1, Column 2) seeking public comment for an information collection entitled, ''Grant Application Form for Project Objectives and Performance Measures''. The docket number is incorrect. The correct docket number is ED–2023–SCC–0027.

The PRA Coordinator, Strategic Collections and Clearance, Office of the Chief Data Officer, Office of Planning, Evaluation and Policy Development, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: February 13, 2023.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Office of the Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–03284 Filed 2–15–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2023–OPE–0030]

Announcement of Listening Sessions

AGENCY: Office of Postsecondary Education, U.S. Department of Education.

ACTION: Announcement of listening sessions.

SUMMARY: The U.S. Department of Education's (Department's) Office of Postsecondary Education (OPE) announces virtual listening sessions to receive public comments, recommendations, and suggestions to improve guidance on the incentive compensation prohibition under title IV of the Higher Education Act of 1965, as amended (HEA), particularly with respect to bundled services. This notice sets forth the dates and times, agenda, and instructions for attending and providing live comments at the virtual listening sessions, as well as instructions for submitting written comments.

DATES: The virtual listening sessions will be held on:

March 8, 2023, from 1 p.m. to 4 p.m., Eastern time

March 9, 2023, from 1 p.m. to 4 p.m., Eastern time

The Department will accept written comments via the Federal eRulemaking portal until March 16, 2023. See the **ADDRESSES** section of this document for submission information.

ADDRESSES: The listening sessions will be held virtually. See the **SUPPLEMENTARY INFORMATION** section for information on how to register to attend or to provide live comments during a session. Written comments must be submitted via the Federal eRulemaking Portal at *regulations.gov*. If you require an accommodation or cannot otherwise submit your comments via *regulations.gov*, however, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments submitted by fax or by email or comments submitted after the comment period closes. To ensure that the Department does not receive duplicate copies, please submit your comments only once. Additionally, please include the Docket ID at the top of your comments.

Federal eRulemaking Portal: Please go to *www.regulations.gov* to submit your comments electronically. Information on using *regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''FAQ.''

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Ashley Clark, U.S. Department of Education. Telephone: (202) 453–7977. Email: *ashley.clark@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:

Background: Since 1992, section 487(a)(20) of the HEA has prohibited institutions of higher education (institutions) from providing any commission, bonus, or other incentive payment to individuals or entities based, directly or indirectly, on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities or in making decisions regarding the award of student financial assistance, subject to certain exceptions. In 2011, the Department issued DCL GEN–11–05 to provide guidance on the Department's interpretation of newly issued regulations (75 FR 66831) relating to the prohibition on incentive compensation and other title IV program integrity issues in § 668.14(b).

As noted in that guidance, the prohibition on incentive compensation applies to both individuals and entities. The Department's guidance also sets forth examples of activities that the Department believes would violate the prohibition and examples of allowed activities. Under that guidance, direct payments to recruiters based on tuition generation are considered prohibited incentive compensation. However, in the case of a third-party entity that is not affiliated with the institution it serves and is not affiliated with any other institution that provides educational services, the guidance specifies that providing a set of services that includes recruitment (known as bundled services) does not violate the prohibition on incentive compensation as long as the entity does not make prohibited compensation payments to its employees, and the institution does not pay the entity separately for student recruitment services.

Since issuing that guidance, the number of students who were recruited to institutions by entities operating under this bundled services exception has increased significantly, particularly through online programs operated by third-party entities, including Online Program Managers (OPMs). These online programs are not subject to the same enrollment constraints, such as physical classroom space or the amount of potential students in the surrounding area, as in-person programs. As a result, the Department is seeking to better understand the impact of the bundled services exception in the context of growing online enrollment and associated Federal student loan debt.

The Department is currently reviewing the incentive compensation guidance to determine what, if any, changes to the incentive compensation guidance might be appropriate, particularly regarding the exception for bundled services. To assist in that effort and ensure the Department is hearing from a wide range of stakeholders, we are convening virtual listening sessions and accepting written public comment on this topic. Specifically, the Department invites comment from institutions, faculty, OPMs and other third-party contractors, scholars, advocates, and students on the following specific questions:

1. What are the benefits and disadvantages of the current incentive compensation exception for bundled services for institutions and students?

2. How can the Department better identify, define, and address the activities that may raise concerns under the current incentive compensation guidance?

3. How much of an institution's spending on a bundle of services provided by a third-party entity is typically allocated to recruitment and related expenses? This will help the Department understand the proportion of the spending in the bundle that goes to recruitment versus a range of services.

4. How has contracting with a third-party providing services under the bundled services exception impacted enrollment, tuition and fees, the types of programs offered, the modality through which programs are provided, student outcomes, revenues, and expenditures at institutions? How do these results compare to programs not supported by an OPM or students attending in-person at a program that is also supported by an OPM?

5. How would changing third-party servicer contracts from a revenue-sharing model to a fee-for-service model impact the services, such as recruitment, currently provided to an institution under the bundled services exception?

6. How do tuition and fees of programs supported by third-party services differ when provided under a revenue-sharing model as compared to a fee-for-service model?

7. To what extent does the bundled services exception impact institutions' ability to create or expand online education offerings? To what extent would fee-for-service models impact institutions' ability to create or expand online education offerings?

8. How might the Department more clearly define what it means to be an unaffiliated third-party for purposes of the incentive compensation guidance to ensure there is no affiliation between the institution and the entity providing services?

9. What steps can the Department take to better ensure compliance with the prohibition on incentive compensation?

Registration: Individuals who would like to present comments at the virtual listening sessions must register by sending an email message to *margo.schroeder@ed.gov* no later than 12:00 p.m., Eastern time, on the business day prior to the listening session at which they want to speak. The message should include the name of the speaker, the email address of the speaker, and one or more dates and times during which the individual would be available to speak. We will attempt to accommodate each speaker's preference for date and time; however, if we are unable to do so, we will make the determination on a first-come, first-served basis, based on the time and date we received the message. We will limit each participant's comments to 3 minutes.

The Department will notify speakers of their reserved time slot and provide information on how to log in to the session as a speaker. An individual may make only one presentation at the listening sessions. If we receive more registrations than we can accommodate, the Department reserves the right to reject the registration of an entity or individual affiliated with an entity already scheduled to present comments, to ensure that a broad range of entities and individuals are able to present. Speakers will access the meetings through a link separate from those who wish to listen to the sessions.

Individuals who want to observe the listening sessions, but who do not want to present comments, also are required to register. We will post registration links for attendees who wish to observe on our website at: *www2.ed.gov/about/offices/list/ope/policy.html.* There will be a unique link each day for attendees who wish to observe. Non-speaking

attendees will be muted for the duration of each listening session.

Reasonable Accommodations: The sessions will be accessible to individuals with disabilities. If you will need an auxiliary aid or service to attend or to provide a live comment, please notify the person listed under **FOR FURTHER INFORMATION CONTACT** at least 1 week before the scheduled meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it. Further information about requesting auxiliary aids and services will be available during the session registration process. To provide written comments, see the **ADDRESSES** section above.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document 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 *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 Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You also may 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.

Nasser Paydar,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2023–03261 Filed 2–15–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[DOE Docket No. 202–22–4]

Emergency Order Issued to PJM Interconnection, L.L.C. To Operate Power Generating Facilities Under Limited Circumstances in the PJM Region as a Result of Extreme Weather

AGENCY: Office of Cybersecurity, Energy Security, and Emergency Response, Department of Energy.

ACTION: Notice of emergency action.

SUMMARY: The U.S. Department of Energy (DOE or the Department) is issuing this Notice to document emergency actions that it has taken pursuant to the Federal Power Act. DOE issued an emergency order to PJM Interconnection, L.L.C. (PJM) to operate certain power generating facilities under limited circumstances as described further below. PJM is the regional transmission operator for 65 million people in thirteen states and the District of Columbia (PJM Region). The PJM Region experienced a significant drop in temperatures and high winds due to a severe winter weather system. As a consequence of the impact of wind and decreasing temperatures, the demand for electricity in the PJM Region rose to an unusually high peak load. While the vast majority of generating units in the PJM Region continued to function adequately under these stressed conditions, some units experienced operating difficulties due to cold weather or fuel limitations, primarily gas. Because the additional generation required to serve the PJM Region was anticipated to result in a conflict with environmental standards and requirements, DOE authorized only the necessary additional generation for PJM to sufficiently supply the amount of energy needed to prevent electrical disruption.

ADDRESSES: Requests for more information should be addressed by electronic mail to *AskCR@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: For further information on this Notice, or for information on the emergency activities described herein, contact Kenneth Buell, (202) 586–3362, *Kenneth.Buell@hq.doe.gov,* or by mail to the attention of Kenneth Buell, CR–30, 1000 Independence Ave. SW, Washington, DC 20585.

The Order and all related information are available here: *https://www.energy.gov/ceser/federal-power-act-section-202c-pjm-december-2022.*

SUPPLEMENTARY INFORMATION:

Background

Section 202(c) of the Federal Power Act

The Department is issuing this Notice pursuant to 10 CFR 1021.343(a) to document emergency actions taken in accordance with section 202(c) of the Federal Power Act (FPA) (16 U.S.C. 824a(c)). FPA section 202(c) provides that ''[d]uring the continuance of any war in which the United States is engaged, or whenever the [Secretary of Energy] determines that an emergency exists by reason of a sudden increase in the demand for electric energy, or a shortage of electric energy or of facilities for the generation or transmission of electric energy, or of fuel or water for generating facilities, or other causes, the [Secretary of Energy] shall have authority, either upon [her] own motion or upon complaint, with or without notice, hearing or report, to require by order such temporary connections of facilities and generation, delivery, interchange, or transmission of electric energy as in [her] judgment will best meet the emergency and serve the public interest.

1. Request for Emergency Order From PJM

On December 24, 2022, PJM submitted to the Department a Request for Emergency Order Under section 202(c) of the Federal Power Act (Application) to maintain the security and reliability of the PJM system. In its Application, PJM cited a severe winter weather system and forecasted a supply deficiency to meet firm load on December 24, December 25, and December 26, 2022. PJM requested the authority to direct the operation of electric generating units identified in Exhibit A of its Application, as well as any other generating units subject to emissions or other permit limitations in the PJM Region set forth in the Order (''Specified Resources''), to operate up to their maximum generation output levels under the limited circumstances described in the Order. PJM stated that the emergency order it was requesting could result in exceedances of National Ambient Air Quality Standards under the Clean Air Act and other permit limitations. Given the permit limits of the Specified Resources, PJM anticipated that the additional capacity may not be made available absent an order under FPA section 202(c).

2. PJM Order

On December 24, 2022, the Under Secretary of Energy for Infrastructure, acting pursuant to delegated authority, issued Order No. 2022–22–4 (the Order). As set forth in the Order, the Under

Secretary for Infrastructure found that an emergency exists in the PJM Region due to a shortage of electric energy, a shortage of facilities for the generation of electric energy, and other causes, and that the issuance of the Order would meet the emergency and serve the public interest.

The Order authorized PJM to dispatch the Specified Resources for the period beginning with the issuance of the Order on December 24, 2022, to 12:00 p.m. Eastern Standard Time on December 26, 2022, under the conditions set forth in the Order, including the following:

(i) For any generation resource whose operator notifies PJM that the unit is unable, or expected to be unable, to produce at its maximum output due to an emissions or other limit in any federal environmental permit, the unit will be allowed to exceed any such limit only during any period for which PJM has declared an Energy Emergency Alert (EEA) Level 2 or Level 3 [1] (during which time PJM will have triggered a Maximum Generation Emergency Action), except as described in certain limited circumstances in anticipation of an EEA Level 2 described below in item (iii). Once PJM declares that the EEA Level 2 event has ended, the unit would be required to immediately return to operation within its permitted limits. And at all other times, the unit would be required to operate within its permitted limits, except for the limited exceptions provided in the Order for operations in anticipation of an EEA Level 2 to prevent the cycling of units or facilitate the charging or pumping of other resources necessary for the EEA Level 2.

(ii) For any generation resource whose operator notifies PJM that the unit is offline or would need to go offline due to an emissions or other limit in any federal environmental permit, PJM may direct the unit operator to bring the unit online, or to keep the unit online, and to operate at the level consistent with its permits but subject to the exceptions set forth in the Order. In this circumstance, the operator is allowed to make all of the unit's capacity available to PJM for dispatch during any period for which PJM has declared an EEA Level 2 or 3 (during which time PJM has triggered a Maximum Generation Emergency Action), except as described in certain limited circumstances in anticipation of an EEA Level 2 described below in item (iii). Once PJM declares that such an EEA Level 2 event has ended and the Maximum Generation Emergency Action is discontinued, the unit would be required to immediately return to operating at a level below the higher of its minimum operating level or the maximum output allowable under the permitted limit.

(iii) The Order granted PJM the authority to operate the Specified Units that are combined cycle generating units in certain limited circumstances in advance of declaring an EEA Level 2, Maximum Generation Emergency, or in between such events, where such operation or continued operation of the Specified Resource is reasonably necessary to avoid shutting down and restarting the Specified Resource. The Order further authorized PJM to operate the Specified Resources in certain limited circumstances in advance of declaring an EEA Level 2, Maximum Generation Emergency where such operation or continued operation of the Specified Resource is reasonably necessary to facilitate charging storage resources or pumping for pumped storage facilities that will be needed during an anticipated EEA Level 2. PJM is required to take measures to dispatch units for which cycling would otherwise be required in a manner reasonably intended to limit the duration and operating level of those units in such a way as to minimize exceedance of permit limitations consistent with the security and reliability of the PJM Region.

(iv) Consistent with good utility practice, and notwithstanding standard merit order dispatch, PJM was required to exhaust all reasonably and practically available resources, including available imports, demand response and identified behind-the-meter generation resources selected to minimize an increase in emissions to the extent that such resources provide support to maintain grid reliability prior to dispatching the Specified Resources at levels above their permitted emissions levels. PJM was required provide a daily notification to the Department reporting each generating unit that has been designated to use the allowance and operated in reliance on the allowances contained in the Order.

The Order requires that PJM provide a report by January 26, 2023, for the dates between December 24, 2022, and December 26, 2022, inclusive, on which the Specified Resources were operated. The report must include '(i) emissions data in pounds per hour for each Specified Resource unit, for each hour of the operational scenario, for CO, NO_X, PM_{10}, VOC, and SO_2; (ii) emissions data must include emissions (lbs./hr.) calculated consistent with reporting obligations pursuant to operating permits, permitted operating/emission limits, and the actual incremental emissions above the permit limits; (iii) the number and actual hours each day that each Specified Resource unit operated in excess of permit limits or conditions; (iv) the amount, type and formulation of any fuel used by each Specified Resource; (v) all reporting provided under the Specified Resource's operating permit requirements over the last three years to the United States Environmental Protection Agency or local Air Quality Management District for the location of a Specified Resource; (vi) additional information requested by DOE as it performs any environmental review relating to the issuance of the Order; and (vii) information provided by the Specified Resource describing how the Specified Resource complied with applicable environmental requirements to the maximum extent feasible while operating consistent with the emergency conditions.

The Order also requires PJM to submit a final report by February 27, 2023, with any revisions to the information reported on January 26, 2023. Consistent with the National Environmental Policy Act, the Department will prepare a Special Environmental Analysis of the environmental impacts of the Order that will include consideration of environmental justice. PJM will be responsible for the reasonable third-party costs of the Special Environmental Analysis.

Signing Authority

This document of the Department of Energy was signed on February 10, 2023, by Puesh M. Kumar, Director for the Office of Cybersecurity, Energy Security, and Emergency Response, 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 February 13, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–03313 Filed 2–15–23; 8:45 am]

BILLING CODE 6450–01–P

[1] For more information on EEA levels, see *https://nercstg.nerc.com/pa/rrm/ea/Pages/Energy-Emergency-Alerts.aspx.*

DEPARTMENT OF ENERGY

[DOE Docket No. 202–22–3]

Emergency Order Issued to the Electric Reliability Council of Texas, Inc. (ERCOT) To Operate Power Generating Facilities Under Limited Circumstances in Texas as a Result of Extreme Weather

AGENCY: Office of Cybersecurity, Energy Security, and Emergency Response, Department of Energy.

ACTION: Notice of emergency action.

SUMMARY: The U.S. Department of Energy (DOE or the Department) is issuing this Notice to document emergency actions that it has taken pursuant to the Federal Power Act. DOE issued an emergency order to the Electric Reliability Council of Texas, Inc. (ERCOT) to operate certain power generating facilities under limited circumstances as described further. ERCOT is the independent system operator for over 26 million people in Texas (ERCOT Region). The state of Texas experienced a severe winter weather system that caused a significant drop in temperatures. While the vast majority of generating units in the ERCOT region continued to operate without any problem, a small number of units experienced operating difficulties due to cold weather or gas curtailments. Additional generation required to serve the ERCOT Region was anticipated to result in a conflict with environmental standards and requirements, therefore DOE authorized only the necessary additional generation for ERCOT to sufficiently supply the amount of energy needed to prevent electrical disruption. Because no facilities operated above permitted levels during the emergency as authorized by the DOE order, no environmental impacts resulted from DOE issuing the order. Consequently, DOE has decided not to prepare a special environmental analysis.

ADDRESSES: Requests for more information should be addressed by electronic mail to *AskCR@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: For further information on this Notice, or for information on the emergency activities described herein, contact Kenneth Buell, (202) 586–3362, *Kenneth.Buell@hq.doe.gov,* or by mail to the attention of Kenneth Buell, CR–30, 1000 Independence Ave. SW, Washington, DC 20585.

The Order and all related information are available here: *https://www.energy.gov/ceser/federal-power-act-section-202c-ercot-december-2022.*

SUPPLEMENTARY INFORMATION:

Background

Section 202(c) of the Federal Power Act

The Department is issuing this Notice pursuant to 10 CFR 1021.343(a) to document emergency actions taken in accordance with section 202(c) of the Federal Power Act (FPA) (16 U.S.C. 824a(c)). FPA section 202(c) provides that ''[d]uring the continuance of any war in which the United States is engaged, or whenever the [Secretary of Energy] determines that an emergency exists by reason of a sudden increase in the demand for electric energy, or a shortage of electric energy or of facilities for the generation or transmission of electric energy, or of fuel or water for generating facilities, or other causes, the [Secretary of Energy] shall have authority, either upon [her] own motion or upon complaint, with or without notice, hearing, or report, to require by order such temporary connections of facilities and generation, delivery, interchange, or transmission of electric energy as in [her] judgment will best meet the emergency and serve the public interest.''

1. Request for Emergency Order From ERCOT

On December 23, 2022, ERCOT filed a Request for Emergency Order Under section 202(c) of the Federal Power Act (Application) to take ''measures to ensure the supply of generation will continue to be sufficient to meet system demand and reserve requirements'' in response to the severe winter weather impacting much of the United States. The temperature drop, accompanied by high winds in excess of 40 mph resulted in wind chill values across the state generally below ten degrees Fahrenheit, with some areas of Texas experiencing wind chills values well below zero degrees.

In its Application, ERCOT noted that a small number of generating units experienced operating difficulties due to cold weather or gas curtailments and that one generation owner was limited in its power output due to emissions, effluent, and other limits established by federal environmental permits, or that, due to continuing cold weather conditions, may become subject to such operational limitations. Specifically, ERCOT indicated that the operation of gas-fired generators may be impacted by permit restrictions on nitrogen oxide, carbon monoxide, and ammonia emissions. ERCOT requested the authority to authorize the provision of additional energy from the units identified in Exhibit A of its Application, as well as any other generating units subject to emissions or other permit limitations, subject to the Order (''Specified Resources''). ERCOT stated that the emergency order it was requesting could result in exceedances of environmental limits. Given the permit limits of the Specified Resources, ERCOT anticipated that the additional capacity may not be made available absent an order under FPA section 202(c).

2. ERCOT Order

On December 23, 2022, the Under Secretary of Energy for Infrastructure, acting pursuant to Delegated authority, issued Order No. 202–22–3 (the Order). As set forth in the Order, the Under Secretary of Energy for Infrastructure found that because of the expected shortage of electric energy, shortage of facilities for the generation of electric energy, and other causes in Texas and within the ERCOT region, the issuance of the Order would meet the emergency and serve the public interest.

The Order authorized ERCOT to dispatch the Specified Resources for the period beginning with the issuance of the Order on December 23, 2022, to 10:00 a.m. Central Time on December 25, 2022, under the conditions set forth in the Order, including the following:

(i) For any Generation Resource or Settlement Only Generator whose operator notifies ERCOT that the unit is unable, or expected to be unable, to produce at its maximum output due to an emissions or other limit in any federal environmental permit at any point before 12:00 p.m. Central Time on Saturday, December 24, 2022, and between 18:00 (6:00 p.m.) Central Time on Saturday, December 24, 2022 and 10:00 Central Time on Sunday, December 25, 2022, the unit would be allowed to exceed any such limit only during any period for which ERCOT has declared an Energy Emergency Alert (EEA) Level 2 or Level 3.[1] This incremental amount of restricted capacity would be offered at a price no lower than $1,500/MWh. Once ERCOT declares that the EEA Level 2 event has ended, the unit would be required to immediately return to operation within its permitted limits. And at all other times, the unit would be required to operate within its permitted limits.

(ii) For any Generation Resource whose operator notifies ERCOT that the unit is offline or would need to go offline at any point before 12:00 p.m. Central Time on Saturday, December 24, 2022, and between 18:00 (6:00 p.m.) Central Time on Saturday, December 24,

[1] For more information on EEA levels, see *https://nercstg.nerc.com/pa/rrm/ea/Pages/Energy-Emergency-Alerts.aspx.*

2022 and 10:00 a.m. Central Time on Sunday, December 25, 2022 due to an emissions or other limit in any federal environmental permit, ERCOT may issue a Reliability Unit Commitment (RUC) instruction directing the unit operator to bring the unit online, or to keep the unit online, and to operate at the minimum level at which the Resource can be sustainably operated. In this circumstance, the operator would be allowed to make all of the unit's capacity available to ERCOT for dispatch during any period for which ERCOT has declared an Energy Emergency Alert (EEA) Level 2 or Level 3. This incremental amount of restricted capacity would be offered at a price no lower than $1,500/MWh. Once ERCOT declares that such an EEA Level 2 event has ended, the unit would be required to immediately return to operating at a level below the higher of its minimum operating level or the maximum output allowable under the permitted limit.

The Order required that ERCOT provide a report by January 25, 2023, for the dates between December 23, 2022 and December 25, 2022, inclusive on which the Specified Resources were operated, the hours of operation, and exceedance of permitting limits, including sulfur dioxide, nitrogen oxide, mercury, carbon monoxide, and other air pollutants, as well as exceedances of wastewater release limits. The report must include, ''(i) emissions data in pounds per hour for each Specified Resource unit, for each hour of the operational scenario, for CO, NO_X, PM_{10}, VOC, and SO_2; (ii) emissions data must include emissions (lbs./hr.) calculated consistent with reporting obligations pursuant to operating permits, permitted operating/emission limits, and the actual incremental emissions above the permit limits; (iii) the number and actual hours each day that each Specified Resource unit operated in excess of permit limits or conditions, *e.g.* ''Generator #1; December 24, 2022; 4 hours; 04:00–08:00 CT''; (iv) the amount, type and formulation of any fuel used by each Specified Resource; (v) all reporting provided under the Specified Resource's operating permit requirements over the last three years to the United States Environmental Protection Agency or local Air Quality Management District for the location of a Specified Resource that operates pursuant to the Order; (vi) additional information requested by DOE as it performs any environmental review relating to the issuance of the Order; and (vii) information provided by the Specified Resource complied with applicable environmental requirements to the maximum extent feasible while operating consistent with emergency conditions.

The Order also requires ERCOT to submit a final report by February 25, 2023, with any revisions to the information reported on January 25, 2023. In this case, because no facilities operated above permitted levels during the emergency as authorized by the DOE order, no environmental impacts resulted from DOE issuing the order. Consequently, DOE has decided not to prepare a special environmental analysis.

Signing Authority

This document of the Department of Energy was signed on February 10, 2023, by Puesh M. Kumar, Director for the Office of Cybersecurity, Energy Security, and Emergency Response, 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 February 13, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–03314 Filed 2–15–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL03–3–011]

S&P Global Commodity Insights (Formerly Platts); Notice of Filing

Take notice that on February 9, 2023, S&P Global Commodity Insights (formerly Platts) filed a formal application to the Federal Energy Regulatory Commission's (Commission) for re-approval as a price index developer fully or substantially in compliance with the Commission's April 2022 *Actions Regarding the Commission's Policy on Price Index Formation and Transparency, and Indices Referenced in Natural Gas and Electric Tariffs (Revised Policy Statement).*[1]

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern Time on February 22, 2023.

Dated: February 10, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–03302 Filed 2–15–23; 8:45 am]

BILLING CODE 6717–01–P

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[1] 179 FERC ¶ 61,036 (2022).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2206–109]

Duke Energy Progress, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Capacity License Amendment.

b. *Project No.:* 2206–109.

c. *Date Filed:* December 23, 2022.

d. *Applicant:* Duke Energy Progress, LLC.

e. *Name of Project:* Yadkin-Pee Dee Hydroelectric Project.

f. *Location:* The project is located on the Pee Dee River, near the cities of Norwood and Rockingham, in Anson, Montgomery, Richmond, and Stanly counties, North Carolina. The project does not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Jeff Lineberger, Director, Water Strategy and Hydro Licensing, Duke Energy Progress, Inc., 526 S Church Street, Mail Stop Ec12y, Charlotte, North Carolina 28202, (704) 382–5942, *Jeff.Linberger@duke-energy.com*.

i. *FERC Contact:* Margaret Noonan, (202) 502–8971, *Margaret.Noonan@ferc.gov*.

j. *Deadline for filing comments, motions to intervene, and protests:* 30 days from the date of notice issuance.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–2206–109. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The applicant requests approval to replace the turbine runners for Units 1 and 3 at the Tillery Development with aerating runners which would improve power and reliability, and would be capable of meeting the project's dissolved oxygen (DO) requirements. The applicant states the updates are expected to increase the project's installed capacity from 105,375 kilowatts (kW) to 115,875 kW. The maximum hydraulic capacity would increase from 26,882 cubic feet per second (cfs) to 28,570 cfs (6% increase). The applicant also filed an updated DO Compliance Implementation Plan to reflect the DO changes caused by the new aeration runners, as well as a new Maintenance and Emergency Protocol. The amendment application does not propose any changes to the licensed project operations beyond the primary methods of DO aeration, nor does the applicant anticipate other modifications of the project facilities.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: February 10, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–03304 Filed 2–15–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14513–003]

Idaho Irrigation District; New Sweden Irrigation District; Notice of Availability of Final Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for original license for the County Line Road Hydroelectric Project, located on the Snake River in Bonneville and Jefferson Counties, Idaho, and has prepared a Final Environmental Assessment (FEA) for the project. No federal land would be

occupied by project works or located within the proposed project boundary.

The FEA contains staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

The number of pages in the FEA exceeds the page limits set forth in the Council on Environmental Quality's July 16, 2020 final rule, *Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act* (85 FR 43304). Noting the scope and complexity of the proposed action and action alternatives, the Director of the Office of Energy Projects, as our senior agency official, has authorized this page limit exceedance for the FEA.

The Commission provides all interested persons with an opportunity to view and/or print the FEA via the internet through the Commission's Home Page (*http://www.ferc.gov/*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at *https://ferconline.ferc.gov/eSubscription.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any questions regarding this notice may be directed to Matt Cutlip at (503) 552–2762.

Dated: February 10, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–03303 Filed 2–15–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–486–000]

Texas Eastern Transmission, LP; Notice of Availability of the Environmental Assessment for the Proposed Appalachia to Market II and Entriken Replacement Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Appalachia to Market II and Entriken HP Replacement Project (Project) proposed by Texas Eastern Transmission, LP (Texas Eastern) in the above-referenced docket. Texas Eastern proposes to construct, operate, and maintain the Line 28 Loop, consisting of 2 miles of 36-inch-diameter looping [1] pipeline; a new receiver, valve, and crossover site; a 27,000 horsepower (hp) electric motor driven (EMD) compressor unit and associated buildings and piping at the Armagh Compressor Station; construct a 24,000 hp EMD compressor unit and associated buildings and piping at the Entriken Compressor Station. The Project would be located in Huntington, Indiana and Lebanon counties, Pennsylvania, and would allow Texas Eastern to provide up to 55,000 Dth/d of firm natural gas transportation service from the Appalachian supply basin in Southwest Pennsylvania to delivery points in New Jersey.

The EA assesses the potential environmental effects of the construction and operation of the Project in accordance with the requirements of the National Environmental Policy Act. With the exception of climate change impacts, FERC staff concludes that approval of the proposed project, with the mitigation measures recommended in the EA, would not result in significant environmental impacts. Climate change impacts are not characterized in the EA as significant or insignificant because the Commission is conducting a generic proceeding to determine whether and how the Commission will conduct significant determinations going forward.[2] The EA also concludes that no system, route, or other alternative would meet the Project objective while providing a significant environmental advantage over the Project as proposed.

The Commission mailed a copy of the *Notice of Availability of the Environmental Assessment for the Appalachia to Market II and Entriken HP Replacement Project* to Federal, State, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the Project area. The EA is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the natural gas environmental documents page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). In addition, the EA may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://elibrary.ferc.gov/eLibrary/search*) select ''General Search'' and enter the docket number in the ''Docket Number'' field (*i.e.,* CP22–486). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The EA is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding. Any person wishing to comment on the EA may do so. Your comments should focus on the EA's disclosure and discussion of potential environmental effects, measures to avoid or lessen environmental impacts and the completeness of the submitted alternatives, information and analyses. The more specific your comments, the more useful they would be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before 5:00 p.m. Eastern Time on March 13, 2023.

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' If you are filing a comment on a particular project, please select

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[1] A pipeline loop is a segment of pipe constructed parallel to an existing pipeline to increase capacity.

[2] Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews, 178 FERC ¶ 61,108 (2022); 178 FERC ¶ 61,197 (2022).

''Comment on a Filing'' as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the Project docket number (CP22–486–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered. Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. At this point in this proceeding, the timeframe for filing timely intervention requests has expired. Any person seeking to become a party to the proceeding must file a motion to intervene out-of-time pursuant to Rule 214(b)(3) and (d) of the Commission's Rules of Practice and Procedures (18 CFR 385.214(b)(3) and (d)) and show good cause why the time limitation should be waived. Motions to intervene are more fully described at *https://www.ferc.gov/how-intervene.*

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Dated: February 10, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–03306 Filed 2–15–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP23–434–000.
Applicants: Midwestern Gas Transmission Company.
Description: § 4(d) Rate Filing: Housekeeping Update to be effective 3/13/2023.
Filed Date: 2/10/23.
Accession Number: 20230210–5035.
Comment Date: 5 p.m. ET 2/22/23.

Docket Numbers: RP23–435–000.
Applicants: Panhandle Eastern Pipe Line Company, LP.
Description: § 4(d) Rate Filing: Update GT&C Section 28 to be effective 3/10/2023.
Filed Date: 2/10/23.
Accession Number: 20230210–5037.
Comment Date: 5 p.m. ET 2/22/23.

Docket Numbers: RP23–436–000.
Applicants: Ruby Pipeline, L.L.C.
Description: § 4(d) Rate Filing: RP 2023–02–10 System Map URL to be effective 3/13/2023.
Filed Date: 2/10/23.
Accession Number: 20230210–5042.
Comment Date: 5 p.m. ET 2/22/23.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 10, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–03308 Filed 2–15–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC23–1–000]

Commission Information Collection Activities (FERC–725I); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on a renewal of currently approved information collection, FERC–725I, (Reporting of Flow Volume and Capacity by Interstate Natural Gas Pipelines), which will be submitted to the Office of Management and Budget (OMB) for review. No Comments were received on the 60-day notice published on December 5, 2022.

DATES: Comments on the collection of information are due March 20, 2023.

ADDRESSES: Send written comments on FERC–725I to OMB through *www.reginfo.gov/public/do/PRAMain.* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB Control Number (1902–0258) in the subject line of your comments. Comments should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.*

Please submit copies of your comments to the Commission. You may submit copies of your comments (identified by Docket No. IC23–1–000) by one of the following methods:

Electronic filing through *https://www.ferc.gov,* is preferred.

- Electronic Filing: Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.

○ *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

○ *Hand (including courier) delivery:* Deliver to: Federal Energy Regulatory Commission, Secretary of the Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: OMB submissions must be formatted and filed in accordance

with submission guidelines at *www.reginfo.gov/public/do/PRAMain.* Using the search function under the ''Currently Under Review'' field, select Federal Energy Regulatory Commission; click ''submit,'' and select ''comment'' to the right of the subject collection.

FERC submissions must be formatted and filed in accordance with submission guidelines at: *https://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *https://www.ferc.gov/ferc-online/overview.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC–725I (Mandatory Reliability Standards for the Northeast Power Coordinating Council).

OMB Control No.: 1902–0258.

Type of Request: Three-year extension of the FERC–725I with no changes to the current recordkeeping requirements.

Abstract: The Regional Reliability standard PRC–006–NPCC–2 (Automatic Underfrequency Load Shedding (UFLS)) provides regional requirements for Automatic UFLS to applicable entities in NPCC. UFLS requirements were in place at a continent-wide level and within NPCC for many years prior to the implementation of federally mandated reliability standards in 2007. NPCC and its members think that a region-wide, fully coordinated single set of UFLS requirements is necessary to create an effective and efficient UFLS program, and their experience has supported that belief.

Information collection burden for Reliability Standard PRC–006–NPCC–2 is based on the time needed for planning coordinators and generator owners to incrementally gather data, run studies, and analyze study results to design or update the UFLS programs that are required in the regional Reliability Standard (in addition to the requirements of the NERC Reliability Standard PRC–006–3). There is also burden on the generator owners to maintain data such as identify, compile, and maintain a list of all of its existing non-nuclear generating units that were in service prior to the effective date of the regional Standard.

Type of Respondent: Generator owners and planning coordinators.

Estimate of Annual Burden: [1] The number of respondents is based on NERC's Registry as of November 4, 2022. Entities registered for more than one applicable function type have been accounted for in the figures below. The Commission estimates the annual public reporting burden and cost [2] for the information collection as:

FERC–725I

[Mandatory Reliability Standards for the Northeast Power Coordinating Council]

Information collection requirements	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden hours & cost ($) per response (4)	Total annual burden hours & total annual cost ($) (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1)
PCs Design and document automatic UFLS program	3	1	3	8 hrs.; $728	24 hrs.; $2,184	$728
PCs update and maintain UFLS program database	3	1	3	16 hrs.; 1,456	48 hrs.; 4,368	1,456
GOs provide documentation and data to the planning coordinator.	121	1	121	16 hrs.; 1,456	1,936 hrs.; 176,176.	1,456
GOs: record retention	121	1	121	4 hrs.; 364	484 hrs.; 44,044.	364
Total			248		2,492 hrs.; 226,772.	

Comments: Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: February 10, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–03305 Filed 2–15–23; 8:45 am]

BILLING CODE 6717–01–P

[1] ''Burden'' is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to title 5 Code of Federal Regulations 1320.3.

[2] Commission staff estimates that the industry's skill set and cost (for wages and benefits) for FERC–725I are approximately the same as the Commission's average cost. The FERC 2022 average salary plus benefits for one FERC full-time equivalent (FTE) is $188,922/year (or $91.00/hour).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project/Docket No. CP22–486–000]

Texas Eastern Transmission, LP; Notice of Waiver Period for Water Quality Certification Application

On October 24, 2022, Texas Eastern Transmission, LP 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 Pennsylvania Department of Environmental Protection, in

conjunction with the above captioned project. Pursuant to 40 CFR 121.6 and section 157.22(b) of the Commission's regulations,[1] we hereby notify the Pennsylvania Department of Environmental Protection of the following:

Date of Receipt of the Certification Request: August 5, 2022.

Reasonable Period of Time to Act on the Certification Request: August 5, 2023.

If the Pennsylvania Department of Environmental Protection 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 10, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–03307 Filed 2–15–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meetings

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

TIME AND DATE: Feburary 16, 2023, 10:00 a.m.

PLACE: Room 2C, 888 First Street NE, Washington, DC 20426.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: Agenda.

* **NOTE**—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items stricken from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's website at *https://elibrary.ferc.gov/eLibrary/search* using the eLibrary link.

1098TH—MEETING

[Open Meeting; February 16, 2023; 10:00 a.m.]

Item No.	Docket No.	Company
		ADMINISTRATIVE
A–1	AD23–1–000	Agency Administrative Matters.
A–2	AD23–2–000	Customer Matters, Reliability, Security and Market Operations.
		ELECTRIC
E–1	RD23–1–000	North American Electric Relaibility Corporation.
E–2	ER19–776–002, ER19–809–002 (consolidated).	Midcontinent Independent System Operator, Inc.
E–3	ER22–495–002, ER22–495–003	Midcontinent Independent System Operator, Inc.
E–4	ER22–496–002	Midcontinent Independent System Operator, Inc.
E–5	ER20–1739–002, ER20–1739–003, ER20–1739–000.	American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.
E–6	ER20–1951–002, ER20–1951–003, ER20–1951–000.	Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.
E–7	ER22–2371–001, ER22–2372–001	Southwest Power Pool, Inc.
E–8	ER23–737–000	North Fork Solar Project, LLC.
E–9	ER23–137–000	ZEP Grand Prairie Wind, LLC.
E–10	ER22–709–003	Southwest Power Pool, Inc.
E–11	ER22–2988–000	DLS—Laskin Project Co, LLC.
	ER22–2990–000	DLS—Sylvan Project Co, LLC.
	ER22–2991–000	DLS—Jean Duluth Project Co, LLC.
E–12	EC21–77–001	FirstEnergy Corp.
E–13	EL21–77–003	Tenaska Clear Creek Wind, LLC v. Southwest Power Pool, Inc.
E–14	EL21–56–001	Louisiana Public Service Commission, Arkansas Public Service Commission, and Council of the City of New Orleans, Louisiana v. System Energy Resources, Inc., Entergy Services, LLC, Entergy Operations, Inc., and Entergy Corporation.
E–15	EL22–42–000	RENEW Northeast, Inc. and the American Clean Power Association v. ISO New England Inc.
E–16	EL22–30–001	Southwestern Public Service Company v. Southwest Power Pool, Inc.
E–17	EL23–7–000	Generate Capital, PBC.
		HYDRO
H–1	P–2816–050	North Hartland, LLC.
H–2	P–2354–152	Georgia Power Company.
H–3	P–2100–185	California Department of Water Resources.
H–4	P–2530–061	Brookfield White Pine Hydro LLC.
		CERTIFICATES
C–1	CP22–141–000	Great Basin Gas Transmission Company.
C–2	OMITTED.	

[1] 18 CFR 157.22.

1098TH—MEETING—Continued

[Open Meeting; February 16, 2023; 10:00 a.m.]

Item No.	Docket No.	Company
C–3	CP23–29–000	Saguaro Connector Pipeline, L.L.C.
C–4	CP22–227–000	Columbia Gas Transmission, LLC.
C–5	CP16–10–010, CP19–477–002, CP21–57–002.	Mountain Valley Pipeline, LLC.

A free webcast of this event is available through the Commission's website. Anyone with internet access who desires to view this event can do so by navigating to *www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The Federal Energy Regulatory Commission provides technical support for the free webcasts. Please call (202) 502–8680 or email *customer@ferc.gov* if you have any questions.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters but will not be telecast.

Issued: February 9, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–03461 Filed 2–14–23; 4:15 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER23–391–001.
Applicants: Avista Corporation, PacifiCorp, Puget Sound Energy, Portland General Electric Company, NorthWestern Corporation.
Description: Tariff Amendment: Avista Corporation submits tariff filing per 35.17(b): First Amendment Amended and Restated Colstrip Project to be effective 11/9/2022.
Filed Date: 2/10/23.
Accession Number: 20230210–5171.
Comment Date: 5 p.m. ET 3/3/23.

Docket Numbers: ER23–659–001.
Applicants: Upper Missouri G. & T. Electric Cooperative, Inc.
Description: Tariff Amendment: Amendment to Revisions to FERC Elec. Tariff No. 1—Formula Rate 02.10.23 to be effective 1/1/2023.
Filed Date: 2/10/23.
Accession Number: 20230210–5038.
Comment Date: 5 p.m. ET 3/3/23.

Docket Numbers: ER23–771–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2023–02–10_SA 3392 Entergy Arkansas-New Madrid Solar Sub 1st Rev GIA (J944) to be effective 12/20/2022.
Filed Date: 2/10/23.
Accession Number: 20230210–5047.
Comment Date: 5 p.m. ET 3/3/23.

Docket Numbers: ER23–800–001.
Applicants: The Dayton Power and Light Company.
Description: Tariff Amendment: Amendment of Union Facilities Agreement Filing in Docket ER23–800 to be effective 3/11/2023.
Filed Date: 2/10/23.
Accession Number: 20230210–5072.
Comment Date: 5 p.m. ET 3/3/23.

Docket Numbers: ER23–979–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: ISA, SA No. 6771; Queue No. AE2–019 to be effective 1/11/2023.
Filed Date: 1/30/23.
Accession Number: 20230130–5167.
Comment Date: 5 p.m. ET 2/21/23.

Docket Numbers: ER23–1082–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2023–02–10_SA 3438 Entergy Arkansas-Long Lake Solar 2nd Rev GIA (J663 J834) to be effective 2/3/2023.
Filed Date: 2/10/23.
Accession Number: 20230210–5001.
Comment Date: 5 p.m. ET 3/3/23.

Docket Numbers: ER23–1083–000.
Applicants: Midcontinent Independent System Operator, Inc., American Transmission Company LLC.
Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2023–02–10_SA 2794 ATC-City of Gladstone 2nd Rev CFA to be effective 4/12/2023.
Filed Date: 2/10/23.
Accession Number: 20230210–5002.
Comment Date: 5 p.m. ET 3/3/23.

Docket Numbers: ER23–1084–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 6777; Queue No. AE1–103 to be effective 1/11/2023.
Filed Date: 2/10/23.
Accession Number: 20230210–5012.
Comment Date: 5 p.m. ET 3/3/23.

Docket Numbers: ER23–1085–000.
Applicants: American Transmission Company LLC, Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: American Transmission Company LLC submits tariff filing per 35.13(a)(2)(iii: 2023–02–10_SA 2766 ATC-City of Elkhorn 2nd Rev CFA to be effective 4/12/2023.
Filed Date: 2/10/23.
Accession Number: 20230210–5014.
Comment Date: 5 p.m. ET 3/3/23.

Docket Numbers: ER23–1086–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 6775; Queue No. AD1–151 to be effective 1/11/2023.
Filed Date: 2/10/23.
Accession Number: 20230210–5015.
Comment Date: 5 p.m. ET 3/3/23.

Docket Numbers: ER23–1087–000.
Applicants: American Electric Power Service Corporation, AEP Appalachian Transmission Company, Inc., AEP Indiana Michigan Transmission Company, Inc., AEP Kentucky Transmission Company, Inc., AEP Ohio Transmission Company, Inc., AEP West Virginia Transmission Company, Inc., PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: American Electric Power Service Corporation submits tariff filing per 35.13(a)(2)(iii: AEP submits revisions to PJM OATT Att. H–20B PBOP Rate to be effective 4/12/2023.
Filed Date: 2/10/23.
Accession Number: 20230210–5046.
Comment Date: 5 p.m. ET 3/3/23.

Docket Numbers: ER23–1088–000.
Applicants: Idaho Power Company.
Description: Compliance filing: Interconnection Metrics Filing—Q4 2022 to be effective N/A.

Filed Date: 2/10/23.
Accession Number: 20230210–5073.
Comment Date: 5 p.m. ET 3/3/23.

Docket Numbers: ER23–1089–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.15: Origis Development (4 Notch Solar + Storage) LGIA Termination Filing to be effective 2/10/2023.
Filed Date: 2/10/23.
Accession Number: 20230210–5075.
Comment Date: 5 p.m. ET 3/3/23.

Docket Numbers: ER23–1090–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.15: Origis Development (5 Notch Solar + Storage) LGIA Termination Filing to be effective 2/10/2023.
Filed Date: 2/10/23.
Accession Number: 20230210–5076.
Comment Date: 5 p.m. ET 3/3/23.

Docket Numbers: ER23–1091–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.15: Flowers Creek Affected System Upgrade Agreement Termination Filing to be effective 1/12/2023.
Filed Date: 2/10/23.
Accession Number: 20230210–5077.
Comment Date: 5 p.m. ET 3/3/23.

Docket Numbers: ER23–1092–000.
Applicants: Georgia Power Company.
Description: Tariff Amendment: Flowers Creek Affected System Upgrade Agreement Concurrence Termination Filing to be effective 1/12/2023.
Filed Date: 2/10/23.
Accession Number: 20230210–5078.
Comment Date: 5 p.m. ET 3/3/23.

Docket Numbers: ER23–1093–000.
Applicants: Mississippi Power Company.
Description: Tariff Amendment: Flowers Creek Affected System Upgrade Agreement Concurrence Termination Filing to be effective 1/12/2023.
Filed Date: 2/10/23.
Accession Number: 20230210–5079.
Comment Date: 5 p.m. ET 3/3/23.

Docket Numbers: ER23–1094–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: Initial rate filing: Alabama Power Company submits tariff filing per 35.12: Pecan Tree Solar Affected System Upgrade Agreement Filing to be effective 1/12/2023.
Filed Date: 2/10/23.
Accession Number: 20230210–5082.
Comment Date: 5 p.m. ET 3/3/23.

Docket Numbers: ER23–1095–000.
Applicants: Georgia Power Company.
Description: Initial rate filing: Pecan Tree Solar Affected System Upgrade Agreement Concurrence Filing to be effective 1/12/2023.
Filed Date: 2/10/23.
Accession Number: 20230210–5083.
Comment Date: 5 p.m. ET 3/3/23.

Docket Numbers: ER23–1096–000.
Applicants: Mississippi Power Company.
Description: Initial rate filing: Pecan Tree Solar Affected System Upgrade Agreement Concurrence Filing to be effective 1/12/2023.
Filed Date: 2/10/23.
Accession Number: 20230210–5084.
Comment Date: 5 p.m. ET 3/3/23.

Docket Numbers: ER23–1097–000.
Applicants: Florida Power & Light Company.
Description: § 205(d) Rate Filing: FPL Amendment to Rate Schedule No. 329 with Southern Companies to be effective 1/12/2023.
Filed Date: 2/10/23.
Accession Number: 20230210–5087.
Comment Date: 5 p.m. ET 3/3/23.

Docket Numbers: ER23–1098–000.
Applicants: New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: NYISO 205 filing of tariff revisions re: deliverability rules for ICLs to be effective 2/13/2023.
Filed Date: 2/10/23.
Accession Number: 20230210–5108.
Comment Date: 5 p.m. ET 3/3/23.

Docket Numbers: ER23–1099–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2023–02–10 Reconciliation Filing of FERC-Approved Language to be effective 9/28/2019.
Filed Date: 2/10/23.
Accession Number: 20230210–5114.
Comment Date: 5 p.m. ET 3/3/23.

Docket Numbers: ER23–1100–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 6779; Queue No. AF1–028 to be effective 1/11/2023.
Filed Date: 2/10/23.
Accession Number: 20230210–5159.
Comment Date: 5 p.m. ET 3/3/23.

Docket Numbers: ER23–1101–000.
Applicants: Vermont Transco LLC.
Description: § 205(d) Rate Filing: Shared Structure Participation Agreement to be effective 2/1/2023.
Filed Date: 2/10/23.
Accession Number: 20230210–5163.
Comment Date: 5 p.m. ET 3/3/23.

Docket Numbers: ER23–1102–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 6781; Queue No. AE2–190 to be effective 1/11/2023.
Filed Date: 2/10/23.
Accession Number: 20230210–5165.
Comment Date: 5 p.m. ET 3/3/23.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 10, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–03309 Filed 2–15–23; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 127100]

Open Commission Meeting Thursday, February 16, 2023

February 9, 2023.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, February 16, 2023, which is scheduled to commence at 10:30 a.m. in the Commission Meeting Room of the Federal Communications Commission, 45 L Street NE, Washington, DC.

While attendance at the Open Meeting is available to the public, the FCC headquarters building is not open access and all guests must check in with and be screened by FCC security at the main

entrance on L Street. Attendees at the Open Meeting will not be required to have an appointment but must otherwise comply with protocols outlined at: *www.fcc.gov/visit.* Open Meetings are streamed live at: *www.fcc.gov/live* and on the FCC's YouTube channel.

Item No.	Bureau	Subject
1	Wireline Competition	*Title:* (Docket No. 22–238); Lifeline and Link Up Reform and Modernization (WC Docket No. 11–42); Affordable Connectivity Program (WC Docket No. 21–450). *Summary:* The Commission will consider a Notice of Proposed Rulemaking which would begin the Commission's required implementation of the Safe Connections Act of 2022. The proposal seeks to help survivors of domestic violence and similar crimes separate lines from shared mobile accounts that include their abusers, protect the privacy of calls made by survivors to domestic abuse hotlines, and support survivors who face financial hardship through the Commission's affordability programs.
2	Wireline Competition	*Title:* Schools and Libraries Universal Service Support Mechanism (CC Docket No. 02–6); Federal-State Joint Board on Universal Service. (CC Docket No. 96–45); Changes to the Board of Directors for the National Exchange Carrier Association, Inc. (CC Docket No. 97–21). *Summary:* The Commission will consider a Notice of Proposed Rulemaking which would seek comments on improvements to the E-Rate program that would increase access for Tribal applicants generally as well as within the Tribal Libraries E-Rate Pilot Program.
3	Media	*Title:* Restricted Adjudicatory Matter. *Summary:* The Commission will consider a restricted adjudicatory matter.

* * * * *

The meeting will be webcast at: *www.fcc.gov/live.* Open captioning will be provided as well as a text only version on the FCC website. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530.

Press Access—Members of the news media are welcome to attend the meeting and will be provided reserved seating on a first-come, first-served basis. Following the meeting, the Chairwoman may hold a news conference in which she will take questions from credentialed members of the press in attendance. Also, senior policy and legal staff will be made available to the press in attendance for questions related to the items on the meeting agenda. Commissioners may also choose to hold press conferences. Press may also direct questions to the Office of Media Relations (OMR): *MediaRelations@fcc.gov.* Questions about credentialing should be directed to OMR.

Additional information concerning this meeting may be obtained from the Office of Media Relations, (202) 418–0500. Audio/Video coverage of the meeting will be broadcast live with open captioning over the internet from the FCC Live web page at *www.fcc.gov/live.*

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2023–03253 Filed 2–15–23; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Administration for Children and Families Program Instruction—Children's Justice Act (OMB #0970–0425)

AGENCY: Children's Bureau, 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) is requesting a 3-year extension of the ACF Program Instruction—Children's Justice Act (Office of Management and Budget (OMB) #0970–0425, expiration 6/30/2023). There are no changes to the Program Instruction.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. You can also obtain copies of the proposed collection of information by emailing *infocollection@acf.hhs.gov.* Identify all emailed requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The Program Instruction, prepared in response to the enactment of the Children's Justice Act, Title II of Public Law 111–320, Child Abuse Prevention and Treatment Act Reauthorization of 2010, provides direction to the states and territories to accomplish the purposes of assisting states in developing, establishing, and operating programs designed to improve: (1) the assessment and investigation of suspected child abuse and neglect cases, including cases of suspected child sexual abuse and exploitation, in a manner that limits additional trauma to the child and the child's family; (2) the assessment and investigation of cases of suspected child abuse-related fatalities and suspected child neglect-related fatalities; (3) the investigation and prosecution of cases of child abuse and neglect, including child sexual abuse and exploitation; and (4) the assessment and investigation of cases involving children with disabilities or serious health-related problems who are suspected victims of

child abuse or neglect. This Program Instruction contains information collection requirements that are found in Public Law 111–320 at sections 107(b) and 107(d), and pursuant to receiving a grant award. The information being collected is required by statute to be submitted pursuant to receiving a grant award. The information submitted will be used by the agency to ensure compliance with the statute; to monitor, evaluate, and measure grantee achievements in addressing the investigation and prosecution of child abuse and neglect; and to report to Congress.

Respondents: State governments.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
Application and Annual Report	52	1	60	3,120

Estimated Total Annual Burden Hours: 3,120.

Authority: 42 U.S.C. 5106c Sec. 107 (b)4; and 42 U.S.C. 5106 Sec. 107 (B)5.

John M. Sweet Jr.,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–03318 Filed 2–15–23; 8:45 am]

BILLING CODE 4184–25–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Proposed Collection; Comment Request; SHIP-SMP Survey of Group Outreach and Education Events, Formerly the "Senior Medicare Program National Beneficiary Survey", OMB# 0985–0056

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) is announcing an opportunity for the public to comment on the proposed collection of information listed above. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish a 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 the Proposed Revision and solicits comments on the information collection requirements related to the ''National SHIP-SMP Beneficiary Survey of Group Outreach and Education Events.''

DATES: Comments on the collection of information must be submitted electronically by 11:59 p.m. (EST) or postmarked by April 17, 2023.

ADDRESSES: Submit electronic comments on the collection of information to: Shefy Simon. Submit written comments on the collection of information to Administration for Community Living, Washington, DC 20201, Attention: Shefy Simon.

FOR FURTHER INFORMATION CONTACT: Shefy Simon, Administration for Community Living, Washington, DC 20201, 202–795–7572, *shefy.simon@acl.hhs.gov*.

SUPPLEMENTARY INFORMATION: 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. ''Collection of information'' is defined in as 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 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, ACL is publishing a notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, ACL invites comments on our burden estimates or any other aspect of this collection of information, including:

(1) whether the proposed collection of information is necessary for the proper performance of ACL's functions, including whether the information will have practical utility;

(2) the accuracy of ACL's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used to determine burden estimates;

(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.

The SHIP-SMP Survey of Group Outreach and Education Events is a survey of individuals who attend outreach and education events provided by the State Health Insurance Assistance Program (SHIP) or Senior Medicare Patrol (SMP). These events help Medicare beneficiaries understand their Medicare benefits and options. These events also increase the ability of beneficiaries to identify fraud, waste, and abuse within health care programs generally, and Medicare/Medicaid specifically. The State Health Insurance Assistance Program (SHIP) was created under the Omnibus Budget Reconciliation Act of 1990. This section of the law authorized the Department of Health and Human Services (HHS) to make grants to states to establish and maintain health insurance advisory service programs for Medicare beneficiaries.

Grant funds were made available to support information, counseling, and assistance activities related to Medicare, Medicaid, and other health insurance options.

The Senior Medicare Patrol (SMP) program was authorized in 1997 under Titles II and IV of the Older Americans Act, the Omnibus Consolidated Appropriation Act of 1997 and the Health Insurance Portability and Accountability Act of 1996. The SMP mission is to empower and assist Medicare beneficiaries, their families, and caregivers, to prevent, detect, and report suspected healthcare fraud, errors, and abuse through outreach, counseling, and education.

SMP grantees support ACL's goals of promoting increased choice and greater independence among older adults and individuals with disabilities. SMP activities enhance the financial,

emotional, physical, and mental well-being of older adults, thereby increasing their capacity to maintain security in retirement and make better financial and healthcare choices.

SHIP-SMP grantees provide group outreach and education through presentation events, and this collection will survey the attendees of those events.

The SHIP-SMP Survey of Group Outreach and Education Events will focus on group outreach and education events and the individuals who attend them, to determine if the target audience is satisfied with the information they are receiving. This is a renewal of the existing Senior Medicare Program National Beneficiary Survey, which received clearance on July 31, 2020, with ICR Reference Number 201702–0985–003 and OMB Control Number 0985–0056. That survey was conducted over a three-year period beginning on October 1, 2020 and will conclude on July 31, 2023. To date, the Senior Medicare Program National Beneficiary Survey has generated over 11,000 responses, all of which were submitted anonymously and voluntarily.

ACL requests renewal of the survey to continue the collection performed in Fiscal Years 2024, 2025, and 2026.

Reports developed for FY 2020 and FY 2021 participants have provided an overall measure of presentation attendee satisfaction and have provided insight into the relationship between presentation inputs (information provided, access to presentations) and overall satisfaction. The renewed survey will include both SHIP and SMP presentations and will survey every participating state and territory at least once each year.

To generate a sample with a 95% confidence level at the national level 400 responses will be required, which is based on over 20,000 group outreach and education event attendees in 2020. ACL will draw a representative sample of event attendees by surveying each of the 54 participating states and territories at least once. An average event surveyed in FY 2020 or FY 2021 generated 11 completed surveys, resulting in an estimated minimal collection of 600 responses.

In the first three years of the existing survey states and territories had the opportunity to exceed the minimum requirements, in order to collect a larger overall dataset for their state or territory. This opportunity will continue with the renewed survey. Assuming that an average state or territory collects 100 surveys per year, the maximum burden estimate is 5,400 responses per year.

Burden tables for both the minimum and maximum response totals are available below.

OMB approval is requested for three (3) years. There are no costs to respondents other than their time.

The proposed data collection tools may be found on the ACL website for review at *https://www.acl.gov/about-acl/public-input*.

Estimated Program Burden: ACL estimates the burden associated with this collection of information as follows:

Respondent/data collection activity	Number of respondents (minimum)	Responses per respondent	Hours per response	Annual burden hours
Survey, Stratified Random Sample	600	1	5/60	50
Total	600	1	5/60	50

Respondent/data collection activity	Number of respondents (maximum)	Responses per respondent	Hours per response	Annual burden hours
Survey, Stratified Random Sample	5400	1	5/60	450
Total	5400	1	5/60	450

Dated: February 11, 2023.

Alison Barkoff,

Acting Administrator and Assistant Secretary for Aging.

[FR Doc. 2023–03264 Filed 2–15–23; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Proposed Collection; Comment Request; SHIP–SMP Survey of One-on-One Assistance, Formerly the "National Beneficiary Survey of State Health Insurance Assistance Program (SHIP)", OMB# 0985–0057

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) is announcing an opportunity for the public to comment on the proposed collection of information listed above. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish a 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 the Proposed Revision and solicits comments on the information collection requirements related to the ''SHIP–SMP Survey of One-on-One Assistance''.

DATES: Comments on the collection of information must be submitted electronically by 11:59 p.m. (EST) or postmarked by April 17, 2023.

ADDRESSES: Submit electronic comments on the collection of information to: Shefy Simon. Submit written comments on the collection of information to Administration for Community Living, Washington, DC 20201, Attention: Shefy Simon.

FOR FURTHER INFORMATION CONTACT: Shefy Simon, Administration for Community Living, Washington, DC 20201, 202–795–7572, *shefy.simon@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION: 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. ''Collection of information'' is defined as and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The PRA 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, ACL is publishing a notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, ACL invites comments on our burden estimates or any other aspect of this collection of information, including:

(1) whether the proposed collection of information is necessary for the proper performance of ACL's functions, including whether the information will have practical utility;

(2) the accuracy of ACL's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used to determine burden estimates;

(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.

The SHIP–SMP Survey of One-on-One Assistance is a survey of individuals who meet with team members from the State Health Insurance Assistance Program (SHIP) or the Senior Medicare Patrol (SMP). These services help Medicare beneficiaries understand their Medicare benefits and options. These services also increase the ability of beneficiaries to identify and report fraud, waste, and abuse within health care programs generally, and Medicare/Medicaid specifically. The State Health Insurance Assistance Program (SHIP) was created under the Omnibus Budget Reconciliation Act of 1990. This section of the law authorized the Department of Health and Human Services (HHS) to make grants to states to establish and maintain health insurance advisory service programs for Medicare beneficiaries. Grant funds were made available to support information, counseling, and assistance activities related to Medicare, Medicaid, and other health insurance options. SHIP grantees provide free, in-depth, unbiased, one-on-one health insurance counseling and assistance to Medicare beneficiaries, their families, and caregivers.

The Senior Medicare Patrol (SMP) program was authorized in 1997 under Titles II and IV of the Older Americans Act, the Omnibus Consolidated Appropriation Act of 1997 and the Health Insurance Portability and Accountability Act of 1996. The SMP mission is to empower and assist Medicare beneficiaries, their families, and caregivers, to prevent, detect, and report suspected healthcare fraud, errors, and abuse through outreach, counseling, and education.

SMP grantees support ACL's goals of promoting increased choice and greater independence among older adults and individuals with disabilities. SMP activities also serve to enhance the financial, emotional, physical, and mental well-being of older adults, thereby increasing their capacity to maintain security in retirement and make better financial and healthcare choices. SMP team members provide one-on-one assistance, and when needed, serve as consumer advocates to resolve billing disputes/issues.

The SHIP–SMP Survey of One-on-One Assistance will gauge individuals' satisfaction with the services provided by SHIP and SMP team members. This survey is a renewal of the existing ''National Beneficiary Survey of State Health Insurance Assistance Program (SHIP),'' which received clearance on July 31, 2020, with ICR Reference Number 201702–0985–002 and OMB Control Number 0985–0057. That survey was conducted over a three-year period beginning on October 1, 2020 and will conclude on June 30, 2023. To date, this survey has generated over 2,500 responses, all of which were submitted voluntarily.

ACL requests renewal of the survey to continue the collection performed in Fiscal Years 2024, 2025, and 2026. Reports developed for FY 2020 and FY 2021 participants have provided an overall measure of satisfaction with SHIP's one-on-one assistance services and have provided insight into the relationship between inputs (information provided, time between initial contact and services received) and overall satisfaction. The renewed collection will survey recipients of both SHIP and SMP one-on-one assistance but will not increase the number of surveys collected.

The renewed survey will provide an annual collection at the national level, with an estimated collection of 800 responses per year. To generate a sample with a 95% confidence level at the national level 400 responses will be required from each program (n = 1,800,000 SHIP one-on-one assistance sessions in 2020; n = 286,000 SMP one-on-one assistance sessions in 2020).

ACL will draw a representative sample of customers who received assistance from each program by focusing only on non-redundant individuals (*i.e.,* a random sample without replacement of individuals who receive SHIP and/or SMP one-on-one assistance).

OMB approval is requested for three (3) years. There are no costs to respondents other than their time.

The proposed data collection tools may be found on the ACL website for review at *https://www.acl.gov/about-acl/public-input.*

Estimated Program Burden

ACL estimates the burden associated with this collection of information as follows:

Respondent/data collection activity	Number of respondents	Responses per respondent	Hours per response	Annual burden hours
Survey, Stratified Random Sample	800	1	6/60	80
Total	800	1	6/60	80

Dated: February 11, 2023.

Alison Barkoff,

Acting Administrator and Assistant Secretary for Aging.

[FR Doc. 2023–03263 Filed 2–15–23; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Proposed Collection; Comment Request; National Adult Maltreatment Reporting System; OMB# 0985–0054

AGENCY: Administration for Community Living (ACL), HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living is announcing that the proposed collection of information listed above has been submitted to the Office of Management and Budget (OMB) for review and clearance as required under the Paperwork Reduction Act of 1995. This 30-Day notice collects comments on the information collection requirements related to an extension without change and solicits comments on the information collection requirements related to the on the information collection requirements relating to the National Adult Maltreatment Reporting System (NAMRS).

DATES: Submit written comments on the collection of information by March 20, 2023.

ADDRESSES: Submit written comments on the collection of information by:

(a) Email to: *OIRA_submission@omb.eop.gov,* Attn: OMB Desk Officer for ACL;

(b) Fax to 202.395.5806, Attn: OMB Desk Officer for ACL; or

(c) By mail to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW, Rm. 10235, Washington, DC 20503, Attn: OMB Desk Officer for ACL.

FOR FURTHER INFORMATION CONTACT: Stephanie Whittier Eliason, Administration for Community Living, Washington, DC 20201, 202–795–7467 at *Stephanie.WhittierEliason@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, ACL has submitted the following proposed collection of information to OMB for review and clearance. The National Adult Maltreatment Reporting System authorized under the Elder Justice Act of 2009, which amends Title XX of the Social Security Act [42.U.S.C. 13976 *et seq.*], requires that the Secretary of the U.S. Department of Health and Human Services ''collects and disseminates data annually relating to the abuse, exploitation, and neglect of elders in coordination with the Department of Justice'' [Sec. 2041(a)(1)(B)] and ''conducts research related to the provision of adult protective services'' [Sec. 2041(a)(1)(D)].

The Elder Justice Coordinating Council (EJCC) recommended development of ''a national adult protective services (APS) system based upon standardized data collection and a core set of service provision standards and best practices.''

NAMRS is a voluntary system that has been annually collecting since FY 2016 both summary and de-identified case-level data on APS investigations submitted by states, and the data does not include any personally identifiable information. NAMRS has and will continue to consist of three components:

(1) Descriptive data on state agency and practices from all states through the ''Agency Component,'' and

(2) Case-level, non-identifiable data on persons who receive an investigation by APS in response to an allegation of abuse, neglect, or exploitation through ''Case Component'', or

(3) For states that are unable to submit a case-level file through the ''Case Component,'' a ''Key Indicators Component'' will be available for them to submit data on a smaller set of core items.

ACL will continue to provide technical assistance to assist in the preparation of data submissions by state APS agencies and APS agencies in the District of Columbia, Puerto Rico, Guam, Northern Mariana Islands, Virgin Islands, and American Samoa (states, hereafter).

To address gathering necessary and relevant demographic information to assess diversity and equity in evidence-based program scaling, participation, and advances;[1] the proposed revisions were compared to the Updates on Terminology of Sexual Orientation and Gender Identity (SOGI) Survey Measures from the Federal Committee on Statistical Methodology that came out after publication of the 60-day notice. Several of the changes originally proposed were consistent with SOGI, and ACL made additional changes in the 30-day posting to further align with the SOGI recommendations. The proposed collection is consistent with the SOGI recommendations conceptually and specifically aligns for most of the code values for sexual orientation and gender identity. A 60-day **Federal Register** notice published on Monday, May 23, 2022, in **Federal Register** Vol. 87, No. 99, page 31243.

[1] Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government and the Executive Order on Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals.

RESPONSE TO PUBLIC COMMENT TABLE

Name	Position	Comment	Draft response/notes for discussion
Shelly Fiebich	Director, Bureau of Adult Services Division of Child Welfare and Community Services New York State.	Case Component 5 & 6: ACL should enhance the quality and clarify of information collected by adding ''declined to answer'' as a selection for gender identity and sexual orientation. Key Indicator 9: ACL should enhance the quality and clarity of information collected by providing an option for individuals to mark their gender as ''X'' in fields that collect this information. People should also have the option to mark decline to answer in fields collecting information about gender identity and sexual orientation. Including these additional options leads to more accurate information and affirming reporting by individuals. It's consistent with the Biden administration's efforts to authorize individuals to select ''X'' as their gender marker on U.S. passports and other federal documents, and in alignment with New York State's commitment to provide individuals the option of marking agenda or sex as ''X'' on state forms, including a driver license, learner permit or non-driver identification card.	ACL will align the proposed NAMRS code values with the recent federal Sexual Orientation and Gender Identity (SOGI) recommendations. The SOGI recommendations use ''prefer not to answer'' instead of ''X''. If NYS uses ''X'' as a value in its case management system, then it should map ''X'' to the appropriate category in NAMRS. Based on the SOGI recommendations, we will also add the following code values: [If respondent is AIAN:] Two-Spirit and ''Prefer not to answer''.
Shelly Fiebich	Director, Bureau of Adult Services Division of Child Welfare and Community Services New York State.	Agency Component 7.1.1: The collection of estimated FTEs of staff and supervisors devoted only to APS work when staff are shared among other programs is not feasible in NY because this information is not collected or tracked at the state level and all reporting systems are for separate entities. Further, the collection of this information does not appear necessary for the proper performance of ACL functions. Regarding ACL's estimated program burden, NYSOCFS respectfully submits that the agency requirement to collect FTEs would require an annual estimated statewide burden of over 370 hours for the local Department of Social Services to collect and submit that information to New York State OCFS.	No change. FTEs is not a required data element and if it is considered too costly to collect and reported by any state they do not have to do so. The FTE data is important to understanding the APS system workforce and is used in various technical assistance and evaluation activities.
Shelly Fiebich	Director, Bureau of Adult Services Division of Child Welfare and Community Services New York State.	Agency 10: ACL should clarify the definition of ''priority level'' to provide clarity of information collected.	No change. Based on responses in NAMRS, almost all states have priority levels and are generally using this terminology. Each state defines a set of priority responses based on its policy. ACL received no other comments indicating a need to define the term. States are encouraged to use the comment field to provide state-specific clarifying information and a link to the specific policy.
Shelly Fiebich	Director, Bureau of Adult Services Division of Child Welfare and Community Services New York State.	Agency 21: ACL should clarify the definition of and purpose for the request of collecting the source of ethical principles and how it relates to the proper performance of ACL's functions.	No change. One of the defining characteristics of the APS system is how it addresses issues such as self-determination, so it is important to understand the source of each program's ethical principles. ACL oversees implementation of the Elder Justice Act and its funding, so it is important to understand how programs respect individual rights consistent with the EJA.
Jay Colbert	Data Manager The Polis Center at IUPUI School of Informatics and Computing.	I've been looking at your NAMRS reports. If I read them right, it's all national data. Is there any place to get state-level data yet? Please include the need for state-level data reports in your NAMRS public comment tracking document.	Agree. Prior to this data renewal, ACL has not shared state specific data without state permission. Notice was provided in the 60-day FRN and is addressed again in the Supporting Statement for this 30 FRN of ACL's intent to begin sharing state-specific data.

RESPONSE TO PUBLIC COMMENT TABLE—Continued

Name	Position	Comment	Draft response/notes for discussion
Dorian Long	Connecticut APS	Specific ages of perpetrator may present as a challenge. Connecticut proposes that age ranges are added as an option be used to support more opportunities for completion of data element. Please see below: 17 and younger. 18 to 34 years. 35 to 59 years. 60 to 74 years. 75 years and over.	No change. The NAMRS age ranges were selected to match census categories and not the proposed categories.
Maria Greene	Consultant	While conducting a comprehensive review of NAMRS, please consider adding requirements for a unique identification number for the worker and supervisor involved in a case. This is done in the child maltreatment reporting system and is useful data for analyzing staff workload and caseloads.	No change. While this would provide useful information, it would add burden to state responses. ACL would not want to make this change in the final posting without discussion with stakeholders. ACL will consider its inclusion in the future.
Maria Greene	Consultant	I propose the addition of one question to the NAMRS Agency Component. In the Agency Profile, ask a question about the Information System that the state uses to collect data.	Agree. Understanding the case information systems used by states will help ACL provide technical assistance support to APS programs in submitting data and is important for understanding and modernizing the NAMRS system. The data collection will include an additional question in the Agency Component as follows: Select which of the following describes the automated system your state uses to document case information: • Statewide system developed by the state • Statewide system developed by an outside vendor. (Please use the comment field to identify the vendor, the name of the system, and when you obtained it.) • Separate systems for different geographic areas of the state • Do not have an automated system. Comment: If your state has multiple APS programs, please provide response to the above question for each program. If your state used a statewide system developed by an outside vendor, please use the comment field to identify the vendor, the name of the system, and when you obtained it.
Mary McGurran ..	Adult Protection Supervisor | Aging and Adult Services, Minnesota Department of Human Services.	Case Component, Case Component, Key Indicators; Use social service terminology for consistency with the ACL definition of adult protective services (APS) as a social service program to maximize client safety and independence and for consistency with ACL values for person-centered planning processes. Suggestions: • Investigation: Assessment. • Victim: Client, Adult, Adult vulnerable to maltreatment, Older adult or Adult with a disability. • Perpetrator: Person responsible, or person alleged responsible for maltreatment.	No change. While ACL agrees person-centered terminology should be used whenever possible, the original terms were selected carefully and deliberatively after consultation with state APS programs. ACL would not want to make this kind of change in the final posting without further consultation with the states. The terminology in NAMRS needs to be consistent with state law in across the states and ACL is not aware to what extent the proposed terms are currently used. Because of the importance of the issue, the Adult Protective Services Technical Assistance Resource Center recently hosted a discussion of APS terminology to start such a dialogue. ACL will consider changes in terminology in future changes.
Mary McGurran ..	Adult Protection Supervisor | Aging and Adult Services, Minnesota Department of Human Services.	Agency Component Data; Enhance selections on APS use of involuntary interventions. 26. Involuntary Intervention: Add Guardianship and Mental Health Commitment.	No change in the selections but include ''mental health commitment'' in the examples. The current selections list does not include specific interventions and inclusion of them would be changing the nature of the data element.

RESPONSE TO PUBLIC COMMENT TABLE—Continued

Name	Position	Comment	Draft response/notes for discussion
Mary McGurran ..	Adult Protection Supervisor | Aging and Adult Services, Minnesota Department of Human Services.	Case Component Data; Enhance data selections to include a service approach effective in preventing maltreatment.. CLT26: Add code for Support System Engaged	No change. The suggested code "Support System Engaged" falls under the definition of current code value "Care Case Management" and should be mapped and reported to it.
Mary McGurran ..	Adult Protection Supervisor | Aging and Adult Services, Minnesota Department of Human Services.	NAMRS Annual Report; Enhance data report to improve utility for APS program evaluation and equity. Add: race/ethnicity; gender identify; sexual orientation; disability type for clients referred and accepted for APS and for voluntary and involuntary services and interventions. Add state population rate for: reports; reports accepted; investigation/assessment; services; involuntary intervention; client location at APS start and close.	No change. ACL agrees in principle with this recommendation. However, it impacts the reporting and use of the current data and does not require a change in the proposed data elements. The suggested demographic categories are all currently part of the data collection except that referred and accepted data is collected in the Agency Component and is not client specific. After this data renewal, as noted in the postings, ACL will begin sharing state specific data so this recommendation is timely. ACL will consider how to incorporate state population rates in any future reports that include state-specific data.

Estimated Program Burden: ACL estimates the burden associated with this collection of information as follows: 59 APS programs will respond every year to the Agency Component, with 50 states providing Case Component data and 9 states providing Key Indicator data. The total annual burden is estimated to be 5,416 hours. The estimates are based on the amount of time States have previously reported in completing the data collection instruments; continued increase in the number of states reporting on Case Component and Key Indicator Component data; one-time costs for the changes in the data elements for this renewal; and assumption of modest incremental efficiencies by States in reporting data to NAMRS every year, including, most significantly, minimal need to recode to extract data after the initial year.

Respondent/data collection activity	Number of respondents	Responses per respondent	Hours per response	Annual burden estimate
Agency One-Time	59	1	6.20	365.80
Key Indicator One-Time	9	1	30.00	270.00
Case Component One-Time	50	1	83	4,150.00
One-Time Subtotal			119.20	4,785.80
Agency Component	59	1	4	236.00
Key Indicators Component	9	1	20	180.00
Case Component	50	1	100	5,000.00
Recurring Sub-total			124	5,416.00

Dated: February 11, 2023.

Alison Barkoff,

Acting Administrator and Assistant Secretary for Aging.

[FR Doc. 2023–03266 Filed 2–15–23; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities: Proposed Collection; Public Comment Request; of the ACL Generic Clearance for the Collection of Qualitative Research and Assessment: OMB 0985–NEW

AGENCY: Administration for Community Living, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) is announcing an opportunity for the public to comment on the proposed collection of information listed above. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish a 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 IC solicits comments on the information collection requirements relating to the ACL Generic Clearance for the Collection of Qualitative Research and Assessment, a generic mechanism to conduct qualitative research in support of program improvement, knowledge generation, and technical assistance for ACL programs and populations served by the agency.

DATES: Comments on the collection of information must be submitted electronically by 11:59 p.m. (EST) or postmarked by April 17, 2023.

ADDRESSES: Submit electronic comments on the collection of information to: ACL's Office of Performance and Evaluation at *evaluation@acl.hhs.gov.* Submit written comments on the collection of information to Administration for Community Living, 330 C Street SW, Washington, DC 20201, Attention: Office of Performance and Evaluation.

FOR FURTHER INFORMATION CONTACT: Amanda Cash, Administration for Community Living, 202–795–7369 or *Amanda.Cash@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION: 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. ''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. The PRA 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, ACL is publishing a notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, ACL invites comments on our burden estimates or any other aspect of this collection of information, including:

(1) whether the proposed collection of information is necessary for the proper performance of ACL's functions, including whether the information will have practical utility;

(2) the accuracy of ACL's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used to determine burden estimates;

(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.

Some individual information collection requests may contain demographic data, and ACL will ensure adherence to best practices for collection of all demographic information in accordance with OMB guidance.

The Administration for Community Living (ACL) at the Department of Health and Human Services (HHS) is requesting a generic clearance for purposes of conducting qualitative research to gain a better understanding of emerging issues related to ACL's grantees, service providers, and programs; develop future intramural and extramural research projects; and to ensure HHS and ACL leadership, programs, and staff can obtain timely and relevant data and information. ACL defines qualitative feedback as information that provides useful insights on perceptions and opinions but are not statistical surveys that yield results that can be generalized beyond the population of study. ACL is requesting approval for at least four types of qualitative research: (a) interviews, (b) focus groups, (c) questionnaires, and (d) other qualitative methods.

ACL's mission is to maximize the independence, well-being, and health of older adults, people with disabilities across the lifespan, and their families and caregivers. ACL implements critical disability and aging programs, serves as the advisor to the HHS Secretary on disability and aging policy, works with other HHS agencies, Departments and the White House on disability and aging policies, and engages a range of disability and aging constituents to inform program development and implementation. Integral to this role, ACL will use this mechanism to conduct research, evaluation, and assessment to understand the needs, barriers, or facilitators for ACL programs. Future proposed data collection tools may be found on the ACL website for review at: *https://www.acl.gov/about-acl/public-input.*

Estimated Program Burden: ACL estimates the burden of this collection of information as follows:

A variety of instruments and platforms will be used to collect information from respondents. The annual burden hours (5,043) requested and the anticipated number of respondents (10,086) are based on the number of qualitative information collection requests (ICRs) that were approved by OMB currently at ACL. Out of the total ICRs at ACL, we estimated that that 30% of them have a qualitative research component. We used this information to develop the annual burden estimate below. Therefore, we estimate that over the requested period for this clearance (3 years) and approximately 30,258 respondents and 15,129 burden hours will be needed.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Form	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACL Program Recipient, Partner, or Key Informant.	Qualitative Research	10,086	1	.5	5,043

Dated: February 11, 2023.

Alison Barkoff,

Acting Administrator and Assistant Secretary for Aging.

[FR Doc. 2023–03265 Filed 2–15–23; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Proposed Collection; Comment Request; of ACL's Lifespan Respite Program Grantee Performance Measurement Reporting Tool

AGENCY: Administration for Community Living, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Administration for Community Living is announcing that the proposed collection of information listed above has been submitted to the Office of Management and Budget (OMB) for review and clearance as required under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by March 20, 2023.

ADDRESSES: Submit written comments on the collection of information by:

(a) email to: *OIRA_submission@omb.eop.gov,* Attn: OMB Desk Officer for ACL;

(b) fax to 202.395.5806, Attn: OMB Desk Officer for ACL; or

(c) by mail to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW, Rm. 10235, Washington, DC 20503, Attn: OMB Desk Officer for ACL.

FOR FURTHER INFORMATION CONTACT: Emily Anozie, Email *emily.anozie@acl.hhs.gov,* or Phone (202) 795–7347.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, ACL has submitted the following proposed collection of information to OMB for review and clearance. This information collection (IC) solicits comments on the IC requirements, outlined in the Lifespan Respite Care Reauthorization Act of 2020, Section 2904, which requires Lifespan Respite Care Program grantees to report data, information, and metrics for the purpose of program evaluation. Such data, information, and metrics are to be used to identify ''. . . effective programs and activities funded . . .'' through ACL's Lifespan Respite Care Program grants.

This IC collects Caregiver and Care Recipient demographics. Demographic questions include information about age, sexual orientation, gender identity, geographic location, ethnicity, and race. Racial equity and sexual orientation and gender identity (SOGI) data elements are consistent with recommendations regulated under Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government and the Executive Order on Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals.

ACL's Office of Supportive and Caregiver Services aims to improve Lifespan Respite Care Program grantee performance measurement and tracking through a new quantitative grantee reporting tool. The existing reporting template used by most ACL grantees funded from discretionary sources consists of four open-ended, narrative questions related to program implementation and outputs, making comparisons between different grant periods and grantees challenging. The proposed tool will allow ACL to meet the additional requirements stated in Section 2904 of the Lifespan Respite Care Reauthorization Act of 2020, by adding quantitative data elements to the existing reporting requirements in accordance with program statute. This tool will allow for more effective tracking of how federal funds are being used, including aggregate data on people served and program development toward stated goals.

In this IC, the new quantitative grant reporting tool will be disseminated to all new Lifespan Respite Program grantees upon grant award. Specifically, the tool will collect information related to respite care services delivered, caregiver demographics, care recipient demographics, respite training, and lifespan respite program systems and providers. Ultimately, this reporting will assist ACL's Office of Supportive and Caregiver Services to assess the performance of the Lifespan Respite Program grantees in improving the delivery and quality of respite services for family caregivers of children and adults of all ages with special needs.

Comments in Response to the 60-Day Federal Register Notice

A notice published in the **Federal Register** *Vol. 87, No. 207/Thursday, October 27, 2022.* Two comments were received during the 60-day FRN. ACL's responses to these comments are included below.

Topic/issue	Comment	ACL Response
Burden	''The proposed quantitative grant reporting tool places limited additional burden on [omitted organization name]—our program already gathers and evaluates most of the proposed measurement and tracking metrics.''.	ACL concurs and plans to monitor the burden once this information collection begins.
Ease of use	''[omitted organization name] recently began testing the draft reporting tool in preparation for its anticipated implementation, and the agency's utilization of the draft reporting tool has gone smoothly. [omitted organization name] is confident in its ability to implement the proposed information collection and concurs in ACL's assessment that the modernized reporting tool would provide valuable data on the delivery and quality of respite services for family caregivers of individuals with disabilities.''.	ACL concurs and plans to monitor the ease of use once this information collection begins.

Estimated Program Burden: ACL estimates the burden of this collection of information as follows:

A maximum of 40 grantees are expected to respond to the grant reporting tool semiannually. The approximate burden for completion may be 6 hours per respondent for a total estimate of 480 hours. The estimated completion burden includes time to review the instructions, read the questions, compile information, and complete responses.

IC BURDEN CHART

Respondent/data collection activity	Number of respondents	Responses per respondent	Hours per response	Annual burden hours
Grantee reporting tool	40	2	6	480
Total				480

Dated: February 11, 2023.

Alison Barkoff,

Acting Administrator and Assistant Secretary for Aging.

[FR Doc. 2023–03267 Filed 2–15–23; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions, and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA) (60 FR 56605, as amended November 6, 1995; as last amended at 87 FR 59105–59106 dated September 29, 2022).

This reorganization realigns functions within the HIV/AIDS Bureau (RV).

Chapter RV—HIV/AIDS Bureau

Section RV.10 Organization

The HIV/AIDS Bureau (RV) is headed by the Associate Administrator, who reports directly to the Administrator, HRSA. The HIV/AIDS Bureau includes the following components:

(1) Office of the Associate Administrator (RV);

(2) Office of Operations and Management (RV2);

(3) Division of Administrative Operations (RV21);

(4) Office of Program Support (RV3);

(5) Division of Policy and Data (RVA).

(6) Division of Metropolitan HIV/AIDS Programs (RV5);

(7) Division of State HIV/AIDS Programs (RVD); and

(8) Division of Community HIV/AIDS Programs (RV6).

Section RV.20 Function

Delete the functional statement for the Office of the Associate Administrator (RV), Office of Operations and Management (RV2), Division of Administrative Operations (RV21) and Office of Program Support (RV3) in its entirety and replace with the following:

Office of the Associate Administrator (RV)

The Office of the Associate Administrator provides leadership and direction for the HIV/AIDS programs and activities of the Bureau and oversees its relationship with other national health programs. Specifically, the Office (1) promotes the implementation of the National HIV/AIDS Strategy within the agency and among agency-funded programs; (2) coordinates the formulation of an overall strategy and policy for programs established by Title XXVI of the Public Health Service Act as amended by the Ryan White HIV/AIDS Treatment Extension Act of 2009, Public Law 111–87; (3) coordinates internal functions of the Bureau and its relationships with other agency bureaus and offices; (4) establishes HIV/AIDS program objectives, alternatives, and policy positions consistent with broad Administration guidelines; (5) provides leadership for and oversight of the Bureau's budgetary development and implementation processes; (6) provides clinical leadership to Ryan White-funded programs; (7) serves as a principal contact and advisor to the Department and other parties on matters pertaining to the planning and development of HIV/AIDS-related health delivery systems; (8) reviews HIV/AIDS-related program activities to determine their consistency with established policies; (9) develops and oversees operating policies and procedures for the Bureau; (10) oversees and directs the planning, implementation, and evaluation of special studies related to HIV/AIDS and public health within the Bureau; (11) prioritizes technical assistance (TA) needs in consultation with each division/office; (12) plans, implements, and evaluates the Bureau's national TA resource training center website and other distance learning modalities; (13) represents the agency in HIV/AIDS related conferences, consultations, and meetings with other Operating Divisions, Office of the Assistant Secretary for Health, and the White House; (14) plans, implements and evaluates HIV/AIDS Bureau staff development and education to enable employees to meet the mission of the Bureau; (15) provides support with the implementation of staff development, organizational development and training activities; and (16) plans, develops, implements, and evaluates the Bureau's organizational and staff development and staff training activities inclusive of guiding action steps addressing annual Employee Viewpoint Survey results.

Office of Operations and Management (RV2)

The Office of Operations and Management provides expertise, guidance, leadership, and support in the areas of general administration, fiscal operations, and contract administration. Specifically, the Office (1) provides direction on all budgetary, administrative, human resources, operations, facility management, and contracting functions for the HIV/AIDS Bureau; (2) oversees and coordinates all Bureau program integrity activities; (3) oversees Bureau Executive Secretariat functions and coordinates HRSA responses and comments on HIV/AIDS-related reports, position papers, guidance documents, correspondence, and related issues, including Freedom of Information Act requests; and (4) supports enterprise information technology systems development to improve program efficiencies and management.

Division of Administrative Operations (RV21)

The Division of Administrative Operations is responsible for the administrative, human resources operations, facility management, and contracting functions for the Bureau.

Office of Program Support (RV3)

The Office of Program Support provides expertise, guidance, leadership, and support in the areas of organizational development, communications, fiscal oversight, grants policy, training and TA to the Bureau staff and grant recipients, and customer service to support program implementation. Specifically, the Office of Program Support (1) coordinates grants management and grants policy for

the Bureau, including grants liaison functions; (2) supports training and TA for grant recipients through the AIDS Education and Training Centers (AETCs), TA contracts, and other TA initiatives; (3) streamlines communications, clearance activities, and development of consistent, quality presentations; (4) improves the Bureau's external facing communication efforts; (5) facilitates transparency in sharing the Bureau's data using internal and external resources; (6) coordinates the development and distribution of all Bureau communication activities, materials, and products internally and externally; (7) supports fiscal oversight and TA to grant recipients; (8) serves as the Bureau's primary liaison with the HRSA Office of Federal Assistance Management (OFAM); (9) provides statutory and programmatic coordination, guidance, and expertise on grants and fiscal compliance to funded programs and Bureau staff; (10) identifies and develops resources to sustain statutory, programmatic and fiscal compliance of funded programs; (11) coordinates with OFAM for grants processes; (12) coordinates with OFAM for fiscal oversight and compliance; (13) coordinates grant recipient site visits and site specific consultations; (14) supports grant recipients in meeting project goals and deliverables related to fiscal compliance and grants policy; (15) develops grant recipients training and TA plans related to fiscal compliance and grants policy; (16) leads distance learning opportunities; and (17) is responsible for activities associated with the planning, development, implementation, evaluation, and coordination of the HIV/AIDS Education and Training Center Program.

Section RV.30 Delegation of Authority

All delegations of authority and re-delegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegation, if allowed, provided they are consistent with this reorganization.

This reorganization is effective upon date of signature.

(Authority: 44 U.S.C. 3101).

Carole Johnson,

Administrator.

[FR Doc. 2023–03254 Filed 2–15–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Statement of Organization, Functions and Delegations of Authority

AGENCY: Administration for Strategic Preparedness and Response, HHS.

ACTION: Notice.

SUMMARY: This notice announces the establishment of the Administration for Strategic Preparedness and Response.

DATES: This reorganization was approved by the Secretary of Health and Human Services on January 27, 2023, and became effective on February 11, 2023.

SUPPLEMENTARY INFORMATION: Part A, Office of the Secretary, Statement of Organization, Functions, and Delegations of Authority of the U.S. Department of Health and Human Services (HHS) is being amended at Chapter AN, Office of the Assistant Secretary for Preparedness and Response (ASPR), as last amended at 79 FR 70.535 (Nov. 26, 2014), 78 FR 25277 (April 30, 2013), 78 FR 7784 (Feb. 4, 2013), 75 FR 35.035 (June 21, 2010) to realign the functions of ASPR to reflect the changes mandated by the 21st Century Cures Act and the Pandemic and All-Hazards Preparedness and Advancing Innovation Act to address ever-increasing manmade and naturally occurring threats which degrade public health, access to healthcare, access to emergency medical services and national security. The changes are as follows.

I. Under AN.10 Organization, delete all the components and replace with the following:

A. Immediate Office of the Administration for Strategic Preparedness and Response (SN)

B. Office of the Principal Deputy Assistant Secretary for Strategic Preparedness and Response (SN)

C. Office of Administration (SNA)

D. Office of Biomedical Advanced Research and Development Authority (SNB)

E. Office of HHS Coordination Operations and Response Element (H–CORE) (SNH)

F. Office of Industrial Base Management and Supply Chain (SNI)

G. Office of Preparedness (SNP)

H. Office of Response (SNR)

I. Office of Strategic National Stockpile (SNS)

II. Delete AN.20 Functions, in its entirety and replace with the following:

Section AR.20 Functions

A. Immediate Office of the Administration for Strategic Preparedness and Response

The Immediate Office of the Administration for Strategic Preparedness and Response (IO/ASPR) is headed by the Assistant Secretary, who provides leadership and executive and strategic direction for the ASPR organization. The Assistant Secretary is the principal advisor to the Secretary on all matters related to Federal public health and medical preparedness and response for public health emergencies. The Assistant Secretary is responsible for carrying out ASPR's mission and implementing the functions of ASPR. The IO/ASPR (1) ensures development and maintenance of liaison relationships with HHS operating and staff divisions and represents HHS at interagency meetings, as required; (2) oversees advanced research, development and procurement of qualified countermeasures, security countermeasures and qualified pandemic or epidemic products; (3) coordinates with relevant federal officials to ensure integration of public health policy and federal preparedness and response activities for public health emergencies; (4) coordinates the strategic and operational activities for public health preparedness response and recovery; and (5) establishes and maintains effective communications and outreach guidance and support for all external communications, including legislative and executive branch questions and inquiries, and serves as the principal advisor to the ASPR on all legislative strategies to fulfill the Office of the ASPR and the HHS mission under section 2811 and other relevant sections of the Public Health Service Act, as amended.

The Immediate Office of the Administration for Strategic Preparedness and Response is headed by the Assistant Secretary (SN), and includes the following components:

- Office of External Affairs (SN1)
- Office of Legislative Affairs (SN2)
- Office of Public Affairs (SN3)

B. Office of the Deputy Assistant Secretary for Strategic Preparedness and Response (SN)

The Office of the Principal Deputy Assistant Secretary (OPDAS) is responsible for providing a well-integrated infrastructure that supports the Department's capabilities to prevent, prepare for, respond to, and recover from public health and medical threats and emergencies. The PDAS also serves as the Chief Operating Officer for ASPR.

The PDAS provides guidance and support to all elements within the ASPR on behalf of the Assistant Secretary. The PDAS is responsible for the execution of business management operations, including the management of correspondence control for the Assistant Secretary. The PDAS also manages coordination among HHS entities and external federal agencies in support of ASPR missions.

The Office of the Principal Deputy Assistant Secretary is headed by the Principal Deputy Assistant Secretary (SN), and includes the following components:

- Office of Strategy, Policy, and Requirements (SN4)
- Executive Secretariat (SN5)

C. Office of Administration (SNA)

The Office of Administration provides the administrative support services necessary to maintain day-to-day operations of ASPR, including functions of human resources, United States Public Health Service (USPHS) liaison, acquisitions management to include policy and operational contracting, grants management, information technology, facilities and all financial planning and analysis. The Office of Administration is headed by a Deputy Assistant Secretary and includes the following components:

- Office of Head of Contracting Activity (HCA) (SNA1)
- Office of Finance (SNA2)
- Office of Human Capital (SNA3)
- Office of Information Technology (SNA4)

D. Office of Biomedical Advanced Research and Development Authority (SNB)

The Office of Biomedical Advanced Research and Development Authority (BARDA), established in April 2007 in response to the Pandemic and All-Hazards Preparedness Act of 2006, serves preparedness and response roles to provide medical countermeasures (MCM) in order to mitigate the medical consequences of chemical, biological, radiological, and nuclear (CBRN) threats and agents and emerging infectious diseases, including pandemic influenza. BARDA executes this mission by facilitating research, development, innovation, and acquisition of MCM and expanding domestic manufacturing infrastructure and surge capacity of these MCM. BARDA is headed by a Director, who is also referred to as a Deputy Assistant Secretary, and includes the following components:

- Office of Medical Countermeasures Program Support Services (SNB2)
- Office of Medical Countermeasures Program (SNB3)

E. Office of HHS Coordination, Operations and Response Element (SNH)

In 2022, the Secretary of HHS transitioned the DOD–HHS partnership that was formerly called Operation Warp Speed into ASPR as the HHS Coordination and Operations Response Element or H–CORE. Moving H–CORE fully into ASPR gives ASPR sole responsibility for the development, manufacture, and distribution of the nation's COVID–19 vaccines and therapeutics.

H–CORE works in partnership with other entities across ASPR, such as, the Biomedical Advanced Research and Development Authority (BARDA), the Strategic National Stockpile (SNS) and other HHS and Interagency partners, to deliver COVID–19 countermeasures to the American public while solidifying enhanced capability to respond to future public-health threats.

The Office of HHS Coordination, Operations and Response Element is headed by a Deputy Assistant Secretary and includes the following components:

- Office of Plans (SNH1)
- Office of Analytics (SNH2)
- Office of Security and Assurance (SNH3)
- Office of Supply, Production, and Distribution (SNH4)
- Office of Vaccine Development Coordination (SNH5)
- Office of Therapeutics Development Coordination (SNH6)

F. Office of Industrial Base Management and Supply Chain (SNI)

The Office of Industrial Base Management and Supply Chain seeks to build permanent Industrial Base Expansion (IBx) capabilities, inclusive of global supply chain situational awareness, market capabilities, and rapid acquisition execution, to reinforce ASPR as the authority to coordinate the activities related to medical industrial base expansion and sustainment through the use of Defense Production Act and Emergency Support Function (ESF) 8 authorities. Efforts under Presidential Executive Orders have already galvanized a large part of the interagency to fully implement HHS and national strategies. HHS is expanding the Public Health Industrial Base and developing innovative solutions to address critical deficiencies in the public health supply chain by working across the U.S. Government and with academia and the private sector.

The Office of Industrial Base Management and Supply Chain is headed by a Deputy Assistant Secretary and includes the following components:

- Office of Personal Protective Equipment and Durable Medical Equipment (SNI1)
- Office Testing and Diagnostics (SNI2)
- Office of Advanced Manufacturing Technologies (SNI3)
- Office of Supply Chain Optimization (SNI4)
- Office of Defense Production Act and Emergency Response Authorities (SNI5)

G. Office of Preparedness (SNP)

The Office of Preparedness is responsible for policy development, planning, analysis, requirements, and strategic planning. This Office also manages and operates the HHS Secretary's Operation Center (SOC), intelligence, security, information management and analysis, and is also responsible for the HHS Continuity of Operations (COOP) and the development of the ASPR COOP Plan.

The Office of Preparedness is headed by a Deputy Assistant Secretary and includes the following components:

- Office of Security and Intelligence (SNP1)
- Office of Information Management Data and Analytics (SNP2)
- Office of Critical Infrastructure Protection (SNP3)
- Office of Health Care Readiness (SNP4)
- Office of Medical Reserve Corps (SNP5)
- Office of Planning and Exercises (SNP6)
- Office of Continuity (SNP7)
- Office of Secretary's Operations Center (SNP8)

H. Office of Response (SNR)

The Office of Response oversees activities required to coordinate public health and healthcare response systems and activities with relevant federal, state, tribal, territorial, local, and international communities under the National Response Framework and Emergency Support Annexes #8, #6 and #14. This Office also provides oversight and guidance to the National Disaster Medical System and provides an important liaison function to other agencies engaged in federal response activities.

The Office of Response is headed by a Deputy Assistant Secretary and includes the following components:

- Office of Regional Response (SNR1)
- Office of Response Logistics (SNR2)
- Office of National Disaster Medical System (SNR3)
- Office of Community Mitigation and Recovery (SNR4)

I. Office of the Strategic National Stockpile (SNS)

The Strategic National Stockpile (SNS) is part of the federal medical response infrastructure and can supplement medical countermeasures needed by states, tribal nations, territories, and the largest metropolitan areas during public health emergencies. The supplies, medicines, and devices for lifesaving care contained in the stockpile can be used as a short-term, stopgap buffer when the immediate supply of these materials may not be available or sufficient. The SNS team works every day to prepare and respond to emergencies, support state and local preparedness activities, and ensure availability of critical medical assets to protect the health of Americans.

The Office of the Strategic National Stockpile is headed by a Deputy Assistant Secretary and includes the following components:

- Office of Management and Business Operations (SNS1)
- Office of Logistics (SNS2)
- Office of State Tribal Local and Territories Preparedness (SNS3)
- Office of National Readiness and Response (SNS4)
- Office of Supply Chain Alliance and Development (SNS5)
- Office of Science (SNS6)

III. *Delegations of Authority:* All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2023–03277 Filed 2–15–23; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Zero Suicide Initiative Coordinating Center

Announcement Type: New.

Funding Announcement Number: HHS–2023–IHS–ZSICC–0001.

Assistance Listing (Catalog of Federal Domestic Assistance or CFDA) Number: 93.654.

Key Dates

Application Deadline Date: April 17, 2023.

Earliest Anticipated Start Date: May 17, 2023.

I. Funding Opportunity Description

Statutory Authority

The Indian Health Service (IHS) is accepting applications for cooperative agreement for the IHS Zero Suicide Initiative Coordinating Center (ZSICC). This program is authorized under the Snyder Act, 25 U.S.C. 13; the Transfer Act, 42 U.S.C. 2001(a); the Indian Health Care Improvement Act, 25 U.S.C. 1665a; the Consolidated Appropriations Act, 2022, Public Law 117–103, 136 Stat. 49, 398 (2022), and subsequent appropriation acts. This program is described in the Assistance Listings located at *https://sam.gov/content/home* (formerly known as the CFDA) under 93.654.

Background

Since 1999, suicide rates within the United States (U.S.) have been steadily increasing.[1] On March 2, 2018, the Centers for Disease Control and Prevention's Morbidity and Mortality Weekly report released a data report, ''Suicides Among American Indian/Alaska Natives National Violent Death Reporting System, 18 States, 2003 to 2014,'' which highlights American Indian and Alaska Native (AI/AN) people having the highest rates of suicide of any racial/ethnic group in the U.S. Suicide rates for AI/AN adolescents and young adult ages 15 to 34 (19.1/100,000) were 1.3 times that of the national average for that age group (14/100,000).[2] In June 2019, the National Center for Health Statistics, Health E-Stat reported in ''Suicide Rates for Females and Males by Race and Ethnicity: United States, 1999 and 2017,'' that suicide rates increased for all race and ethnicity groups but the largest increase occurred for AI/AN females (139 percent from 4.6 to 11.0 per 100,000). Suicide is the eighth leading cause of death among all AI/AN people across all ages and may be underestimated.

The Zero Suicide Initiative (ZSI) is a key concept of the National Strategy for Suicide Prevention and is a priority of the National Action Alliance for Suicide Prevention (*https://theactionalliance.org/*). In fiscal year (FY) 2022, the IHS awarded eight grants to Tribes, Tribal organizations, and Urban Indian organizations to combat the suicide public health crisis in Indian Country. This program aims to improve the system of care for those at risk for suicide by implementing a comprehensive, culturally informed, multi-setting approach to suicide prevention in Indian health systems. Applicants are encouraged to view the list of funded sites *https://www.ihs.gov/sites/zerosuicide/themes/responsive2017/display_objects/documents/ZSIAwards20222027.pdf* and are encouraged to visit *https://www.hhs.gov/surgeongeneral/reports-and-publications/suicide-prevention/index.html* to access a copy of the 2012 National Strategy.

In FY 2023, the IHS intends to fund ten health care facilities and systems sites operated by the IHS that will solely focus on the implementation of only one out of the seven Zero Suicide model elements. The element entitled ''Improve'' focuses on applying a data-driven, quality improvement approach to inform system changes that will lead to improved patient outcomes and better care for those at risk. Health care facilities and systems, operated by the IHS, that provide direct care services to AI/AN patients to raise awareness of suicide, establish an integrated system of care, and improve outcomes for such individuals in FY 2023 to FY 2028.

Purpose

The purpose of this cooperative agreement is to build capacity of ZSI projects to improve the system of care for those at risk for suicide by implementing a comprehensive, culturally informed, multi-setting approach to suicide prevention in Indian health systems. The ZSICC will provide technical assistance in the areas of data collection, reporting, training, resources, and implementation of the Zero Suicide approach in Indian Country. The ZSICC technical assistance will be framed to promote the core Seven Elements of the Zero Suicide model that was developed by the Suicide Prevention Resource Center (SPRC) at *https://zerosuicide.edc.org/toolkit/zero-suicide-toolkit.*

1. Lead—Create and sustain a leadership-driven, safety-oriented culture committed to dramatically reducing suicide among people under care. Include survivors of suicide attempts and suicide loss in leadership and planning roles.

2. Train—Develop a competent, confident, and caring workforce.

3. Identify—Systematically identify and assess suicide risk among people receiving care.

4. Engage—Ensure every individual has a pathway to care that is both timely and adequate to meet his or her needs.

[1] Curtin SC, Hedegaard H. Suicide rates for females and males by race and ethnicity: United States, 1999 and 2017. NCHS Health E-Stat. 2019.

[2] Leavitt RA, Ertle AE, Sheats K, Petrosky E, Ivey-Stephenson A, Fowler KA (2018) Suicides Among American Indian/Alaska Natives—National Violent Death Reporting System, 18 States, 2003 to 2014. MMWR Morb Mortal Wkly Rep 2018;67: 37–240.

Include collaborative safety planning and restriction of lethal means.

5. Treat—Use effective, evidence-based treatments that directly target suicidal thoughts and behaviors.

6. Transition—Provide continuous contact and support, especially after acute care.

7. Improve—Apply a data-driven quality improvement approach to inform system changes that will lead to improved patient outcomes and better care for those at risk.

Required Activities

The ZSICC award funds must be used primarily to provide training and technical assistance to all ZSI projects in the implementation of the ZSI model and support projects in meeting data collection, program evaluation and reporting requirements. The awardee will be required to:

1. Establish staffing with expertise to implement and complete required activities.

2. Review all ZSI projects applications and proposed work plans for implementing the ZSI model and provide a brief project summary report.

3. All training materials produced should be 508 compliant and culturally informed in the prevention of suicide in Indian health systems.

4. Coordinate all the logistics including securing a web platform, development of materials, agenda, meeting summaries, and PowerPoints for teleconferences and trainings.

5. Provide an accessible web portal for all ZSI projects to access the ZSICC's materials.

6. Provide a web portal to share information and resources in compliance with Information Technology (IT) policies and prepare all materials to be transferred back to the IHS at the end of the period of performance.

7. Coordinate logistics as mentioned above and identify Subject Matter Experts for seven webinars focused on each of the seven ZSI model elements using the IHS Tele-Behavioral Health Center of Excellence (TBHCE) web platform.

8. Coordinate logistics as mentioned above and participate in virtual or face-to-face site visits with ZSI Projects (not exceed three per period of performance) with program official. After each site visit, a report will be generated by the ZSICC.

9. Coordinate logistics as mentioned above and participate in web conferences with the program official to report on the status of technical assistance activities.

10. Communicate four times each budget year with key stakeholders such as the Substance Abuse and Mental Health Services Administration's (SAMHSA) SPRC and other identified organizations to best meet the suicide prevention needs of Tribal communities with a focus on policy and resource development and on issues related to suicide prevention in AI/AN communities.

11. Submit one annual summary report of technical assistance activities provided to ZSI projects completed each budget period. This will be submitted directly to the assigned program official as a Grant Note in GrantSolutions. The ZSICC should submit a draft template for approval at least 30 days prior to submission. The template is subject to change at the request of the program official.

12. Ensure the technical assistance strategies address the needs of AI/AN people at risk for suicide, older adults, veterans, the LGBTQIA+ community, and individuals with serious mental illness.

13. Execute succession planning and transfer all deliverables to IHS program official at the end of the period of performance.

14. Develop a National Evaluation Plan for the ZSI projects within 60 days of receiving funding:

i. Coordinate a cross-site evaluation with the ZSI projects to cover their existing activities and data;

ii. Provide a Health Insurance Portability and Accountability Act compliant, online data collection instrument to collect and organize a quantitative and qualitative data set for each ZSI project that combines the data entered into one database at the end of each budget year. Data elements will be developed in consultation with the National Data Coordinator of the Division of Behavioral Health, IHS. At a minimum, the data elements will include the clinical pathway (series of actions) taken by the staff in order to prepare for and respond to a patient at risk for suicidal ideation, suicide attempt, or death by suicide and the outcomes of those actions. Awardee will complete the following, within 60 days of receiving the complete data set outlined in the Data Collection and Reporting section of this announcement;

iii. Complete an Evaluation Report within 30 days of the end of each budget year; and

iv. Create standard tables, slides, and talking points from the Evaluation Report within 30 days of the end of each budget year.

Pre-Conference Grant Requirements

The awardee is required to comply with the ''HHS Policy on Promoting Efficient Spending: Use of Appropriated Funds for Conferences and Meeting Space, Food, Promotional Items, and Printing and Publications,'' dated January 23, 2015 (Policy), as applicable to conferences funded by grants and cooperative agreements. The Policy is available at *https://www.hhs.gov/grants/contracts/contract-policies-regulations/efficient-spending/index.html?language=es.*

The awardee is required to:

Provide a separate detailed budget justification and narrative for each conference anticipated. The cost categories to be addressed are as follows: (1) Contract/Planner, (2) Meeting Space/Venue, (3) Registration website, (4) Audio Visual, (5) Speakers Fees, (6) Non-Federal Attendee Travel, (7) Registration Fees, and (8) Other (explain in detail and cost breakdown). For additional questions please contact Pamela End of Horn by phone at (301) 443–8028 or by email at *Pamela.EndofHorn@ihs.gov.*

II. Award Information

Funding Instrument—Cooperative Agreement

Estimated Funds Available

The total funding identified for FY 2023 is approximately $850,000. The award amount for the first year is anticipated to be up to $850,000. The funding available for competing and subsequent continuation awards issued under this announcement is subject to the availability of appropriations and budgetary priorities of the Agency. The IHS is under no obligation to make awards that are selected for funding under this announcement.

Anticipated Number of Awards

One award will be issued under this program announcement.

Period of Performance

The period of performance is for 5 years.

Cooperative Agreement

Cooperative agreements awarded by the Department of Health and Human Services (HHS) are administered under the same policies as grants. However, the funding agency, IHS, is anticipated to have substantial programmatic involvement in the project during the entire period of performance. Below is a detailed description of the level of involvement required of the IHS.

Substantial Agency Involvement Description for Cooperative Agreement

A. Liaise with ZSI projects to ensure the ZSICC is able to provide timely and appropriate technical assistance.

B. Facilitate linkages to other IHS/Federal government resources and promote collaboration with other IHS and Federal health and behavioral health initiatives, including the SAMHSA, the National Action Alliance for Suicide Prevention, the National Suicide Prevention Lifeline, the SPRC, and the Zero Suicide Institute.

C. Provide input and monitor the technical assistance being administered by the ZSICC. Ensure that the ZSICC receives ZSI project data according to IHS polices.

D. Provide written feedback, suggested revisions, or comments for all materials developed as deemed necessary by Program officials.

III. Eligibility Information

1. Eligibility

To be eligible for this funding opportunity applicant must be one of the following:

- A federally recognized Indian Tribe as defined by 25 U.S.C. 1603(14). The term ''Indian Tribe'' means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or group, or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 *et seq.*], which is recognized as eligible for the special programs and services provided by the U.S. to Indians because of their status as Indians.
- A Tribal organization as defined by 25 U.S.C. 1603(26). The term ''Tribal organization'' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304(l)): ''Tribal organization'' means the recognized governing body of any Indian Tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: provided that, in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian Tribe, the approval of each such Indian Tribe shall be a prerequisite to the letting or making of such contract or grant. Applicant shall submit letters of support and/or Tribal Resolutions from the Tribes to be served.
- An Urban Indian organization, as defined by 25 U.S.C. 1603(29), that is currently administering a contract or receiving a grant pursuant to 25 U.S.C. 1653. The term ''Urban Indian organization'' means a nonprofit corporate body situated in an urban center, governed by an urban Indian controlled board of directors, and providing for the maximum participation of all interested Indian groups and individuals, which body is capable of legally cooperating with other public and private entities for the purpose of performing the activities described in 25 U.S.C. 1653(a). Applicants must provide proof of nonprofit status with the application, *e.g.,* 501(c)(3).
- Domestic public and private non-profit entities. Applicants must provide proof of nonprofit status with the application, *e.g.,* 501(c)(3).
- Domestic for-profit entities.
- Domestic Public and state controlled institutions of higher education.
- Private institutions of higher education.

Debarment, Suspension, Ineligibility, and Voluntary Exclusion Certification

- You certify on behalf of the applicant organization, by submission of your proposal, that neither you nor your principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- Failure to make required disclosures can result in any of the remedies described in 45 CFR 75.371, including suspension or debarment. (See also 2 CFR parts 180 and 376, and 31 U.S.C. 3354).
- If you are unable to attest to the statements in this certification, you must include an explanation in your application. Upload this in the Other Documents section in the *Grants.gov* Workspace.

The Division of Grants Management (DGM) will notify any applicants deemed ineligible.

Note: Please refer to Section IV.2 (Application and Submission Information/Subsection 2, Content and Form of Application Submission) for additional proof of applicant status documents required, such as Tribal Resolutions, proof of nonprofit status, etc.

2. Cost Sharing or Matching

The IHS does not require matching funds or cost sharing for grants or cooperative agreements.

3. Other Requirements

Applications with budget requests that exceed the highest dollar amount outlined under Section II Award Information, Estimated Funds Available, or exceed the period of performance outlined under Section II Award Information, Period of Performance, are considered not responsive and will not be reviewed. The DGM will notify the applicant.

Additional Required Documentation

Tribal Resolution

The DGM must receive an official, signed Tribal Resolution prior to issuing a Notice of Award (NoA) to any Tribe or Tribal organization selected for funding. An applicant that is proposing a project affecting another Indian Tribe must include resolutions from all affected Tribes to be served. However, if an official signed Tribal Resolution cannot be submitted with the application prior to the application deadline date, a draft Tribal Resolution must be submitted with the application by the deadline date in order for the application to be considered complete and eligible for review. The draft Tribal Resolution is not in lieu of the required signed resolution but is acceptable until a signed resolution is received. If an application without a signed Tribal Resolution is selected for funding, the applicant will be contacted by the Grants Management Specialist (GMS) listed in this funding announcement and given 90 days to submit an official signed Tribal Resolution to the GMS. If the signed Tribal Resolution is not received within 90 days, the award will be forfeited.

Applicants organized with a governing structure other than a Tribal council may submit an equivalent document commensurate with their governing organization. Note that this requirement does not require a Tribe or Tribal organization applicant to obtain resolutions from all current ZSI grantees.

Proof of Nonprofit Status

Organizations claiming nonprofit status must submit a current copy of the 501(c)(3) Certificate with the application.

IV. Application and Submission Information

Grants.gov uses a Workspace model for accepting applications. The

Workspace consists of several online forms and three forms in which to upload documents—Project Narrative, Budget Narrative, and Other Documents. Give your files brief descriptive names. The filenames are key in finding specific documents during the objective review and in processing awards. Upload all requested and optional documents individually, rather than combining them into a package. Creating a package creates confusion when trying to find specific documents. Such confusion can contribute to delays in processing awards, and could lead to lower scores during the objective review.

1. Obtaining Application Materials

The application package and detailed instructions for this announcement are available at *https://www.Grants.gov.*

Please direct questions regarding the application process to *DGM@ihs.gov.*

2. Content and Form Application Submission

Mandatory documents for all applicants include:

- Application forms:

1. SF–424, Application for Federal Assistance.
2. SF–424A, Budget Information—Non-Construction Programs.
3. SF–424B, Assurances—Non-Construction Programs.
4. Project Abstract Summary form.

- Project Narrative (not to exceed 12 pages). See Section IV.2.A, Project Narrative for instructions.
- Budget Narrative (not to exceed 5 pages). See Section IV.2.B, Budget Narrative for instructions.
- One-page Timeframe Chart.
- Tribal Resolution(s) as described in Section III, Eligibility, if applicable.
- Letters of Support from organization's Board of Directors, if applicable. Letters of support must be dated and specifically indicate a commitment to the project/program (in-kind services, dollars, staff, space, equipment, etc.).
- 501(c)(3) Certificate, if applicable.
- Biographical sketches for all Key Personnel.
- Contractor/Consultant resumes or qualifications and scope of work.
- Disclosure of Lobbying Activities (SF–LLL), if applicant conducts reportable lobbying.
- Certification Regarding Lobbying (GG-Lobbying Form).
- Copy of current Negotiated Indirect Cost (IDC) rate agreement (required in order to receive IDC).
- Organizational Chart.
- Documentation of current Office of Management and Budget (OMB) Financial Audit (if applicable).

Acceptable forms of documentation include:

1. Email confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or
2. Face sheets from audit reports. Applicants can find these on the FAC website at *https://facdissem.census.gov/.*

Public Policy Requirements

All Federal public policies apply to IHS grants and cooperative agreements. Pursuant to 45 CFR 80.3(d), an individual shall not be deemed subjected to discrimination by reason of their exclusion from benefits limited by Federal law to individuals eligible for benefits and services from the IHS. See *https://www.hhs.gov/grants/grants/grants-policies-regulations/index.html.*

Requirements for Project and Budget Narratives

A. *Project Narrative:* This narrative should be a separate document that is no more than 12 pages and must: (1) have consecutively numbered pages; (2) use black font 12 points or larger (applicants may use 10 point font for tables); (3) be single-spaced; and (4) be formatted to fit standard letter paper (8½ x 11 inches). Do not combine this document with any others.

Be sure to succinctly answer all questions listed under the evaluation criteria (refer to Section V.1, Evaluation Criteria) and place all responses and required information in the correct section noted below or they will not be considered or scored. If the narrative exceeds the overall page limit, the reviewers will be directed to ignore any content beyond the page limit. The 12-page limit for the project narrative does not include the work plan, standard forms, Tribal Resolutions, budget, budget narratives, and/or other items. Page limits for each section within the project narrative are guidelines, not hard limits.

There are three parts to the project narrative: Part 1—Program Information; Part 2—Program Planning and Evaluation; and Part 3—Program Report. See below for additional details about what must be included in the narrative.

The page limits below are for each narrative and budget submitted.

Part 1: Program Information (Limit—5 pages)

Section 1: Must include the applicant's background information, a description of technical assistance capacity in the areas of suicide prevention, Zero Suicide model, and program evaluation and history of support for such activities. Applicants need to include current public health technical assistance activities, what program services they currently provide, and interactions with other public health authorities in the region (state, local, or Tribal).

Section 2: Organizational Capabilities

The applicant must describe staff capabilities or hiring plans for the key personnel with appropriate expertise in suicide prevention, Zero Suicide model, epidemiology, health sciences, and program management. The applicant must also demonstrate access to specialized expertise, such as a Masters level public health and/or a program evaluator. Applicants must include an organizational chart and provide position descriptions and biographical sketches of key personnel including consultants or contractors. The position description should clearly describe each position and its duties. Resumes should indicate that proposed staff is qualified to carry out the project activities.

Part 2: Program Planning and Evaluation (Limit—5 pages)

Section 1: Program Plans

The applicant must include a work plan that describes program goals, objectives, activities, timeline, and responsible person for carrying out the objectives/activities.

The work plan should only include the first year of the project period showing dates, key activities, and responsible staff for key requirements.

Describe the proposed technical assistance recipients and the methods you will use to engage them. In your response, describe your expertise and experience in providing suicide prevention technical assistance to federally recognized Indian Tribes, Tribal organizations, Urban Indian organizations, domestic public/private entities, community organizations, or faith-based organizations.

Discuss the service gaps, barriers, and other problems related to the need for technical assistance in the area of suicide prevention in Indian Country.

Section 2: Program Evaluation

Applicant must define the criteria they will use to evaluate activities listed in the work plan under the Required Activities section. They must explain the methodology they will use to determine if the needs identified for the objectives are being met and if the outcomes identified are being achieved, and describe how evaluation findings will be disseminated to the IHS, co-funders, and the population served. The evaluation plan must include a logic model (not counted in the page limit)

with at least one measurable outcome per required activity.

Provide specific information about how you will collect the required data for this program and how you will use such data to manage, monitor, and enhance the program.

Part 3: Program Report (Limit—2 pages)

Section 1: Describe major accomplishments over the last 24 months providing technical assistance, training, and in the area of suicide prevention and mental health.

B. Budget Narrative (Limit—5 pages)

Provide a budget narrative that explains the amounts requested for each line item of the budget from the SF–424A (Budget Information for Non-Construction Programs) for the first year of the project. The applicant can submit with the budget narrative a more detailed spreadsheet than is provided by the SF–424A (the spreadsheet will not be considered part of the budget narrative). The budget narrative should specifically describe how each item would support the achievement of proposed objectives. Be very careful about showing how each item in the ''Other'' category is justified. Do NOT use the budget narrative to expand the project narrative.

3. Submission Dates and Times

Applications must be submitted through *Grants.gov* by 11:59 p.m. Eastern Time on the Application Deadline Date. Any application received after the application deadline will not be accepted for review. *Grants.gov* will notify the applicant via email if the application is rejected.

If technical challenges arise and assistance is required with the application process, contact *Grants.gov* Customer Support (see contact information at *https://www.Grants.gov*). If problems persist, contact Mr. Paul Gettys, Deputy Director, DGM, by telephone at (301) 443–2114 or by email at *DGM@ihs.gov.* Please be sure to contact Mr. Gettys at least 10 days prior to the application deadline. Please do not contact the DGM until you have received a *Grants.gov* tracking number. In the event you are not able to obtain a tracking number, call the DGM as soon as possible.

The IHS will not acknowledge receipt of applications.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

- Pre-award costs are not allowable.
- The available funds are inclusive of direct and indirect costs.
- Only one cooperative agreement may be awarded per applicant.
- The purchase of food (*i.e.,* as supplies, for meetings or events, etc.) is not an allowable cost with this grant funding and should not be included in the budget/budget justification.

6. Electronic Submission Requirements

All applications must be submitted via *Grants.gov*. Please use the *https://www.Grants.gov* website to submit an application. Find the application by selecting the ''Search Grants'' link on the homepage. Follow the instructions for submitting an application under the Package tab. No other method of application submission is acceptable.

If you cannot submit an application through *Grants.gov*, you must request a waiver prior to the application due date. You must submit your waiver request by email to *DGM@ihs.gov,* with a copy to Mr. Gettys by email at *DGM@ihs.gov.* Your waiver request must include clear justification for the need to deviate from the required application submission process. The IHS will not accept any applications submitted through any means outside of *Grants.gov* without an approved waiver.

If the DGM approves your waiver request, you will receive a confirmation of approval email containing submission instructions. You must include a copy of the written approval with the application submitted to the DGM. Applications that do not include a copy of the signed waiver from the Deputy Director of the DGM will not be reviewed. The Grants Management Officer of the DGM will notify the applicant via email of this decision. Applications submitted under waiver must be received by the DGM no later than 5:00 p.m. Eastern Time on the Application Deadline Date. Late applications will not be accepted for processing. Applicants that do not register for both the System for Award Management (SAM) and *Grants.gov* and/or fail to request timely assistance with technical issues will not be considered for a waiver to submit an application via alternative method.

Please be aware of the following:

- Please search for the application package in *https://www.Grants.gov* by entering the Assistance Listing (CFDA) number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.
- If you experience technical challenges while submitting your application, please contact *Grants.gov* Customer Support (see contact information at *https://www.Grants.gov*).
- Upon contacting *Grants.gov*, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver from the agency must be obtained.
- Applicants are strongly encouraged not to wait until the deadline date to begin the application process through *Grants.gov* as the registration process for SAM and *Grants.gov* could take up to 20 working days.
- Please follow the instructions on *Grants.gov* to include additional documentation that may be requested by this funding announcement.
- Applicants must comply with any page limits described in this funding announcement.
- After submitting the application, you will receive an automatic acknowledgment from *Grants.gov* that contains a *Grants.gov* tracking number. The IHS will not notify you that the application has been received.

System for Award Management

Organizations that are not registered with SAM must access the SAM online registration through the SAM home page at *https://sam.gov.* Organizations based in the U.S. will also need to provide an Employer Identification Number from the Internal Revenue Service that may take an additional 2–5 weeks to become active. Please see *SAM.gov* for details on the registration process and timeline. Registration with the SAM is free of charge but can take several weeks to process. Applicants may register online at *https://sam.gov.*

Unique Entity Identifier

Your *SAM.gov* registration now includes a Unique Entity Identifier (UEI), generated by *SAM.gov*, which replaces the DUNS number obtained from Dun and Bradstreet. *SAM.gov* registration no longer requires a DUNS number. Check your organization's *SAM.gov* registration as soon as you decide to apply for this program. If your *SAM.gov* registration is expired, you will not be able to submit an application. It can take several weeks to renew it or resolve any issues with your registration, so do not wait.

Check your *Grants.gov* registration. Registration and role assignments in *Grants.gov* are self-serve functions. One user for your organization will have the authority to approve role assignments, and these must be approved for active users in order to ensure someone in your organization has the necessary access to submit an application.

The Federal Funding Accountability and Transparency Act of 2006, as amended (''Transparency Act''), requires all HHS awardees to report information on sub-awards. Accordingly, all IHS awardees must notify potential first-tier sub-awardees that no entity may receive a first-tier sub-award unless the entity has provided its UEI number to the prime awardee organization. This requirement ensures the use of a universal identifier to enhance the quality of information available to the public pursuant to the Transparency Act.

Additional information on implementing the Transparency Act, including the specific requirements for SAM, are available on the DGM Grants Management, Policy Topics web page at *https://www.ihs.gov/dgm/policytopics/.*

V. Application Review Information

Possible points assigned to each section are noted in parentheses. The project narrative and budget narrative should include only the first year of activities. The project narrative should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to fully understand the project. Attachments requested in the criteria do not count toward the page limit for the narratives. Points will be assigned to each evaluation criteria adding up to a total of 100 possible points. Points are assigned as follows:

1. Evaluation Criteria

A. Program Information (20 Points)

Describe the applicant's current public health activities, including Technical Assistance services currently provided, interactions with other public health authorities in the regions (Federal, state, local, or Tribal) and how long it has been operating. Specifically, describe current technical assistance capacity and history of support for such activities.

Describe staff capabilities or hiring plans for the key personnel with appropriate expertise in suicide prevention, Zero Suicide model, epidemiology, health sciences, and program management.

B. Project Objectives, Work Plan, and Approach (45 Points)

1. Describe the goals and measure objectives of your proposed project and align them with the Statement of Need.

2. Describe how you will implement the Required Activities. Also, describe how you will assess your activities, identify resources, and reassess recipient needs.

3. Provide a work plan depicting a realistic timeline for the first year of the project period showing dates, key activities, and responsible staff. These key activities should include the requirements.

C. Program Evaluation (15 Points)

Applicants need to clearly demonstrate the ability to collect and report on required data associated with this project and lead all aspects of the cross-site program evaluation. Provide specific information on the development of the annual data report for this program and how such data will be used to manage, monitor, and enhance the program.

1. Define the criteria to be used to evaluate activities listed in the work plan under the Required Activities.

2. Explain the methodology that will be used to determine if the needs identified for the objectives are being met and if the outcomes identified are being achieved. Be explicit about how the logic model relates to the objectives and activities.

3. Explain how the applicant will lead the cross-recipient site organization evaluation activities.

D. Organizational Capabilities, Key Personnel, and Qualifications (15 Points)

1. Explain both the management and administrative structure of the organization, including documentation of current certified financial management systems from the Bureau of Indian Affairs, IHS, or a Certified Public Accountant, and an updated organizational chart.

2. Describe the ability of the organization to manage a program of the proposed scope.

3. Provide position descriptions and biographical sketches of key personnel, including those of consultants or contractors. Position descriptions should very clearly describe each position and its duties, indicating desired qualification and experience requirements related to the project. Resumes should indicate that the proposed staff is qualified to carry out the project activities. Applicants must include an organizational chart.

4. The applicant must also demonstrate access to specialized expertise, such as a Masters level epidemiologist and/or a biostatistician. Applicants with expertise in epidemiology will receive priority.

E. Categorical Budget and Budget Justification (5 Points)

1. Provide a justification by line item in the budget including sufficient cost and other details to facilitate the determination of cost allowance and relevance of these costs to the proposed project. The funds requested should be appropriate and necessary for the scope of the project.

2. If use of consultants or contractors is proposed or anticipated, provide a detailed budget and scope of work that clearly defines the activities' outcomes anticipated.

Additional documents (some of which are required) can be uploaded as Other Attachments in *Grants.gov*. These can include:

- Work plan, logic model, and/or timeline for proposed objectives.
- Position descriptions for key staff.
- Resumes of key staff that reflect current duties.
- Consultant or contractor proposed scope of work and letter of commitment (if applicable).
- Current Indirect Cost Rate Agreement.
- Organizational chart.
- Map of area identifying project location(s).
- Additional documents to support narrative (*i.e.,* data tables, key news articles, etc.).
- Other Relevant Documents.

Include any other documents that are relevant to the application.

2. Review and Selection

Each application will be prescreened for eligibility and completeness as outlined in the funding announcement. Applications that meet the eligibility criteria shall be reviewed for merit by the Objective Review Committee (ORC) based on the evaluation criteria. Incomplete applications and applications that are not responsive to the administrative thresholds (budget limit, period of performance limit) will not be referred to the ORC and will not be funded. The DGM will notify the applicant of this determination.

Applicants must address all program requirements and provide all required documentation.

3. Notifications of Disposition

All applicants will receive an Executive Summary Statement from the IHS Office of Clinical and Preventive Services within 30 days of the conclusion of the ORC outlining the strengths and weaknesses of their application. The summary statement will be sent to the Authorizing Official identified on the face page (SF–424) of the application.

A. Award Notices for Funded Applications

The NoA is the authorizing document for which funds are dispersed to the approved entities and reflects the amount of Federal funds awarded, the purpose of the award, the terms and conditions of the award, the effective date of the award, the budget period, and period of performance. Each entity approved for funding must have a user account in GrantSolutions in order to retrieve the NoA. Please see the Agency Contacts list in Section VII for the systems contact information.

B. Approved but Unfunded Applications

Approved applications not funded due to lack of available funds will be held for 1 year. If funding becomes available during the course of the year, the application may be reconsidered.

Note: Any correspondence, other than the official NoA executed by an IHS grants management official announcing to the project director that an award has been made to their organization, is not an authorization to implement their program on behalf of the IHS.

VI. Award Administration Information

1. Administrative Requirements

Awards issued under this announcement are subject to, and are administered in accordance with, the following regulations and policies:

A. The criteria as outlined in this program announcement.

B. Administrative Regulations for Grants:

- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards currently in effect or implemented during the period of award, other Department regulations and policies in effect at the time of award, and applicable statutory provisions. At the time of publication, this includes 45 CFR part 75, at *https://www.govinfo.gov/content/pkg/CFR-2021-title45-vol1/pdf/CFR-2021-title45-vol1-part75.pdf.*
- Please review all HHS regulatory provisions for Termination at 45 CFR 75.372, at the time of this publication located at *https://www.govinfo.gov/content/pkg/CFR-2021-title45-vol1/pdf/CFR-2021-title45-vol1-sec75-372.pdf.*

C. Grants Policy:

- HHS Grants Policy Statement, Revised January 2007, at *https://www.hhs.gov/sites/default/files/grants/grants/policies-regulations/hhsgps107.pdf.*

D. Cost Principles:

- Uniform Administrative Requirements for HHS Awards, ''Cost Principles,'' at 45 CFR part 75 subpart E, at the time of this publication located at *https://www.govinfo.gov/content/pkg/CFR-2021-title45-vol1/pdf/CFR-2021-title45-vol1-part75-subpartE.pdf.*

E. Audit Requirements:

- Uniform Administrative Requirements for HHS Awards, ''Audit Requirements,'' at 45 CFR part 75 subpart F, at the time of this publication located at *https://www.govinfo.gov/content/pkg/CFR-2021-title45-vol1/pdf/CFR-2021-title45-vol1-part75-subpartF.pdf.*

F. As of August 13, 2020, 2 CFR part 200 was updated to include a prohibition on certain telecommunications and video surveillance services or equipment. This prohibition is described in 2 CFR part 200.216. This will also be described in the terms and conditions of every IHS grant and cooperative agreement awarded on or after August 13, 2020.

2. Indirect Costs

This section applies to all awardees that request reimbursement of IDC in their application budget. In accordance with HHS Grants Policy Statement, Part II–27, the IHS requires applicants to obtain a current IDC rate agreement and submit it to the DGM prior to the DGM issuing an award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award's budget period. If the current rate agreement is not on file with the DGM at the time of award, the IDC portion of the budget will be restricted. The restrictions remain in place until the current rate agreement is provided to the DGM.

Per 45 CFR 75.414(f) Indirect (F&A) costs,

> any non-Federal entity (NFE) [*i.e.,* applicant] that has never received a negotiated indirect cost rate, . . . may elect to charge a de minimis rate of 10 percent of modified total direct costs which may be used indefinitely. As described in Section 75.403, costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both. If chosen, this methodology once elected must be used consistently for all Federal awards until such time as the NFE chooses to negotiate for a rate, which the NFE may apply to do at any time.

Electing to charge a de minimis rate of 10 percent only applies to applicants that have never received an approved negotiated indirect cost rate from HHS or another cognizant Federal agency. Applicants awaiting approval of their indirect cost proposal may request the 10 percent de minimis rate. When the applicant chooses this method, costs included in the indirect cost pool must not be charged as direct costs to the grant.

Available funds are inclusive of direct and appropriate indirect costs. Approved indirect funds are awarded as part of the award amount, and no additional funds will be provided.

Generally, IDC rates for IHS awardees are negotiated with the Division of Cost Allocation at *https://rates.psc.gov/* or the Department of the Interior (Interior Business Center) at *https://ibc.doi.gov/ICS/tribal.* For questions regarding the indirect cost policy, please call the Grants Management Specialist listed under ''Agency Contacts'' or write to *DGM@ihs.gov.*

3. Reporting Requirements

The awardee must submit required reports consistent with the applicable deadlines. Failure to submit required reports within the time allowed may result in suspension or termination of an active award, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in the imposition of special award provisions and/or the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the awardee organization or the individual responsible for preparation of the reports. Per DGM policy, all reports must be submitted electronically by attaching them as a ''Grant Note'' in GrantSolutions. Personnel responsible for submitting reports will be required to obtain a login and password for GrantSolutions. Please use the form under the Recipient User section of *https://www.grantsolutions.gov/home/getting-started-request-a-user-account/.* Download the Recipient User Account Request Form, fill it out completely, and submit it as described on the web page and in the form.

The reporting requirements for this program are noted below.

A. Progress Reports

Program progress reports are required annually. The progress reports are due within 30 days after the reporting period ends (specific dates will be listed in the NoA Terms and Conditions). These reports must include a brief comparison of actual accomplishments to the goals established for the period, a summary of progress to date or, if applicable, provide sound justification for the lack

of progress, and other pertinent information as required. A final report must be submitted within 90 days of expiration of the period of performance.

B. Financial Reports

Federal Financial Reports are due 90 days after the end of each budget period, and a final report is due 120 days after the end of the period of performance. Awardees are responsible and accountable for reporting accurate information on all required reports: the Progress Reports and the Federal Financial Report.

Failure to submit timely reports may result in adverse award actions blocking access to funds.

C. Data Collection and Reporting

Awardee will be required to collect and report data pertaining to activities, processes, and outcomes. The IHS will provide additional guidance on data collection and reporting for evaluation purposes. Programmatic reporting must be submitted within 30 days after the budget period ends for each project year (specific dates will be listed in the Notice of Award Terms and Conditions). All reporting items will be submitted via GrantSolutions. Technical assistance for web-based data entry will be timely and readily available to awardee by assigned DBH staff. Awardee is responsible and accountable for accurate information being submitted by required due dates for Data Collection and Reporting.

The IHS will provide ZSI project data and any aggregate program statistics including associated community-level GPRA health care facility data available in the National Data Warehouse as needed.

Awardee will collect data from ZSI projects and will be required to compile a cross-site evaluation that will include both qualitative and qualitative analysis. The project site data reports will include the following data points:

Treat

- Number of patient visits.
- Number of patients screened for suicide risk.
- Number of patients placed on suicide care pathway or registry.
- Number of patients hospitalized for suicide risk.
- Number of patients with safety plan.
- Number of patients counseled on access to lethal means.
- Number of approved ZSI Policies for Screening, Assessment, Safety-Planning, Means Restriction, Transfer, and Follow-up.
- Number of Protocol Guide of culturally informed practices and activities to be used with Evidence Based Practices (EBP).
- Number of Integrated Electronic Health Records (EHR).

Train

- Number of staff trained in EBP for Screening.
- Number of staff trained in EBP for Assessment.
- Number of staff trained in EBP for Treatment.
- Number of staff trained, number of trainings, type of trainings, and number of staff trained in each health care profession in evidence-based treatment of suicide risk.
- Number of staff that report feeling competent to deliver suicide care.
- Number of staff that report feeling confident to deliver suicide care.
- Number of patients who received a suicide screening during the reporting period.
- Number of staff using EBP to provide treatment of suicide risk.
- Number of staff incorporating culturally informed practices and activities with EBP.
- Number of culturally informed practices and activities used.
- Number of patients with a Safety Plan that receive follow-up within 8 hours of missed appointment.
- Number of patients who receive follow-up within 24 hours of inpatient emergency department visit.

Improve

- Existence of multidisciplinary ZSI Leadership Succession Team.
- Existence of Approved ZSI Policies for screening, assessment, safety-planning, means restriction, prescription, and follow-up.
- Protocol Guide of culturally informed practices and activities to be used with EBP.
- Existence of Integrated EHR.
- Existence of data collection and surveillance processes in place.
- Results from Organizational Self-Study.
- Results from the Workforce Survey (WFS).
- Existence of trained, competent staff as evidenced by results of WFS.
- Existence of approved Implementation Work Plan.

D. Post Conference Grant Reporting

The following requirements were enacted in Section 3003 of the Consolidated Continuing Appropriations Act, 2013, Public Law 113–6, 127 Stat. 198, 435 (2013), and; *Office of Management and Budget Memorandum M–17–08, Amending OMB Memorandum M–12–12:* All HHS/IHS awards containing grants funds allocated for conferences will be required to complete a mandatory post award report for all conferences. Specifically: The total amount of funds provided in this award/cooperative agreement that were spent for ''Conference X'' must be reported in final detailed actual costs within 15 calendar days of the completion of the conference. Cost categories to address should be: (1) Contract/Planner, (2) Meeting Space/Venue, (3) Registration website, (4) Audio Visual, (5) Speakers Fees, (6) Non-Federal Attendee Travel, (7) Registration Fees, and (8) Other.

E. Federal Sub-Award Reporting System (FSRS)

This award may be subject to the Transparency Act sub-award and executive compensation reporting requirements of 2 CFR part 170.

The Transparency Act requires the OMB to establish a single searchable database, accessible to the public, with information on financial assistance awards made by Federal agencies. The Transparency Act also includes a requirement for awardees of Federal grants to report information about first-tier sub-awards and executive compensation under Federal assistance awards.

The IHS has implemented a Term of Award into all IHS Standard Terms and Conditions, NoAs, and funding announcements regarding the FSRS reporting requirement. This IHS Term of Award is applicable to all IHS grant and cooperative agreements issued on or after October 1, 2010, with a $25,000 sub-award obligation threshold met for any specific reporting period.

For the full IHS award term implementing this requirement and additional award applicability information, visit the DGM Grants Management website at *https://www.ihs.gov/dgm/policytopics/.*

F. Non-Discrimination Legal Requirements for Awardees of Federal Financial Assistance

The awardee must administer the project in compliance with Federal civil rights laws that prohibit discrimination on the basis of race, color, national origin, disability, age, and comply with applicable conscience protections. The awardee must comply with applicable laws that prohibit discrimination on the basis of sex, which includes discrimination on the basis of gender identity, sexual orientation, and pregnancy. Compliance with these laws requires taking reasonable steps to provide meaningful access to persons with limited English proficiency and

providing programs that are accessible to and usable by persons with disabilities. The HHS Office for Civil Rights provides guidance on complying with civil rights laws enforced by HHS. See *https://www.hhs.gov/civil-rights/for-providers/provider-obligations/index.html* and *https://www.hhs.gov/civil-rights/for-individuals/nondiscrimination/index.html.*

- Recipients of FFA must ensure that their programs are accessible to persons with limited English proficiency. For guidance on meeting your legal obligation to take reasonable steps to ensure meaningful access to your programs or activities by limited English proficiency individuals, see *https://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/fact-sheet-guidance/index.html* and *https://www.lep.gov.*
- For information on your specific legal obligations for serving qualified individuals with disabilities, including reasonable modifications and making services accessible to them, see *https://www.hhs.gov/civil-rights/for-individuals/disability/index.html.*
- HHS funded health and education programs must be administered in an environment free of sexual harassment. See *https://www.hhs.gov/civil-rights/for-individuals/sex-discrimination/index.html.*
- For guidance on administering your program in compliance with applicable Federal religious nondiscrimination laws and applicable Federal conscience protection and associated anti-discrimination laws, see *https://www.hhs.gov/conscience/conscience-protections/index.html* and *https://www.hhs.gov/conscience/religious-freedom/index.html.*

G. Federal Awardee Performance and Integrity Information System (FAPIIS)

The IHS is required to review and consider any information about the applicant that is in the FAPIIS at *https://www.fapiis.gov/fapiis/#/home* before making any award in excess of the simplified acquisition threshold (currently $250,000) over the period of performance. An applicant may review and comment on any information about itself that a Federal awarding agency previously entered. The IHS will consider any comments by the applicant, in addition to other information in FAPIIS, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants, as described in 45 CFR 75.205.

As required by 45 CFR part 75 Appendix XII of the Uniform Guidance, NFEs are required to disclose in FAPIIS any information about criminal, civil, and administrative proceedings, and/or affirm that there is no new information to provide. This applies to NFEs that receive Federal awards (currently active grants, cooperative agreements, and procurement contracts) greater than $10 million for any period of time during the period of performance of an award/project.

Mandatory Disclosure Requirements

As required by 2 CFR part 200 of the Uniform Guidance, and the HHS implementing regulations at 45 CFR part 75, the IHS must require an NFE or an applicant for a Federal award to disclose, in a timely manner, in writing to the IHS or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

All applicants and awardees must disclose in writing, in a timely manner, to the IHS and to the HHS Office of Inspector General all information related to violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. 45 CFR 75.113.

Disclosures must be sent in writing to:

U.S. Department of Health and Human Services, Indian Health Service, Division of Grants Management, ATTN: Marsha Brookins, Director, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857 (Include ''Mandatory Grant Disclosures'' in subject line), Office: (301) 443–4750, Fax: (301) 594–0899, Email: *DGM@ihs.gov*

AND

U.S. Department of Health and Human Services, Office of Inspector General, ATTN: Mandatory Grant Disclosures, Intake Coordinator, 330 Independence Avenue SW, Cohen Building, Room 5527, Washington, DC 20201, URL: *https://oig.hhs.gov/fraud/report-fraud/* (Include ''Mandatory Grant Disclosures'' in subject line), Fax: (202) 205–0604 (Include ''Mandatory Grant Disclosures'' in subject line) or, Email: *MandatoryGranteeDisclosures@oig.hhs.gov*

Failure to make required disclosures can result in any of the remedies described in 45 CFR 75.371 Remedies for noncompliance, including suspension or debarment (see 2 CFR part 180 and 2 CFR part 376).

VII. Agency Contacts

1. Questions on program matters may be directed to: Pamela End of Horn, DSW, LICSW Public Health Advisor, Indian Health Service, Division of Behavioral Health, 5600 Fishers Lane, Mail Stop: 08N34–A, Rockville, MD 20857, Telephone: (301) 443–8028, Fax: (301) 594–6213, Email: *Pamela.EndofHorn@ihs.gov.*
2. Questions on grants management and fiscal matters may be directed to: Sheila Miller, Grants Management Specialist, Indian Health Service, Division of Grants Management, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Phone: (240) 535–9308, Email: *Sheila.Miller@ihs.gov.*
3. Questions on systems matters may be directed to: Paul Gettys, Deputy Director, Indian Health Service, Division of Grants Management, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Phone: (301) 443–2114; or the DGM main line (301) 443–5204, E-Mail: *Paul.Gettys@ihs.gov.*

VIII. Other Information

The Public Health Service strongly encourages all grant, cooperative agreement, and contract awardees to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Roselyn Tso,

Director, Indian Health Service.

[FR Doc. 2023–03281 Filed 2–15–23; 8:45 am]

BILLING CODE 4165–16–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; Small Business: Aging and Development, Auditory Vision and Low Vision Technologies.
Date: March 16–17, 2023.
Time: 8:30 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Canopy by Hilton, 940 Rose Avenue, North Bethesda, MD 20852.
Contact Person: Barbara Susanne Mallon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 480–8992, *mallonb@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Clinical Neurophysiology, Devices, Neuroprosthetics and Biosensors.
Date: March 16–17, 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: Cristina Backman, Ph.D., Scientific Review Officer, ETTN IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5211, MSC 7846 Bethesda, MD 20892, 301–480–9069, *cbackman@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–21–303: Mobile Health Technology and Outcomes in Low and Middle Income Countries.
Date: March 16–17, 2023.
Time: 9:30 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: Izabella Zandberg, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–594–0359, *izabella.zandberg@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Oncology.
Date: March 20–21, 2023.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Nywana Sizemore, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6189, MSC 7804, Bethesda, MD 20892, 301–408–9916, *sizemoren@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Clinical Care and Health Interventions.
Date: March 20, 2023.
Time: 9:30 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications and/or proposals.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Jessica Campbell Chambers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 496–5693, *jcampbel@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Vascular and Hematological Systems, Surgical Sciences, Biomedical Imaging, and Bioengineering.
Date: March 20–21, 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: Ai-Ping Zou, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–408–9497, *zouai@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Radiation Therapy SBIR/STTR.
Date: March 20, 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: Jennifer Ann Sanders, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 496–3553, *jennifer.sanders@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Animal & Material Resources.
Date: March 20, 2023.
Time: 1:00 p.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: Brian Paul Chadwick, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–3586 *chadwickbp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Pain Mechanisms.
Date: March 20, 2023.
Time: 2:00 p.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 Bishop, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@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 13, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–03310 Filed 2–15–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 on Drug Abuse Special Emphasis Panel; NIDA K Conflict SEP.
Date: March 14, 2023.
Time: 12:00 p.m. to 1:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Marisa Srivareerat, Ph.D., Scientific Review Officer, Scientific Review Branch, Office of Extramural Policy, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 435–1258, *marisa.srivareerat@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Enabling SUD Digital Therapeutics Research to Improve Payor Adoption.
Date: March 22, 2023.
Time: 11:00 a.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jenny Raye Browning, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 443–4577, *jenny.browning@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: February 10, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–03248 Filed 2–15–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Facial Comparison for APIS Compliance Test

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces that U.S. Customs and Border Protection (CBP) plans to conduct a voluntary test in which participating commercial airlines and vessels use CBP's Traveler Verification Service (TVS) facial comparison service to comply with certain regulatory requirements regarding the Advance Passenger Information System (APIS). CBP regulations currently require an appropriate official of commercial aircraft and commercial vessels (collectively ''carriers'') to submit electronic manifests to CBP listing crew, non-crew, and passenger (collectively ''travelers'') information upon arrival and departure of aircraft and vessels. The carrier is required to compare the travel documents presented by the travelers with the information the carrier submits to CBP to, among other things, ensure that the information is correct and that each traveler is the person to whom the travel document was issued. Additionally, the carrier is required to ensure that the travel document presented is valid for travel to the United States. Participation in this pilot does not remove this requirement for carriers. During this test, participating carriers will use the existing TVS facial comparison service to ensure the manifest information transmitted to CBP is correct and to perform the required identity verification. The use of TVS technology for APIS verification purposes has the potential to speed up the departure process for both carriers and travelers, as it enables travelers to be matched more efficiently to their travel documents. This notice provides a description of the test, sets forth requirements for participation, and invites public comment on any aspect of the test.

DATES: The test will begin no earlier than February 16, 2023 and will run for at most two years. CBP is accepting applications from carriers to participate in the test on a rolling basis throughout the two-year testing period. CBP will announce any modifications by notice in the **Federal Register**.

ADDRESSES: Applications to participate in the Facial Comparison for APIS Compliance Test must be submitted via email to *simplifytravel@cbp.dhs.gov.* Written comments concerning program, policy, and technical issues may also be submitted via email to *simplifytravel@cbp.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Natascha A. Gutermuth, Program Manager, Admissibility and Passenger Programs, Office of Field Operations, *natascha.a.gutermuth@cbp.dhs.gov* or (202) 417–0096.

SUPPLEMENTARY INFORMATION:

Background

APIS Requirements

The Advance Passenger Information System (APIS) is an electronic data system that allows carriers to transmit traveler data to CBP. Under the relevant statutes and CBP regulations, an appropriate official [1] of each carrier arriving in or departing from the United States must transmit an electronic manifest to CBP's APIS system for all travelers within a specified timeframe (generally before the vessel or aircraft departs, though the exact timeframe varies, depending on the circumstances of the trip and type of carrier). *See* 8 U.S.C. 1221, 19 U.S.C. 1433, and 49 U.S.C. 44909; 19 CFR 4.7b(b), 4.64(b), 122.49a(b), 122.49b(b), 122.49c, 122.75a(b), and 122.75b(b). The electronic manifest must include the travelers' biographic information including name, age, gender, date of birth, citizenship, passport number if relevant, and numerous other biographic data elements depending upon the type of traveler (*e.g.,* crew or passenger), as well as such other information as determined necessary by the Secretary of the Department of Homeland Security (DHS),[2] in consultation with the Secretary of State, for flights and vessels arriving in and departing from the United States, or as determined necessary by the Administrator of the Transportation Security Administration (TSA), in consultation with the Commissioner of CBP, for flights arriving in the United States. *See* 8 U.S.C. 1221; 49 U.S.C. 44909. Among other things, the carrier must compare the travel document presented by the traveler with the information the carrier is transmitting to CBP on the electronic manifest in order to (1) verify that the manifest information transmitted to CBP is correct and (2) verify that the traveler is the person to whom the travel document was issued. These two requirements will be referred to in this document as the ''APIS verification requirements''. *See* 19 CFR 4.7b(d), 4.64(d), 122.49a(d), 122.49b(d), 122.75a(d), and 122.75b(d).

The Facial Comparison for APIS Compliance Test

Description and Purpose

CBP plans to conduct a voluntary test (the ''Facial Comparison for APIS Compliance Test'' or the ''APIS test'') in which participating commercial airlines and vessels use CBP's Traveler Verification Service (TVS) facial comparison service to comply with the APIS verification requirements referenced in the background section of this document. CBP's TVS facial comparison service is part of an information technology system that provides facial matching for photos to verify the identity of travelers entering and leaving the United States pursuant to 8 CFR 215.8 and 235.1.[3] The purpose

[1] An ''appropriate official'' is defined as the master or commanding officer, or authorized agent, owner, or consignee of a commercial aircraft or vessel; this term and the term ''carrier'' are sometimes used interchangeably within the regulations. *See* title 19 of the Code of Federal Regulations parts 4 and 122 (19 CFR parts 4 and 122).

[2] Upon the creation of the Department of Homeland Security (DHS), through the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2140 (2002), and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, the functions of the Immigration and Naturalization Service (INS) of the Department of Justice, and all authorities with respect to those functions were transferred to DHS on March 1, 2003.

[3] TVS is used at participating ports of entry and with participating carriers to biometrically confirm the identity of noncitizens who are subject to biometric facial comparison when entering and exiting the United States pursuant to 8 CFR 215.8 and 235.1. Additionally, TVS is used for other travelers who submit their facial images voluntarily to participating carriers or at participating ports of

Continued

of the APIS test is to determine the feasibility of allowing carriers to use CBP's TVS facial comparison service to comply with the carrier's APIS verification requirements. The APIS TVS procedures are discussed in greater detail in the Procedures Section below.

Procedures

The APIS test is voluntary for carriers and travelers. Eligible carriers may participate in this test by following the procedures outlined below in the Eligibility and Participation Requirements Section.

Carriers who voluntarily participate in this test will collect facial images (photographs) of certain travelers at the gate or other identity check points. The carriers will then submit those facial images to CBP's TVS facial comparison service.[4] Carriers must submit photos at the time of boarding. Carriers may also submit photos at passenger check-in if the carriers elect to take photos at that identity check point. The submitted photographs will be compared to biometric templates[5] generated from pre-existing photographs that CBP already maintains, known as a ''gallery.'' When CBP receives a passenger manifest, CBP will build a gallery of photographs for the individuals identified on the manifest. These images may include photographs captured by CBP during previous entry inspections, photographs from U.S. passports and U.S. visas, and photographs from other DHS encounters.

If the TVS matches the traveler's facial image to a photograph in the gallery and the manifest information transmitted to CBP is correct, the carrier's APIS verification requirements will be considered fulfilled and the carrier will not need to perform any additional identity or passenger manifest verification.[6] If the traveler's facial image does not result in a match from TVS for any reason, the carrier will be required to verify the traveler's identity through a manual review of the traveler's travel documents pursuant to the existing APIS regulatory requirements. If a carrier identifies a traveler who has been incorrectly matched by the TVS to another passenger (referred to as a ''false positive''), the carrier will manually review the travel documents of any such false positives pursuant to current APIS requirements.[7]

The APIS test procedures described above involve the use of TVS facial comparison service, which depends on the traveler being photographed at the time of boarding or other identity checkpoints. If an individual traveler does not want to be photographed, the traveler can opt out of this procedure by notifying the carrier. CBP will require carriers to post clear and visible signs notifying travelers of their ability to opt out. Additionally, carriers may choose to give a verbal announcement during the boarding process and pass out tear sheets provided by CBP with additional information about CBP's use of facial comparison technology. If a traveler opts out of the APIS test procedures, the carrier must perform a manual review of the travel documents to ensure the manifest information sent to CBP is correct and verify the traveler's identity as required by the APIS regulations. CBP requires carriers to provide an electronic manifest listing all travelers pursuant to APIS regulations, regardless of the verification process used by the carrier.

Eligibility and Participation Requirements

Any commercial air or commercial sea carrier may apply to participate in the APIS test. In order to participate, a carrier must submit a request to participate in this test and must meet CBP requirements including those listed in the Business Requirements Document[8] and the Technical Reference Guides provided by CBP to the carriers. Upon request, CBP will provide the carrier with the full list of requirements for participation, which vary depending upon the specific circumstances of the carrier. Carriers must agree that they will not store or retain any photos taken while using TVS facial comparison services. They also must provide a method agreeable to CBP by which CBP is able to audit compliance with this requirement. Any system log files associated with a TVS enabled system must be approved by CBP to ensure compliance with DHS and CBP privacy and security policies and all applicable privacy statutes and regulations.

The carrier must also sign and return the Business Requirements Document agreement to CBP in order to participate in the APIS test. The Business Requirements Document is an acknowledgement by the carrier that it agrees to all CBP terms and technical specifications as well as any other requirements as determined by CBP.

Any carrier that wishes to participate in the APIS test may contact CBP via email at *simplifytravel@cbp.dhs.gov* to request the detailed technical requirements for participation from CBP, as well as to obtain a copy of the Business Requirements Document to be signed by the carrier. If the carrier wishes to participate in the test, they can return the signed Business Requirements document and CBP will coordinate with the carrier to ensure that the carrier's systems meet the technical and privacy requirements as determined by CBP.

It is within CBP's sole discretion to refuse test participation for any carrier.

Authorization for the Test

The test described in this notice is authorized pursuant to 19 CFR 101.9(a), which allows the Commissioner of CBP to impose requirements different from those specified in the CBP regulations for conducting a test program or procedure designed to evaluate the effectiveness of new technology or operation procedures regarding the processing of passengers, vessels, or merchandise. This test is authorized pursuant to this regulation as it is designed to evaluate whether the use of CBP's TVS technology is a feasible way for carriers to meet their APIS verification requirements.

Waiver of Certain Regulatory Requirements

Under this test, the requirement that carriers manually review travel documents to confirm that the electronic manifest information the carrier is transmitting to CBP is correct as well as the identity of the traveler prior to submission of the manifest data to CBP will be waived if CBP's TVS returns a match of the traveler's facial

entry. For additional information on CBP's TVS see the TVS Privacy Impact Assessment (PIA), available at: *https://www.dhs.gov/publication/dhscbppia-056-traveler-verification-service-0.*

[4] As noted in further detail below, individual travelers may opt out of the APIS test procedures if they do not wish to provide their facial image.

[5] A biometric template is a digital representation of a biometric trait of an individual generated from a biometric image and processed by an algorithm. The template is usually represented as a sequence of characters and numbers. For the TVS, templates cannot be reverse engineered to recreate a biometric image. The templates generated for the TVS are proprietary to a specific vendor's algorithm and cannot be used with another vendor's algorithms.

[6] Carriers still need to ensure that each traveler has a valid passport or authorized travel document in his or her possession. This separate check for a valid passport or authorized travel document fulfills the passenger manifest requirements for the United States, but there may be additional requirements from destination or transit countries.

[7] In the unlikely event that a false positive results in the creation of an incorrect travel record, the traveler affected by the incorrect travel record can seek redress through the DHS Traveler Redress Inquiry Program (DHS TRIP) at *https://www.dhs.gov/dhs-trip* or the CBP redress process, which can be found at *https://www.cbp.gov/travel/international-visitors/i-94/traveler-compliance.*

[8] Business Requirement Documents available at: *https://www.cbp.gov/document/specifications/exit-business-requirements-document* and *https://www.cbp.gov/document/specifications/exit-business-requirements-document.*

image to a photograph in the gallery.[9] For carriers participating in this test, when TVS returns a match of a traveler's facial image, the carrier's APIS verification requirements under 19 CFR 122.49a(d), 122.49b(d), 122.75a(d), and 122.75b(d) will be considered fulfilled without the carrier further inspecting the traveler's travel documents.[10]

As noted above, if CBP's TVS does not return a match of the traveler's facial image, the carrier will still be required to perform the manual document check to fulfill the carrier's APIS verification requirements.

Costs

CBP will give carriers access to its TVS facial comparison service, and the carriers will choose and purchase the equipment that best fits their needs. The cost of the equipment will vary by carrier and may depend on how the equipment is used. CBP believes costs will range from $5,000 to $20,000 per departure gate, based on its experience procuring equipment for previous CBP facial comparison pilots. It is also possible that costs will go down substantially over time as carriers develop more efficient and inexpensive equipment. For example, the Washington Metropolitan Airports Authority has begun using modified iPads for its facial comparison pilot.[11] If this equipment is successful and is adopted more broadly, the cost to carriers could drop substantially.

Benefits

The goal of the APIS test procedure is to enable carriers to satisfy the APIS verification requirements more accurately and efficiently by eliminating the manual data and identity verification process in most cases. As noted in the Evaluation section below, CBP will evaluate whether the test procedure is more accurate than the current regulatory procedure. Performing biometric identity verification can help CBP and partner stakeholders reconcile any errors or incomplete data in a traveler's biographic data. CBP anticipates that having a more accurate verification will result in more accurate border crossing records of travelers. By having more accurate border crossing records of travelers, CBP can more effectively identify overstays and noncitizens who are, or were, present in the United States without having been admitted or paroled and prevent their unlawful reentry into the United States. It will also make it more difficult for imposters to utilize other travelers' credentials. Ultimately, this provides CBP with more reliable information to verify identity and to strengthen its ability to identify criminals and known or suspected terrorists.

The use of TVS technology for APIS verification purposes has the potential to speed up the departure process for both carriers and travelers, as it enables travelers to be matched more efficiently to their travel documents. Various airlines have already partnered with CBP to test facial comparison in other contexts pursuant to regulations in Title 8 of the Code of Federal Regulations. These other programs are unrelated to APIS compliance, and participants have reported that facial comparison tests speed up the boarding process substantially.[12]

Duration of Test

This test will run for at most two years from February 16, 2023. While the test is ongoing, CBP will evaluate the results and determine whether the test should be extended or otherwise modified. CBP reserves the right to discontinue this test at any time at CBP's sole discretion. CBP will announce any modifications by notice in the **Federal Register**.

Evaluation of APIS Test

CBP will use the results of this test to assess the operational feasibility of using TVS facial comparison service for the purposes of compliance with the APIS verification requirements. CBP will evaluate this test based on a number of criteria, including:

- the percentage of travelers for whom CBP had a gallery photo available for matching purposes; and
- the ability of the technology to correctly match the facial images captured to the correct individuals' facial image(s) on file, including continued tracking of any differences in matching performance based on measurable demographic factors.

CBP's operational data continues to show there is no measurable differential performance in matching based on demographic factors. CBP continually monitors algorithm performance and technology enhancements to ensure we are deploying the most accurate and effective algorithm. CBP continues to partner with the National Institute of Standards and Technology (NIST) and use NIST research to ensure the continued optimal performance.[13] CBP will continue its review of matches and no-matches to determine the reason for such a match, including whether the match was based on a demographic factor (age, gender, citizenship). CBP will continue to work both internally and with partners to identify and remediate disparate impacts and other forms of bias and discrimination, if any.[14]

Misconduct Under the Test

If a carrier participating in the test fails to abide by the rules, procedures, or terms and conditions of this test, fails to exercise reasonable care in the execution of participant obligations, or otherwise fails to comply with all applicable laws and regulations, then the participant may be suspended from participation in this test and/or subjected to penalties, liquidated damages, and/or other administrative or judicial sanction under APIS regulations.

If CBP determines that a suspension is warranted, CBP will notify the participant of this decision, the facts or conduct warranting suspension, and the

[9] However, in the event of a ''false positive'' as discussed above, the carrier will still be required to manually review the travel documents in accordance with the requirements of 19 CFR 122.49a(d), 122.49b(d), 122.75a(d), and 122.75b(d).

[10] As noted above, carriers still need to ensure each traveler has a valid passport or authorized travel document in his or her possession.

[11] Source: *https://www.washingtonpost.com/transportation/2018/09/06/officials-unveil-new-facial-recognition-system-dulles-international-airport/?noredirect=on&utm_term=.ae3fdefbd1a6.* Accessed June 4, 2020.

[12] In one test, an airline partner has been able to board an Airbus A–380 with 350 travelers in only 20 minutes. (*https://www.cntraveler.com/story/orlando-airport-first-in-the-us-to-scan-faces-of-all-international-passengers.* Accessed June 4, 2020.) Another airline partner has reported to CBP that their baseline loading time for an A–380 is 45 minutes. In the test of the integrated facial comparison service used at the Orlando Airport, travelers have experienced a 15-minute time savings. According to one news article, this is down from 30 minutes for a 240-passenger plane. (*https://www.forbes.com/sites/grantmartin/2018/06/24/orlando-airport-deploys-biometric-scanners-at-all-international-gates/#2a4a588118f9. Accessed June 4, 2020.*) In both tests, boarding times are reduced by approximately 50 percent.

[13] In July 2021, NIST published its Face Recognition Vendor Test (FRVT) Part 7: Identification for Paperless Travel and Immigration, available at: *https://nvlpubs.nist.gov/nistpubs/ir/2021/NIST.IR.8381.pdf.* The report demonstrates that the current biometric facial recognition technology passes the threshold for use in CBP's Biometric Exit Program, based on computer-focused simulations. In December 2019, NIST published the FRVT Part 3: Demographic Effects, available at: *https://nvlpubs.nist.gov/nistpubs/ir/2021/NIST.IR.8381.pdf.* As the report demonstrates, NEC–3, which CBP uses, is among the algorithms with an undetectable false positive differential. NIST also noted, ''NEC–3, is on many measures the most accurate we have evaluated,'' see page 8 of the report.

[14] Information regarding biometric matching performance can be found on CBP's website at *https://biometrics.cbp.gov/privacy* which includes a link to CBP's Privacy Evaluation Report as well as the TVS Privacy Impact Assessment (PIA). The PIA is also available at *http://www.dhs.gov/privacy-documents-us-customs-and-border-protection.*

date when the suspension will be effective. This decision may be appealed in writing to the Executive Assistant Commissioner, Office of Field Operations, within 15 days of notification. The appeal should address the facts or conduct charges contained in the notice and state how the participant has or will achieve compliance. CBP will notify the participant within 30 days of receipt of an appeal whether the appeal is granted. If the appeal is granted and the participant has already been suspended, CBP will notify the participant when its participation in the test will be reinstated.

Privacy

CBP will ensure that all Privacy Act requirements and applicable DHS privacy policies are adhered to during this test.[15] Pursuant to these requirements, CBP will delete photos of U.S. citizens immediately upon confirmation of U.S. citizenship.[16] CBP will retain photos of all noncitizens [17] and no-matches for up to 14 days in the Automated Targeting System (ATS). DHS may retain the facial images of in-scope [18] noncitizens for up to 75 years in DHS's Automated Biometric Identification System (IDENT) system, and any successor system.

CBP has issued a Privacy Impact Assessment (PIA) for TVS, which outlines how CBP ensures compliance with Privacy Act protections and DHS privacy policies, including DHS's Fair Information Practice Principles (FIPPs). The FIPPs account for the nature and purpose of the information being collected in relation to DHS's mission to preserve, protect and secure the United States. The PIA addresses issues such as the security, integrity, and sharing of data, use limitation and transparency. The PIA is publicly available at: *http://www.dhs.gov/privacy-documents-us-customs-and-border-protection.*

CBP has also issued the DHS/CBP–005 APIS System of Records Notice (SORN) and the APIS PIA, as well as the DHS/CBP–007 Border Crossing Information (BCI) SORN and the DHS/CBP–006 Automated Targeting System (ATS) SORN. These documents encompass all data collected for APIS compliance, as well as data collected to create border crossing records for individuals. CBP will create new documents or update these documents as needed to reflect the use of biometric data for the purposes of this test and will make these documents available at: *https://www.dhs.gov/compliance.*

Paperwork Reduction Act

The Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3507(d)) requires that CBP consider the impact of paperwork and other information collection burdens imposed on the public. An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget (OMB). This information collection is covered by OMB control numbers 1651–0138 Biometric Identity and 1651–0088 Passenger and Crew Manifest.

Signing Authority

Troy A. Miller, the Acting Commissioner of CBP, having reviewed and approved this document, is delegating the authority to electronically sign this document to Robert F. Altneu, who is the Director of the Regulations and Disclosure Law Division for CBP, for purposes of publication in the **Federal Register**.

Dated: February 13, 2023.

Robert F. Altneu,

Director, Regulations & Disclosure Law Division, Regulations & Rulings, Office of Trade, U.S. Customs and Border Protection.

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BILLING CODE 9111–14–P

[15] *See* 8 U.S.C. 552a and *https://www.dhs.gov/privacy-policy-guidance.*

[16] Photos of U.S. citizens are destroyed immediately upon confirmation of U.S. citizenship, but no later than 12 hours only under specific circumstances. If there is a system or network issue, photos will reside in an inaccessible queue for up to 12 hours and will be processed once the system and/or network connectivity is re-established and proper dispositioning (confirmation of U.S. citizenship) can occur. Further information about the retention of facial images is provided in the TVS Privacy Impact Assessment (PIA). It is available at *http://www.dhs.gov/privacy-documents-us-customs-and-border-protection.*

[17] For purposes of this document, CBP uses the term ''noncitizen'' in place of the term ''alien.'' However, CBP regulations use the term ''alien.''

[18] An ''in-scope'' noncitizen is any person who is required by law to provide biometrics upon entry or exit from the United States pursuant to 8 CFR 215.8(a) and 235.1(f).

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Section 321 Data Pilot: Modification of Data Elements, Expansion of Pilot To Include Additional Test Participants, and Extension of Pilot

AGENCY: U.S. Customs and Border Protection; Department of Homeland Security.

ACTION: General notice.

SUMMARY: This notice announces that U.S. Customs and Border Protection (CBP) is modifying the Section 321 Data Pilot by adding optional data elements that may be submitted by any participant. CBP is also expanding the Section 321 Data Pilot to accept applications for additional participants in this test from all parties that meet the eligibility requirements. This notice also announces that CBP is extending the Section 321 Data Pilot through August 2025.

DATES: The voluntary pilot initially began on August 22, 2019, and will run through August 2025. The modifications of the data elements and expansion of the test to include additional participants set forth in this document are effective as of the date of publication of this notice in the **Federal Register**.

ADDRESSES: Prospective pilot participants should submit an email to *ecommerce@cbp.dhs.gov.* In the subject line of your email please state, ''Application for Section 321 Data Pilot.'' For information on what to include in the email, see section II.D (Application Process and Acceptance) of the notice published in the **Federal Register** on July 23, 2019 (84 FR 35405).

FOR FURTHER INFORMATION CONTACT: Christopher Mabelitini, Director, Intellectual Property Rights & E-Commerce Division at *ecommerce@cbp.dhs.gov* or 202–325–6915.

SUPPLEMENTARY INFORMATION:

I. Section 321 Data Pilot

Section 321(a)(2)(C) of the Tariff Act of 1930, as amended, provides for an exemption from duty and taxes for shipments of merchandise imported by one person on one day having an aggregate fair retail value in the country of shipment of not more than $800. *See* 19 U.S.C. 1321(a)(2)(C). On July 23, 2019, U.S. Customs and Border Protection (CBP) published a general notice in the **Federal Register** (84 FR 35405) (July 2019 notice) introducing a voluntary Section 321 Data Pilot with a limit of nine participants. In accordance with the pilot, participants agree to transmit electronically certain data in advance of arrival for shipments potentially eligible for release under section 321 of the Tariff Act of 1930, as amended (Section 321 shipments). The data pilot tests the feasibility of collecting certain advance data, beyond those required by current regulations, and of collecting data from non-traditional entities, such as online marketplaces, in order to effectively identify and target high-risk shipments in the e-commerce environment. With the expansion of the data pilot, CBP intends to increase the number of trade participants who are transmitting

advance data elements on Section 321 *de minimis* shipments for trade facilitation and risk management purposes, as well as add optional data elements that may be submitted by any participant.

The purpose of this data pilot is to improve CBP's ability to identify and target high-risk shipments in the e-commerce environment, in addition to enhancing CBP's ability to facilitate trade and manage risks of shipments potentially eligible for release under Section 321 more effectively and efficiently. The increase in the number of participants transmitting data, as well as the addition of new optional data elements, will provide CBP with additional data needed to measure the success of the pilot.

The July 2019 notice provided a comprehensive description of the data pilot, its purpose, eligibility requirements, the application process for participation, and specifically stated that the data pilot applied only to Section 321 shipments arriving by air, truck, or rail (84 FR 35405). In December 2019, the pilot was expanded to include Section 321 shipments arriving by ocean and international mail covered in 19 CFR part 145 and extended through August 2021; CBP also provided clarification with respect to the misconduct portion of the data pilot (84 FR 67279) (December 2019 notice). On August 30, 2021, CBP extended the pilot for an additional two years through August 2023 to continue evaluation of the pilot and the risks associated with Section 321 shipments (86 FR 48435).

II. Modification to Section 321 Data Elements

This notice announces that CBP is modifying the Section 321 Data Pilot to include optional data elements that may be submitted by any participant. The modification will enable CBP to test further the feasibility of collecting advance data from individuals or entities that may possess the most relevant information relating to an e-commerce shipment's supply chain. It will also enable CBP to better direct resources used in inspecting and processing these shipments, so that CBP can more accurately and efficiently target Section 321 shipments to assess potential associated security risks. By expanding the pilot to include new optional data elements that can be submitted by any participant, the results of the pilot will inform possible future rulemakings, trade facilitation benefits, and other CBP initiatives affecting Section 321 shipments. For these reasons, CBP is modifying the Section 321 Data Pilot to include optional data elements.

Data Elements

Participants in the Section 321 Data Pilot must transmit certain information for any Section 321 shipment destined for the United States for which the participant has information (84 FR 35405). The required data elements differ slightly depending on the entity transmitting the data. In general, the required data relates to the entity initiating the shipment (*e.g.,* the entity causing the shipment to cross the border, such as the seller, manufacturer, or shipper); the product in the package; the listed marketplace price; and the final recipient (*e.g.,* the final entity to possess the shipment in the United States). The data elements are as follows:

1. All participants. All participants, regardless of filer type, must electronically transmit the following elements:

- Originator Code of the Participant (assigned by CBP)
- Participant Filer Type (*e.g.,* carrier or online marketplace)
- One or more of the following:
  - ○ Shipment Tracking Number
  - ○ House Bill Number
  - ≤○ Master Bill Number
- Mode of Transportation (*e.g.,* air, truck, ocean, or rail).

2. Participating carriers. In addition to the data elements listed above in paragraph 1, participating carriers must also electronically transmit the following data elements:

- Shipment Initiator Name and Address (*e.g.,* the entity that causes the movement of a shipment, which may be a seller, shipper, or manufacturer, but not a foreign consolidator)
- Final Deliver to Party Name and Address (*e.g.,* the final entity to receive the shipment once it arrives in the United States, which may be a final purchaser or a warehouse, but not a domestic deconsolidator)
- Enhanced Product Description (*e.g.,* a description of a product shipped to the United States more detailed than the description on the manifest, which should, if applicable, reflect the advertised retail description of the product as listed on an online marketplace)
- Shipment Security Scan (*e.g.,* verification that a foreign security scan for the shipment has been completed, such as an x-ray image or other security screening report)
- Known Carrier Customer Flag (*e.g.,* an indicator that identifies a shipper as a repeat customer that has consistently paid all required fees and does not have any known trade violations).

3. Participating online marketplaces. In addition to the data elements listed above in paragraph 1, participating online marketplaces must electronically submit the following data elements:

- Seller Name and Address (*e.g.,* an international or domestic company that sells products on marketplaces and other websites), and, if applicable, Shipment Initiator Name and Address
- Final Deliver to Party Name and Address
- Known Marketplace Seller Flag (*e.g.,* an indicator provided by a marketplace that identifies a seller as an entity vetted by the marketplace and has no known trade violations)
- Marketplace Seller Account Number/ Seller ID (*e.g.,* the unique identifier a marketplace assigns to sellers)
- Buyer Name and Address, if applicable (*e.g.,* the purchaser of a good from an online marketplace. This entity is not always the same as the final deliver to party.)
- Product Picture (*e.g.,* picture of the product presented on an online marketplace), Link to Product Listing (*e.g.,* an active and direct link to the listing of a specific product on an online marketplace), or Enhanced Product Description (as defined in paragraph 2)
- Listed Price on Marketplace (*e.g.,* the retail price of a product that a seller lists while advertising on an online marketplace. For auction marketplaces, this price is the price of final sale.).

4. Optional Data Elements. In addition to the data elements listed above, participants, regardless of filer type, may electronically submit the following data elements:

- Harmonized Tariff Schedule of the United States (10-digit HTSUS)
- Retail Price in Export Country
- Shipper Name
- Shipper Address
- Shipper Phone Number
- Shipper Email Address
- Consignee Name (*e.g.,* the final deliver to party)
- Consignee Address
- Consignee Phone Number
- Consignee Email Address
- Buyer Name
- Buyer Address
- Buyer Phone Number
- Buyer Email Address
- Buyer Account Number
- Buyer Confirmation Number
- Shipment Initiator Phone Number
- Seller Phone Number

- Marketplace Name
- Marketplace website
- Carrier Name
- Known Carrier Customer Flag
- Merchandise/Product Weight
- Merchandise/Product Quantity
- Listed Price on Marketplace
- Manufacturer Identification Number (*e.g.,* the MID)
- Manufacturer Name
- Manufacturer Address.

The optional data elements may be submitted as of the publication of this notice in the **Federal Register**.

III. Expansion of Section 321 Applicant Participation

Effective Immediately, CBP is expanding the test to accept applications for additional participants in this test from all parties that meet the eligibility requirements. If selected for participation, participants will be onboarded in the order in which their applications are received in phases averaging three participants per month. CBP will aim to onboard an average of three additional participants each month. This expansion will allow CBP to continue evaluating the feasibility of the 321 Data Pilot program and the risks associated with Section 321 shipments.

CBP seeks participation from stakeholders in the e-commerce environment, including carriers, brokers, freight forwarders, and online marketplaces. There are no restrictions regarding organizational size, location, or commodity type. Additionally, online marketplaces do not need to offer delivery logistic services to participate in the pilot. However, participation is limited to those parties with sufficient information technology infrastructure and support, as described below. All prospective pilot participants must fulfill the following eligibility requirements:

- Participants must use MQ connectivity capability, a messaging solution component, to submit data electronically to CBP and to receive messaging responses via an existing point-to-point connection with CBP. Alternatively, participants may authorize a carrier or broker that already participates in the pilot and has an existing point-to-point connection with CBP to transmit the information on their behalf.
- Participants establishing a new point-to-point connection with CBP will need to sign an Interconnect Security Agreement (ISA) or amend their existing ISA, if necessary, and adhere to security policies defined in the DHS 4300a security guide.
- Participants must send the mandatory data elements required for their filer type, as described above.

IV. Extension of the Section 321 Data Pilot Period

CBP will extend the pilot to continue evaluation of the 321 Data Pilot program and the risks associated with section 321 shipments. The pilot will run through August 2025.

V. Authority

This pilot is conducted pursuant to 19 CFR 101.9(a), which authorizes the Commissioner to impose requirements different from those specified in the CBP regulations for the purposes of conducting a test program or procedure designed to evaluate the effectiveness of new technology or operational procedures regarding the processing of passengers, vessels, or merchandise.

VI. Privacy

CBP will ensure that all Privacy Act requirements and applicable policies are adhered to during the implementation of this pilot.

VII. Paperwork Reduction Act

The collection of information gathered under this test has been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) and assigned OMB control number 1651–0142. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

VIII. Misconduct Under the Pilot

A pilot participant may be subject to civil and criminal penalties, administrative sanctions, liquidated damages, or discontinuance from participation in the Section 321 Data Pilot for any of the following:

(1) Failure to follow the rules, terms, and conditions of this pilot;

(2) Failure to exercise due care in the execution of participant obligations; or

(3) Failure to abide by applicable laws and regulations.

If the Director, Intellectual Property Rights and E-Commerce Division, Office of Trade, finds that there is a basis for discontinuance of pilot participation privileges, the pilot participant will be provided a written notice which may be transmitted electronically proposing the discontinuance with a description of the facts or conduct warranting the action. The pilot participant will be offered the opportunity to appeal the decision in writing within ten (10) business days of receipt of the written notice. The appeal of this determination must be submitted to the Executive Director, Trade Policy and Programs, Office of Trade, by emailing *ecommerce@cbp.dhs.gov.*

The Executive Director, Trade Policy and Programs, Office of Trade, will issue a decision in writing which may be transmitted electronically on the proposed action within 30 business days after receiving a timely filed appeal from the pilot participant. If no timely appeal is received, the proposed notice becomes the final decision of the Agency as of the date that the appeal period expires. A proposed discontinuance of a pilot participant's privileges will not take effect unless the appeal process under this paragraph has been concluded with a written decision adverse to the pilot participant.

In cases of willfulness or those in which public health, interest, or safety so require, the Director, Intellectual Property Rights and E-Commerce Division, Office of Trade, may immediately discontinue the pilot participant's privileges upon written notice which may be sent electronically to the pilot participant. The notice will contain a description of the facts or conduct warranting the immediate action. The pilot participant will be offered the opportunity to appeal the decision within ten (10) business days of receipt of the written notice providing for immediate discontinuance. The appeal of this determination must be submitted to the Executive Director, Trade Policy and Programs, Office of Trade, by emailing *ecommerce@cbp.dhs.gov.*

The immediate discontinuance will remain in effect during the appeal period. The Executive Director, Trade Policy and Programs, Office of Trade, will issue a decision in writing on the discontinuance within 15 business days after receiving a timely filed appeal from the pilot participant. If no timely appeal is received, the notice becomes the final decision of the Agency as of the date that the appeal period expires.

IX. Applicability of Initial Test Notice

All other provisions found in the July 2019, December 2019, and August 2021, notices remain applicable, subject to the expansion of applicants provided herein. Furthermore, CBP reiterates that it is not waiving any regulations for purposes of the pilot. All existing regulations continue to apply to pilot participants.

X. Signing Authority

Troy Miller, Acting Commissioner, having reviewed and approved this document, has delegated the authority

to electronically sign this document to Robert F. Altneu, who is the Director of the Regulations and Disclosure Law Division for CBP, for purposes of publication in the **Federal Register**.

Date: February 13, 2023.

Robert F. Altneu,

Director, Regulations & Disclosure, Law Division. Regulations & Rulings, Office of Trade, U.S. Customs and Border Protection.

[FR Doc. 2023–03279 Filed 2–15–23; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

[Docket ID FEMA–2014–0022]

Technical Mapping Advisory Council; Meeting

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Federal Emergency Management Agency (FEMA) Technical Mapping Advisory Council (TMAC) will hold an in-person public meeting with a virtual option on Wednesday, March 1, 2023, and Thursday, March 2, 2023. The meeting will be open to the public in-person and via a Microsoft Teams Video Communications link.

DATES: The TMAC will meet on Wednesday, March 1, 2023, and Thursday, March 2, 2023, from 8 a.m. to 5 p.m. Eastern Time (ET). Please note that the meeting will close early if the TMAC has completed its business.

ADDRESSES: The meeting will be held in-person at FEMA Conference Center at 400 C St. SW Washington, DC 20472, and virtually using the following Microsoft Teams Video Communications link (Wednesday Link: *https://bit.ly/3jeBjCN;* Thursday Link: *https://bit.ly/3DufWE6*). Members of the public who wish to attend the in-person or virtual meeting must register in advance by sending an email to *FEMA-TMAC@fema.dhs.gov* (Attn: Brian Koper) by 5 p.m. ET on Monday, February 27, 2023.

To facilitate public participation, members of the public are invited to provide written comments on the issues to be considered by the TMAC, as listed in the **SUPPLEMENTARY INFORMATION** caption below. Associated meeting materials will be available upon request after Thursday, February 23, 2023. The draft 2022 TMAC Annual Report will be available for review after Thursday, February 23, 2023. To receive a copy of any relevant materials, please send the request to: *FEMA-TMAC@fema.dhs.gov* (Attn: Brian Koper). Written comments to be considered by the committee at the time of the meeting must be submitted and received by Friday, February 24, 2023, 5 p.m. ET identified by Docket ID FEMA–2014–0022, and submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email:* Address the email TO: *FEMA-TMAC@fema.dhs.gov.* Include the docket number in the subject line of the message. Include name and contact information in the body of the email.
- *Instructions:* All submissions received must include the words ''Federal Emergency Management Agency'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may wish to review the Privacy & Security Notice via a link on the homepage of *www.regulations.gov.*
- *Docket:* For docket access to read background documents or comments received by the TMAC, go to *http://www.regulations.gov* and search for the Docket ID FEMA–2014–0022.

A public comment period will be held on Wednesday, March 1, 2023, from 2:30 p.m. to 3 p.m. ET and Thursday, March 2, 2023, from 1:30 p.m. to 2 p.m. ET. The public comment period will not exceed 30 minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. Contact the individual listed below to register as a speaker by Friday, February 24, 2023, 5 p.m. ET. Please be prepared to submit a written version of your public comment.

FEMA is committed to ensuring all participants have equal access regardless of disability status. If you require a reasonable accommodation due to a disability to fully participate, please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** caption as soon as possible.

FOR FURTHER INFORMATION CONTACT: Brian Koper, Designated Federal Officer for the TMAC, FEMA, 400 C Street SW, Washington, DC 20472, telephone 202–646–3085, and email *brian.koper@fema.dhs.gov.* The TMAC website is: *https://www.fema.gov/flood-maps/guidance-partners/technical-mapping-advisory-council*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act,* Public Law 117–286, 5 U.S.C. ch. 10.

In accordance with the *Biggert-Waters Flood Insurance Reform Act of 2012,* the TMAC makes recommendations to the FEMA Administrator on: (1) how to improve, in a cost-effective manner, the (a) accuracy, general quality, ease of use, and distribution and dissemination of flood insurance rate maps and risk data; and (b) performance metrics and milestones required to effectively and efficiently map flood risk areas in the United States; (2) mapping standards and guidelines for (a) flood insurance rate maps, and (b) data accuracy, data quality, data currency, and data eligibility; (3) how to maintain, on an ongoing basis, flood insurance rate maps and flood risk identification; (4) procedures for delegating mapping activities to State and local mapping partners; and (5) (a) methods for improving interagency and intergovernmental coordination on flood mapping and flood risk determination, and (b) a funding strategy to leverage and coordinate budgets and expenditures across Federal agencies. Furthermore, the TMAC is required to submit an annual report to the FEMA Administrator that contains: (1) a description of the activities of the Council; (2) an evaluation of the status and performance of flood insurance rate maps and mapping activities to revise and update Flood Insurance Rate Maps; and (3) a summary of recommendations made by the Council to the FEMA Administrator.

Agenda: The purpose of this meeting is for the TMAC members to discuss and vote on the content of the 2023 TMAC Annual Report. Any related materials will be available upon request prior to the meeting to provide the public an opportunity to review the materials. The full agenda and related meeting materials will be available upon request by Thursday, February 23, 2023. To receive a copy of any relevant materials, please send the request to: *FEMA-TMAC@fema.dhs.gov* (Attn: Brian Koper).

Michael M. Grimm,

Assistant Administrator for Risk Management, Federal Emergency Management Agency.

[FR Doc. 2023–03312 Filed 2–15–23; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6377–N–01]

Exhibitors Sought for Innovative Housing Showcase

AGENCY: Office of the Assistant Secretary for Policy Development and

Research, Department of Housing and Urban Development (HUD).

ACTION: Notice.

SUMMARY: HUD, in collaboration with other organizations, will present the Innovative Housing Showcase in June 2023 on the National Mall in Washington, DC. The Innovative Housing Showcase (Showcase) is a public event to raise awareness of innovative housing designs and technologies that have the potential to increase housing supply, lower the cost of construction, and/or reduce housing expenses for owners and renters. HUD is especially interested in innovative housing designs and technologies that, in addition to reducing costs and expenses for builders, owners and renters, can expand affordable, accessible, and healthy housing options for low- and moderate-income households; support aging in place; improve climate mitigation and resilience and disaster recovery; and/or increase energy efficiency and support decarbonization in the housing sector. HUD is seeking exhibitors to showcase innovations, and this notice solicits affirmations of interest from parties that would like to be considered for participation in the Innovative Housing Showcase.

DATES: All affirmations of interest must be received no later than March 15, 2023.

ADDRESSES: Affirmations of interest must be in writing and submitted via email to *housingshowcase@hud.gov.* Individuals who do not have internet access may submit affirmations of interest to the Office of Policy Development and Research, Affordable Housing Research and Technology, U.S. Department of Housing and Urban Development, 451 7th Street SW, Room 8134, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Michael Blanford, Research Engineer, U.S. Department of Housing and Urban Development, Office of Policy Development and Research, 451 7th St SW, Washington, DC 20410, telephone number 202–402–5728 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Individuals with questions may also email *housingshowcase@hud.gov* and in the subject line write ''2023 Showcase Questions.''

SUPPLEMENTARY INFORMATION:

I. Background

This year will be the third time HUD has hosted the Showcase on the National Mall, having done so in 2019 and 2022. Prior Showcases were attended by several thousand members of the public, as well as housing practitioners and government leaders, and received coverage in both popular media and trade press. Given HUD's mission to create ''quality, affordable homes for all,'' this event offers a unique opportunity to highlight innovative housing designs and technologies that can improve quality and deepen affordability for leaders in the housing sector, from policymakers and planners to funders, architects and builders.

The National Mall is a landscaped Park that is always open to the public, which brings certain expectations when presenting housing innovations on a large scale. Exhibitors are responsible for complying with all National Park Service rules and regulations as identified in the NPS Event Planning Guide (*https://www.nps.gov/nama/learn/management/event-planning-guide.htm*). As the National Mall is part of the National Park System, there is no review or permit required to meet building codes within the District of Columbia; however, the NPS may require a review for Fire and Life Safety Requirements by NPS representatives.

Approach to the National Mall involves DC streets or interstate highways, local and federal restrictions pertaining to weight, and compliance with width of load and height restrictions. There are two primary DC routes approaching the National Mall that can accommodate 13′6″ clearance. Showcase Management will advance the arrival and departure routes as well as the set-up and tear-down schedule to each exhibitor.

II. Showcase Information and Exhibit Requirements

Showcase management is overseen by HUD and HUD-designated entities responsible for Showcase planning and event logistics. The Innovative Housing Showcase host exhibits in three primary categories:

- Tabletop Displays—these displays are typically housed in an individual tent or space within a larger tent.
- On-Ground Exhibit—these displays may showcase a particular technology or method of construction within the given footprint that is too large for a tabletop and cannot be entered.
- Enterable Exhibit—these displays may involve a structure that showcases a technology or method of construction that can be entered by the public present at the showcase site.

Each exhibit should be positioned and equipped to allow persons who have mobility restrictions to approach the threshold of an enterable exhibit. Showcase Management will provide a list of contractors that are prepared to provide ADA compliant ramps for Enterable exhibits.

The Showcase Management will review the public facing branding of each exhibit and can provide advice and direction to remain compliant with the NPS guidelines.

Exhibits must be presented in a manner that can sustain a 30-mph wind and should not exceed 45′ in height. HUD will make available the use of a crane or forklifts for installation. Typically, the crane provided has a 20-ton capacity and will be apportioned to accommodate the needs of all exhibitors. Exhibits that exceed 400 sq ft will require the NPS review of floor plans and engineering to establish an occupancy load as well as any ballast that may be required to satisfy the wind load guidelines.

To maintain adequate pathways for the public to traverse between monuments and museums that are adjacent to the event site, exhibit areas are apportioned based on individual footprints that do not exceed 30′ in depth and are generally 60′ to 80′ in width. Exhibits will be delivered by truck and placed on the gravel walkways of the National Mall. The National Mall, also considered ''America's Front Yard,'' is managed by the National Park Service (NPS) and the NPS has requirements for events to protect the public and the Mall. Exhibitors shall comply with all NPS rules and requirements.

For each exhibit type, HUD provides a standard tent with side walls, tables, and chairs as well as a sign identifying the Exhibitor. The sign includes the exhibitor's brand and features the event brand consistent with the NPS guidelines. Showcase Management will also provide electricity for each exhibit whether Tabletop, On-Ground or Enterable.

Exhibitors are responsible for their own expenses, personnel, and resources. Exhibitors will bear the cost to manufacture the exhibit, deliver and remove the exhibit from the Showcase Site, and staff the exhibit during the run of show. HUD will not provide any funding to exhibitors. HUD will provide support to manage the event.

III. Affirmations of Interest of Potential Exhibitors

HUD is interested in housing designs and technologies that have the potential to increase supply and, lower the cost of construction, and/or reduce housing expenses for owners and renters. This could include designs that reduce building footprints, like Accessory Dwelling Units and multi-unit manufactured and modular housing, or that impact on-site construction efficiency, like three dimensional (3D) printing and panelization. HUD is especially interested in innovative housing designs and technologies that, in addition to reducing costs and expenses for builders, owners and renters, can expand affordable, accessible and healthy housing options for low- and moderate-income households; support aging in place; improve climate mitigation and resilience and disaster recovery; and/or increase energy efficiency and support decarbonization in the housing sector. Potential exhibits could range from tabletop displays to on-ground exhibits to enterable homes.

Interested potential exhibitors should submit via the methods discussed previously in this notice an affirmation of interest containing the following information: the name and contact information for the organization and a statement that the organization is interested in participating as a potential exhibitor in the Showcase.

HUD will select exhibitors that align with the above themes and areas of focus, particularly affordability, as well as other considerations such as novelty, housing quality, and overall composition. For the sake of visitor engagement, HUD will prioritize exhibits that can be displayed in person or through visually interesting presentations. Other factors that may impact exhibitor selection include National Mall site limitations and potential expense to HUD (*e.g.,* crane time).

Solomon J. Greene,

Principal Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 2023–03269 Filed 2–15–23; 8:45 am]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Environmental Research and Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Advisory Committee for Environmental Research and Education (9487).

Date and Time:

April 5, 2023; 11:00 a.m.–5:30 p.m. (EDT).

April 6, 2023; 11:00 a.m.–4:00 p.m. (EDT).

Place: National Science Foundation, 2415 Eisenhower Avenue, Room E 2020, Alexandria, VA 22314. Virtual: Registration for the virtual meeting can be accessed at: *https://nsf.zoomgov.com/meeting/register/vJItceipqjovHQoNqRB9aSLTH0WJlRyddRM.*

Type of Meeting: Open.

Contact Person: Dr. Arnoldo Valle-Levinson, Staff Associate, Office of Integrative Activities/Office of the Director/National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; (Email: *avellele@nsf.gov;* Telephone: (703) 292–7946).

Summary of Minutes: May be obtained from the AC ERE website: *https://www.nsf.gov/ere/ereweb/minutes.jsp.*

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for environmental research and education.

Agenda: Approval of minutes from past meeting. Updates on agency support for environmental research and activities. Discussion with NSF Director and Assistant Directors. Plan for future advisory committee activities. Updated agenda will be available on the AC ERE website: *https://www.nsf.gov/ere/ereweb/minutes.jsp.*

Dated: February 10, 2023.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2023–03244 Filed 2–15–23; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0028]

Information Collection: NRC Form 850, Request for Contractor Assignment(s)

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 850, Request for Contractor Assignment(s).''

DATES: Submit comments by March 20, 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–2022–0028 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–2022–0028.
- *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 and NRC Form 850 are available in ADAMS under Accession Nos. ML22339A089 and ML22210A127.
- *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 850, Request for Contractor Assignment(s).'' 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 September 7, 2022 (87 FR 54719).

1. *The title of the information collection:* NRC Form 850, Request for Contractor Assignment(s).
2. *OMB approval number:* 3150–0218.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* NRC Form 850.
5. *How often the collection is required or requested:* On occasion.
6. *Who will be required or asked to respond:* NRC contractors, subcontractors and other individuals who are not NRC employees.
7. *The estimated number of annual responses:* 500.
8. *The estimated number of annual respondents:* 500.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 85.
10. *Abstract:* NRC Form 850 is completed by NRC contractors, subcontractors, licensee employees, employees of other government agencies, and other individuals who are not NRC employees who require an NRC access authorization.

Dated: February 13, 2023.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2023–03287 Filed 2–15–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 70–1151, 11004036, 11004358, 11004552, 11004736, 11004752, 11004918, 11005030, 11005042, 11005057, 11005536, 11005908, 11006001, 11006014, 11006040, 11006060, 11006085, 11006217, 11005472, 11006011, 11006216, 11004990, 11005224, 11005639, 11005968, 11006233, 11006332, 11006333, 11006334, 11006403, 11006430, 11006446, 11006453; NRC–2023–0038]

Westinghouse Electric Company LLC; Consideration of Approval of Transfer of License

AGENCY: Nuclear Regulatory Commission.

ACTION: Application for indirect transfer of license; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of an application filed by Westinghouse Electric Company, LLC (Westinghouse) on December 20, 2022. The application seeks NRC approval of the indirect transfer of materials license SNM–1107 and several export licenses for Westinghouse, from Brookfield Corporation (Brookfield), the parent company of the license holder, to Watt New Aggregator L.P., which Brookfield will hold a controlling 51 percent interest in and Cameco Corporation (Cameco) will hold the remaining 49 percent interest. The application contains sensitive unclassified non-safeguards information (SUNSI).

DATES: Submit comments by March 20, 2023. A request for a hearing or petition for leave to intervene must be filed by March 8, 2023. Any potential party as defined in § 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 follow the instructions in section VI of the **SUPPLEMENTARY INFORMATION** section of this notice.

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–2023–0038. 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: Jenny Tobin, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–2328, email: *Jennifer.Tobin@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2023–0038 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–2023–0038.

• *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 Application for Consent to Indirect Change of Control with Respect to a Materials License, Export Licenses, and Notification Regarding Other Approvals and Request for Threshold Determination is available in ADAMS under Accession No. ML22354A291.

- *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.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2023–0038 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. Introduction

The NRC is considering approving the indirect transfer of control of Westinghouse. On December 20, 2022, Westinghouse submitted an application (ADAMS Accession No. ML22354A291) pursuant to 10 CFR 70.36, 10 CFR 110.50, and 10 CFR 110.51 regarding materials license SNM–1107 and export licenses XCOM–1014, XCOM–1047, XCOM–1072, XCOM–1093, XCOM–1094, XCOM–1102, XCOM–1111, XCOM–1113, XCOM–1116, XCOM–1170, XCOM–1188, XCOM–1219, XCOM–1246, XCOM1249, XCOM–1252, XCOM–1255, XCOM–1262, XCOM–1298, XR–169, XR–176, XR–178, XSNM–3006, XSNM–3163, XSNM–3264, XSNM–3461, XSNM–3702, XSNM–3769, XSNM–3802, XSNM–3803, XSNM–3804, XSNM–3820, XSNM–3825, XSNM–3829, and XSNM–3830.

According to Westinghouse, the application and consent request are necessitated by the proposed indirect acquisition of 100 percent of Westinghouse by Watt New Aggregator L.P. that is ultimately controlled by Brookfield, a Canadian company. Upon the closing of the transaction, Brookfield will indirectly hold a controlling interest in Watt GP Ltd., which controls Watt New Aggregator L.P. as its general partner. Brookfield will also indirectly hold a 51 percent limited partnership interest in Watt New Aggregator L.P. The remaining 49 percent interest in Watt GP and Watt New Aggregator L.P. will be held by Cameco, a Canadian company. After the closing of the transaction, Westinghouse will continue to be indirectly controlled by Brookfield, as Brookfield ultimately controls Watt New Aggregator L.P. Cameco, however, will be entitled to certain shareholder rights. Westinghouse will continue to operate the facility and hold the licenses.

No physical changes or operational changes associated with the licensed activities are being proposed in the application.

Section 184 of the Atomic Energy Act provides ''[n]o license granted hereunder and no right to utilize or produce special nuclear material granted hereby shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of this Act, and shall give its consent in writing.'' The NRC's regulations at 10 CFR 70.36 state that no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission, after securing full information, finds that the transfer is in accordance with the provisions of the Atomic Energy Act and gives its consent in writing. The Commission will approve an application for the indirect transfer of a license if the Commission determines that the proposed transfer of controlling interest will not affect the qualifications of the licensee to hold the license, and that the licensee has provided the financial assurance for decommissioning required by 10 CFR 70.25. 10 CFR 110.50(d) likewise requires Commission approval for transfers of a specific export or import license.

III. Opportunity To Comment

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305 and 10 CFR 110.81. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted as described in the **ADDRESSES** section of this document.

IV. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 20 days after the date of publication of this notice, any person (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2, as well as the public participation procedures in 10 CFR part 110. Interested persons should consult 10 CFR 2.309 and 10 CFR 110.82. If a petition is filed, the presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 20 days from the date of publication of this notice in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document. 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).

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 20 days from the date of publication of this notice. 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).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 (*https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20340A053*) and on the NRC's public website at *https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate.*

V. 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 a.m. and 6 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.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

For further details with respect to this application, see the application dated December 20, 2022 (ML22354A291).

VI. Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

Any person who desires access to proprietary, confidential commercial information that has been redacted from the application should contact the applicant by telephoning Michael T. Sweeney, 412–374–4526 for the purpose of negotiating a confidentiality agreement or a proposed protective order with the applicant. If no agreement can be reached, persons who desire access to this information may file a motion with the Secretary and addressed to the Commission that requests the issuance of a protective order.

Dated: February 10, 2023.

For the Nuclear Regulatory Commission.

Shana R. Helton,

Director, Division of Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2023–03243 Filed 2–15–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0217]

Information Collection: NRC Form 974 "Privacy Act Complaint Form"

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on this proposed information collection. The information collection is entitled, ''NRC Form 974 'Privacy Act Complaint Form'.''

DATES: Submit comments by April 17, 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: 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–2022–0217. 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(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* David C. Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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: David 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.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0217 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–2022–0217. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2022–0217 on this website.
- *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 No. ML22353A096. The supporting statement is available in ADAMS under Accession No. ML22353A095.
- *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

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2022–0217, in your comment submission.

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 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 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

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* NRC Form 974 ''Privacy Act Complaint Form''.
2. *OMB approval number:* An OMB control number has not yet been assigned to this proposed information collection.
3. *Type of submission:* New.
4. *The form number, if applicable:* NRC Form 974.
5. *How often the collection is required or requested:* On occasion.
6. *Who will be required or asked to respond:* The public.
7. *The estimated number of annual responses:* 12.
8. *The estimated number of annual respondents:* 12.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 3.
10. *Abstract:* The U.S. Nuclear Regulatory Commission (NRC) provides an electronic mechanism for the public to voluntarily register a complaint concerning privacy data collection practices at the NRC. The complainant provides the following information: Name, Telephone Number, Email Address, Summary of Privacy Complaint, Summary of any other steps already take if any by them or NRC to resolve complaint, and Preferred method of contact.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility? Please explain your answer.
2. Is the estimate of the burden of the information collection accurate? Please explain your answer.
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: February 13, 2023.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2023–03286 Filed 2–15–23; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Change in Rates and Classes of General Applicability for Competitive Products

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: This notice sets forth changes in rates and classifications of general applicability for competitive products, namely, Parcel Select.

DATES: July 9, 2023.

FOR FURTHER INFORMATION CONTACT: Elizabeth Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: On February 9, 2023, pursuant to their authority under 39 U.S.C. 3632, the Governors of the Postal Service established prices and classification changes for competitive products. The Governors' Decision and the record of proceedings in connection with such decision are reprinted below in accordance with section 3632(b)(2). Mail Classification Schedule language containing the new prices and classification changes can be found at *www.prc.gov.*

Tram T. Pham,

Attorney, Ethics and Legal Compliance.

Decision of the Governors of the United States Postal Service on Changes in Rates and Classifications of General Applicability for Competitive Products (Governors' Decision No. 23–2)

February 9, 2023

Statement of Explanation and Justification

Pursuant to authority under section 3632 of title 39, as amended by the Postal Accountability and Enhancement Act of 2006 (''PAEA''), we establish changes in rates and classifications of general applicability for Parcel Select, one of the Postal Service's competitive products. The changes are described generally below, with a detailed description of the changes in the attachment. The attachment includes the draft Mail Classification Schedule sections with classification changes in legislative format.

The changes we establish today will simplify and streamline the Parcel Select product in a number of ways. The place of entry and zone options will be aligned across the Parcel Select Destination Entry and Parcel Select Lightweight price tables. The separate and distinct machinable and nonmachinable price tables under Parcel Select Destination Entry will be eliminated, such that one set of prices will remain. The Postal Service expects that the Nonstandard Fees will be relied upon to make up for any cost differential for bulky items. Finally, a new Destination Hub (DHub) price category will be introduced, and new DHub rates will be established. The Postal Service expects these new rates will encourage growth at new facilities.

As with the Postal Service's other recent product simplification efforts, the Postal Service anticipates that its customers will greatly benefit from these changes to the Parcel Select product. The consolidated price tables will be easier to understand, and the streamlined categories will help mailers optimize entry points for their Parcel Select packages. Negotiated Service Agreements will continue to be utilized for Parcel Select customers who seek to take further advantage of package sorting capabilities, entry points, and network capacity.

Order

The changes in rates and classes set forth herein shall be effective at 12:01 a.m. on July 9, 2023. We direct the Secretary to have this decision published in the **Federal Register** in accordance with 39 U.S.C. 3632(b)(2) and direct management to file with the Postal Regulatory Commission appropriate notice of these changes.

By The Governors:

/s/

Roman Martinez IV
Chairman, Board of Governors

UNITED STATES POSTAL SERVICE OFFICE OF THE BOARD OF GOVERNORS

CERTIFICATION OF GOVERNORS' VOTE ON GOVERNORS' DECISION NO. 23–2

Consistent with 39 U.S.C. 3632(a), I hereby certify that, on February 9, 2023, the Governors voted on adopting Governors' Decision No. 23–2, and that a majority of the Governors then holding office voted in favor of that Decision.

/s/

Date: February 9, 2023
Michael J. Elston
Secretary of the Board of Governors

[FR Doc. 2023–03256 Filed 2–15–23; 8:45 am]

BILLING CODE 7710–12–P

RAILROAD RETIREMENT BOARD

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., March 1, 2023.

PLACE: Members of the public wishing to attend the meeting must submit a written request at least 24 hours prior to the meeting to receive dial-in information. All requests must be sent to *SecretarytotheBoard@rrb.gov.*

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

1. Status of Board Appeals.
2. Highlights of IT Plan and deliverables.

CONTACT PERSON FOR MORE INFORMATION: Stephanie Hillyard, Secretary to the Board, (312) 751–4920.

Authority: 5 U.S.C. 552b.

Dated: February 14, 2023.

Stephanie Hillyard,

Secretary to the Board.

[FR Doc. 2023–03414 Filed 2–14–23; 4:15 pm]

BILLING CODE 7905–01–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Request for Information; Criminal Justice Statistics

AGENCY: Office of Science and Technology Policy (OSTP).

ACTION: Notice of request for information.

SUMMARY: Executive Order, *Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety,* states that building trust in policing and criminal justice requires ''transparency through data collection and public reporting.'' The Executive Order calls for issuing a report to the President on the current data collection, use, and data transparency practices with respect to law enforcement activities. This includes data related to calls for service, searches, stops, frisks, seizures, arrests, complaints, law enforcement demographics, and civil asset forfeiture. The White House Office of Science and Technology Policy (OSTP), on behalf of the National Science and Technology Council (NSTC) and in coordination

with the Assistant to the President for Domestic Policy, is requesting public input to inform this report.

DATES: Interested persons and organizations are invited to submit comments on or before 5 p.m. ET March 30, 2023.

ADDRESSES: You may submit comments by any of the following methods:

• *Email: equitabledata@ostp.eop.gov,* include ''Criminal Justice Statistics RFI'' in the message subject line. Email submissions should be machine-readable [PDF, Word], all attachments must be 25MB or less, and responses should not be copy-protected. Due to time constraints, mailed paper submissions will not be accepted, and electronic submissions received after the deadline cannot be ensured to be incorporated or taken into consideration.

Instructions: Response to this RFI is voluntary. Each responding entity (individual or organization) is requested to submit only one response, in English. Respondents may answer as many or as few questions as they wish. Please identify the question number(s) associated with your answer. Submissions must be at most 7 pages in 11-point or larger font (3,500 words). Responses should include the name of the person(s) or organization(s) filing the comment, as well as the respondent type (*e.g.,* academic institution, advocacy group, professional society, community-based organization, industry, member of the public, government, or other).

We encourage all members of the public interested in this initiative to submit their comments. OSTP and the Criminal Justice Statistics Working Group will consider each comment, whether it contains a personal narrative, experiences with the Federal government, or more technical legal, research, or scientific content.

OSTP will not respond directly to submissions. This RFI is not accepting applications for financial assistance or financial incentives. Comments submitted in response to this notice are subject to the Freedom of Information Act (FOIA). Responses to this RFI may be posted online without notice. OSTP requests that no proprietary, copyrighted, 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 U.S. Government to form a binding contract. Additionally, the U.S. Government will not pay for response preparation or the use of any information contained in the response.

FOR FURTHER INFORMATION CONTACT: Karin Underwood, at OSTP, by email at *equitabledata@ostp.eop.gov* or by phone at 202–456–6121. Individuals who use telecommunication devices for the deaf and hard of hearing (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: On May 25, 2022, President Biden signed an Executive Order (E.O.) on *Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety* (E.O. 14074). This E.O. aimed to enhance public trust and public safety by promoting accountability, transparency, equality, and dignity in policing and the criminal justice system. The E.O. recognized that better data practices are a vital component of advancing these objectives, noting that ''Building trust between law enforcement agencies and the communities they are sworn to protect and serve also requires accountability for misconduct and transparency through data collection and public reporting.''

Improving the collection, use, and transparency of criminal justice data enables a more rigorous assessment of the extent to which law enforcement agency procedures and policies yield fair, just, and impartial treatment of all individuals, including those in underserved communities. To improve outcomes for communities, we need to identify effective and emerging practices and opportunities to accelerate the adoption and adaptation of those practices across the nation's approximately 18,000 State, Tribal, local, territorial (STLT) law enforcement agencies. To help reach this goal, the E.O. directed the Equitable Data Working Group to work with the National Science and Technology Council (NSTC) to create an Interagency Working Group on Criminal Justice Statistics and tasked this group to develop a report about how to collect and publish data on police practices.

In this RFI, we are seeking the following:

1. Information to understand the current data collection, use, and transparency practices across STLT law enforcement activities.

2. Best practice examples and lessons learned from STLT law enforcement agencies and other entities in the criminal justice system related to how they have collected, used, and/or made transparent data disaggregated by demographic information, geographic information, and other variables to inform changes to policies, procedures, and protocols to produce more equitable outcomes.

3. Recommendations on how to build the capacity and ability of STLT law enforcement agencies to collect, use, and make transparent, comprehensive, high-quality, and disaggregated data on law enforcement activities.

Law enforcement agencies can use data to foster collaborations across all levels of government, neighboring jurisdictions, and a diverse community of external organizations. Public-facing tools and dashboards can allow civil society organizations and communities to visualize and use data about police activities and chart their local law enforcement agency's progress toward equitable outcomes. However, for these efforts to increase police accountability and legitimacy and to improve community participation, they must take into account the data analysis capacity and resources of all stakeholders.

The Equitable Data Working Group noted in its recommendations that data disaggregation and transparency need to ensure that individual identities and personally identifiable information (PII) are protected. The stakes of data privacy are exceptionally high in criminal justice, where insufficient privacy and confidentiality can have a chilling effect on victim reporting—including for domestic violence and for hate crimes such as crimes targeted against LGBTQI+ people, religious minorities, and Asian American, Native Hawaiian, and Pacific Islander populations—which, in turn, reduces the ability of law enforcement to respond to, solve, and prevent crimes.[1] [2]

We invite members of the public to share perspectives on what could help achieve comprehensive and transparent criminal justice data and how the Interagency Working Group on Criminal Justice Statistics should address the requirements in E.O. 14074.

Please consider the following when responding to this RFI:

• *Datasets:* The Working Group is tasked with issuing a report to the President that assesses current data collection, use, and data transparency practices with respect to law enforcement activities, including but not limited to calls for service, searches, stops, frisks, seizures, arrests, complaints, law enforcement

[1] National Science and Technology Council: Federal Evidence Agenda on LGBTQI+ Equity.

[2] DOJ Office of Violence Against Women: Improving Law Enforcement Response to Sexual Assault and Domestic Violence by Preventing Gender.

demographics, and civil asset forfeiture. Additional datasets about law enforcement activities to consider include, but are not limited to: use-of-force, officer-involved shootings, de-escalation incidents, incidents (including the federally-reported National Incident-Based Reporting System, NIBRS), hate/bias crimes; solicitations, fees and fines, officer training, community engagement, vehicle pursuits, body-worn camera/dashboard camera metadata, accidents/crashes, patrol locations, and assaults on officers. This RFI does *not* include surveillance technologies or body-worn camera imagery.

- *Law enforcement agencies:* This Working Group focuses on policing and criminal justice data from STLT law enforcement agencies, *not* Federal law enforcement, which is covered elsewhere in the E.O.
- *Equitable data:* Equitable data refers to data that allow for rigorous assessment of the extent to which government programs and policies yield consistently fair, just, and impartial treatment of all individuals, including those who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality. Equitable data can illuminate opportunities for targeted actions that will result in demonstrably improved outcomes for underserved communities.
- *Disaggregated data:* One key characteristic of equitable data is that it is disaggregated, or broken down into detailed sub-categories that will differ based on the context and desired policy outcomes. For example, data might be disaggregated by demographics (*e.g.,* race, ethnicity, gender identity, sexual orientation,[3] language spoken, national origin), geography (*e.g.,* rural/urban, police district, neighborhood), or other variables (disability, veteran status, housing status), enabling insights on disparities in access to, and outcomes from, government programs, policies, and services.

Additional context: The Equitable Data Working Group was established by President Biden's first Executive Order, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (E.O. 13985), to study Federal data collection policies, programs, and infrastructure to identify inadequacies and provide recommendations that lay out a strategy to ''expand and refine the data available to the Federal Government to measure equity and capture the diversity of the American people.'' The Criminal Justice Statistics Working Group is now part of the NSTC Subcommittee on Equitable Data. It includes representatives of the Domestic Policy Council, the Office of the Counsel to the President, the Department of Justice, the Office of Management and Budget, the Office of Science and Technology Policy, the Gender Policy Council, the Office of Drug Control Policy, the Centers for Disease Control, the Department of Homeland Security, the Department of Education, and the General Services Administration.

Request for Information

OSTP seeks responses to the following questions about how STLT law enforcement agencies collect, use, and make data transparent to inform policies, procedures, and protocols to reduce disparities. Respondents may provide information for one or more topics below, as desired.

1. What existing reports or research should the Federal government review to better understand and assess the status of data collection, use, and transparency in STLT law enforcement agencies? What are the findings of researchers, groups, and organizations researching the status of law enforcement agencies' data practices in general and disaggregated by sociodemographic and geographic variables in particular?

2. What are promising and effective models for, and what are lessons learned from, how law enforcement agencies collect, use, and share disaggregated data to inform policies, procedures, and training to reduce disparities in policing? What are some examples of law enforcement agencies using these models? *Note:* We are seeking models and examples that collect, use, and share disaggregated data while being intentional about when data are collected and shared, as well as how data are protected.

3. What datasets are critical for law enforcement agencies to collect in order to ensure the comprehensive and disaggregated collection of operational data, incident-based datasets, and other data to produce more equitable outcomes? Why?

4. What communities of practice or collaborations can law enforcement agencies participate in to improve how they collect comprehensive, quality, and disaggregated data to identify and address disparities? How can the Federal government encourage and support the development of collaborations to further promote the exchange of ideas and best practices?

5. What *is* and *is not* working regarding how the Federal government supports the collection, use, and transparency of disaggregated data on law enforcement activities, and why?

6. What specific challenges and opportunities do small and resource-constrained STLT law enforcement agencies face in the collection, use, and transparency of disaggregated data to inform more equitable outcomes?

7. How can software vendors (including those that build records management systems (RMS) and other systems) improve software design, development, and deployment to reduce barriers for law enforcement agencies to collect, use, and share comprehensive, quality, and disaggregated data and further incentivize them to produce more equitable outcomes?

8. How might professional, academic, nonprofit, and philanthropic organizations support and/or make investments to help law enforcement agencies advance equitable and disaggregated data practices?

Data Collection

9. How might the Federal government better understand and improve the technologies and data systems that law enforcement agencies use to collect disaggregated data?

10. What standards must be implemented to reduce barriers to data collection from law enforcement? What organizations or models of data standards exist that could serve as a model to inform more standardized police and criminal justice data collection in the future?

11. What are valuable models and lessons learned from data collected by organizations, groups, and researchers other than law enforcement agencies that are related to law enforcement activities? How might these practices lead to the valuable data collection that law enforcement agencies are unable or unwilling to collect on their own?

Use of Data

12. What are effective examples, and what lessons have been learned from how law enforcement agencies use data policies, tools, and practices to improve how police officers interact with underserved populations?

13. What are examples of law enforcement agencies using data policies, tools, and practices that have and have not improved how police officers collect, maintain, review, and act upon data regarding sexual assault, domestic violence, and other forms of gender-based violence?

[3] The Federal Evidence Agenda on LGBTQI+ Equity includes guidelines for collecting sexual orientation and gender identity (SOGI) data on forms and in other administrative contexts such as policing and criminal justice.

14. What investments in human capital and data infrastructure can STLT law enforcement agencies make to disaggregate data and conduct equity assessments to inform policies, programs, and protocols to reduce disparities?

15. How might philanthropic organizations and academic researchers work effectively with government officials to evaluate and improve data collection, use, and transparency practices for small and resource-constrained STLT law enforcement agencies?

Data Transparency

16. What are exemplary models of police-community partnerships where police actively work with the community to share data findings and discuss how these data can address community needs? What lessons have been learned?

17. To what extent do law enforcement agencies currently make data publicly available about their efforts to reduce disparities in policing outcomes? What are examples and opportunities for law enforcement agencies to use relevant and accessible approaches to data transparency?

18. How might small and resource-constrained jurisdictions participate in public data sharing and use it to inform decision-making and increase accountability?

19. What relationship-building and what resources would be effective for expanding opportunities for historically underrepresented scholars and research institutions to access law enforcement data while protecting privacy?

20. The E.O. intends to maximize STLT participation in the National Incident-Based Report System (NIBRS). What are the barriers and opportunities for improving agency participation in NIBRS, including its hate crime reporting section and the FBI's National Use-Of-Force Data Collection?

21. How might the Federal government better share the criminal justice data it collects through surveys and programs like these in a manner that assists and empowers STLT government officials, researchers, and civil society to make use of such data to understand trends and inform policy decisions?

Dated: February 10, 2023.

Rachel Wallace,

Deputy General Counsel.

[FR Doc. 2023–03260 Filed 2–15–23; 8:45 am]

BILLING CODE 3270–F1–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96879; File No. SR–NYSEAMER–2023–13]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the NYSE American Options Fee Schedule

February 10, 2023.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 9, 2023, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE American Options Fee Schedule (''Fee Schedule'') regarding the Firm Monthly Fee Cap. The Exchange proposes to implement the fee change effective February 9, 2023.[4] The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange previously filed to amend the Fee Schedule on January 31, 2023 (SR–NYSEAMER–2023–10) and withdrew such filing on February 9, 2023.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the Fee Schedule to modify the Firm Monthly Fee Cap. The Exchange proposes to implement the rule change on February 9, 2023.

The Firm Monthly Fee Cap is set forth in Section I.I. of the Fee Schedule.[5] Currently, a Firm's fees associated with Manual transactions are capped at $150,000 per month per Firm.

The Exchange proposes to raise the Firm Monthly Fee Cap to $200,000 per month per Firm. To effect this change, the Exchange proposes to modify Section I.I. to replace references to a $150,000 cap with references to a $200,000 cap.[6] The Exchange also proposes to increase the incremental service fee—which is charged for Manual transactions once the Firm Monthly Fee Cap has been reached—from $0.01 to $0.02 and to extend the proposed incremental service fee of $0.02 per contract to also apply to QCC transactions entered by Floor Brokers from the Trading Floor (*i.e.,* manual QCC transactions). Royalty Fees and fees or volumes associated with Strategy Executions will continue to be excluded from the calculation of fees towards the Firm Monthly Fee Cap. Firm Facilitation Manual trades will also continue to be executed at the rate of $0.00 per contract regardless of whether a Firm has reached the Firm Monthly Fee Cap.

The Exchange believes that the proposed change, despite increasing the amount of the Firm Monthly Fee Cap and the incremental service fee for Manual transactions and QCC transactions, would continue to incentivize Firms to direct order flow to the Exchange to receive the benefits of a cap on their Manual transaction fees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections

[5] *See* Fee Schedule, Section I.I., Firm Monthly Fee Cap, *available at: https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf.*

[6] The Exchange also proposes a conforming change to footnote 4 in Section I.A. (Rates for Options transactions) of the Fee Schedule, which cross-references the Firm Monthly Fee Cap as set forth in Section I.I. The Exchange likewise proposes to modify footnote 4 to replace the reference to a $150,000 cap with a reference to a $200,000 cap.

[7] 15 U.S.C. 78f(b).

6(b)(4) and (5) of the Act,[8] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change Is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [9]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[10] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in December 2022, the Exchange had less than 8% market share of executed volume of multiply-listed equity and ETF options trades.[11]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The proposed change to the Firm Monthly Fee Cap is reasonable because the Exchange believes the fee cap would continue to incentivize Firms to direct order flow to the Exchange to receive the benefits of capped fees for their Manual transactions (including manual QCC transactions), even though the proposed change would increase the amount of the fee cap and the incremental service charge applicable to Manual transactions (including manual QCC transactions) after a Firm has reached the fee cap. The Exchange also believes the proposed change is reasonable because the proposed fee cap amount would be applicable to all Firms and the proposed incremental service charge would be applicable to all Manual transactions (including manual QCC transactions) executed by a Firm once it reaches the fee cap. In addition, although the proposed change would establish a higher fee cap amount, it would continue to offer Firms the ability to qualify for capped fees on Manual transactions (including manual QCC transactions), which the Exchange believes provides Firms with a benefit not offered by at least one other options exchange.[12]

To the extent that the proposed change continues to attract volume to the Exchange, this order flow would continue to make the Exchange a more competitive venue for order execution, which, in turn, promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system. The Exchange notes that all market participants stand to benefit from any increase in volume, which could promote market depth, facilitate tighter spreads and enhance price discovery, particularly to the extent the proposed change encourages market participants to utilize the Exchange as a primary trading venue, and may lead to a corresponding increase in order flow from other market participants.

Finally, to the extent the proposed change continues to attract greater volume and liquidity, the Exchange believes the proposed change would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors. The Exchange's fees are constrained by intermarket competition, as market participants can choose to direct their order flow to any of the 16 options exchanges The Exchange believes that proposed rule change is designed to continue to incent market participants to direct liquidity to the Exchange, and, to the extent they continue to be incentivized to aggregate their trading activity at the Exchange, that increased liquidity could promote market depth, price discovery and improvement, and enhanced order execution opportunities for all market participants.

The Proposed Rule Change Is an Equitable Allocation of Credits and Fees

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposed change is equitable because the increased Firm Monthly Fee Cap would be available to all Firms equally. The proposed change is also equitable because the increased incremental service charge would apply equally to all Firms that achieve the fee cap and would now also apply to manual QCC transactions executed by Firms once they have reached the fee cap. The Exchange also believes that the proposed rule change is equitable with respect to non-Firm market participants because the Firm Monthly Fee Cap would not be as meaningful for Customers or Professional Customers and because Market Makers are offered other incentives to reduce transaction fees.[13] The Exchange believes that the proposed changes, although they increase the fee cap and incremental service charge amounts, would not discourage Firms from directing order flow to the Exchange. To the extent that the proposed change achieves its purpose in continuing to incent Firms to aggregate their executions at the Exchange as a primary execution venue and attracting more volume to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange,

[8] 15 U.S.C. 78f(b)(4) and (5).

[9] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

[10] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, *available here: https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.*

[11] Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, *see id.,* the Exchange's market share in equity-based options was 6.77% for the month of December 2021 and 7.11% for the month of December 2022.

[12] *See, e.g.,* BOX Options Fee Schedule, available at: *https://boxoptions.com/fee-schedule/* (no cap on Firm manual transaction fees).

[13] Customers are not subject to a fee for Manual transactions, and neither Customers nor Professional Customers pay transaction fees for QCC transactions. *See* Fee Schedule at Sections I.A. and I.F. The Exchange offers various incentives to Market Makers, including the Market Maker Sliding Scale and Prepayment Program. *See id.* at Sections I.C. and I.D.

thereby improving market-wide quality and price discovery.

The Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes that the modification of the Firm Monthly Fee Cap is not unfairly discriminatory because the fee cap and incremental service charge amounts, as proposed, would continue to be applicable to all similarly situated Firms, any of which could continue to be incentivized to direct order flow to the Exchange to qualify for the fee cap. The Exchange notes that offering the Firm Monthly Fee Cap, as proposed, to Firms but not to other market participants is not unfairly discriminatory because the Firm Monthly Fee Cap would not be as meaningful for Customers or Professional Customers and because Market Makers are offered other incentives to reduce transaction fees.[14]

Thus, to the extent the proposed change continues to attract Manual transactions (including manual QCC transactions) to the Exchange, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange, thereby improving market-wide quality and price discovery. The resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [15]

Intramarket Competition. The proposed change is designed to continue to attract order flow to the Exchange, which could increase the volumes of contracts traded on the Exchange. Greater liquidity benefits all market participants on the Exchange, and the Exchange believes that the proposed modification of the Firm Monthly Fee Cap (even though it would raise the amount of the fee cap and incremental service charge) would not impose any burden on competition that is not necessary or appropriate because it is intended to continue to incentivize Firms to direct order flow to the Exchange to be eligible for the benefits of capped fees on Manual transactions, thereby promoting liquidity on the Exchange to the benefit of all market participants.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[16] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in December 2022, the Exchange had less than 8% market share of executed volume of multiply-listed equity and ETF options trades.[17]

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to continue to incent market participants to direct trading interest to the Exchange, to provide liquidity and to attract order flow. To the extent that Firms are incentivized to utilize the Exchange as a primary trading venue for all transactions, all of the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues, including those that do not offer a cap on Firm fees.[18] In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [19] of the Act and subparagraph (f)(2) of Rule 19b–4 [20] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [21] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2023–13 on the subject line.

[14] *See* note 13, *supra.*

[15] *See* Reg NMS Adopting Release, *supra* note 9, at 37499.

[16] *See* note 10, *supra.*

[17] *See* note 11, *supra.*

[18] *See* note 12, *supra.*

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(2).

[21] 15 U.S.C. 78s(b)(2)(B).

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2023–13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2023–13, and should be submitted on or before March 9, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–03250 Filed 2–15–23; 8:45 am]

BILLING CODE 8011–01–P

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96878; File No. SR–NYSEARCA–2023–14]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the NYSE Arca Options Fee Schedule

February 10, 2023.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 9, 2023, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE Arca Options Fee Schedule (''Fee Schedule'') regarding the Firm and Broker Dealer Monthly Fee Cap and the Ratio Threshold Fee. The Exchange proposes to implement the fee change effective February 9, 2023.[4] The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange previously filed to amend the Fee Schedule on January 31, 2023 (SR–NYSEARCA–2023–11) and withdrew such filing on February 9, 2023.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to (1) modify the Firm and Broker Dealer Monthly Fee Cap (the ''Monthly Fee Cap'') and (2) extend the waiver of the Ratio Threshold Fee. The Exchange proposes to implement the rule change on February 9, 2023.

Firm and Broker Dealer Monthly Fee Cap

The Exchange proposes to modify the Monthly Fee Cap, which currently provides that combined Firm proprietary fees and Broker Dealer fees for transactions in standard option contracts cleared in the customer range for Manual executions and QCC transactions are capped at $150,000 per month.[5]

The Exchange proposes to raise the Monthly Fee Cap to $200,000 per month. Accordingly, the Exchange proposes to modify the Fee Schedule to replace $150,000 with $200,000 in the description of the Monthly Fee Cap. Strategy executions, royalty fees, and firm trades executed via a Joint Back Office agreement will continue to be excluded from fees to which the Monthly Fee Cap would apply. Once a Firm or Broker Dealer has reached the Monthly Fee Cap, an incremental service fee of $0.01 per contract for Firm or Broker Dealer Manual transactions will continue to apply, except for the execution of a QCC order.

The Exchange believes that the proposed change, despite increasing the amount of the Monthly Fee Cap, would continue to incent Firms and Broker Dealers to direct order flow to the Exchange to receive the benefits of a fee cap on Manual and QCC transactions.

Ratio Threshold Fee

The Exchange proposes to further extend the waiver of the Ratio Threshold Fee that was originally implemented in connection with the Exchange's migration to the Pillar platform.[6]

The Ratio Threshold Fee is based on the number of orders entered as compared to the number of executions received in a calendar month and is

[5] *See* Fee Schedule, NYSE Arca OPTIONS: TRADE-RELATED CHARGES FOR STANDARD OPTIONS, FIRM AND BROKER DEALER MONTHLY FEE CAP.

[6] *See* Securities Exchange Act Release No. 94095 (January 28, 2022), 87 FR 6216 (February 3, 2022) (SR–NYSEArca–2022–04) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Options Fee Schedule).

intended to deter OTP Holders from submitting an excessive number of orders that are not executed.[7] Because order to execution ratios of 10,000 to 1 or greater have the potential residual effect of exhausting system resources, bandwidth, and capacity, such ratios may create latency and impact other OTP Holders' ability to receive timely executions.[8] In connection with the Exchange's migration to the Pillar platform, the Exchange implemented a waiver of the Ratio Threshold Fee (the ''Waiver'') that took effect beginning in the month in which the Exchange began its migration to the Pillar platform and would remain in effect for the three months following the month during which the Exchange completed its migration to the Pillar platform. As the Exchange completed the migration in July 2022, the Waiver was originally due to expire on October 31, 2022. The Exchange previously filed to extend the Waiver until January 31, 2023,[9] and now proposes to extend the Waiver for an additional three months, until April 30, 2023.

The Exchange believes that extending the Waiver would allow the Exchange additional time to continue to work with OTP Holders to monitor traffic rates and order to execution ratios, without imposing a financial burden on OTP Holders based on their order to execution ratios. The extension of the Waiver would also allow the Exchange to continue to evaluate system performance as OTP Holders continue to adapt to trading on the Pillar platform. The Exchange thus proposes to modify the Fee Schedule to provide that the Waiver would extend through April 30, 2023.[10]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[12] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change Is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [13]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[14] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in December 2022, the Exchange had less than 13% market share of executed volume of multiply-listed equity and ETF options trades.[15]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, modifications to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The proposed increase to the Monthly Fee Cap is reasonable because the Exchange believes the fee cap, although higher, would continue to incent Firms and Broker Dealers to direct order flow to the Exchange to receive the benefits of capped fees. The Exchange also believes the proposed change is reasonable because the proposed fee cap amount would be applicable to all Firms and Broker Dealers. In addition, although the proposed change would raise the amount of the Monthly Fee Cap, it would continue to offer Firms and Broker Dealers the opportunity to qualify for capped fees on Manual and QCC transactions, which the Exchange believes provides Firms and Broker Dealers with a benefit not offered by at least one other options exchange.[16]

The Exchange believes that the proposed extension of the Waiver is reasonable because it is designed to lessen the impact of the migration on OTP Holders and would allow OTP Holders to continue to adjust to trading on the Pillar platform without incurring excess Ratio Threshold Fees while the Exchange continues to evaluate Pillar system performance. To the extent the proposed rule change encourages OTP Holders to maintain their trading activity on the Exchange, the Exchange believes the proposed change would sustain the Exchange's overall competitiveness and its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to mitigate the impacts of the Pillar migration without affecting its competitiveness.

Finally, to the extent the proposed changes continue to attract greater volume and liquidity, the Exchange believes the proposed changes would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors. The Exchange's fees are constrained by intermarket competition, as OTP Holders may direct their order flow to any of the 16 options exchanges. Thus, OTP Holders have a choice of where they direct their order flow, including their Manual and QCC transactions. The proposed rule changes are designed to continue to incent OTP Holders to direct liquidity and, in particular, Firm and Broker Dealer transactions to the

[7] *See* Fee Schedule, RATIO THRESHOLD FEE; *see also* Securities Exchange Act Release No. 60102 (June 11, 2009), 74 FR 29251 (June 19, 2009) (SR–NYSEArca–2009–50).

[8] *See id.*

[9] *See* Securities Exchange Act Release No. 96252 (November 7, 2022), 87 FR 68210 (November 14, 2022) (SR–NYSEARCA–2022–74) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the NYSE Arca Options Fee Schedule).

[10] *See* proposed Fee Schedule, RATIO THRESHOLD FEE.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4) and (5).

[13] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

[14] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: *https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.*

[15] Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of equity-based ETF options, *see id.,* the Exchange's market share in equity-based options decreased from 13.30% for the month of December 2021 to 12.42% for the month of December 2022.

[16] *See, e.g.,* BOX Options Fee Schedule, available at: *https://boxoptions.com/fee-schedule/* (no cap on Firm and Broker Dealer manual or QCC transaction fees).

Exchange. In addition, to the extent OTP Holders are incentivized to aggregate their trading activity at the Exchange, that increased liquidity could promote market depth, price discovery and improvement, and enhanced order execution opportunities for market participants.

The Proposed Rule Change Is an Equitable Allocation of Credits and Fees

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits because the proposal is based on the amount and type of business transacted on the Exchange. The Exchange believes that the proposed modification of the Monthly Fee Cap is equitable because it would apply to all Firms and Broker Dealers equally and would continue to provide for the same fee cap amount for all Firms and Broker Dealers. The Exchange also believes that the proposed rule change is equitable with respect to non-Firm and Broker Dealer market participants because the Monthly Fee Cap would not be meaningful for Customers or Professional Customers (neither of whom pay transaction charges for Manual transactions or QCC transactions) and because Market Makers are offered other incentives to reduce transaction fees.[17] To the extent the proposed change does not discourage Firms and Broker Dealers from continuing to direct order flow to the Exchange to achieve the benefits of capped fees and instead continues to encourage increased liquidity to the Exchange, all market participants would benefit from enhanced opportunities for price improvement and order execution.

The proposed extension of the Waiver is an equitable allocation of fees and credits because the Waiver would continue to apply to all OTP Holders. All OTP Holders would have the opportunity to continue adjusting to the Pillar platform without incurring Ratio Threshold Fees, while the Exchange continues to evaluate post-migration system performance. Thus, the Exchange believes the proposed rule change would continue to mitigate the impact of the migration process for all market participants on the Exchange, thereby sustaining market-wide quality.

The Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed change to the Monthly Fee Cap is not unfairly discriminatory because the fee cap, as proposed, would continue to be available to all similarly situated Firms and Broker Dealers, any of which could continue to be incented to direct order flow to the Exchange to qualify for the fee cap. Moreover, the proposed change to the Monthly Fee Cap is not unfairly discriminatory because it would continue to apply the same fee cap amount to all Firms and Broker Dealers. The Exchange notes that offering the Monthly Fee Cap to Firms and Broker Dealers but not other market participants is not unfairly discriminatory because the Firm Fee Cap would not be meaningful for Customers or Professional Customers because neither Customers nor Professional Customers pay transaction charges for Manual transactions or QCC transactions and is not unfairly discriminatory towards Market Makers, as Market Makers have alternative avenues to reduce transaction fees.[18]

The Exchange believes the proposed extension of the Waiver is not unfairly discriminatory because it would apply to all OTP Holders on an equal and non-discriminatory basis. The Waiver, as proposed, would permit all OTP Holders to continue adapting to the Pillar platform, without incurring additional fees based on their monthly order to execution ratios, while the Exchange continues to evaluate post-migration system performance. The Exchange thus believes that the proposed change would support continued trading opportunities for all market participants, thereby promoting just and equitable principles of trade, removing impediments to and perfecting the mechanism of a free and open market and a national market system and, in general, protecting investors and the public interest.

To the extent that the proposed change continues to attract Manual and QCC transactions to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange, thereby improving market-wide quality and price discovery. The resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [19]

Intramarket Competition. With respect to the modification of the Monthly Fee Cap, the Exchange believes that the proposed change (even though it would raise the amount of the fee cap) would not impose any burden on competition that is not necessary or appropriate because it is intended to continue to incentivize Firms and Broker Dealers to direct order flow to the Exchange to be eligible for the benefits of capped fees on Manual and QCC transactions, thereby promoting liquidity on the Exchange to the benefit of all market participants.

The Exchange does not believe the proposed extension of the Waiver would impose any burden on intramarket competition that is not necessary or appropriate because it would apply equally to all OTP Holders. All OTP Holders would continue to be eligible for the Waiver for an additional three months while the Exchange continues to assess system performance following the migration to Pillar.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its

[17] *See generally* Fee Schedule (various incentives available to Market Makers for posted monthly volume, including on executions in penny issues, non-penny issues, and SPY).

[18] *See id.*

[19] *See* Reg NMS Adopting Release, *supra* note 13, at 37499.

fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[20] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in December 2022, the Exchange had less than 13% market share of executed volume of multiply-listed equity and ETF options trades.[21]

The Exchange believes that the proposed changes reflect this competitive environment because they modify the Exchange's fees and rebates in a manner designed to continue to incent OTP Holders to direct trading interest (particularly Firm and Broker Dealer Manual and QCC transactions) to the Exchange, to provide liquidity and to attract order flow. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market quality and increased trading opportunities.

The Exchange further believes that the proposed change could promote competition between the Exchange and other execution venues, including those that do not offer a cap on Firm and Broker Dealer fees,[22] by encouraging additional orders to be sent to the Exchange for execution.

The Exchange does not believe the proposed extension of the Waiver would impose any burden on intramarket competition that is not necessary or appropriate because it would apply equally to all OTP Holders. All OTP Holders would continue to be eligible for the Waiver for an additional three months while the Exchange continues to assess system performance following the migration to Pillar.

[20] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: *https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.*

[21] Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of equity-based ETF options, *see id.,* the Exchange's market share in equity-based options decreased from 13.30% for the month of December 2021 to 12.42% for the month of December 2022.

[22] *See* note 16, *supra.*

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[23] of the Act and subparagraph (f)(2) of Rule 19b–4[24] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[25] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2023–14 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–NYSEARCA–2023–14. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2023–14, and should be submitted on or before March 9, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–03249 Filed 2–15–23; 8:45 am]

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[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 CFR 240.19b–4(f)(2).

[25] 15 U.S.C. 78s(b)(2)(B).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96886; File No. SR–C2–2023–005]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt a New Data Product Called the Cboe One Options Feed

February 10, 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 30, 2023, Cboe C2 Exchange, Inc. (''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2 Options'') proposes to adopt a new data product called the Cboe One Options Feed.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/ctwo/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to establish a new market data product called the Cboe One Options Feed. As described more fully below, the Cboe One Options Feed is a data feed that that will offer top of book quotations and execution information based on options orders entered into the Exchange System and its affiliated options exchanges, Cboe Exchange, Inc. (''Cboe Options''), Cboe BZX Exchange, Inc. (''BZX Options'') and Cboe EDGX Exchange, Inc. (''EDGX Options'') (collectively, the ''Affiliates'' and collectively with the Exchange, the ''Cboe Options Exchanges'') and for which the Cboe Options Exchanges report quotes under the OPRA Plan.[3]

Currently, the Exchange offers C2 Options Top Data feed, which is an uncompressed data feed that offers top-of-book quotations and last sale information based on options orders entered into the Exchange's System. The C2 Options Top Data feed benefits investors by facilitating their prompt access to real-time top-of-book information contained in C2 Options Top Data. The Exchange notes that C2 Options Top Data is ideal for market participants requiring both quote and trade data. The Exchange's Affiliates also offer similar top-of-book data.[4] Particularly, each of the Exchange's Affiliates offer top-of-book quotation and last sale information based on their own quotation and trading activity that is substantially similar to the information provided by the Exchange through the C2 Options Top Data. Further, the quote and last sale data contained in the Exchange's Affiliates top feeds is identical to the data sent to OPRA for redistribution to the public.

The Exchange now proposes to adopt a market data product that will provide top-of-book quotation and last sale information based on the quotation and trading activity on the Exchange and each of its Affiliates, which the Exchange believes will offer a comprehensive and highly representative view of US options pricing to market participants. More specifically, the proposed Cboe One Options Feed will contain the aggregate best bid and offer (''BBO'') of all displayed orders for options traded on the Exchange and its Affiliates, as well as individual last sale information and volume, which includes the price, time of execution and individual Cboe options exchange on which the trade was executed. The Cboe One Options Feed will also consist of Symbol Summary,[5] Market Status,[6] Trading Status,[7] and Trade Break[8] messages for the Exchange and each of its Affiliates.

The Exchange notes its affiliated equities exchanges Cboe BYX Exchange, Inc. (''BYX''), Cboe BZX Exchange, Inc. (''BZX Equities''), Cboe EDGA Exchange, Inc. (''EDGA'') and Cboe EDGX Exchange, Inc. (''EDGX Equities'') already offer a similar data product, the Cboe One Summary Feed, which contains the aggregate best bid and offer of all displayed orders for securities traded on each of the Exchange's affiliated equities exchanges as well as last sale information for each of the Exchange's affiliated equities exchanges.[9] The Cboe One Summary Feed also consists of Symbol Summary, Market Status, Trading Status, and Trade Break messages for each of its affiliated equities exchanges.

Particularly, the Cboe One Options Feed will offer market participants with a new option for receiving Cboe market data that provides a consolidated view of activity on all Cboe options exchanges. The Exchange proposes to offer the Cboe One Options Feed voluntarily in response to demand from market participants (*e.g.,* retail brokerage firms) that are interested in receiving the aggregate top of book quotation and last sale information from the Cboe Options Exchanges as part of a single data feed. Specifically, Cboe One Options Feed can be used by industry professionals and retail investors looking for a cost effective, easy-to-administer, high quality market data product with the characteristics of the Cboe One Options Feed. For example, today an entity can subscribe to various market data products offered by single exchanges and distribute or resell that data, either separately or in the aggregate, to their customers as part of their own market data offerings.[10] Distributors and vendors may incur administrative costs when consolidating

[3] The Exchange understands that each of the Cboe Options Exchanges will separately file substantially similar proposed rule changes to implement Cboe One Options Feed and its related fees.

[4] *See* Cboe Data Services, LLC Fee Schedule, EDGX Rule 21.15, and BZX Rule 21.15.

[5] The Symbol Summary message will include the total executed volume across all Cboe Options Exchanges.

[6] The Market Status message is disseminated to reflect a change in the status of one of the Cboe Options Exchanges. For example, the Market Status message will indicate whether one of the Cboe Options Exchanges is experiencing a systems issue or disruption and quotation or trade information from that market is not currently being disseminated via the Cboe One Options Feed as part of the aggregated BBO. The Market Status message will also indicate when a Cboe Options Exchange is no longer experiencing a systems issue or disruption to properly reflect the status of the aggregated BBO.

[7] The Trade Break message will indicate when an execution on a Cboe Options Exchange is broken in accordance with the individual Cboe Options Exchange's rules (*e.g.,* Cboe Options Rule 6.5, C2 Option Rule 6.5, BZX Options Rule 20.6, EDGX Options Rule 20.6).

[8] The Trading Status message will indicate the current trading status of an option contract on each individual Cboe Options Exchange. A Trading Status message will also be sent whenever a security's trading status changes. For example, a Trading Status message will be sent when a symbol is open for trading or when a symbol is subject to a trading halt or when it resumes trading.

[9] *See* BZX Rule 11.22(j), BYX Rule 11.22(i), EDGA Rule 13.8(b) and EDGX Rule 13.8(b).

[10] For purposes of this filing, a ''vendor'', which is a type of distributor, will refer to any entity that receives an exchange market data product directly from the exchange or indirectly from another entity (for example, from an extranet) and then resells that data to a third-party customer (*e.g.,* a data provider that resells exchange market data to a retail brokerage firm). The term ''distributor'' herein, will refer to any entity that receives an exchange market data product, directly from the exchange or indirectly from another entity (*e.g.,* from a data vendor) and then distributes to individual internal or external end-users (*e.g.,* a retail brokerage firm who distributes exchange data to its individual employees and/or customers). An example of a vendor's ''third-party customer'' or ''customer'' is an institutional broker dealer or a retail broker dealer, who then may in turn distribute the data to their customers who are individual internal or external end-users.

and augmenting the data to meet their customer's need. Consequently, distributors and/or vendors may simply choose to not take the data from each of the Cboe Options Exchanges because of the effort and cost required to aggregate data from separate feeds into their existing products. The Exchange believes those same distributors and/or vendors may be interested in distributing the Cboe One Options Feed so that they may easily incorporate aggregated or summarized Cboe Options Exchange data into their own products without themselves incurring the costs of the repackaging and aggregating the data it would receive by subscribing to each market data product offered by the individual Cboe Options Exchanges. The Exchange therefore believes that the Cboe One Options Feed would provide high-quality, comprehensive last sale and top-of-book data for the Cboe Options Exchanges in a unified view and respond to demand for such a product.

The Exchange also notes that it has taken into consideration its affiliated relationship with its Affiliates in its design of Cboe One Options Feed to assure distributors and/or vendors would be able to resell and offer a similar product on the same terms as the Exchange, both from a perspective of latency and cost.

With respect to latency, the path for distribution by the Exchange of Cboe One Options Feed would not be faster than the path for distribution by a vendor that independently created a Cboe One Options Feed-like product could distribute its own product. As such, the proposed Cboe One Options data feed is a data product that a vendor could create and sell without being in a disadvantaged position relative to the Exchange. In recognition that the Exchange is the source of its own market data and is affiliated with Cboe Options, BZX Options and EDGX Options, the Exchange represents that the source of the market data it would use to create the proposed Cboe One Options Feed is available to other vendors. Specifically, the Exchange would use the following data feeds to create the proposed Cboe One Options Feed, each of which is available to vendors: the EDGX Options Top, Cboe Options Top Data, the C2 Options Top Data, and the BZX Options Top Feeds. The Cboe Options Exchanges will continue to make available these individual underlying feeds, and thus, the source of the market data it would use to create the proposed Cboe One Options feed is the same as the source available to other vendors.

In order to create the Cboe One Options Feed, the Exchange will receive the individual data feeds from each Cboe Options Exchange and, in turn, aggregate and summarize that data to create the Cboe One Options Feed. This is the same process any entity would undergo should it create a market data product similar to the Cboe One Options Feed to distribute to its customers. In addition, the servers of most vendors could be located in the same facilities as the Exchange, and, therefore, should receive the individual data feed from each Cboe Options Exchange at the same time the Exchange would for it to create the Cboe One Options Feed.[11] Therefore, a vendor that is located in the same facilities as the Exchange could obtain the underlying data feeds from the Cboe Options Exchanges on the same latency basis as the system that would be performing the aggregation and consolidation of the proposed Cboe One Options Feed and provide the same type of product to its customers with the same latency they could achieve by purchasing the Cboe One Options Feed from the Exchange. As such, the Exchange would not have any unfair advantage over vendors with respect to obtaining data from the individual Cboe Options Exchanges. In fact, the technology supporting the Cboe One Options Feed would similarly need to obtain the Exchange's data feed as well and even this connection would be on a level playing field with a vendor located at the same facility as the Exchange. The Exchange has designed the Cboe One Options data feed so that it would not have a competitive advantage over a vendor with respect to the speed of access to those underlying data feeds. Likewise, the Cboe One Options data feed would not have a speed advantage vis-à-vis vendors located in the same data center as the Exchange with respect to access to its customers, whether those customers are also located in the same data center or not.

With regard to cost, the Exchange will file a separate rule filing with the Commission to establish fees for Cboe One Options Feed, which would be designed to ensure that vendors could compete with the Exchange by creating a similar product as the Cboe One Options Feed. The pricing the Exchange would charge for the Cboe One Options Feed would not be lower than the cost to a vendor (or distributor) to obtain receiving the underlying Cboe Options Exchanges' top-of-book data feeds. The pricing the Exchange would charge for the Cboe One Options Feed compared to the cost of the individual data feeds from the Cboe Options Exchanges would enable a vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no greater latency than the Exchange. The Distribution and User (Professional and Non-Professional) fees that the Exchange intends to propose for the Cboe One Options Feed would be equal to the combined fees for subscribing to each individual data feed. Additionally, the Exchange also intends to propose a separate ''Data Consolidation Fee'', which would reflect the value of the aggregation and consolidation function the Exchange performs in creating the Cboe One Options Feed. The intended proposed pricing would therefore enable a vendor to create a competing product based on the individual data feeds and charge its customer a fee that it believes reflects the value of the aggregation and consolidation function that is competitive with Cboe One Options Feed pricing. For these reasons, the Exchange believes that vendors could readily offer a product similar to the Cboe One Options Feed on a competitive basis at a similar cost.

Implementation

The Exchange will announce when it intends to make available the Cboe One Options feed, subject to the effectiveness of the proposed rule change and the effectiveness of a rule filing to establish the fees (via a separate rule filing).[12]

2. Statutory Basis

The Exchange believes that the proposed Cboe One Options Feed is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also

[11] The Exchange notes that it does not own the facilities in which its servers are located but is aware that there are vendors that currently locate their servers in the same facilities as the Exchange and on an equal basis as the Exchange. The Exchange is not aware of any reasons why vendors would not be able to locate their servers on an equal basis as the Exchange on an on-going basis.

[12] The Exchange also represents that should it wish to modify the proposed Cboe One Options Feed data product in the future, it will submit a proposed rule change as required under the Act.

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(5).

believes this proposal is consistent with Section 6(b)(5) of the Act because it protects investors and the public interest and promotes just and equitable principles of trade by providing investors with new options for receiving market data as requested by market participants and Section 6(b)(8) of the Act, which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[15]

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act[16] in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to consumers of such data. It was believed that this authority would expand the amount of data available to users and consumers of such data and also spur innovation and competition for the provision of market data. The Exchange believes that the proposed Cboe One Options Feed would further broaden the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. Particularly, the Exchange believes the proposed Cboe One Options Feed promotes transparency by disseminating the Cboe Options Exchanges' market data more widely through additional distribution channels, which will enable investors to better monitor trading activity on the Cboe Options Exchanges, and thereby serve the public interest. The Exchange is providing additional distribution channels because it believes market participants may be more inclined to purchase a combined data feed and redistribute it. Particularly, the Exchange believes that market participants would welcome a market data product that would provide high-quality, comprehensive top-of-book and last sale data for the Cboe Options Exchanges in a unified view (*i.e.,* the Cboe One Options Feed).

The Exchange also notes that it operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 18% of the market share.[17] The Exchange believes top-of-book quotation and transaction data is highly competitive as national securities exchanges compete vigorously with each other to provide efficient, reliable, and low-cost data to a wide range of investors and market participants. While there is not currently an aggregated top-of-book data product offered at competitor options exchanges, the quote and last sale data contained in the proposed Cboe One Options Feed is identical to data already provided in the Exchange's and its Affiliate's individual top-of-book data products as well as to the data sent to OPRA for redistribution to the public.[18] Accordingly, the Exchange believes market participants can substitute any individual or consolidated exchange top-of-book feeds with similar feeds from other exchanges and/or through OPRA with respect to the data contained in the proposed Cboe One Options Feed. Exchange top-of-book data is therefore widely available today from a number of different sources.

Moreover, exchange top-of-book data is distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors or vendors are required by any rule or regulation to make this data available. Accordingly, distributors and vendors can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Further, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers. Moreover, all broker-dealers involved in order routing must take consolidated data from OPRA, and proprietary data feeds cannot be used to meet that particular requirement. As such, all proprietary data feeds are optional.

Similar to exchanges' individual top-of-book data feeds, the proposed Cboe One Options Feed would be distributed and purchased on a voluntary basis, in that neither the Exchange, its Affiliates, nor market data distributors or vendors are required by any rule or regulation to make this data feed available. Accordingly, distributors and vendors can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. The Exchange believes that the proposed Cboe One Options Feed will offer an alternative to subscribing to the Cboe Options Exchanges four individual top-of-book data feeds. Also, as noted above, there is a history of offering similar consolidated data products in the equities industry. Indeed, the Exchange's affiliated equities exchanges offer the Cboe One Summary Feed, which is a substantially similar data product which contains the aggregate BBO of all displayed orders for securities (instead of options) traded on the Cboe's equities exchanges, along with last sale information.[19] The Cboe One Summary Feed also consists of Symbol Summary, Market Status, Trading Status, and Trade Break messages.[20]

The Exchange believes the proposal would not permit unfair discrimination because the product will be available to all market data distributors and vendors on an equivalent basis. Any distributor or vendor that wishes to instead purchase one or more of the individual data feeds offered by the Cboe Options Exchanges separately will still be able to do so. Further, the Exchange and its Affiliates will continue to make the data contained in the proposed Cboe One Options Feed available no earlier than the time at which the exchanges send that data to OPRA. Market participants may therefore also substitute Cboe One Options Feed with feeds from other exchanges and/or through OPRA.

In addition, the Exchange does not believe that the proposal would permit unfair discrimination among customers, brokers, or dealers and thus is consistent with the Act because the Exchange will be offering the product on terms that a vendor could offer a competing product. Specifically, the proposed data feed merely represents an aggregation and consolidation of data contained in existing, previously filed individual market data products of the Cboe Options Exchanges. As such, a vendor could similarly obtain the underlying data feeds and perform a similar aggregation and consolidation function to create the same data product as being proposed with the same latency and cost as the Exchange.

The Exchange has taken into consideration its affiliated relationship with Cboe Options, BZX Options and EDGX Options in its design of the Cboe One Options Feed to assure that distributors and/or vendors would be

[15] 15 U.S.C. 78f(b)(8).

[16] 15 U.S.C. 78k–1.

[17] *See* Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (January 9, 2023), available at *https://markets.cboe.com/us/options/market_statistics/.*

[18] The Exchange notes that it and its Affiliates, make available their respective top-of-book data and last sale data that is included in each exchange's top-of-book data feed no earlier than the time at which the Exchange sends that data to OPRA.

[19] *See* BZX Rule 11.22(j), BYX Rule 11.22(i), EDGA Rule 13.8(b) and EDGX Rule 13.8(b).

[20] *Id.*

able to offer a similar product on the same terms as the Exchange, both from the perspective of latency and cost. As discussed above, the Exchange proposes to offer the Cboe One Options Feed voluntarily in response to demand from market participants such as retail brokerage firms that are interested in receiving and distributing the top-of-book quotation and last sale information from the Cboe Options Exchanges as part of a single data feed. Specifically, Cboe One Options Feed can be used by industry professionals and retail investors looking for a cost effective, easy-to-administer, high quality market data product with the characteristics of the Cboe One Options Feed. The Cboe One Options Feed would help protect a free and open market by providing market participants additional choices in receiving this type of market data, thus promoting competition and innovation.

With respect to latency, the path for distribution by the Exchange of Cboe One Options Feed would not be faster than the path for distribution a vendor that independently created a Cboe One Options Feed-like product could distribute its own product. As such, the proposed Cboe One Options data feed is a data product that a vendor could create and sell without being in a disadvantaged position relative to the Exchange. In recognition that the Exchange is the source of its own market data and is affiliated with Cboe Options, BZX Options and EDGX Options, the Exchange represents that the source of the market data it would use to create the proposed Cboe One Options Feed is available to other vendors. Specifically, the Exchange would use the following data feeds to create the proposed Cboe One Options Feed, each of which is available to other vendors: the EDGX Options Top, Cboe Options Top Data, the C2 Options Top Data, and the BZX Options Top Feeds. The Cboe Options Exchanges will continue to make available these individual underlying feeds, and thus, the source of the market data it would use to create the proposed Cboe One Options feed is the same as the source available to other vendors.

In order to create the Cboe One Options Feed, the Exchange will receive the individual data feeds from each Cboe Options Exchange and, in turn, aggregate and summarize that data to create the Cboe One Options Feed. This is the same process any vendor would undergo should it create a market data product similar to the Cboe One Options Feed to distribute to its customers. In addition, the servers of most vendors could be located in the same facilities as the Exchange, and, therefore, should receive the individual data feed from each Cboe Options Exchange at the same time the Exchange would for it to create the Cboe One Options Feed. Therefore, a vendor that is located in the same facilities as the Exchange could obtain the underlying data feeds from the Cboe Options Exchanges on the same latency basis as the system that would be performing the aggregation and consolidation of the proposed Cboe One Options Feed and provide the same type of product to its customers with the same latency they could achieve by purchasing the Cboe One Options Feed from the Exchange. As such, the Exchange would not have any unfair advantage over vendors with respect to obtaining data from the individual Cboe Options Exchanges. In fact, the technology supporting the Cboe One Options Feed would similarly need to obtain the Exchange's data feed as well and even this connection would be on a level playing field with a vendor located at the same facility as the Exchange. The Exchange has designed the Cboe One Options data feed so that it would not have a competitive advantage over a vendor with respect to the speed of access to those underlying data feeds. Likewise, the Cboe One Options data feed would not have a speed advantage vis-à-vis vendors located in the same data center as the Exchange with respect to access to customers, whether those customers are also located in the same data center or not.

With regard to cost, the Exchange will file a separate rule filing with the Commission to establish fees for Cboe One Options Feed, which would be designed to ensure that vendors could compete with the Exchange by creating a similar product as the Cboe One Options Feed to offer and resell. The pricing the Exchange would charge for the Cboe One Options Feed would not be lower than the cost to a vendor (or distributor) to obtain receiving the underlying Cboe Options Exchanges' top-of-book data feeds. The pricing the Exchange would charge clients for the Cboe One Options Feed compared to the cost of the individual data feeds from the Cboe Options Exchanges would enable a vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no greater latency than the Exchange. The Distribution and User (Professional and Non-Professional) fees that the Exchange intends to propose for the Cboe One Options Feed would be equal to the combined fees for subscribing to each individual data feed.[21] The Exchange also intends to propose a separate ''Data Consolidation Fee'', which would reflect the value of the aggregation and consolidation function the Exchange performs in creating the Cboe One Options Feed. The intended proposed fees would therefore enable a vendor to create a product based on the individual data feeds and charge its clients a fee that it believes reflects the value of the aggregation and consolidation function that is competitive with Cboe One Options Feed pricing. For these reasons, the Exchange believes that vendors could readily offer a product similar to the Cboe One Options Feed on a competitive basis at a similar cost.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Because the Exchange and its affiliates, along with other exchanges already offer the similar underlying data products, the Exchange's proposed Cboe One Options Feed will enhance competition. This proposed new data feed provides investors with new options for receiving market data, which was a primary goal of the market data amendments adopted by Regulation NMS.[22] As the Cboe Options Exchanges are consistently one of the top exchange operators by market share for U.S. options trading the data included within the Cboe One Options Feed will provide investors a new option for obtaining a broad market view, consistent with the primary goal

[21] For example, the combined external distribution fee for the individual data feeds of the Cboe Options Exchanges is $10,000 per month (*i.e.,* the monthly external distribution fee is $5,000 per month for the Cboe Options Top, $2,500 per month for C2 Options Top $2,000 per month for BZX Options Top, and $500 for EDGX Options Top). The combined monthly Professional User fee for the individual data feeds of the Cboe Options Exchanges is $30.50 per Professional User (*i.e.,* the monthly Professional User fee is $15.50 per Professional User for the Cboe Options Top, $5 per Professional User for C2 Options Top; $5 per Professional User for BZX Options Top, and $5 per Professional User for EDGX Options Top). The combined monthly Non-Professional User fee for the individual data feeds of the Cboe Options Exchanges is $0.60 per Non-Professional User (*i.e.,* the monthly Non-Professional User fee is $0.30 per Non-Professional User for Cboe Options Top, $0.10 per Non-Professional User for C2 Options Top, $0.10 per Non-Professional User for BZX Options Top, and $0.10 per Non-Professional User for EDGX Options Top).

[22] See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, at 37503 (June 29, 2005) (Regulation NMS Adopting Release).

of the market data amendments adopted by Regulation NMS.

The Exchange believes the Cboe One Options Feed will further enhance competition by providing distributors and vendors with a data feed that allows them to more quickly and efficiently integrate into their existing products. For example, today, vendors may subscribe to various market data products offered by single exchanges and resell that data, either separately or in the aggregate, to their customers as part of their own market data offerings. Distributors and vendors may incur administrative costs when consolidating and augmenting the data to meet their customer's need. Consequently, many distributors and/or vendors will simply choose to not take the data from each of the Cboe Options Exchanges because of the effort and cost required to aggregate data from separate feeds into their existing products. Those same distributors and/or vendors may therefore be interested in the Cboe One Options Feed as they may easily incorporate aggregated or summarized Cboe Options Exchanges' data into their own products without themselves incurring the costs of the repackaging and aggregating the data it would receive by purchasing each market data product offered by the individual Cboe Options Exchanges separately. The Exchange therefore believes that by providing market data that encompasses combined data from affiliated exchanges, the Exchange enables vendors with the ability to compete in the provision of similar content with other vendors, where they may not have done so previously if they were required to purchase the top-of-book feeds from each individual Cboe options exchanges separately.

Although the Exchange considers the acceptance of the Cboe One Options Feed by distributors and/or vendors as important to the success of the product, depending on their needs, such distributors and vendors may choose not to subscribe to the Cboe One Options Feed and may rather receive the Cboe Options Exchanges' individual market data products and incorporate them into their specific market data products. The Cboe One Options Feed simply provides another option for distributors and vendors to choose from when selecting a product that meets their market data needs.

Exchange Not the Exclusive Distributor of Cboe One Options Feed

Although the Cboe Options Exchanges are the exclusive distributors of the individual data feeds from which certain data elements would be taken to create the Cboe One Options Feed, the Exchange would not be the exclusive distributor of the aggregated and consolidated information that would compose the proposed Cboe One Options Feed. As discussed above, distributors and/or vendors would be able, if they chose, to create a data feed with the same information as the Cboe One Options Feed and distribute it to their clients on a level-playing field with respect to latency and cost as compared to the Exchange's proposed Cboe One Options Feed. The pricing the Exchange would charge for the Cboe One Options Feed would not be lower than the cost to a distributor or vendor to obtain receiving the underlying data feeds. In addition, the pricing the Exchange would charge clients for the Cboe One Options Feed compared to the cost of the individual data feeds from the Cboe Options Exchanges would enable a distributor and/or vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no greater latency than the Exchange.

Latency

The Cboe One Options Feed is also not intended to compete with similar products offered by distributors. Rather, it is intended to assist them in incorporating aggregated and summarized data from the Cboe Options Exchanges into their own market data products that are provided to their customers. Therefore, distributors will receive the data, who will, in turn, make available Cboe One Options Feed to their end users, either separately or as incorporated into the various market data products they provide. As stated above distributors may prefer a product like the Cboe One Options Feed so that they may easily incorporate aggregated or summarized Cboe Options Exchange data into their own products without themselves incurring the administrative costs of repackaging and aggregating the data it would receive by subscribing to each market data product offered by the individual Cboe Options Exchanges.

Notwithstanding the above, the Exchange believes that vendors may create a product similar to Cboe One Options Feed based on the market data products offered by the individual Cboe Options Exchanges with no greater latency than the Exchange. As discussed above, in order to create the Cboe One Options Feed, the Exchange will receive the individual data feeds from each Cboe Options Exchange and, in turn, aggregate and summarize that data to create the Cboe One Options Feed. This is the same process a vendor would undergo should it create a market data product similar to the Cboe One Options Feed to distribute to its customers. In addition, the servers of most vendors could be located in the same facilities as the Exchange, and, therefore, should receive the individual data feed from each Cboe Options Exchange at the same time the Exchange would for it to create the Cboe One Options Feed.

The Exchange has designed the Cboe One Options data feed so that it would not have a competitive advantage over a vendor with respect to the speed of access to those underlying data feeds. Likewise, the Cboe One Options data feed would not have a speed advantage vis-à-vis vendors located in the same data center as the Exchange with respect to access to their customers, whether those end users are also located in the same data center or not. Therefore, the Exchange believes that it will not incur any potential latency advantage that will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Cost

With regard to cost, the Exchange will file a separate rule filing with the Commission to establish fees for Cboe One Options Feed that would be designed to ensure that vendors could compete with the Exchange by creating a similar product as the Cboe One Options Feed. The pricing the Exchange would charge clients for the Cboe One Options Feed compared to the cost of the individual data feeds from the Cboe Options Exchanges would enable a vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no greater latency than the Exchange. The Distribution and User (Professional and Non-Professional) User fees that the Exchange proposes for the Cboe One Options Feed will be equal to the combined fees for subscribing to each individual data feed. Moreover, as discussed, the Exchange intends to propose a separate ''Data Consolidation Fee'', which would reflect the value of the aggregation and consolidation function the Exchange performs in creating the Cboe One Options Feed. Therefore, vendors would be enabled to create a competing product based on the individual data feeds and charge their clients a fee that they believes reflects the value of the aggregation and consolidation function that is competitive with Cboe One Options Feed pricing. For these reasons, the Exchange believes that vendors could readily offer a product similar to the Cboe One Options Feed on a competitive basis at a similar cost.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. 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) of the Act [23] and Rule 19b–4(f)(6) [24] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–C2–2023–005 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–C2–2023–005. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2023–005 and should be submitted on or before March 9, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–03252 Filed 2–15–23; 8:45 am]

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[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 CFR 240.19b–4(f)(6).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96885; File No. SR–CBOE–2023–009]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt a New Data Product Called the Cboe One Options Feed

February 10, 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 30, 2023, Cboe Exchange, Inc. (''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to adopt a new data product called the Cboe One Options Feed.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to establish a new market data product called the Cboe One Options Feed. As described more fully below, the Cboe One Options Feed is a data feed that that will offer top of book quotations and execution information based on options orders entered into the Exchange System and its affiliated options exchanges, Cboe C2 Exchange, Inc. (''C2''), Cboe BZX Exchange, Inc. (''BZX Options'') and Cboe EDGX Exchange, Inc. (''EDGX Options'') (collectively, the ''Affiliates'' and collectively with the Exchange, the ''Cboe Options Exchanges'') and for which the Cboe Options Exchanges report quotes under the OPRA Plan.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange understands that each of the Cboe Options Exchanges will separately file substantially similar proposed rule changes to implement Cboe One Options Feed and its related fees.

Currently, the Exchange offers Cboe Options Top Data feed, which is an uncompressed data feed that offers top-of-book quotations and last sale information based on options orders entered into the Exchange's System. The Cboe Options Top Data feed benefits investors by facilitating their prompt access to real-time top-of-book information contained in Cboe Options Top Data. The Exchange notes that Cboe Options Top Data is ideal for market participants requiring both quote and trade data. The Exchange's Affiliates also offer similar top-of-book data.[4] Particularly, each of the Exchange's Affiliates offer top-of-book quotation and last sale information based on their own quotation and trading activity that is substantially similar to the information provided by the Exchange through the Cboe Options Top Data. Further, the quote and last sale data contained in the Exchange's Affiliates top feeds is identical to the data sent to OPRA for redistribution to the public, including data relating to the Exchange's proprietary and exclusively listed products.

The Exchange now proposes to adopt a market data product that will provide top-of-book quotation and last sale information based on the quotation and trading activity on the Exchange and each of its Affiliates, which the Exchange believes will offer a comprehensive and highly representative view of U.S. options pricing to market participants. More specifically, the proposed Cboe One Options Feed will contain the aggregate best bid and offer (''BBO'') of all displayed orders for options traded on the Exchange and its Affiliates, as well as individual last sale information and volume, which includes the price, time of execution and individual Cboe options exchange on which the trade was executed. The Cboe One Options Feed will also consist of Symbol Summary,[5] Market Status,[6] Trading Status,[7] and Trade Break[8] messages for the Exchange and each of its Affiliates.

The Exchange notes its affiliated equities exchanges Cboe BYX Exchange, Inc. (''BYX''), Cboe BZX Exchange, Inc. (''BZX Equities''), Cboe EDGA Exchange, Inc. (''EDGA'') and Cboe EDGX Exchange, Inc. (''EDGX Equities'') already offer a similar data product, the Cboe One Summary Feed, which contains the aggregate best bid and offer of all displayed orders for securities traded on each of the Exchange's affiliated equities exchanges as well as last sale information for each of the Exchange's affiliated equities exchanges.[9] The Cboe One Summary Feed also consists of Symbol Summary, Market Status, Trading Status, and Trade Break messages for each of its affiliated equities exchanges.

Particularly, the Cboe One Options Feed will offer market participants with a new option for receiving Cboe market data that provides a consolidated view of activity on all Cboe options exchanges. The Exchange proposes to offer the Cboe One Options Feed voluntarily in response to demand from market participants (*e.g.,* retail brokerage firms) that are interested in receiving the aggregate top of book quotation and last sale information from the Cboe Options Exchanges as part of a single data feed. Specifically, Cboe One Options Feed can be used by industry professionals and retail investors looking for a cost effective, easy-to-administer, high quality market data product with the characteristics of the Cboe One Options Feed. For example, today an entity can subscribe to various market data products offered by single exchanges and distribute or resell that data, either separately or in the aggregate, to their customers as part of their own market data offerings.[10] Distributors and vendors may incur administrative costs when consolidating and augmenting the data to meet their customer's need. Consequently, distributors and/or vendors may simply choose to not take the data from each of the Cboe Options Exchanges because of the effort and cost required to aggregate data from separate feeds into their existing products. The Exchange believes those same distributors and/or vendors may be interested in distributing the Cboe One Options Feed so that they may easily incorporate aggregated or summarized Cboe Options Exchange data into their own products without themselves incurring the costs of the repackaging and aggregating the data it would receive by subscribing to each market data product offered by the individual Cboe Options Exchanges. The Exchange therefore believes that the Cboe One Options Feed would provide high-quality, comprehensive last sale and top-of-book data for the Cboe Options Exchanges in a unified view and respond to demand for such a product.

The Exchange also notes that it has taken into consideration its affiliated relationship with its Affiliates in its design of Cboe One Options Feed to assure distributors and/or vendors would be able to resell and offer a similar product on the same terms as the Exchange, both from a perspective of latency and cost.

With respect to latency, the path for distribution by the Exchange of Cboe One Options Feed would not be faster than the path for distribution by a vendor that independently created a Cboe One Options Feed-like product could distribute its own product. As such, the proposed Cboe One Options data feed is a data product that a vendor could create and sell without being in a disadvantaged position relative to the Exchange. In recognition that the Exchange is the source of its own market data and is affiliated with C2, BZX Options and EDGX Options, the Exchange represents that the source of the market data it would use to create the proposed Cboe One Options Feed is available to vendors. Specifically, the Exchange would use the following data feeds to create the proposed Cboe One Options Feed, each of which is available

[4] *See* C2 Options Exchange Fees Schedule, Cboe Data Services, LLC Fees, EDGX Rule 21.15, and BZX Rule 21.15.

[5] The Symbol Summary message will include the total executed volume across all Cboe Options Exchanges.

[6] The Market Status message is disseminated to reflect a change in the status of one of the Cboe Options Exchanges. For example, the Market Status message will indicate whether one of the Cboe Options Exchanges is experiencing a systems issue or disruption and quotation or trade information from that market is not currently being disseminated via the Cboe One Options Feed as part of the aggregated BBO. The Market Status message will also indicate when a Cboe Options Exchange is no longer experiencing a systems issue or disruption to properly reflect the status of the aggregated BBO.

[7] The Trade Break message will indicate when an execution on a Cboe Options Exchange is broken in accordance with the individual Cboe Options Exchange's rules (*e.g.,* Cboe Options Rule 6.5, C2 Option Rule 6.5, BZX Options Rule 20.6, EDGX Options Rule 20.6).

[8] The Trading Status message will indicate the current trading status of an option contract on each individual Cboe Options Exchange. A Trading Status message will also be sent whenever a security's trading status changes. For example, a Trading Status message will be sent when a symbol is open for trading or when a symbol is subject to a trading halt or when it resumes trading.

[9] *See* BZX Rule 11.22(j), BYX Rule 11.22(i), EDGA Rule 13.8(b) and EDGX Rule 13.8(b).

[10] For purposes of this filing, a ''vendor'', which is a type of distributor, will refer to any entity that receives an exchange market data product directly from the exchange or indirectly from another entity (for example, from an extranet) and then resells that data to a third-party customer (*e.g.,* a data provider that resells exchange market data to a retail brokerage firm). The term ''distributor'' herein, will refer to any entity that receives an exchange market data product, directly from the exchange or indirectly from another entity (*e.g.,* from a data vendor) and then distributes to individual internal or external end-users (*e.g.,* a retail brokerage firm who distributes exchange data to its individual employees and/or customers). An example of a vendor's ''third-party customer'' or ''customer'' is an institutional broker dealer or a retail broker dealer, who then may in turn distribute the data to their customers who are individual internal or external end-users.

to other vendors: the EDGX Options Top, Cboe Options Top Data, the C2 Options Top Data, and the BZX Options Top Feeds. The Cboe Options Exchanges will continue to make available these individual underlying feeds, and thus, the source of the market data it would use to create the proposed Cboe One Options feed is the same as the source available to other vendors.

In order to create the Cboe One Options Feed, the Exchange will receive the individual data feeds from each Cboe Options Exchange and, in turn, aggregate and summarize that data to create the Cboe One Options Feed. This is the same process any entity would undergo should it create a market data product similar to the Cboe One Options Feed to distribute to its customers. In addition, the servers of most vendors could be located in the same facilities as the Exchange, and, therefore, should receive the individual data feed from each Cboe Options Exchange at the same time the Exchange would for it to create the Cboe One Options Feed.[11] Therefore, a vendor that is located in the same facilities as the Exchange could obtain the underlying data feeds from the Cboe Options Exchanges on the same latency basis as the system that would be performing the aggregation and consolidation of the proposed Cboe One Options Feed and provide the same type of product to its customers with the same latency they could achieve by purchasing the Cboe One Options Feed from the Exchange. As such, the Exchange would not have any unfair advantage over vendors with respect to obtaining data from the individual Cboe Options Exchanges. In fact, the technology supporting the Cboe One Options Feed would similarly need to obtain the Exchange's data feed as well and even this connection would be on a level playing field with a vendor located at the same facility as the Exchange. The Exchange has designed the Cboe One Options data feed so that it would not have a competitive advantage over a vendor with respect to the speed of access to those underlying data feeds. Likewise, the Cboe One Options data feed would not have a speed advantage vis-à-vis vendors located in the same data center as the Exchange with respect to access to its customers, whether those customers are also located in the same data center or not.

With regard to cost, the Exchange will file a separate rule filing with the Commission to establish fees for Cboe One Options Feed, which would be designed to ensure that vendors could compete with the Exchange by creating a similar product as the Cboe One Options Feed. The pricing the Exchange would charge for the Cboe One Options Feed would not be lower than the cost to a vendor (or distributor) to obtain the underlying Cboe Options Exchanges' top-of-book data feeds. The pricing the Exchange would charge for the Cboe One Options Feed compared to the cost of the individual data feeds from the Cboe Options Exchanges would enable a vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no greater latency than the Exchange. The Distribution and User (Professional and Non-Professional) fees that the Exchange intends to propose for the Cboe One Options Feed would be equal to the combined fees for subscribing to each individual data feed. Additionally, the Exchange also intends to propose a separate ''Data Consolidation Fee'', which would reflect the value of the aggregation and consolidation function the Exchange performs in creating the Cboe One Options Feed. The intended proposed pricing would therefore enable a vendor to create a competing product based on the individual data feeds and charge its customer a fee that it believes reflects the value of the aggregation and consolidation function that is competitive with Cboe One Options Feed pricing. For these reasons, the Exchange believes that vendors could readily offer a product similar to the Cboe One Options Feed on a competitive basis at a similar cost.

Implementation

The Exchange will announce when it intends to make available the Cboe One Options feed, subject to the effectiveness of the proposed rule change and the effectiveness of a rule filing to establish the fees (via a separate rule filing).[12]

2. Statutory Basis

The Exchange believes that the proposed Cboe One Options Feed is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes this proposal is consistent with Section 6(b)(5) of the Act because it protects investors and the public interest and promotes just and equitable principles of trade by providing investors with new options for receiving market data as requested by market participants and Section 6(b)(8) of the Act, which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[15] The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act[16] in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to consumers of such data. It was believed that this authority would expand the amount of data available to users and consumers of such data and also spur innovation and competition for the provision of market data. The Exchange believes that the proposed Cboe One Options Feed would further broaden the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. Particularly, the Exchange believes the proposed Cboe One Options Feed promotes transparency by disseminating the Cboe Options Exchanges' market data more widely through additional distribution channels, which will enable investors to better monitor trading activity on the Cboe Options Exchanges, and thereby serve the public interest. The Exchange is providing additional distribution channels because it believes market participants may be more inclined to purchase a combined data feed and redistribute it. Particularly, the Exchange believes that market participants would welcome a market

[11] The Exchange notes that it does not own the facilities in which its servers are located but is aware that there are vendors that currently locate their servers in the same facilities as the Exchange and on an equal basis as the Exchange. The Exchange is not aware of any reasons why vendors would not be able to locate their servers on an equal basis as the Exchange on an on-going basis.

[12] The Exchange also represents that should it wish to modify the proposed Cboe One Options Feed data product in the future, it will submit a proposed rule change as required under the Act.

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(8).

[16] 15 U.S.C. 78k–1

data product that would provide high-quality, comprehensive top-of-book and last sale data for the Cboe Options Exchanges in a unified view (*i.e.,* the Cboe One Options Feed).

The Exchange also notes that it operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 18% of the market share.[17] The Exchange believes top-of-book quotation and transaction data is highly competitive as national securities exchanges compete vigorously with each other to provide efficient, reliable, and low-cost data to a wide range of investors and market participants. While there is not currently an aggregated top-of-book data product offered at competitor options exchanges, the quote and last sale data contained in the proposed Cboe One Options Feed is identical to data already provided in the Exchange's and its Affiliate's individual top-of-book data products as well as to the data sent to OPRA for redistribution to the public (including data relating to any exchange's proprietary and exclusively listed products).[18] Accordingly, the Exchange believes market participants can substitute any individual or consolidated exchange top-of-book feeds with similar feeds from other exchanges and/or through OPRA with respect to the data contained in the proposed Cboe One Options Feed. Exchange top-of-book data is therefore widely available today from a number of different sources.

Moreover, exchange top-of-book data is distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors or vendors are required by any rule or regulation to make this data available. Accordingly, distributors and vendors can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Further, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers. Moreover, all broker-dealers involved in order routing must take consolidated data from OPRA, and proprietary data feeds cannot be used to meet that particular requirement. As such, all proprietary data feeds are optional.

Similar to exchanges' individual top-of-book data feeds, the proposed Cboe One Options Feed would be distributed and purchased on a voluntary basis, in that neither the Exchange, its Affiliates, nor market data distributors or vendors are required by any rule or regulation to make this data feed available. Accordingly, distributors and vendors can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. The Exchange believes that the proposed Cboe One Options Feed will offer an alternative to subscribing to the Cboe Options Exchanges four individual top-of-book data feeds. Also, as noted above, there is a history of offering similar consolidated data products in the equities industry. Indeed, the Exchange's affiliated equities exchanges offer the Cboe One Summary Feed, which is a substantially similar data product which contains the aggregate BBO of all displayed orders for securities (instead of options) traded on the Cboe's equities exchanges, along with last sale information.[19] The Cboe One Summary Feed also consists of Symbol Summary, Market Status, Trading Status, and Trade Break messages.[20]

The Exchange believes the proposal would not permit unfair discrimination because the product will be available to all market data distributors and vendors on an equivalent basis. Any distributor or vendor that wishes to instead purchase one or more of the individual data feeds offered by the Cboe Options Exchanges separately will still be able to do so. Further, the Exchange and its Affiliates will continue to make the data contained in the proposed Cboe One Options Feed available no earlier than the time at which the exchanges send that data to OPRA. Market participants may therefore also substitute Cboe One Options Feed with feeds from other exchanges and/or through OPRA.

In addition, the Exchange does not believe that the proposal would permit unfair discrimination among customers, brokers, or dealers and thus is consistent with the Act because the Exchange will be offering the product on terms that a vendor could offer a competing product. Specifically, the proposed data feed merely represents an aggregation and consolidation of data contained in existing, previously filed individual market data products of the Cboe Options Exchanges. As such, a vendor could similarly obtain the underlying data feeds and perform a similar aggregation and consolidation function to create the same data product as being proposed with the same latency and cost as the Exchange.

The Exchange has taken into consideration its affiliated relationship with C2, BZX Options and EDGX Options in its design of the Cboe One Options Feed to assure that distributors and/or vendors would be able to offer a similar product on the same terms as the Exchange, both from the perspective of latency and cost. As discussed above, the Exchange proposes to offer the Cboe One Options Feed voluntarily in response to demand from market participants such as retail brokerage firms that are interested in receiving and distributing the top-of-book quotation and last sale information from the Cboe Options Exchanges as part of a single data feed. Specifically, Cboe One Options Feed can be used by industry professionals and retail investors looking for a cost effective, easy-to-administer, high quality market data product with the characteristics of the Cboe One Options Feed. The Cboe One Options Feed would help protect a free and open market by providing market participants additional choices in receiving this type of market data, thus promoting competition and innovation.

With respect to latency, the path for distribution by the Exchange of Cboe One Options Feed would not be faster than the path for distribution a vendor that independently created a Cboe One Options Feed-like product could distribute its own product. As such, the proposed Cboe One Options data feed is a data product that a vendor could create and sell without being in a disadvantaged position relative to the Exchange. In recognition that the Exchange is the source of its own market data and is affiliated with C2, BZX Options and EDGX Options, the Exchange represents that the source of the market data it would use to create the proposed Cboe One Options Feed is available to other vendors. Specifically, the Exchange would use the following data feeds to create the proposed Cboe One Options Feed, each of which is available to other vendors: the EDGX Options Top, Cboe Options Top Data, the C2 Options Top Data, and the BZX Options Top Feeds. The Cboe Options Exchanges will continue to make available these individual underlying feeds, and thus, the source of the market data it would use to create the proposed Cboe One Options feed is the same as the source available to other vendors.

[17] *See* Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (January 9, 2023), available at *https://markets.cboe.com/us/options/market_statistics/.*

[18] The Exchange notes that it and its Affiliates, make available their respective top-of-book data and last sale data that is included in each exchange's top-of-book data feed no earlier than the time at which the Exchange sends that data to OPRA.

[19] *See* BZX Rule 11.22(j), BYX Rule 11.22(i), EDGA Rule 13.8(b) and EDGX Rule 13.8(b).

[20] *Id.*

In order to create the Cboe One Options Feed, the Exchange will receive the individual data feeds from each Cboe Options Exchange and, in turn, aggregate and summarize that data to create the Cboe One Options Feed. This is the same process any vendor would undergo should it create a market data product similar to the Cboe One Options Feed to distribute to its customers. In addition, the servers of most vendors could be located in the same facilities as the Exchange, and, therefore, should receive the individual data feed from each Cboe Options Exchange at the same time the Exchange would for it to create the Cboe One Options Feed. Therefore, a vendor that is located in the same facilities as the Exchange could obtain the underlying data feeds from the Cboe Options Exchanges on the same latency basis as the system that would be performing the aggregation and consolidation of the proposed Cboe One Options Feed and provide the same type of product to its customers with the same latency they could achieve by purchasing the Cboe One Options Feed from the Exchange. As such, the Exchange would not have any unfair advantage over vendors with respect to obtaining data from the individual Cboe Options Exchanges. In fact, the technology supporting the Cboe One Options Feed would similarly need to obtain the Exchange's data feed as well and even this connection would be on a level playing field with a vendor located at the same facility as the Exchange. The Exchange has designed the Cboe One Options data feed so that it would not have a competitive advantage over a vendor with respect to the speed of access to those underlying data feeds. Likewise, the Cboe One Options data feed would not have a speed advantage vis-à-vis vendors located in the same data center as the Exchange with respect to access to customers, whether those customers are also located in the same data center or not.

With regard to cost, the Exchange will file a separate rule filing with the Commission to establish fees for Cboe One Options Feed, which would be designed to ensure that vendors could compete with the Exchange by creating a similar product as the Cboe One Options Feed to offer and resell. The pricing the Exchange would charge for the Cboe One Options Feed would not be lower than the cost to a vendor (or distributor) to obtain the underlying Cboe Options Exchanges' top-of-book data feeds. The pricing the Exchange would charge clients for the Cboe One Options Feed compared to the cost of the individual data feeds from the Cboe Options Exchanges would enable a vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no greater latency than the Exchange. The Distribution and User (Professional and Non-Professional) fees that the Exchange intends to propose for the Cboe One Options Feed would be equal to the combined fees for subscribing to each individual data feed.[21] The Exchange also intends to propose a separate ''Data Consolidation Fee'', which would reflect the value of the aggregation and consolidation function the Exchange performs in creating the Cboe One Options Feed. The intended proposed fees would therefore enable a vendor to create a product based on the individual data feeds and charge its clients a fee that it believes reflects the value of the aggregation and consolidation function that is competitive with Cboe One Options Feed pricing. For these reasons, the Exchange believes that vendors could readily offer a product similar to the Cboe One Options Feed on a competitive basis at a similar cost.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Because the Exchange and its affiliates, along with other exchanges already offer the similar underlying data products, the Exchange's proposed Cboe One Options Feed will enhance competition. The Cboe One Options Feed will foster competition by providing an alternative market data product to those offered by those exchanges and/or OPRA. This proposed new data feed provides investors with new options for receiving market data, which was a primary goal of the market data amendments adopted by Regulation NMS.[22] As the Cboe Options Exchanges are consistently one of the top exchange operators by market share for U.S. options trading the data included within the Cboe One Options Feed will provide investors a new option for obtaining a broad market view, consistent with the primary goal of the market data amendments adopted by Regulation NMS.

The Exchange believes the Cboe One Options Feed will further enhance competition by providing distributors and vendors with a data feed that allows them to more quickly and efficiently integrate into their existing products. For example, today, vendors may subscribe to various market data products offered by single exchanges and resell that data, either separately or in the aggregate, to their customers as part of their own market data offerings. Distributors and vendors may incur administrative costs when consolidating and augmenting the data to meet their customer's need. Consequently, many distributors and/or vendors will simply choose to not take the data from each of the Cboe Options Exchanges because of the effort and cost required to aggregate data from separate feeds into their existing products. Those same distributors and/or vendors may therefore be interested in the Cboe One Options Feed as they may easily incorporate aggregated or summarized Cboe Options Exchanges' data into their own products without themselves incurring the costs of the repackaging and aggregating the data it would receive by purchasing each market data product offered by the individual Cboe Options Exchanges separately. The Exchange therefore believes that by providing market data that encompasses combined data from affiliated exchanges, the Exchange enables vendors with the ability to compete in the provision of similar content with other vendors, where they may not have done so previously if they were required to purchase the top-of-book feeds from each individual Cboe options exchanges separately.

Although the Exchange considers the acceptance of the Cboe One Options Feed by distributors and vendors as important to the success of the product, depending on their needs, such distributors and vendors may choose not to subscribe to the Cboe One Options Feed and may rather receive the

[21] For example, the combined external distribution fee for the individual data feeds of the Cboe Options Exchanges is $10,000 per month (*i.e.,* the monthly external distribution fee is $5,000 per month for the Cboe Options Top, $2,500 per month for C2 Options Top $2,000 per month for BZX Options Top, and $500 for EDGX Options Top). The combined monthly Professional User fee for the individual data feeds of the Cboe Options Exchanges is $30.50 per Professional User (*i.e.,* the monthly Professional User fee is $15.50 per Professional User for the Cboe Options Top, $5 per Professional User for C2 Options Top; $5 per Professional User for BZX Options Top, and $5 per Professional User for EDGX Options Top). The combined monthly Non-Professional User fee for the individual data feeds of the Cboe Options Exchanges is $0.60 per Non-Professional User (*i.e.,* the monthly Non-Professional User fee is $0.30 per Non-Professional User for Cboe Options Top, $0.10 per Non-Professional User for C2 Options Top, $0.10 per Non-Professional User for BZX Options Top, and $0.10 per Non-Professional User for EDGX Options Top).

[22] See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, at 37503 (June 29, 2005) (Regulation NMS Adopting Release).

Cboe Options Exchanges' individual market data products and incorporate them into their specific market data products. The Cboe One Options Feed simply provides another option for distributors and vendors to choose from when selecting a product that meets their market data needs.

Exchange Not the Exclusive Distributor of Cboe One Options Feed

Although the Cboe Options Exchanges are the exclusive distributors of the individual data feeds from which certain data elements would be taken to create the Cboe One Options Feed, the Exchange would not be the exclusive distributor of the aggregated and consolidated information that would compose the proposed Cboe One Options Feed. As discussed above, distributors and/or vendors would be able, if they chose, to create a data feed with the same information as the Cboe One Options Feed and distribute it to their clients on a level-playing field with respect to latency and cost as compared to the Exchange's proposed Cboe One Options Feed. The pricing the Exchange would charge for the Cboe One Options Feed would not be lower than the cost to a distributor or vendor to obtain the underlying data feeds. In addition, the pricing the Exchange would charge clients for the Cboe One Options Feed compared to the cost of the individual data feeds from the Cboe Options Exchanges would enable a distributor and/or vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no greater latency than the Exchange.

Latency

The Cboe One Options Feed is also not intended to compete with similar products offered by distributors. Rather, it is intended to assist them in incorporating aggregated and summarized data from the Cboe Options Exchanges into their own market data products that are provided to their customers. Therefore, distributors will receive the data, who will, in turn, make available Cboe One Options Feed to their end users, either separately or as incorporated into the various market data products they provide. As stated above distributors may prefer a product like the Cboe One Options Feed so that they may easily incorporate aggregated or summarized Cboe Options Exchange data into their own products without themselves incurring the administrative costs of repackaging and aggregating the data it would receive by subscribing to each market data product offered by the individual Cboe Options Exchanges.

Notwithstanding the above, the Exchange believes that vendors may create a product similar to Cboe One Options Feed based on the market data products offered by the individual Cboe Options Exchanges with no greater latency than the Exchange. As discussed above, in order to create the Cboe One Options Feed, the Exchange will receive the individual data feeds from each Cboe Options Exchange and, in turn, aggregate and summarize that data to create the Cboe One Options Feed. This is the same process a vendor would undergo should it create a market data product similar to the Cboe One Options Feed to distribute to its customers. In addition, the servers of most vendors could be located in the same facilities as the Exchange, and, therefore, should receive the individual data feed from each Cboe Options Exchange at the same time the Exchange would for it to create the Cboe One Options Feed.

The Exchange has designed the Cboe One Options data feed so that it would not have a competitive advantage over a vendor with respect to the speed of access to those underlying data feeds. Likewise, the Cboe One Options data feed would not have a speed advantage vis-à-vis vendors located in the same data center as the Exchange with respect to access to their customers, whether those end users are also located in the same data center or not. Therefore, the Exchange believes that it will not incur any potential latency advantage that will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Cost

With regard to cost, the Exchange will file a separate rule filing with the Commission to establish fees for Cboe One Options Feed that would be designed to ensure that vendors could compete with the Exchange by creating a similar product as the Cboe One Options Feed. The pricing the Exchange would charge clients for the Cboe One Options Feed compared to the cost of the individual data feeds from the Cboe Options Exchanges would enable a vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no greater latency than the Exchange. The Distribution and User (Professional and Non-Professional) fees that the Exchange proposes for the Cboe One Options Feed will be equal to the combined fees for subscribing to each individual data feed. Moreover, as discussed, the Exchange intends to propose a separate ''Data Consolidation Fee'', which would reflect the value of the aggregation and consolidation function the Exchange performs in creating the Cboe One Options Feed. Therefore, vendors would be enabled to create a competing product based on the individual data feeds and charge their clients a fee that they believes reflects the value of the aggregation and consolidation function that is competitive with Cboe One Options Feed pricing. For these reasons, the Exchange believes that vendors could readily offer a product similar to the Cboe One Options Feed on a competitive basis at a similar cost.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. 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) of the Act [23] and Rule 19b–4(f)(6) [24] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 CFR 240.19b–4(f)(6).

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2023–009 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2023–009. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2023–009 and should be submitted on or before March 9, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–03251 Filed 2–15–23; 8:45 am]

BILLING CODE 8011–01–P

[25] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 11996]

Review of the Designations as Foreign Terrorist Organizations of Tehrik-e Taliban Pakistan, Hizbul Mujahideen, and Army of Islam (and Other Aliases)

Based on a review of the Administrative Records assembled pursuant to Section 219(a)(4)(C) of the Immigration and Nationality Act, amended (8 U.S.C. 1189(a)(4)(C))(''INA''), and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that the circumstances that were the bases for the designations of the aforementioned organizations as Foreign Terrorist Organizations have not changed in such a manner as to warrant revocation of the designations and that the national security of the United States does not warrant a revocation of the designations.

Therefore, I hereby determine that the designations of the aforementioned organizations as Foreign Terrorist Organizations, pursuant to Section 219 of the INA (8 U.S.C. 1189), shall be maintained.

This determination shall be published in the **Federal Register**.

Dated: February 6, 2023.

Antony J. Blinken,

Secretary of State.

[FR Doc. 2023–03255 Filed 2–15–23; 8:45 am]

BILLING CODE 4710–AD–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

United States-Mexico-Canada Agreement: Rules of Procedure for Binational Panel Proceedings, Extraordinary Challenge Committee Proceedings, and Special Committee Proceedings

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice of rules of procedure for binational panel proceedings, extraordinary challenge committee proceedings, and special committee proceedings under the United States-Mexico-Canada Agreement (USMCA).

SUMMARY: Canada, Mexico, and the United States have finalized the rules of procedure for binational panel proceedings, extraordinary challenge committee proceedings, and special committee proceedings under the USMCA.

DATES: Applicable as of July 1, 2020, the date USMCA entered into force. These rules of procedure apply to all binational panel proceedings, extraordinary challenge committee proceedings, and special committee proceedings commenced under USMCA.

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Associate General Counsel Philip Butler or Assistant General Counsel Thor Petersen at (202) 395–5804. For procedural matters involving cases under review, contact Vidya Desai, United States Secretary, USMCA Secretariat, Room 2061, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5438; email: *usa@can-mex-usa-sec.org.*

SUPPLEMENTARY INFORMATION:

Background

Article 10.12 of the USMCA establishes a mechanism for replacing judicial review of final antidumping and countervailing duty determinations involving imports from Canada, Mexico or the United States with review by independent binational panels. If requested, these panels will review final determinations to determine whether they are consistent with the antidumping or countervailing duty law of the importing country.

Annex 10–B.3 of the USMCA establishes a mechanism for the formation of an extraordinary challenge committee to review the appeal of Article 10.12 panel decisions under certain circumstances described in Article 10.12.13 of the USMCA. Article 10.13 of the USMCA establishes a mechanism for special committees to review certain procedural allegations described in Article 10.13.1 of the USMCA. Section 504 of the United States-Mexico-Canada Agreement Implementation Act, Public Law 116–113, 134 Stat. 11, amended United States law to implement Chapter Ten of the USMCA. See, *e.g.,* 19 U.S.C. 4581 et. seq.; see also 19 CFR 356.1 *et seq.*

The USMCA Rules of Procedure for Article 10.12, Annex 10–B.3, and Article 10.13 are intended to give effect to the provisions of Chapter Ten of the USMCA by setting forth the procedures for commencing, conducting, and completing reviews. These rules are the result of negotiations among Canada, Mexico, and the United States in compliance with the terms of the USMCA, and are derived in large part from the rules established under Chapter 19 of the North American Free Trade Agreement. The English versions of the rules of procedure under Article 10.12 (Binational Panel Reviews) and

Article 10.13 (Special Committees) were adopted under Decision No. 2 of the Free Trade Commission, with French and Spanish versions adopted under Decision No. 4 of the Free Trade Commission. The English, French, and Spanish versions of the rules of procedure under Annex 10–B.3 (Extraordinary Challenge Committees) were adopted under Decision No. 4 of the Free Trade Commission.

The USMCA Article 10.12, Annex 10–B.3, and Article 10.13 rules are reproduced in the annex to this notice. These rules are also available at: *https://can-mex-usa-sec.org/.*

Juan Millan,

Assistant United States Trade Representative for Monitoring and Enforcement, Office of the United States Trade Representative.

ANNEX

RULES OF PROCEDURE FOR ARTICLE 10.12 (BINATIONAL PANEL REVIEWS)

Part I: Initial Provisions and Definitions (Rules 1–10)

Application

1. These Rules are established in accordance with Article 10.12.14 (Review of Final Antidumping and Countervailing Duty Determinations) of the Agreement and apply to all panel reviews under Article 10.12 (Review of Final Antidumping and Countervailing Duty Determinations) of the Agreement. These Rules will be published in Canada in the *Canada Gazette,* in Mexico in the *Diario Oficial de la Federación,* and in the United States in the **Federal Register**.

Short Title

2. These Rules may be cited as the Article 10.12 Binational Panel Rules.

Statement of General Intent

3. These Rules are intended to give effect to the provisions of Chapter 10 (Trade Remedies) of the Agreement with respect to panel reviews conducted pursuant to Article 10.12 (Review of Final Antidumping and Countervailing Duty Determinations) of the Agreement and are designed to result in decisions of panels within 315 days after the commencement of the panel review. The purpose of these Rules is to secure the just, speedy, and inexpensive review of final determinations in accordance with the objectives and provisions of Article 10.12 (Review of Final Antidumping and Countervailing Duty Determinations) of the Agreement. If a procedural question arises that is not covered by these Rules, a panel may adopt the procedure to be followed in the particular case before it by analogy to these Rules or may refer for guidance to rules of procedure of a court that would otherwise have had jurisdiction in the importing country.

4. In the event of any inconsistency between these Rules and the Agreement, the Agreement shall prevail.

Definitions and Interpretation

5. For the purposes of these Rules,

Agreement means the Agreement signed between Canada, Mexico, and the United States on November 30, 2018, as amended;

Code of Conduct means the code of conduct established by the Parties pursuant to Article 10.17 (Code of Conduct) of the Agreement;

complainant means a Party or interested person who files a Complaint pursuant to Rule 44;

counsel means with respect to a panel review of a final determination made in:

(a) Canada, a person entitled to appear as counsel before the Federal Court of Canada;

(b) Mexico, a person entitled to appear as counsel before the *Tribunal Federal de Justicia Administrativa;* and

(c) the United States, a person entitled to appear as counsel before a federal court in the United States;

counsel of record means a counsel referred to in subrule 26(1);

final determination means, in the case of Canada, a definitive decision within the meaning of subsection 77.01(1) of the *Special Import Measures Act,* as amended;

first Request for Panel Review means:

(a) if only one Request for Panel Review is filed for review of a final determination, that Request; and

(b) if more than one Request for Panel Review is filed for review of the same final determination, the Request that is filed first;

government information means, with respect to a panel review of a final determination made in:

(a) Canada, information:

(i) the disclosure of which would be injurious to international relations or national defense or security,

(ii) that constitutes a confidence of the Queen's Privy Council for Canada, or

(iii) contained in government-to-government correspondence that is transmitted in confidence;

(b) Mexico, information the disclosure of which is prohibited under the laws and regulations of Mexico, including:

(i) data, statistics, and documents referring to national security and strategic activities for scientific and technological development, and

(ii) information contained in government-to-government correspondence that is transmitted in confidence, and

(c) the United States, information classified in accordance with Executive Order No. 12065 or its successor;

interested person means a person who, pursuant to the laws of the country in which a final determination was made, would be entitled to appear and be represented in a judicial review of the final determination;

investigating authority means the competent investigating authority, as defined in Article 10.8 (Definitions) of the Agreement, that issued the final determination subject to review and includes, in respect of the issuance, amendment, modification or revocation of a Proprietary Information Access Order, a person authorized by the investigating authority;

involved Secretariat means the Section of the Secretariat located in the country of an involved Party;

legal holiday with respect to a Party's Section of the Secretariat, means every Saturday, Sunday, and any other day designated by that Party as a holiday for the purposes of these Rules and notified by that Party to its Section of the Secretariat and by that Section to the other Sections of the Secretariat and the other Parties;

official publication means, in the case of the Government of:

(a) Canada, the *Canada Gazette;*

(b) Mexico, the *Diario Oficial de la Federación;* and

(c) the United States, the **Federal Register***;*

panel means a binational panel established pursuant to Annex 10–B.1 (Establishment of Binational Panels) of the Agreement for the purpose of reviewing a final determination;

participant means any of the following persons who files a Complaint pursuant to Rule 44 or a Notice of Appearance pursuant to Rule 45:

(a) a Party;

(b) an investigating authority; or

(c) an interested person;

Party means the Government of Canada, the Government of Mexico, or the Government of the United States;

person means:

(a) an individual;

(b) a Party;

(c) an investigating authority;

(d) a government of a province, state, or other political subdivision of the country of a Party;

(e) a department, agency, or body of a Party or of a government referred to in paragraph (d); or

(f) a partnership, corporation, or association;

pleading means a Request for Panel Review, a Complaint, a Notice of Appearance, a Change of Service Address, a Notice of Motion, a Notice of

Change of Counsel of Record, a brief, or any other written submission filed by a participant;

President means the President of the Canada Border Services Agency appointed under subsection 7(1) of the *Canada Border Services Agency Act,* as amended, and includes a person authorized to perform a power, duty, or function of the President under the *Special Import Measures Act,* as amended;

privileged information means with respect to a panel review of a final determination made in:

(a) Canada, information of the investigating authority that is subject to solicitor-client privilege under the laws of Canada, or that constitutes part of the deliberative process with respect to the final determination, and with respect to which the privilege has not been waived;

(b) Mexico,

(i) information of the investigating authority that is subject to attorney-client privilege under the laws of Mexico, or

(ii) internal communications between officials of the Secretariat of Economy (*Secretaría de Economía*) in charge of antidumping and countervailing duty investigations or communications between those officials and other government officials, where those communications constitute part of the deliberative process with respect to the final determination; and

(c) the United States, information of the investigating authority that is subject to the attorney-client, attorney work product or government deliberative process privilege under the laws of the United States with respect to which the privilege has not been waived;

proof of service means with respect to a panel review of a final determination made in:

(a) Canada or Mexico,

(i) an affidavit of service stating by whom the document was served, the date on which it was served, where it was served, and the manner of service, or

(ii) an acknowledgement of service by counsel for a participant stating by whom the document was served, the date on which it was served and the manner of service, and, if the acknowledgement is signed by a person other than the counsel, the name of that person followed by a statement that the person is signing as agent for the counsel; and

(b) the United States, a certificate of service in the form of a statement of the date and manner of service and of the name of the person served, signed by the person who made service;

proprietary information means with respect to a panel review of a final determination made in:

(a) Canada, information referred to in subsection 84(3) of the *Special Import Measures Act,* as amended, or subsection 45(3) of the *Canadian International Trade Tribunal Act,* as amended, with respect to which the person who designated or submitted the information has not withdrawn the person's claim as to the confidentiality of the information;

(b) Mexico, *información confidencial,* as defined under article 80 of the *Ley de Comercio Exterior* and its regulations; and

(c) the United States, business proprietary information under section 777(f) of the *Tariff Act of 1930,* as amended, and any regulations made under that Act;

Proprietary Information Access Application means with respect to a panel review of a final determination made in:

(a) Canada, a disclosure undertaking in the prescribed form, which form,

(i) in respect of a final determination by the President, is available from the President, and

(ii) in respect of a final determination by the Tribunal, is available from the Tribunal;

(b) Mexico, a disclosure undertaking in the prescribed form, which form is available from the Secretariat of Economy (*Secretaría de Economía*); and

(c) the United States, a Protective Order Application,

(i) in respect of a final determination by the International Trade Administration of the United States Department of Commerce, in a form prescribed by, and available from, the International Trade Administration of the United States Department of Commerce, and

(ii) in respect of a final determination by the United States International Trade Commission, in a form prescribed by, and available from, the United States International Trade Commission;

Proprietary Information Access Order means in the case of:

(a) Canada, a Disclosure Order issued by the President or the Tribunal pursuant to a Proprietary Information Access Application;

(b) Mexico, a Disclosure Order issued by the Secretariat of Economy (*Secretaría de Economía*) pursuant to a Proprietary Information Access Application; and

(c) the United States, a Protective Order issued by the International Trade Administration of the United States Department of Commerce or the United States International Trade Commission pursuant to a Proprietary Information Access Application;

responsible Secretariat means the Section of the Secretariat located in the country in which the final determination under review was made;

responsible Secretary means the Secretary of the responsible Secretariat;

Secretariat means the Secretariat established pursuant to Article 30.6 (The Secretariat) of the Agreement;

Secretary means the Secretary of the United States Section of the Secretariat, the Secretary of the Mexican Section of the Secretariat, or the Secretary of the Canadian Section of the Secretariat, and includes any person authorized to act on behalf of that Secretary;

service address means:

(a) with respect to a Party, the address filed with the Secretariat as the service address of the Party, including an electronic mail address submitted with that address;

(b) with respect to a participant other than a Party, the address of the counsel of record for the person, including an electronic mail address submitted with that address, or if the person is not represented by counsel, the address set out by the participant in a Request for Panel Review, Complaint or Notice of Appearance as the address at which the participant may be served, including an electronic mail address submitted with that address; or

(c) if a Change of Service Address has been filed by a Party or participant, the address set out as the new service address in that form, including an electronic mail address submitted with that address;

service list means, with respect to a panel review,

(a) if the final determination was made in Canada, a list comprising the other involved Party and,

(i) in the case of a final determination made by the President, persons named on the list maintained by the President who participated in the proceedings before the President and who were exporters or importers of goods of the country of the other involved Party or complainants referred to in section 34 of the *Special Import Measures Act,* as amended, and

(ii) in the case of a final determination made by the Tribunal, persons named on the list maintained by the Tribunal of parties in the proceedings before the Tribunal who were exporters or importers of goods of the country of the other involved Party, complainants referred to in section 31 of the *Special Import Measures Act,* as amended, or other domestic parties whose interest in

the findings of the Tribunal is with respect to goods of the country of the other involved Party; and

(b) if the final determination was made in Mexico or the United States, the list, maintained by the investigating authority of persons who have been served in the proceedings leading to the final determination; and

Tribunal means the Canadian International Trade Tribunal or its successor and includes any person authorized to act on its behalf.

6. The definitions set forth in Article 10.8 (Definitions) of the Agreement are hereby incorporated into these Rules.

7. When these Rules require that notice be given, it shall be given in writing.

Code of Conduct

8. Candidates being considered for appointment to a panel, panelists, and their assistants and staff, must comply with the Code of Conduct established under Article 10.17 (Code of Conduct) of the Agreement.

9. The responsible Secretariat shall provide a copy of the Code of Conduct to each candidate being considered for appointment to serve as a member of a panel, and to each individual selected to serve as a panelist as well as to their assistants and staff.

10. If a participant believes that a panelist, assistant, or staff to a panelist is in violation of the Code of Conduct, the participant shall immediately notify the responsible Secretary in writing of the alleged violation. The responsible Secretary shall promptly notify the other involved Secretary and the involved Parties of the allegations.

Part II: General (Rules 11–37)

Duration and Scope of Panel Review

11. A panel review commences on the day on which a first Request for Panel Review is filed with the Secretariat and terminates on the day on which a Notice of Completion of Panel Review is effective.

12. A panel review shall be limited to:

(a) the allegations of error of fact or law, including challenges to the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review; and

(b) procedural and substantive defenses raised in the panel review.

Responsibility of the Secretariat

13. The normal business hours of the Secretariat, during which the offices of the Secretariat shall be open to the public, shall be from 9:00 a.m. to 5:00 p.m. on each weekday other than, in the case of the:

(a) United States Section of the Secretariat, legal holidays of that Section;

(b) Canadian Section of the Secretariat, legal holidays of that Section; and

(c) Mexican Section of the Secretariat, legal holidays of that Section.

14. The responsible Secretary shall provide administrative support for each panel review and shall make the arrangements necessary for the oral proceedings and meetings of each panel, including, if required, interpreters to provide simultaneous translation.

15. (1) Each Secretary must maintain a file for each panel review. Subject to subrules (3) and (4), the file must be comprised of either the original or a copy of all documents filed, whether or not filed in accordance with these Rules, in the panel review.

(2) The file number assigned to a first Request for Panel Review must be the Secretariat file number for all documents filed or issued in that panel review. All documents filed must be stamped by the Secretariat to show the date and time of receipt.

(3) If, after notification of the selection of a panel pursuant to Rule 47, a document is filed that is not provided for in these Rules or that is not in accordance with the Rules, the responsible Secretary may refer the unauthorized filing to the chair of the Panel for instructions, provided that the authority has been delegated by the Panel to its chair pursuant to subrule 22(2).

(4) On a referral referred to in subrule (3), the chair may instruct the responsible Secretary to:

(a) retain the document in the file, without prejudice to a motion to strike that document; or

(b) return the document to the person who filed the document, without prejudice to a motion for leave to file the document.

16. (1) The responsible Secretary shall forward to the other involved Secretary all orders and decisions issued by the panel. The responsible Secretary shall also forward to the other involved Secretary a copy of all documents filed in the office of the responsible Secretary that are not clearly marked as privileged or proprietary pursuant to subrules 48(2)(b) and 60(1)(a).

(2) If an involved Secretariat makes a written request to the responsible Secretary requesting any privileged or proprietary documents, the responsible Secretary shall forward those documents to the involved Secretariat forthwith.

17. If under these Rules a responsible Secretary is required to publish a notice or other document in the official publications of the involved Parties, the responsible Secretary and the other involved Secretary shall cause the notice or other document to be published in the official publication of the country in which that Section of the Secretariat is located.

18. (1) Each Secretary and every member of the staff of the Secretariat shall, before taking up duties, file a Proprietary Information Access Application with each of the President, the Tribunal, the Secretariat of Economy (*Secretaría de Economía*), the International Trade Administration of the United States Department of Commerce, and the United States International Trade Commission.

(2) If a Secretary or a member of the staff of the Secretariat files a Proprietary Information Access Application in accordance with subrule (1), the appropriate investigating authority shall issue to the Secretary or to the member a Proprietary Information Access Order.

19. (1) The responsible Secretary shall file either physically with the investigating authority one original and any additional copies required, or electronically with the investigating authority, of every Proprietary Information Access Application and any amendments or modifications thereto, filed by a panelist, assistant to a panelist, court reporter, interpreter, or translator pursuant to Rule 51.

(2) The responsible Secretary shall ensure that every panelist, assistant to a panelist, court reporter, interpreter, and translator, before taking up duties in a panel review, files with the responsible Secretariat a copy of a Proprietary Information Access Order.

20. If a document containing proprietary information or privileged information is filed with the responsible Secretariat, each involved Secretary shall ensure that:

(a) the document is stored, maintained, handled, and distributed in accordance with the terms of any applicable Proprietary Information Access Order;

(b) the inner wrapper or cover sheet of the document is clearly marked to indicate that it contains proprietary information or privileged information; and

(c) access to the document is limited to officials of, and counsel for, the investigating authority whose final determination is under review, and

(i) in the case of proprietary information, the person who submitted the proprietary information to the investigating authority or counsel for that person and any persons who have been granted access to the information

under a Proprietary Information Access Order with respect to the document, and

(ii) in the case of privileged information filed in a panel review of a final determination made in the United States or Canada, persons with respect to whom the panel has ordered disclosure of the privileged information under Rule 56, if the persons have filed with the responsible Secretariat a Proprietary Information Access Order with respect to the document.

21. (1) Each Secretary shall permit access by any person to the information in the file in a panel review that is not proprietary information or privileged information and shall provide copies of that information on request and payment of an appropriate fee.

(2) Each Secretary shall, in accordance with subrule 20(c) and the terms of the applicable Proprietary Information Access Order or order of the panel,

(a) permit access to proprietary information or privileged information in the file of a panel review; and

(b) on payment of an appropriate fee, provide a copy of the information referred to in subrule (2)(a).

(3) No document filed in a panel review shall be removed from the offices of the Secretariat except in the ordinary course of the business of the Secretariat or pursuant to the direction of a panel.

Internal Functioning of Panels

22. (1) A panel may adopt its own internal procedures, not inconsistent with these Rules, for routine administrative matters.

(2) A panel may delegate to its chair,

(a) the authority to accept or reject filings in accordance with subrule 15(4); and

(b) the authority to grant motions consented to by all participants, other than a motion filed pursuant to Rule 25 or Rule 56, a motion for remand of a final determination, or a motion that is inconsistent with an order or decision previously made by the panel.

(3) A decision of the chair referred to in subrule (2) shall be issued as an order of the panel.

(4) Subject to subrule 31(b), meetings of a panel may be conducted by means of a telephone or video conference call.

23. Only panelists may take part in the deliberations of a panel, which shall take place in private and remain secret. Staff of the involved Secretariats and assistants to panelists may be present by permission of the panel.

Computation of Time

24. (1) In computing any time period fixed in these Rules or by an order or decision of a panel, the day from which the time period begins to run shall be excluded and, subject to subrule (2), the last day of the time period shall be included.

(2) If the last day of a time period computed in accordance with subrule (1) falls on a legal holiday of the responsible Secretariat or on any other day on which the offices of that Section are closed by order of the government or because of unforeseen circumstances outside that Party's control, that day and any other legal holidays of the responsible Secretariat immediately following that day shall be excluded from the computation.

25. (1) A panel may extend any time period fixed in these Rules if:

(a) adherence to the time period would result in unfairness or prejudice to a participant or the breach of a general legal principle of the country in which the final determination was made;

(b) the time period is extended only to the extent necessary to avoid the unfairness, prejudice, or breach;

(c) the decision to extend the time period is agreed to by four of the five panelists; and

(d) in fixing the extension, the panel takes into account the intent of the Rules to secure just, speedy and inexpensive reviews of final determinations.

(2) A participant may request an extension of time by filing a Notice of Motion no later than the tenth day prior to the last day of the time period. Any response to the Notice of Motion shall be filed no later than seven days after the Notice of Motion is filed.

(3) A participant who fails to request an extension of time pursuant to subrule (2) may file a Notice of Motion for leave to file out of time, which shall include reasons why additional time is required and why the participant has failed to comply with the provisions of subrule (2).

(4) The panel will normally rule on a motion under subrule (3) before the last day of the time period which is the subject of the motion.

Counsel of Record

26. (1) A counsel who signs a document filed pursuant to these Rules on behalf of a participant shall be the counsel of record for the participant from the date of filing until a change is effected in accordance with subrule (2).

(2) A participant may change its counsel of record by filing with the responsible Secretariat a Notice of Change of Counsel of Record signed by the new counsel, together with proof of service on the former counsel and other participants.

(3) A participant other than an individual must be represented by a counsel of record.

Filing, Service, and Communications

27. (1) Subject to subrule 50(1), Rule 51 and subrules 54(1), 56(3) and 77(2)(a), a document is filed with the Secretariat when the responsible Secretariat receives the document, during its normal business hours and within the time period fixed for filing, physically, with one original and two copies, or when the document is filed by electronic means.

(2) The responsible Secretariat shall also acknowledge receipt physically or electronically, to the party filing the document.

(3) Acknowledgement pursuant to subrule (2) does not constitute a waiver of any time period fixed for filing or an acknowledgement that the document has been filed in accordance with these Rules.

28. The responsible Secretary shall be responsible for the service of the following, which may be satisfied through an electronic notification if the involved Parties have agreed to an electronic filing platform that is in use by the responsible Secretariat:

(a) Notices of Intent to Commence Judicial Review and Complaints on each Party;

(b) Requests for Panel Review on the Parties, the investigating authority, and the persons listed on the service list; and

(c) Notices of Appearance, Proprietary Information Access Orders granted to panelists, assistants to panelists, court reporters, interpreter(s), or translators, and any amendments or modifications thereto or notices of revocation thereof, decisions and orders of a panel, Notices of Final Panel Action, and Notices of Completion of Panel Review on the participants.

29. (1) Subject to subrules (6) and (7), all documents filed by a participant, other than the administrative record, any supplementary remand record and any document required by Rule 28 to be served by the responsible Secretary, shall be served by the participant on the counsel of record of each of the other participants, or if a participant is not represented by counsel, on the participant.

(2) If an electronic filing platform agreed upon by the involved Parties is used for filing, electronic notification by the filing platform shall satisfy the service requirements of this Rule.

(3) A proof of service shall appear on, or be affixed to, all documents referred to in subrule (1).

(4) If a document is served by expedited delivery courier or expedited mail service, the date of service set out in the affidavit of service or certificate of service shall be the day on which the document is consigned to the expedited delivery courier or expedited mail service.

(5) If a document is served electronically, the date of service shall be the day on which the document is sent by the sender.

(6) A document containing proprietary information or privileged information shall be filed and served under seal in accordance with Rules 48 and 60(1)(a), and shall be served only on:

(a) the investigating authority; and

(b) participants who have been granted access to the proprietary information or privileged information under a Proprietary Information Access Order or an order of the panel.

(7) A complainant shall serve a Complaint on the investigating authority and on all persons listed on the service list.

30. Subject to subrule 31(a), a document may be served by:

(a) mailing or delivering a copy of the document to the service address of the participant by expedited delivery courier or expedited mail service;

(b) transmitting a copy of the document to the electronic service address of the participant;

(c) personal service on the participant; or

(d) any means, including the use of an electronic filing platform agreed upon by the involved Parties, that the responsible Secretariat, in consultation with participants, may direct.

31. If proprietary information or privileged information is disclosed in a panel review to a person pursuant to a Proprietary Information Access Order, the person shall not:

(a) file, serve, or otherwise communicate the proprietary information or privileged information by unsecure electronic means except as authorized by the terms of that Order; or

(b) communicate the proprietary information or privileged information by telephone.

32. Service on an investigating authority does not constitute service on a Party and service on a Party does not constitute service on an investigating authority.

Pleadings and Simultaneous Translation of Panel Reviews in Canada

33. Rules 34 to 36 apply with respect to a panel review of a final determination made in Canada.

34. A person or panelist may use either English or French in a document or oral proceeding.

35. (1) Subject to subrule (2), any order or decision including the reasons for it, issued by a panel, shall be made available simultaneously in both English and French if:

(a) in the opinion of the panel, the order or decision is in respect of a question of law of general public interest or importance; or

(b) the proceedings leading to the issuance of the order or decision were conducted in whole or in part in English and French.

(2) If an order or decision,

(a) issued by a panel is not required by subrule (1) to be made available simultaneously in English and French; or

(b) is required by subrule (1)(a) to be made available simultaneously in both English and French but the panel is of the opinion that to make the order or decision available simultaneously in both English and French would occasion a delay prejudicial to the public interest or result in injustice or hardship to any participant; the order or decision, including the reasons therefor, shall be issued in the first instance in either English or French and thereafter at the earliest possible time in the other language, each version to be effective from the time the first version is effective.

(3) Nothing in subrule (1) or (2) shall be construed as prohibiting the oral delivery in either English or French of any order or decision or any reasons therefor.

(4) No order or decision is invalid by reason only that it was not made or issued in both English and French.

36. (1) Any oral proceeding conducted in both English and French shall be translated simultaneously.

(2) If a participant requests simultaneous translation of oral proceedings in a panel review, the request shall be made as early as possible in the panel review and preferably at the time of filing a Complaint or a Notice of Appearance.

(3) If the chair of a panel is of the opinion that there is a public interest in the panel review, the chair may direct the responsible Secretary to arrange for simultaneous translation of any of the oral proceedings in the panel review.

Costs of Participation, Panel Remuneration, and Expenses

37. (1) Each participant shall bear the costs of, and those incidental to, its own participation in a panel review.

(2) The involved Parties shall bear equally the remuneration and expenses of panelists selected under Annex 10–B.1 (Establishment of Binational Panels), and of their assistants, and all administrative expenses of the panel.

(3) Unless the involved Parties agree otherwise, remuneration for panelists shall be paid at the rate for non-governmental panelists used by the WTO on the date the Request for Panel Review is made pursuant to Article 10.12 (Review of Final Antidumping and Countervailing Duty Determinations).

(4) Unless the involved Parties agree otherwise, travel expenses shall be paid at the Daily Subsistence Allowance rate for the location of the hearing established by the United Nations International Civil Service Commission on the date a Request for Panel Review is made pursuant to Article 10.12 (Review of Final Antidumping and Countervailing Duty Determinations).

(5) Each panelist may hire one assistant to provide research, translation, or interpretation support, unless a panelist requires an additional assistant and the involved Parties agree that, due to exceptional circumstances, the panelist should be permitted to hire an additional assistant. Each assistant to a panelist shall be paid at a rate of one-fifth the rate for a panelist.

(6) The expenses authorized for a panel established under Annex 10–B.1 (Establishment of Binational Panels), shall be as follows:

(a) travel expenses: include the transportation costs of the panelists and assistants, their accommodations and meals, as well as related taxes and insurance. Travel arrangements shall be made and travel expenses reimbursed, in accordance with the administrative guidelines applied by the responsible Secretariat; and

(b) administrative expenses: include, among others, telephone calls, courier services, fax, stationery, rent of locations used for hearings and deliberations, interpreter services, court reporters, or any other person or service contracted by the responsible Secretariat to support the proceeding.

(7) Each panelist and assistant shall keep and render a final account of his or her time and expenses to the responsible Secretariat, and the panel shall keep and render a final account to the responsible Secretariat of its administrative expenses. Each panelist and assistant shall submit this account, including relevant supporting documentation, such as invoices, in accordance with the administrative guidelines of the responsible Secretariat. A panelist or assistant may submit requests for payment of remuneration or reimbursement for expenses during the

proceeding on a recommended quarterly basis throughout an ongoing dispute. Panelists and assistants should submit any final requests for payment of remuneration or reimbursement within 60 days of the filing of a Notice of Completion of Panel Review.

(8) All requests for payment shall be subject to review by the responsible Secretariat. The responsible Secretariat shall make payments for the remuneration of panelists and assistants, and for expenses in accordance with the administrative guidelines applied by the responsible Secretariat, using resources provided equally by the involved Parties, and in coordination with the involved Parties. No responsible Secretariat shall be obligated to pay any remuneration or expense in connection with a panel proceeding prior to receiving the contributions of the involved Parties.

(9) The responsible Secretariat shall submit to the involved Parties a final report on payments made in connection with a dispute. On request of an involved Party, the responsible Secretariat shall submit to the involved Parties a report of payments made to date at any time during the panel proceedings.

(10) In case of resignation or removal of a panelist or assistant, or if a Panel issues an Order dismissing or terminating a proceeding, the responsible Secretariat will make payment of the remuneration and expenses owed up until the date of resignation or removal of the panelist or assistant, or the date of the Order of dismissal or termination, using resources provided equally by the involved Parties. A panelist's or assistant's final account of time or expenses must follow the procedures in paragraph 7 and should be submitted within 60 days of the date of their resignation, or removal, or of an Order dismissing or terminating the panel proceeding.

Part III: Commencement of Panel Review (Rules 38–46)

Notice of Intent To Commence Judicial Review

38. (1) If an interested person intends to commence judicial review of a final determination, the interested person shall,

(a) if the final determination was made in Canada, publish a notice to that effect in the *Canada Gazette* and serve a Notice of Intent to Commence Judicial Review on both involved Secretaries and on all persons listed on the service list; and

(b) if the final determination was made in Mexico or the United States, no later than 20 days after the date referred to in subrule (3)(b) or (c), serve a Notice of Intent to Commence Judicial Review on:

(i) both involved Secretaries,

(ii) the investigating authority, and

(iii) all persons listed on the service list.

(2) If the final determination referred to in subrule (1) was made in Canada, the Secretary of the Canadian Section of the Secretariat shall serve a copy of the Notice of Intent to Commence Judicial Review on the investigating authority.

(3) Every Notice of Intent to Commence Judicial Review referred to in subrule (1) must include the following information (model form provided in the Schedule):

(a) the information set out in subrules 59(1)(c) to (f);

(b) the title of the final determination for which judicial review is sought, the investigating authority that issued the final determination, the file number assigned by the investigating authority, and, if the final determination was published in an official publication, the appropriate citation, including the date of publication; and

(c) the date on which the notice of the final determination was received by the other Party if the final determination was not published in an official publication.

Request for Panel Review

39. (1) A Request for Panel Review shall be made in accordance with the requirements of:

(a) section 77.011 or 96.21 of the *Special Import Measures Act,* as amended, and any regulations made thereunder;

(b) section 516A of the *Tariff Act of 1930,* as amended, and any regulations made thereunder;

(c) section 504 of the *United States-Mexico-Canada Implementation Act* and any regulations made thereunder; or

(d) articles 97 and 98 of the *Ley de Comercio Exterior* and its regulations.

(2) A Request for Panel Review must contain the following information (model form provided in the Schedule):

(a) the information set out in subrule 59(1);

(b) the title of the final determination for which panel review is requested, the investigating authority that issued the final determination, the file number assigned by the investigating authority, and, if the final determination was published in an official publication, the appropriate citation;

(c) the date on which the notice of the final determination was received by the other Party if the final determination was not published in an official publication;

(d) the service list, as defined in Rule 5.

40. (1) On receipt of a first Request for Panel Review, the responsible Secretary shall:

(a) forthwith forward a copy of the Request to the other involved Secretary;

(b) forthwith inform the other involved Secretary of the Secretariat file number; and

(c) serve a copy of the first Request for Panel Review on the persons listed on the service list together with a statement setting out the date on which the Request was filed and stating that:

(i) a Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 44 no later than 30 days after the filing of the first Request for Panel Review,

(ii) a Party, an investigating authority, or other interested person who does not file a Complaint but who intends to participate in the panel review must file a Notice of Appearance in accordance with Rule 45 no later than 45 days after the filing of the first Request for Panel Review, and

(iii) the panel review will be limited to the allegations of error of fact or law, including challenges to the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and to the procedural and substantive defenses raised in the panel review.

(2) On the filing of a first Request for Panel Review, the responsible Secretary shall forthwith publish a notice of that Request in the official publications of the involved Parties, stating that a Request for Panel Review has been received and specifying the date on which the Request was filed, the final determination for which panel review is requested and the information set out in subrule (1)(c).

Joint Panel Reviews

41. (1) Subject to Rule 42, if a panel is established to review a final determination made under,

(a) paragraph 41(1)(b) of the *Special Import Measures Act,* as amended, with respect to particular goods of the United States or Mexico and a Request for Panel Review of a final determination made under subsection 43(1) of that Act with respect to those goods is filed; or

(b) section 705(a) or 735(a) of the *Tariff Act of 1930,* as amended, with respect to particular goods of Canada or Mexico and a Request for Panel Review of a final determination made under section 705(b) or 735(b) of that Act with

respect to those goods is filed; no later than 10 days after that Request is filed, a participant in the former panel review, the investigating authority in the latter panel review, or an interested person listed in the service list of the latter panel review may file a motion in the former panel review requesting that both final determinations be reviewed jointly by one panel.

(2) Any participant in the former panel review, the investigating authority in the latter panel review, or an interested person listed in the service list of the latter panel review who certifies an intention to become a participant in the latter panel review may, no later than 10 days after a motion is filed under subrule (1), file an objection to the motion, in which case the motion shall be deemed to be denied and separate panel reviews shall be held.

42. (1) If a panel is established to review a final determination made under paragraph 41(1)(b) of the *Special Import Measures Act,* as amended, that applies with respect to particular goods of the United States or Mexico and a Request for Panel Review of a negative final determination made under subsection 43(1) of that Act with respect to those goods is filed, the final determinations shall be reviewed jointly by one panel.

(2) If a panel is established to review a final determination made under section 705(a) or 735(a) of the *Tariff Act of 1930,* as amended, that applies with respect to particular goods of Canada or Mexico and a Request for Panel Review of a negative final determination made under section 705(b) or 735(b) of that Act with respect to those goods is filed, the final determinations shall be reviewed jointly by one panel.

43. (1) Subject to subrules (2) and (3), if final determinations are reviewed jointly pursuant to Rule 41 or 42, the time periods fixed under these Rules for the review of the final determination made under subsection 43(1) of the *Special Import Measures Act,* as amended, or section 705(b) or 735(b) of the *Tariff Act of 1930,* as amended, shall apply to the joint review, commencing with the date fixed for filing briefs pursuant to Rule 61.

(2) Unless otherwise ordered by a panel as a result of a motion under subrule (3), if final determinations are reviewed jointly pursuant to Rule 42, the panel shall issue its decision with respect to the final determination made under subsection 43(1) of the *Special Import Measures Act,* as amended, or section 705(b) or 735(b) of the *Tariff Act of 1930,* as amended, and if the panel remands the final determination to the investigating authority and the Determination on Remand is affirmative, the panel shall thereafter issue its decision with respect to the final determination made under paragraph 41(1)(b) of the *Special Import Measures Act,* as amended, or section 705(a) or 735(a) of the *Tariff Act of 1930,* as amended.

(3) If the final determinations are reviewed jointly pursuant to Rule 41 or 42, a participant may, unilaterally or with the consent of the other participants, request by motion that time periods, other than the time periods referred to in subrule (1), be fixed for the filing of pleadings, oral proceedings, decisions and other matters.

(4) A Notice of Motion pursuant to subrule (3) must be filed no later than 10 days after the date fixed for filing Notices of Appearance in the review of the final determination made under subsection 43(1) of the *Special Import Measures Act,* as amended, or section 705(b) or 735(b) of the *Tariff Act of 1930,* as amended.

(5) Unless otherwise ordered by a panel, if the panel has not issued a ruling on a motion filed pursuant to subrule (3) no later than 30 days after the filing of the Notice of Motion, the motion shall be deemed denied.

Complaint

44. (1) Subject to subrule (3), any interested person who intends to make an allegation of an error of fact or law, including a challenge to the jurisdiction of the investigating authority, with respect to a final determination, shall file with the responsible Secretariat, no later than 30 days after the filing of a first Request for Panel Review of the final determination, a Complaint, together with proof of service on the investigating authority and on all persons listed on the service list.

(2) Every Complaint referred to in subrule (1) must contain the following information (model form provided in the Schedule):

(a) the information set out in subrule 59(1);

(b) the precise nature of the Complaint, including the applicable standard of review and the allegations of errors of fact or law, including challenges to the jurisdiction of the investigating authority;

(c) a statement describing the interested person's entitlement to file a Complaint under this Rule; and

(d) if the final determination was made in Canada, a statement as to whether the complainant,

(i) intends to use English or French in pleadings and oral proceedings before the panel, and

(ii) requests simultaneous translation of any oral proceedings.

(3) Only an interested person who would otherwise be entitled to commence proceedings for judicial review of the final determination may file a Complaint.

(4) Subject to subrule (5), an amended Complaint must be filed no later than 5 days before the expiration of the time period for filing a Notice of Appearance pursuant to Rule 45.

(5) An amended Complaint may, with leave of the panel, be filed after the time limit set out in subrule (4) but no later than 20 days before the expiration of the time period for filing briefs pursuant to subrule 61(1).

(6) Leave to file an amended Complaint may be requested of the panel by the filing of a Notice of Motion for leave to file an amended Complaint accompanied by the proposed amended Complaint.

(7) If the panel does not grant a motion referred to in subrule (6) within the time period for filing briefs pursuant to subrule 61(1), the motion shall be deemed to be denied.

Notice of Appearance

45. (1) No later than 45 days after the filing of a first Request for Panel Review of a final determination, the investigating authority and any other interested person who proposes to participate in the panel review and who has not filed a Complaint in the panel review must file with the responsible Secretariat a Notice of Appearance containing the following information (model form provided in the Schedule):

(a) the information set out in subrule 59(1);

(b) a statement as to the basis for the person's claim of entitlement to file a Notice of Appearance under this rule;

(c) in the case of a Notice of Appearance filed by the investigating authority, any admissions with respect to the allegations set out in the Complaints;

(d) a statement as to whether appearance is made:

(i) in support of some or all of the allegations set out in a Complaint under subrule 44(2)(b),

(ii) in opposition to some or all of the allegations set out in a Complaint under subrule 44(2)(b), or

(iii) in support of some of the allegations set out in a Complaint under subrule 44(2)(b) and in opposition to some of the allegations set out in a Complaint under subrule 44(2)(b); and

(e) if the final determination was made in Canada, a statement as to

whether the person filing the Notice of Appearance:

(i) intends to use English or French in pleadings and oral proceedings before the panel, and

(ii) requests simultaneous translation of oral proceedings.

(2) Any complainant who intends to appear in opposition to allegations set out in a Complaint under subrule 44(2)(b) shall file a Notice of Appearance containing the statements referred to in subrules (1)(b) and (1)(d)(ii) or (iii).

Record for Review

46. (1) The investigating authority whose final determination is under review shall, no later than 15 days after the expiration of the time period fixed for filing a Notice of Appearance, file with the responsible Secretariat a copy of:

(a) the final determination, including reasons for the final determination;

(b) an Index comprised of a descriptive list of all items contained in the administrative record, together with proof of service of the Index on all participants; and

(c) subject to subrules (3), (4) and (5), the administrative record.

(2) An Index referred to in subrule (1)(b) must, if applicable, identify those items that contain proprietary information, privileged information, or government information by a statement to that effect.

(3) Where a document containing proprietary information is filed, it must be filed under seal in accordance with Rule 48.

(4) No privileged information may be filed with the responsible Secretariat unless the investigating authority waives the privilege and voluntarily files the information, or the information is filed pursuant to an order of a panel.

(5) No government information may be filed with the responsible Secretariat unless the investigating authority, after having reviewed the government information and, if applicable, after having pursued appropriate review procedures, determines that the information may be disclosed.

Part IV: Panels (Rule 47)

Announcement of Panel

47. On the completion of the selection of a panel, the responsible Secretary shall notify the participants and the other involved Secretary of the names of the panelists.

Part V: Proprietary Information and Privileged Information (Rules 48–58)

Filing or Service Under Seal

48. (1) If, under these Rules, a document containing proprietary information or privileged information is required to be filed under seal with the Secretariat or is required to be served under seal, the document shall be filed or served in accordance with this Rule and, if the document is a pleading, in accordance with Rule 60.

(2) A document filed or served under seal shall be:

(a) separate from all other documents;

(b) clearly marked:

(i) with respect to a panel review of a final determination made in Canada,

(A) in the case of a document containing proprietary information, ''Proprietary'', ''Confidential'', ''De nature exclusive'' or ''Confidentiel'', and

(B) in the case of a document containing privileged information, ''Privileged'' or ''Protégé'',

(ii) with respect to a panel review of a final determination made in Mexico,

(A) in the case of a document containing proprietary information, ''Confidencial'', and

(B) in the case of a document containing privileged information, ''Privilegiada'', and

(iii) with respect to a panel review of a final determination made in the United States,

(A) in the case of a document containing proprietary information, ''Proprietary'', and

(B) in the case of a document containing privileged information, ''Privileged''; and

(c) inside:

(i) an opaque inner wrapper and an opaque outer wrapper, if filed or served physically, or

(ii) a cover sheet, if filed or served electronically.

(3) An inner wrapper or cover sheet referred to in subrule (2)(c) shall indicate

(a) that proprietary information or privileged information is enclosed, as the case may be; and

(b) the Secretariat file number of the panel review.

49. Filing or service of proprietary information or privileged information with the Secretariat does not constitute a waiver of the designation of the information as proprietary information or privileged information.

Proprietary Information Access Orders

50. (1) A counsel of record, or a professional retained by, or under the control or direction of, a counsel of record, who wishes disclosure of proprietary information in a panel review must file a Proprietary Information Access Application with respect to the proprietary information as follows:

(a) with the responsible Secretariat, two copies; and

(b) with the investigating authority, one original and any additional copies that the investigating authority requires.

(2) A Proprietary Information Access Application referred to in subrule (1) shall be served

(a) if the Proprietary Information Access Application is filed before the expiration of the time period fixed for filing a Notice of Appearance in the panel review, on the persons listed in the service list; and

(b) in any other case, on all participants other than the investigating authority, in accordance with subrule 29(1).

(3) Electronic means may be used to satisfy the service and filing requirements of subrules (1) and (2).[1]

51. (1) Every panelist, assistant to a panelist, court reporter, interpreter, and translator shall, before taking up duties in a panel review, physically or electronically[2] provide to the responsible Secretary a Proprietary Information Access Application.

(2) A panelist, assistant to a panelist, court reporter, interpreter, or translator who amends or modifies a Proprietary Information Access Application shall provide the responsible Secretariat with a copy of the amendment or modification.

(3) If the investigating authority receives, pursuant to subrule 19(1), a Proprietary Information Access Application or an amendment or modification thereto, the investigating authority shall issue a Proprietary Information Access Order, amendment or modification accordingly.

52. The investigating authority shall, no later than 30 days after a Proprietary Information Access Application is filed in accordance with subrule 50(1), serve on the person who filed the Proprietary Information Access Application,

(a) a Proprietary Information Access Order; or

(b) a notification in writing setting out the reasons why a Proprietary Information Access Order is not issued.

53. (1) If an investigating authority,

(a) refuses to issue a Proprietary Information Access Order to a counsel

[1] For greater certainty, for electronic filings with respect to subrule 50(1)(b), the Mexican investigating authority may verify the authenticity of the application and the documents submitted.

[2] For greater certainty, for electronic filings, the Mexican Secretariat will verify the authenticity of the application and the documents submitted.

of record or to a professional retained by, or under the control or direction of, a counsel of record; or

(b) issues a Proprietary Information Access Order with terms unacceptable to the counsel of record;

the counsel of record may file with the responsible Secretariat a Notice of Motion requesting that the panel review these decisions of the investigating authority.

(2) If, after consideration of any response made by the investigating authority referred to in subrule (1), the panel decides that a Proprietary Information Access Order should be issued or that the terms of a Proprietary Information Access Order should be modified or amended, the panel shall so notify counsel for the investigating authority.

(3) If the final determination was made in the United States and the investigating authority fails to comply with the notification referred to in subrule (2), the panel may issue any order that is just in the circumstances, including an order refusing to permit the investigating authority to make certain arguments in support of its case or striking certain arguments from its pleadings.

54. (1) If a Proprietary Information Access Order is issued to a person in a panel review, the person shall file with the responsible Secretariat, pursuant to the applicable regulations of the investigating authority, a copy of the Proprietary Information Access Order.

(2) If a Proprietary Information Access Order is revoked, amended, or modified by the investigating authority, the investigating authority shall provide to the responsible Secretariat and to all participants a copy of the Notice of Revocation, amendment, or modification.

55. If a Proprietary Information Access Order is issued to a person, the person is entitled,

(a) to access to the document(s) containing the proprietary information; and

(b) if the person is a counsel of record, to a copy of the document(s) containing the proprietary information, on payment of an appropriate fee, and to service of pleadings containing the proprietary information.

Privileged Information

56. (1) A Notice of Motion for disclosure of a document in the administrative record identified as containing privileged information shall set out,

(a) the reasons why disclosure of the document is necessary to the case of the participant filing the Notice of Motion; and

(b) a statement of any point of law or legal authority relied on, together with a concise argument in support of disclosure.

(2) No later than 10 days after a Notice of Motion referred to in subrule (1) is filed, the investigating authority shall, if it intends to respond, file the following in response:

(a) an affidavit of an official of the investigating authority stating that, since the filing of the Notice of Motion, the official has examined the document and has determined that disclosure of the document would constitute disclosure of privileged information; and

(b) a statement of any point of law or legal authority relied on, together with a concise argument in support of non-disclosure.

(3) After having reviewed the Notice of Motion referred to in subrule (1) and any response filed under subrule (2), the panel may order:

(a) that the document shall not be disclosed; or

(b) that the investigating authority file two copies of the document under seal with the responsible Secretariat.

(4) If the panel has issued an order pursuant to subrule (3)(b), the panel shall select two panelists, one of whom shall be a lawyer who is a citizen of the country of one involved Party and the other of whom shall be a lawyer who is a citizen of the country of the other involved Party.

(5) The two panelists selected under subrule (4) shall:

(a) examine the document *in camera;* and

(b) communicate their decision, if any, to the panel.

(6) The decision referred to in subrule (5)(b) shall be issued as an order of the panel.

(7) If the two panelists selected under subrule (4) fail to come to a decision, the panel shall:

(a) examine the document *in camera;* and

(b) issue an order with respect to the disclosure of the document.

(8) If an order referred to in subrule (6) or (7)(b) is to the effect that the document shall not be disclosed, the responsible Secretary shall return all copies of the document to the investigating authority by service under seal.

57. In a panel review of a final determination made in the United States or Canada, if, pursuant to Rule 56, disclosure of a document is granted,

(a) the panel shall limit disclosure to:

(i) persons who must have access in order to permit effective representation in the panel review,

(ii) persons, such as the Secretariat staff, court reporters, interpreters, and translators, who must have access for administrative purposes in order to permit effective functioning of the panel, and

(iii) members of an Extraordinary Challenge Committee and their assistants who may need access pursuant to the Extraordinary Challenge Committee Rules established under Annex 10–B.3(2) (Extraordinary Challenge Procedure) of the Agreement;

(b) the panel shall issue an order identifying by name and by title or position the persons who are entitled to access and shall allow for future access by new counsel of record and by members of an Extraordinary Challenge Committee and, as necessary, their assistants; and

(c) the investigating authority shall issue a Propriety Information Access Order with respect to that document in accordance with the order of the panel.

Violations of Proprietary Information Access Applications or Orders

58. If a person alleges that the terms of a Proprietary Information Access Application or of a Proprietary Information Access Order have been violated, the panel shall refer the allegations to the investigating authority for investigation and, if applicable, the imposition of sanctions in accordance with section 77.034 of the *Special Import Measures Act,* as amended, section 777(f) of the *Tariff Act of 1930,* as amended, or article 93 of the *Ley de Comercio Exterior.*

Part VI: Written Proceedings (Rules 59–68)

Form and Content of Pleadings

59. (1) Every pleading filed in a panel review shall contain the following information:

(a) the title of, and any Secretariat file number assigned for, the panel review;

(b) a brief descriptive title of the pleading;

(c) the name of the Party, investigating authority or interested person filing the document;

(d) the name of counsel of record for the Party, investigating authority, or interested person;

(e) the service address, as defined in Rule 5; and

(f) the telephone number and electronic mail address of the counsel of record referred to in subrule (d) or, if an interested person is not represented by counsel, the telephone number and

electronic mail address of the interested person.

(2) Every pleading filed in a panel review shall be on paper 8 ½ x 11 inches (216 millimeters by 279 millimeters) in size. The text of the pleading shall be printed, typewritten, or reproduced legibly on one side only with a margin of approximately 1 ½ inches (40 millimeters) on the left-hand side with double spacing between each line of text, except for quotations of more than 50 words, which shall be indented and single-spaced. Footnotes, titles, schedules, tables, graphs, and columns of figures shall be presented in a readable form. Briefs and appendices shall be securely bound along the left-hand margin.

(3) If a pleading is filed by electronic means, that pleading shall be formatted in a manner that, if printed, it would meet the requirements of subrule (2).

(4) Every pleading filed on behalf of a participant in a panel review shall be signed by written or electronic signature, by counsel for the participant or, if the participant is not represented by counsel, by the participant.

60. (1) If a participant files a pleading that contains proprietary information, the participant shall file two sets of the pleading in the following manner:

(a) one set containing the proprietary information shall be filed under seal and, with respect to a panel review of a final determination made in:

(i) Canada, shall be labelled ''Proprietary'', ''Confidential'', ''Confidentiel'' or ''De nature exclusive'', with the top of each page that contains proprietary information marked with the word ''Proprietary'', ''Confidential'', ''Confidentiel'' or ''De nature exclusive'' and with the proprietary information enclosed in brackets,

(ii) Mexico, shall be labelled ''Confidencial'', with the top of each page that contains proprietary information marked with the word ''Confidencial'' and with the proprietary information enclosed in brackets, and

(iii) the United States, shall be labelled ''Proprietary'', with the top of each page that contains proprietary information marked with the word ''Proprietary'' and with the proprietary information enclosed in brackets; and

(b) no later than one day following the day on which the set of pleadings referred to in subrule (1)(a) is filed, another set not containing proprietary information shall be filed, and with respect to a panel review of a final determination made in:

(i) Canada, shall be labelled ''Non-Proprietary'', ''Non-Confidential'', ''Non confidentiel'' or ''De nature non exclusive'',

(ii) Mexico, shall be labelled ''No confidencial'', and

(iii) the United States, shall be labelled ''Non-Proprietary'';

with each page from which proprietary information has been deleted marked to indicate the location from which the proprietary information was deleted.

(2) If a participant files a pleading that contains privileged information, the participant shall file two sets of the pleading in the following manner:

(a) one set containing the privileged information shall be filed under seal, and with respect to a panel review of a final determination made in:

(i) Canada, shall be labelled ''Privileged'' or ''Protégé'', with the top of each page that contains privileged information marked with the word ''Privileged'' or ''Protégé'' and with the privileged information enclosed in brackets,

(ii) Mexico, shall be labelled ''Privilegiada'', with the top of each page that contains privileged information marked with the word ''Privilegiada'', and with the privileged information enclosed in brackets, and

(iii) the United States, shall be labelled ''Privileged'', with the top of each page that contains privileged information marked with the word ''Privileged'' and with the privileged information enclosed in brackets; and

(b) no later than one day following the day on which the set of pleadings referred to in subrule (2)(a) is filed, another set not containing privileged information shall be filed and with respect to a panel review of a final determination made in:

(i) Canada, shall be labelled ''Non-Privileged'' or ''Non protégé'',

(ii) Mexico, shall be labelled ''No privilegiada'', and

(iii) the United States, shall be labelled ''Non-Privileged'';

with each page from which privileged information has been deleted marked to indicate the location from which the privileged information was deleted.

Filing of Briefs

61. (1) Subject to subrule 43(1), every participant who has filed a Complaint under Rule 44 or a Notice of Appearance with a statement under subrule 45(1)(d)(i) or (iii) shall file a brief, setting forth grounds and arguments supporting allegations of the Complaint no later than 60 days after the expiration of the time period fixed, under subrule 46(1), for filing the administrative record.

(2) Every participant who has filed a Notice of Appearance with a statement under subrule 45(1)(d)(ii) or (iii) shall file a brief setting forth grounds and arguments opposing allegations of a Complaint no later than 60 days after the expiration of the time period for filing of briefs referred to in subrule (1).

(3) Every participant who has filed a brief pursuant to subrule (1) may file a brief replying to the grounds and arguments set forth in the briefs filed pursuant to subrule (2) no later than 15 days after the expiration of the time period for filing of briefs referred to in subrule (2). Reply briefs shall be limited to rebuttal of matters raised in the briefs filed pursuant to subrule (2).

(4) An appendix containing authorities cited in all briefs filed under any of subrules (1) to (3) must be filed with the responsible Secretariat no later than 10 days after the last day on which a brief under subrule (3) may be filed.

(5) Any number of participants may join in a single brief and any participant may adopt by reference any part of the brief of another participant.

(6) A participant may file a brief without appearing to present oral argument.

(7) If a panel review of a final determination made by an investigating authority of the United States with respect to certain goods involves issues that may relate to the final determination of the other investigating authority for those goods, the latter investigating authority may file an amicus curiae brief in the panel review in accordance with subrule (2).

Failure To File Briefs

62. (1) In respect of a panel review of a final determination made in the United States or Canada, if a participant fails to file a brief within the time period fixed and no motion pursuant to Rule 25 is pending, on a motion of another participant, the panel may order that the participant who fails to file a brief is not entitled to:

(a) present oral argument;

(b) service of any further pleadings, orders, or decisions in the panel review; or

(c) further notice of the proceedings in the panel review.

(2) The panel may, on its own motion or pursuant to the motion of a participant, issue an order to show cause why the panel review should not be dismissed if:

(a) no brief is filed by any complainant or by any participant in support of any of the complainants within the time periods established pursuant to these Rules; and

(b) no motion pursuant to Rule 25 is pending.

(3) If, pursuant to an order under subrule (2), good cause is not shown, the panel shall issue an order dismissing the panel review.

(4) If no brief is filed by an investigating authority, or by an interested person in support of the investigating authority, within the time period fixed in subrule 61(2), a panel may issue a decision referred to in subrule 76(1).

Content of Briefs and Appendices

63. (1) Every brief filed pursuant to subrule 61(1) or (2) shall contain information, in the following order, divided into five parts:

Part I

(a) A table of contents; and

(b) A table of authorities cited:

The table of authorities shall contain references to all treaties, statutes, and regulations cited, any cases primarily relied on in the briefs, set out alphabetically, and all other documents referred to except documents from the administrative record. The table of authorities shall refer to the page(s) of the brief where each authority is cited and mark, with an asterisk in the margin, those authorities primarily relied on.

Part II: A Statement of the Case

(a) in the brief of a complainant or of a participant filing a brief pursuant to subrule 61(1), this Part shall contain a concise statement of the relevant facts;

(b) in the brief of an investigating authority or of a participant filing a brief pursuant to subrule 61(2), this Part shall contain a concise statement of the position of the investigating authority or the participant with respect to the statement of facts set out in the briefs referred to in paragraph (a), including a concise statement of other facts relevant to its case; and

(c) in all briefs, references to evidence in the administrative record shall be made by page and, where practicable, by line.

Part III: A Statement of the Issues

(a) in the brief of a complainant or of a participant filing a brief pursuant to subrule 61(1), this Part shall contain a concise statement of the issues; and

(b) in the brief of an investigating authority or of a participant filing a brief pursuant to subrule 61(2), this Part shall contain a concise statement of the position of the investigating authority or the participant with respect to each issue relevant to its case.

Part IV: Argument

This Part shall consist of the argument setting out concisely the points of law relating to the issues, with applicable citations to authorities and the administrative record.

Part V: Relief

This part shall consist of a concise statement precisely identifying the relief requested.

(2) Paragraphs in Parts I to V of a brief may be numbered consecutively.

(3) A reply brief filed pursuant to Rule 61(3) shall include a table of contents and a table of authorities, indicating those principally relied upon in the argument.

Appendix to the Briefs

64. (1) Authorities referred to in the briefs shall be included in an appendix, which shall be organized as follows: a table of contents, copies of all treaty and statutory references, references to regulations, cases primarily relied on in the briefs, set out alphabetically, and all other documents referred to in the briefs except documents from the administrative record.

(2) The appendix required under subrule 61(4) shall be compiled by a participant who filed a brief under subrule 61(1) and who was so designated by all the participants who filed a brief. Each participant who filed a brief under subrule 61(2) shall provide the designated participant with a copy of each authority on which it primarily relied in its brief that was not primarily relied on in any other brief filed under subrule 61(1). Each participant who filed a brief under subrule 61(3) shall provide the designated participant with a copy of each authority on which it primarily relied in its brief that was not primarily relied on in briefs filed pursuant to subrule 61(1) or (2).

(3) The costs for compiling the appendix shall be borne equally by all participants who file briefs.

Motions

65. (1) A motion shall be made by Notice of Motion in writing (model form provided in the Schedule) unless the circumstances make it unnecessary or impracticable.

(2) Every Notice of Motion, and any affidavit in support thereof, shall be accompanied by a proposed order of the panel (model form provided in the Schedule) and shall be filed with the responsible Secretariat, together with proof of service on all participants.

(3) Every Notice of Motion shall contain the following information:

(a) the title of the panel review, the Secretariat file number for that panel review, and a brief descriptive title indicating the purpose of the motion;

(b) a statement of the precise relief requested;

(c) a statement of the grounds to be argued, including a reference to any rule, point of law or legal authority to be relied on, together with a concise argument in support of the motion; and

(d) if necessary, references to evidence in the administrative record identified by page and, if practicable, by line.

(4) The pendency of any motion in a panel review shall not alter any time period fixed by these Rules or by an order or decision of the panel.

(5) A Notice of Motion to which all participants consent shall be titled a Consent Motion.

66. Subject to subrules 25(2) and 80(5), unless the panel otherwise orders, a participant may file a response to a Notice of Motion no later than 10 days after the Notice of Motion is filed.

67. (1) A panel may dispose of a motion based upon the pleadings filed pertaining to the motion.

(2) The panel may hear oral argument or, subject to subrule 31(b), direct that a motion be heard by means of a telephone or video conference call with the participants.

(3) A panel may deny a motion before responses to the Notice of Motion have been filed.

68. If a panel chooses to hear oral argument or, pursuant to subrule 67(2), directs that a motion be heard by means of a telephone or video conference call with the participants, the responsible Secretary shall, at the direction of the chair, fix a date, time and place for the hearing of the motion and shall notify all participants of the same.

Part VII: Oral Proceedings (Rules 69–73)

Location

69. Oral proceedings in a panel review shall take place at the office of the responsible Secretariat or at another location that the responsible Secretary arranges.

Pre-Hearing Conference

70. (1) A panel may hold a pre-hearing conference, in which case the responsible Secretary shall give notice of the conference to all participants.

(2) A participant may request that the panel hold a pre-hearing conference by filing with the responsible Secretariat a written request setting out the matters that the participant proposes to raise at the conference.

(3) The purpose of a pre-hearing conference shall be to facilitate the expeditious advancement of the panel review by addressing matters such as:

(a) the clarification and simplification of the issues;

(b) the procedure to be followed at the hearing of oral argument; and

(c) outstanding motions.

(4) Subject to subrule 31(b), a pre-hearing conference may be conducted by means of a telephone or video conference call.

(5) Following a pre-hearing conference, the panel shall promptly issue an order setting out its rulings with respect to the matters considered at the conference.

Oral Argument

71. (1) A panel shall commence the hearing of oral argument no later than 30 days after the expiration of the time period fixed under subrule 61(3) for filing reply briefs. At the direction of the panel, the responsible Secretary must notify all participants of the date, time, and place for the oral argument.

(2) Oral argument shall be subject to the time constraints set by the panel and shall, unless the panel otherwise orders, be presented in the following order:

(a) the complainants and any participant who filed a brief in support of the allegations set out in a Complaint or partly in support of the allegations set out in a Complaint and partly in opposition to the allegations set out in a Complaint;

(b) the investigating authority and any participant who filed a brief in opposition to the allegations set out in a Complaint, other than a participant referred to in subrule (2)(a); and

(c) argument in reply, at the discretion of the panel.

(3) If a participant fails to appear at oral argument, the panel may hear argument on behalf of the participants who are present. If no participant appears, the panel may decide the case on the basis of the briefs.

(4) Oral argument on behalf of a participant on a motion or at a hearing shall be conducted by the counsel of record for that participant or, if the participant is a self-represented individual, by the participant.

(5) Oral argument shall be limited to the issues in dispute.

Oral Proceedings in Camera

72. During that part of oral proceedings in which proprietary information or privileged information is presented, a panel shall not permit any person other than the following persons to be present:

(a) the person presenting the proprietary information or privileged information;

(b) a person who has been granted access to the proprietary information or privileged information under a Proprietary Information Access Order or an order of the panel;

(c) in the case of privileged information, a person as to whom the confidentiality of the privileged information has been waived; and

(d) officials of, and counsel for, the investigating authority.

Subsequent Authorities

73. (1) A participant who has filed a brief may bring to the attention of the panel,

(a) at any time before the conclusion of oral argument, an authority that is relevant to the panel review;

(b) at any time after the conclusion of oral argument and before the panel has issued its decision,

(i) an authority that was reported subsequent to the conclusion of oral argument, or

(ii) with the leave of the panel, an authority that is relevant to the panel review and that came to the attention of counsel of record after the conclusion of oral argument;

by filing with the responsible Secretariat a written request, setting out the citation of the decision or judgment, the page reference of the brief of the participant to which the decision or judgment relates, and a concise statement, of no more than one page in length, of the relevance of the decision or judgment.

(2) A request referred to in subrule (1) must be filed as soon as possible after the issuance of the decision or judgment by the court.

(3) If a request referred to in subrule (1) is filed with the responsible Secretariat, another participant may, within no later than five days after the date on which the request was filed, file a concise statement, of no more than one page in length, in response.

Part VIII: Decisions and Completions of Panel Reviews (Rules 74–80)

Orders, Decisions, and Terminations

74. The responsible Secretary shall cause notice of every decision of a panel issued pursuant to subrule 76(1) to be published in the official publications of the involved Parties.

75. (1) If a participant files a Notice of Motion requesting dismissal of a panel review, the panel may issue an order dismissing the panel review.

(2) If a participant files a Notice of Motion requesting termination of a panel review, all the participants consent to the request, and an affidavit to that effect is filed, or if all participants file Notices of Motion requesting termination, the panel review is terminated and, if a panel has been appointed, the panelists are discharged.

(3) A panel review is deemed to be terminated on the day after the expiration of the limitation period established pursuant to subrule 44(1) if no Complaint has been filed in a timely manner. The responsible Secretariat shall issue a Notice of Completion of Panel Review.

76. (1) A panel must issue a written decision with reasons, together with any dissenting or concurring opinions of the panelists, in accordance with Article 10.12.8 (Review of Final Antidumping and Countervailing Duty Determinations) of the Agreement, within 90 days of the oral hearing. The decision will normally be released by noon on the date of issuance.

(2) The Panel must notify the participants and the involved Parties of any delay in the issuance of its decision.

Panel Review of Action on Remand

77. (1) An investigating authority shall give notice of the action taken pursuant to a remand of the panel by filing with the responsible Secretariat a Determination on Remand within the time specified by the panel.

(2) If, on remand, the investigating authority has supplemented the administrative record,

(a) the investigating authority shall file, physically or electronically, with the responsible Secretariat an Index listing each item in the supplementary remand record, together with proof of service of the Index on the counsel of record of each of the participants, or if a participant is not represented by counsel, on the participant, and one copy of each non-privileged item listed in that Index, no later than five days after the date on which the investigating authority filed the Determination on Remand with the panel;

(b) any participant who intends to challenge the Determination on Remand shall file a written submission with respect to the Determination on Remand no later than 20 days after the date on which the investigating authority filed the Index and supplementary remand record; and

(c) any response to the written submissions referred to in subrule (2)(b) shall be filed by the investigating authority, and by any participant supporting the investigating authority, no later than 20 days after the last day on which written submissions in opposition to the Determination on Remand may be filed.

(3) If, on remand, the investigating authority has not supplemented the record,

(a) any participant who intends to challenge the Determination on Remand shall file a written submission no later

than 20 days after the date on which the investigating authority filed the Determination on Remand with the panel; and

(b) any response to the written submissions referred to in subrule (3)(a) shall be filed by the investigating authority, and by any participant filing in support of the investigating authority, no later than 20 days after the last day on which those written submissions may be filed.

(4) In the case of a panel review of a final determination made in Mexico, if a participant who fails to file a brief under Rule 61 files a written submission pursuant to subrule (2)(b) or (3)(a), the submission shall be disregarded by the panel.

(5) If no written submissions are filed under subrule (2)(b) or (3)(a) within the time periods established by these Rules, and if no motion pursuant to Rule 25 is pending, the panel shall, within no later than 10 days after the later of the due date for those written submissions and the date of the denial of a motion pursuant to Rule 25, issue an order affirming the investigating authority's Determination on Remand.

(6) If a Determination on Remand is challenged, the panel shall issue a written decision pursuant to subrule 76(1), either affirming the Determination on Remand or remanding it to the investigating authority, no later than 90 days after the Determination on Remand is filed.

78. In setting the date by which a Determination on Remand shall be due from the investigating authority, the panel shall take into account, among other factors,

(a) the date that any Determination on Remand with respect to the same goods is due from the other investigating authority; and

(b) the effect the Determination on Remand from the other investigating authority might have on the deliberations of the investigating authority with respect to the making of a final Determination on Remand.

Re-Examination of Orders and Decisions

79. A clerical error in an order or decision of a panel, or an error in an order or decision of a panel arising from any accidental oversight, inaccuracy, or omission, may be corrected by the panel at any time during the panel review.

80. (1) A participant may, no later than 10 days after a panel issues its decision, file a Notice of Motion requesting that the panel re-examine its decision for the purpose of correcting an accidental oversight, inaccuracy, or omission, which shall set out:

(a) the oversight, inaccuracy, or omission with respect to which the request is made;

(b) the relief requested; and

(c) if ascertainable, a statement as to whether other participants consent to the motion.

(2) The grounds for a motion referred to in subrule (1) shall be limited to one or both of the following grounds:

(a) that the decision does not accord with the reasons therefor; or

(b) that some matter has been accidentally overlooked, stated inaccurately, or omitted by the panel.

(3) No Notice of Motion referred to in subrule (1) shall set out any argument already made in the panel review.

(4) There shall be no oral argument in support of a motion referred to in subrule (1).

(5) Except as the panel may otherwise order under subrule (6)(b), no participant shall file a response to a Notice of Motion filed pursuant to subrule (1).

(6) No later than seven days after the filing of a Notice of Motion under subrule (1), the panel shall:

(a) issue a decision ruling on the motion; or

(b) issue an order identifying further action to be taken concerning the motion.

(7) A decision or order under subrule (6) may be made with the concurrence of any three panelists.

Part IX: Completion of Panel Review (Rules 81–89)

Completion of Panel Review

81. (1) Subject to subrule (2), when a panel issues:

(a) an order dismissing a panel review under subrule 62(3) or 75(1);

(b) a decision under subrule 76(1) or 77(6) that is the final action in the panel review; or

(c) an order under subrule 77(5);

the panel shall direct the responsible Secretary to issue a Notice of Final Panel Action (model form provided in the Schedule) on the eleventh day thereafter.

(2) If a motion is filed pursuant to subrule 80(1) regarding a decision referred to in subrule (1)(b), the responsible Secretary shall issue the Notice of Final Panel Action on the day on which the panel:

(a) issues a ruling finally disposing of the motion; or

(b) directs the responsible Secretary to issue the Notice of Final Panel Action, the issuance of which shall constitute a denial of the motion.

82. If no Request for an Extraordinary Challenge Committee is filed, the responsible Secretary shall publish a Notice of Completion of Panel Review in the official publications of the involved Parties, effective:

(a) on the day on which a panel is terminated pursuant to subrule 75(2); or

(b) in any other case, on the day after the expiration of the limitation period established pursuant to subrules 41(1) and 41(2)(a) of the Extraordinary Challenge Committee Rules under Annex 10–B.3(2) (Extraordinary Challenge Procedure) of the Agreement.

83. If a Request for an Extraordinary Challenge Committee has been filed, the responsible Secretary shall publish a Notice of Completion of Panel Review in the official publications of the involved Parties, effective on the day after the day referred to in Rule 68 or subrule 69(a) of the Extraordinary Challenge Committee Rules under Annex 10–B.3(2) (Extraordinary Challenge Procedure) of the Agreement.

84. Panelists are discharged from their duties on the day on which a Notice of Completion of Panel Review is effective, or on the day on which an Extraordinary Challenge Committee vacates a panel review pursuant to subrule 69(b) of the Extraordinary Challenge Committee Rules under Annex 10–B.3(2) (Extraordinary Challenge Procedure) of the Agreement.

Stays and Suspensions

85. If a panelist becomes unable to fulfill panel duties, is disqualified or dies, panel proceedings and the running of time periods shall be suspended, pending the appointment of a substitute panelist in accordance with the procedures set out in Annex 10–B.1 (Establishment of Binational Panels) of the Agreement.

86. If a panelist is disqualified, dies or otherwise becomes unable to fulfill panel duties after the oral argument, the chair may order that the matter be reheard, on such terms as are appropriate, after selection of a substitute panelist.

87. (1) A Party may make a request, pursuant to Article 10.13.11(a)(ii) (Safeguarding the Panel Review System) of the Agreement, that an ongoing panel review be stayed by filing the request with the responsible Secretariat.

(2) A Party who files a request under subrule (1) shall forthwith give written notice of the request to the other involved Party and to the other involved Secretariat.

(3) On receipt of a request under subrule (1), the responsible Secretary shall:

(a) immediately give written notice of the stay of the panel review to all participants in the panel review; and

(b) publish a notice of the stay of the panel review in the official publications of the involved Parties.

88. On receipt of a report containing an affirmative finding with respect to a ground specified in Article 10.13.1 (Safeguarding the Panel Review System) of the Agreement, the responsible Secretary for panel reviews referred to in Article 10.13.11(a)(i) (Safeguarding the Panel Review System) of the Agreement shall:

(a) immediately give notice in writing to all participants in those reviews; and

(b) publish a notice of the affirmative finding in the official publications of the involved Parties.

89. (1) A Party who intends to suspend the operation of Article 10.12 (Review of Final Antidumping and Countervailing Duty Determinations) of the Agreement pursuant to Article 10.13.8 (Safeguarding the Panel Review System) or Article 10.13.9 (Safeguarding the Panel Review System) of the Agreement shall endeavor to give written notice of that intention to the other involved Party and to the involved Secretaries at least five days prior to the suspension.

(2) On receipt of a notice under subrule (1), the involved Secretaries shall publish a notice of the suspension in the official publications of the involved Parties.

BILLING CODE 3390–F3–P

Schedule (Procedural Forms)

ARTICLE 10.12 BINATIONAL PANEL REVIEW
pursuant to the AGREEMENT[1]

IN THE MATTER OF:
(Title of Final Determination)

NOTICE OF INTENT TO COMMENCE JUDICIAL REVIEW

Pursuant to Article 10.12 (Review of Final Antidumping and Countervailing Duty Determinations) of the Agreement, notice is hereby served that

_____
(interested person filing notice)

intends to commence judicial review in the

_____
(name of the court)

of the final determination referenced below. The following information is provided pursuant to Rule 38 of the Rules of Procedure for Article 10.12 (Review of Final Antidumping and Countervailing Duty Determinations) of the Agreement (Binational Panel Rules):

1. _____
   (The name of the interested person filing this notice)

2. _____
   (The name of counsel for the interested person, if any)

[1] "Agreement" means the CUSMA, T-MEC, USMCA.

3. _____
_____
_____
(The service address, as defined in Rule 5 of the Article 10.12 Binational Panel Rules, including an electronic mail address, if any)

4. _____
(The telephone number and electronic mail address of counsel for the interested person or the telephone number and electronic mail address of the interested person, if not represented by counsel)

5. _____
(The title of the final determination for which Notice of Intent to Commence Judicial Review is served)

6. _____
(The investigating authority that issued the final determination)

7. _____
(The file number of the investigating authority)

8. a) _____
(The citation and date of publication of the final determination in the *Federal Register*, *Canada Gazette,* or *Diario Oficial de la Federación*); or

b) _____
(If the final determination was not published, the date notice of the final determination was received by the other Party)

_____
Date

_____
Signature of Counsel
(or interested person, if not represented by counsel)

ARTICLE 10.12 BINATIONAL PANEL REVIEW
pursuant to the AGREEMENT[1]

IN THE MATTER OF:
(Title of Panel Review)

Secretariat File No.

_____

REQUEST FOR PANEL REVIEW

Pursuant to Article 10.12 (Review of Final Antidumping and Countervailing Duty Determinations) of the Agreement, panel review is hereby requested of the final determination referenced below. The following information is provided pursuant to Rule 39 of the Rules of Procedure for Article 10.12 (Review of Final Antidumping and Countervailing Duty Determinations) of the Agreement (Binational Panel Rules):

1. _____
(The name of the Party or the interested person filing this request for panel review)

2. _____
(The name of counsel for the Party or the interested person, if any)

3. _____
_____
_____
(The service address, as defined in Rule 5 of the Binational Panel Rules, including an electronic mail address, if any)

4. _____
(The telephone number and electronic mail address of counsel for the Party or the interested person or the telephone number and electronic mail address of the interested person, if not represented by counsel)

5. _____
(The title of the final determination for which panel review is requested)

6. _____
(The investigating authority that issued the final determination)

[1] "Agreement" means the CUSMA, T-MEC, USMCA.

7. _____
(The file number of the investigating authority)

8. a) _____
(The citation and date of publication of the final determination in the *Federal Register*, *Canada Gazette, or Diario Oficial de la Federación*); or

b) _____
(If the final determination was not published, the date notice of the final determination was received by the other Party)

9. The Service List, as defined in Rule 5 of the Binational Panel Rules, is attached.

_____
Date

_____
Signature of Counsel
(or interested person, if
not represented by counsel)

ARTICLE 10.12 BINATIONAL PANEL REVIEW
pursuant to the AGREEMENT[1]

IN THE MATTER OF:
(Title of Panel Review)

Secretariat File No.

_____

COMPLAINT

1. _____
(The name of the interested person filing the complaint)

2. _____
(The name of counsel for the interested person, if any)

3. _____
_____
_____
(The service address, as defined in Rule 5 of the Rules of Procedure for Article 10.12 (Review of Final Antidumping and Countervailing Duty Determinations) of the Agreement (Binational Panel Rules), including an electronic mail address, if any)

4. _____
(The telephone number and electronic mail address of counsel for the interested person or telephone number and electronic mail address of the interested person, if not represented by counsel)

5. _____
Statement of the Precise Nature of the Complaint
(See Rule 44 of the Binational Panel Rules)

   A. The Applicable Standard of Review
   B. Allegations of Errors of Fact or Law
   C. Challenges to the Jurisdiction of the Investigating Authority

6. Statement of the Interested Person's Entitlement to File a Complaint under Rule 44 of the Binational Panel Rules

[1] "Agreement" means the CUSMA, T-MEC, USMCA.

7. For Panel Reviews of final determinations made in Canada:

a) Complainant intends to use the specified language in pleadings and oral proceedings (Specify one)

_____English _____French

b) Complainant requests simultaneous translation of oral proceedings (Specify one)

_____English _____French

_____ _____

Date Signature of Counsel (or interested person, if not represented by counsel)

ARTICLE 10.12 BINATIONAL PANEL REVIEW
pursuant to the AGREEMENT[1]

IN THE MATTER OF:
(Title of Panel Review)

Secretariat File No.

_____

NOTICE OF APPEARANCE

1. _____
(The name of the investigating authority or the interested person filing this Notice of Appearance)

2. _____
(The name of counsel for the investigating authority or the interested person, if any)

3. _____
_____
_____
(The service address, as defined in Rule 5 of the Rules of Procedure for Article 10.12 (Review of Final Antidumping and Countervailing Duty Determinations) of the Agreement (Binational Panel Rules), including an electronic mail address, if any)

4. _____
(The telephone number and electronic mail address of counsel for the investigating authority or the interested person or the telephone number and electronic mail address of the interested person, if not represented by counsel)

5. This Notice of Appearance is made:

_____ in support of some or all of the allegations set out in a Complaint;

_____ in opposition to some or all of the allegations set out in a Complaint; or

[1] "Agreement" means the CUSMA, T-MEC, USMCA.

_____ in support of some of the allegations set out in a Complaint and in opposition to some of the allegations set out in a Complaint.

6. Statement as to the basis for the interested person's entitlement to file a Notice of Appearance under Rule 45 of the Binational Panel Rules

7. For Notices of Appearance filed by the Investigating Authority

Statement by the Investigating Authority regarding any admissions with respect to the allegations set out in the Complaints

8. For Panel Reviews of final determinations made in Canada:

a) I intend to use the specified language in pleadings and oral proceedings (Specify one)

_____ English _____French

b) I request simultaneous translation of oral proceedings (Specify one)

_____ Yes _____ No

_____
Date

_____
Signature of Counsel
(or interested person, if
not represented by counsel)

ARTICLE 10.12 BINATIONAL PANEL REVIEW
pursuant to the AGREEMENT[1]

IN THE MATTER OF:
(Title of Panel Review)

Secretariat File No.

_____

NOTICE OF MOTION

_____
(descriptive title indicating the purpose of the motion)

1. _____
(The name of the investigating authority or the interested person filing this Notice of Motion)

2. _____
(The name of counsel for the investigating authority or the interested person, if any)

3. _____
_____
_____
(The service address, as defined in Rule 5 of the Rules of Procedure for Article 10.12 (Review of Final Antidumping and Countervailing Duty Determinations) of the Agreement (Binational Panel Rules), including an electronic mail address, if any)

4. _____
(The telephone number and electronic mail address of the counsel for the investigating authority or the interested person or the telephone number and electronic mail address of the interested person, if not represented by counsel)
5. Statement of the precise relief requested

6. Statement of the grounds to be argued, including references to any rule, point of law, or legal authority to be relied on

[1] "Agreement" means the CUSMA, T-MEC, USMCA.

7. Arguments in support of the motion, including references to evidence in the administrative record by page and, where practicable, by line

8. Draft Order attached (see Rule 65 and Form (6) of the Binational Panel Rules)

_____ _____

Date

Signature of Counsel
(or interested person, if
not represented by counsel)

ARTICLE 10.12 BINATIONAL PANEL REVIEW
pursuant to the AGREEMENT[1]

IN THE MATTER OF:
(Title of Panel Review)

Secretariat File No.

_____

ORDER

Upon consideration of the motion for _____,
(relief requested)

filed on behalf of _____, and upon all other
(participant filing motion)

papers and proceedings herein, it is hereby

ORDERED that the motion is _____

Date		panelist name
		panelist name
		panelist name
		panelist name
		panelist name

[1] "Agreement" means the CUSMA, T-MEC, USMCA.

ARTICLE 10.12 BINATIONAL PANEL REVIEW
pursuant to the AGREEMENT[1]

IN THE MATTER OF:
(Title of Panel Review)

Secretariat File No.

_____

NOTICE OF FINAL PANEL ACTION

Under the direction of the Panel,

pursuant to Rule 81 of the Rules of Procedure for Article 10.12 (Review of Final Antidumping and Countervailing Duty Determinations) of the Agreement (Binational Panel Rules),

NOTICE is hereby given that the Panel has taken its final action in the above-referenced matter.

This Notice is effective on _____

_____
Issue Date

_____
Signature of the
Responsible Secretary

[1] "Agreement" means the CUSMA, T-MEC, USMCA.

BILLING CODE 3390–F3–C

RULES OF PROCEDURE FOR ANNEX 10–B.3

(EXTRAORDINARY CHALLENGE COMMITTEES)

Part I: Initial Provisions and Definitions (Rules 1–10)

Application

1. These Rules are established in accordance with Annex 10–B.3.2 (Extraordinary Challenge Procedure) of the Agreement and apply to all extraordinary challenge committee proceedings conducted pursuant to Article 10.12.13 (Review of Final Antidumping and Countervailing Duty Determinations) of the Agreement. These Rules will be published in Canada in the *Canada Gazette,* in Mexico in the *Diario Oficial de la Federación,* and in the United States in the **Federal Register**.

Short Title

2. These Rules may be cited as the Extraordinary Challenge Committee Rules.

Statement of General Intent

3. These Rules give effect to the provisions of Chapter 10 (Trade Remedies) of the Agreement with respect to extraordinary challenge procedures conducted pursuant to Article 10.12.13 (Review of Final Antidumping and Countervailing Duty Determinations) and Annex 10–B.3 (Extraordinary Challenge Procedure) of the Agreement and are designed to result in decisions within 90 days after the establishment of the committee. If a procedural question arises that is not covered by these Rules, a committee may adopt an appropriate procedure that is not inconsistent with the Agreement.

4. In the event of any inconsistency between the provisions of these Rules and the Agreement, the Agreement shall prevail.

Definitions and Interpretation

5. For the purposes of these Rules:

Agreement means the Agreement signed between Canada, Mexico, and the United States on November 30, 2018, as amended;

Code of Conduct means the code of conduct established by the Parties pursuant to Article 10.17 (Code of Conduct) of the Agreement;

committee means an extraordinary challenge committee established pursuant to Annex 10–B.3 (Extraordinary Challenge Procedure) of the Agreement;

counsel means, with respect to an extraordinary challenge of a panel review of a final determination made in:

(a) Canada, a person entitled to appear as counsel before the Federal Court of Canada;

(b) Mexico, a person entitled to appear as counsel before the Tribunal Federal de Justicia Administrativa; and

(c) the United States, a person entitled to appear as counsel before a federal court in the United States;

counsel of record means a counsel referred to in subrule 18(1);

final determination means, in the case of Canada, a definitive decision within the meaning of subsection 77.01(1) of the *Special Import Measures Act,* as amended;

investigating authority means the competent investigating authority, as defined in Article 10.8 (Definitions) of the Agreement, that issued the final determination that was the subject of the panel review to which an extraordinary challenge procedure relates and includes, in respect of the issuance, amendment, modification or revocation of a Proprietary Information Access Order, a person authorized by the investigating authority;

involved Secretariat means the Section of the Secretariat located in the country of an involved Party;

legal holiday for a Party's Section of the Secretariat, means every Saturday and Sunday and any other day designated by that Party as a holiday for the purposes of these Rules and notified by that Party to its Section of the Secretariat and by that Section to the other Sections of the Secretariat and the other Parties;

official publication means in the case of the Government of:

(a) Canada, the *Canada Gazette;*

(b) Mexico, the *Diario Oficial de la Federación;* and

(c) the United States, the **Federal Register***;*

panel means a binational panel established pursuant to Annex 10–B.1 (Establishment of Binational Panels) of the Agreement, the decision of which is the subject of an extraordinary challenge;

participant means a Party who files a Request for an Extraordinary Challenge Committee or any of the following persons who files a Notice of Appearance pursuant to these Rules:

(a) the other involved Party;

(b) a person who participated in the panel review that is the subject of the extraordinary challenge; and

(c) a panelist against whom an allegation referred to in Article 10.12.13(a)(i) (Review of Final Antidumping and Countervailing Duty Determinations) of the Agreement is made;

Party means the Government of Canada, the Government of Mexico, or the Government of the United States;

person means:

(a) an individual;

(b) a Party;

(c) an investigating authority;

(d) a government of a province, state or other political subdivision of the country of a Party;

(e) a department, agency, or body of a Party or of a government referred to in paragraph (d); or

(f) a partnership, corporation, or association;

personal information means, with respect to an extraordinary challenge proceeding in which an allegation is made that a member of the panel was guilty of gross misconduct, bias, or a serious conflict of interest, or otherwise materially violated the rules of conduct, information submitted pursuant to subrule 43(2) and Rule 45;

pleading means a Request for an Extraordinary Challenge Committee, a Notice of Appearance, a Change of Service Address, a Notice of Change of Counsel of Record, a Notice of Motion, a brief, or any other written submission filed by a participant;

President means the President of the Canada Border Services Agency appointed under subsection 7(1) of the *Canada Border Services Agency Act,* as amended, and includes a person authorized to perform a power, duty, or function of the President under the *Special Import Measures Act,* as amended;

privileged information means with respect to an extraordinary challenge of a panel review of a final determination made in:

(a) Canada, information of the investigating authority that is subject to solicitor-client privilege under the laws of Canada, or that constitutes part of the deliberative process with respect to the final determination, with respect to which the privilege has not been waived;

(b) Mexico,

(i) information of the investigating authority that is subject to attorney-client privilege under the laws of Mexico, or

(ii) internal communications between officials of the Secretariat of Economy (*Secretaría de Economía*) in charge of antidumping and countervailing duty investigations or communications between those officials and other government officials, where those communications constitute part of the deliberative process with respect to the final determination; and

(c) the United States, information of the investigating authority that is

subject to the attorney-client, attorney work product or government deliberative process privilege under the laws of the United States and with respect to which the privilege has not been waived;

proof of service means with respect to an extraordinary challenge of a panel review of a final determination made in:

(a) Canada or Mexico,

(i) an affidavit of service stating the name of the person who served the document, the date on which it was served, where it was served, and the manner of service, or

(ii) a written acknowledgement of service by counsel for a participant stating the name of the person who served the document, the date on which it was served, and the manner of service and, if the acknowledgement is signed by a person other than the counsel, the name of that person followed by a statement that the person is signing as agent for the counsel; and

(b) the United States, a certificate of service in the form of a statement of the date and manner of service and of the name of the person served, signed by the person who made service;

proprietary information means with respect to an extraordinary challenge of a panel review of a final determination made in:

(a) Canada, information referred to in subsection 84(3) of the *Special Import Measures Act,* as amended, or subsection 45(3) of the *Canadian International Trade Tribunal Act,* as amended, and with respect to which the person who designated or submitted the information has not withdrawn the person's claim as to the confidentiality of the information;

(b) Mexico, *información confidencial,* as defined under article 80 of the *Ley de Comercio Exterior* and its regulations; and

(c) the United States, business proprietary information under section 777(f) of the *Tariff Act of 1930,* as amended, and any regulations made under that Act;

Proprietary Information Access Application means with respect to an extraordinary challenge of a panel review of a final determination made in:

(a) Canada, a disclosure undertaking in the prescribed form, which form,

(i) in respect of a final determination by the President, is available from the President, and

(ii) in respect of a final determination by the Tribunal, is available from the Tribunal;

(b) Mexico, a disclosure undertaking in the prescribed form, which form is available the from Secretariat of Economy (*Secretaría de Economía*); and

(c) the United States, a Protective Order Application,

(i) in respect of a final determination by the International Trade Administration of the United States Department of Commerce, in a form prescribed by, and available from, the International Trade Administration of the United States Department of Commerce, and

(ii) in respect of a final determination by the United States International Trade Commission, in a form prescribed by, and available from, the United States International Trade Commission;

Proprietary Information Access Order means in the case of:

(a) Canada, a Disclosure Order issued by the President or the Tribunal pursuant to a Proprietary Information Access Application;

(b) Mexico, a Disclosure Order issued by the Secretariat of Economy (*Secretaría de Economía*) pursuant to a Proprietary Information Access Application; and

(c) the United States, a Protective Order issued by the International Trade Administration of the United States Department of Commerce or the United States International Trade Commission pursuant to a Proprietary Information Access Application;

responsible Secretariat means, with respect to an extraordinary challenge of a panel review, the Section of the Secretariat located in the country in which the final determination reviewed by the panel was made;

responsible Secretary means the Secretary of the responsible Secretariat;

Secretariat means the Secretariat established pursuant to Article 30.6 (The Secretariat) of the Agreement;

Secretary means the Secretary of the United States Section of the Secretariat, the Secretary of the Mexican Section of the Secretariat, or the Secretary of the Canadian Section of the Secretariat and includes any person authorized to act on behalf of that Secretary;

service address means:

(a) with respect to a Party or panelist, the address filed with the Secretariat as the service address of the Party or panelist, including an electronic mail address submitted with that address;

(b) with respect to a participant other than a Party or panelist, the service address of the participant filed with the Secretariat in the panel review; or

(c) if a Change of Service Address has been filed by a Party, panelist, or participant, the address set out as the new service address of the participant in that form, including an electronic mail address submitted with that address; and

Tribunal means the Canadian International Trade Tribunal or its successor and includes any person authorized to act on its behalf.

6. The definitions set forth in Article 10.8 (Definitions) of the Agreement are hereby incorporated into these Rules.

7. When these Rules require that notice be given, it shall be given in writing.

Code of Conduct

8. Candidates being considered for appointment to a committee, committee members and their assistants, and staff, must comply with the Code of Conduct established under Article 10.17 (Code of Conduct) of the Agreement.

9. The responsible Secretariat shall provide a copy of the Code of Conduct to each candidate being considered for appointment to serve as a committee member, and to each individual selected to serve as a committee member as well as to their assistants and staff.

10. If a participant believes that a committee member, assistant, or staff to a committee member is in violation of the Code of Conduct, the participant shall forthwith notify the responsible Secretary in writing of the alleged violation. The responsible Secretary shall promptly notify the other involved Secretary and the involved Parties of the allegations.

Part II: General (Rules 11–27)

Duration and Scope of Proceedings

11. An extraordinary challenge proceeding commences on the day on which a Request for an Extraordinary Challenge Committee is filed with the Secretariat and terminates on the day on which a Notice of Completion of Extraordinary Challenge is effective.

12. The general legal principles of the country in which a final determination was made apply in an extraordinary challenge of the decision of a panel with respect to the final determination.

13. A committee may review any part of the record of the panel review relevant to the extraordinary challenge.

Internal Functioning of Committees

14. (1) For routine administrative matters governing its own internal functioning, a committee may adopt procedures not inconsistent with these Rules or the Agreement.

(2) Subject to subrule 38(b), meetings of a committee may be conducted by means of a telephone or video conference call.

15. Only committee members may take part in the deliberations of a committee, which shall take place in private and remain secret. Staff of the

involved Secretariats and assistants to committee members may be present by permission of the committee.

Computation of Time

16. (1) In computing any time period fixed in these Rules or by an order or decision of a committee, the day from which the time period begins to run shall be excluded and, subject to subrules (2) and (3), the last day of the time period shall be included.

(2) If the last day of a time period computed in accordance with subrule (1) falls on a legal holiday of the responsible Secretariat or on any other day on which the offices of that Section are closed by order of the government or because of unforeseen circumstances outside that Party's control, that day and any other legal holidays of the responsible Secretariat immediately following that day shall be excluded from the computation.

(3) In computing any time period of five days or less fixed in these Rules or by an order or decision of a committee, any legal holiday or any other day on which the offices of that Section are closed by order of the government or because of unforeseen circumstances outside that Party's control, that falls within the time period shall be excluded from the computation.

17. A committee may extend any time period fixed in these Rules if:

(a) the extension is made in the interests of fairness and justice; and

(b) in fixing the extension, the committee takes into account the intent of the Rules to secure just, speedy and inexpensive final resolutions of challenges to decisions of panels.

Counsel of Record

18. (1) Subject to subrule (2), the counsel of record for a participant in an extraordinary challenge proceeding shall be:

(a) the counsel for the participant in the panel review; or

(b) in the case of a Party who was not a participant in the panel review or of a panelist, the counsel who signs any document filed on behalf of the Party or panelist in the extraordinary challenge proceeding.

(2) A participant may change its counsel of record by filing with the responsible Secretariat a Notice of Change of Counsel of Record signed by the new counsel, together with proof of service on the former counsel and other participants.

Costs of Participation, Committee Remuneration, and Expenses

19. (1) Each participant shall bear the costs of, and those incidental to, its own participation in an extraordinary challenge proceeding.

(2) The involved Parties shall bear equally the remuneration and expenses of committee members selected under Annex 10–B.3 (Extraordinary Challenge Procedure), and of their assistants, and all administrative expenses of the committee.

(3) Unless the involved Parties agree otherwise, remuneration for committee members shall be paid at the rate for non-governmental panelists used by the WTO on the date the Request for Extraordinary Challenge Committee is made pursuant to Article 10.12.13 (Review of Final Antidumping and Countervailing Duty Determinations).

(4) Unless the involved Parties agree otherwise, travel expenses shall be paid at the Daily Subsistence Allowance rate for the location of the hearing established by the United Nations International Civil Service Commission on the date a Request for Extraordinary Challenge Committee is made pursuant to Article 10.12.13 (Review of Final Antidumping and Countervailing Duty Determinations).

(5) Each committee member may hire one assistant to provide research, translation, or interpretation support, unless a committee member requires an additional assistant and the involved Parties agree that, due to exceptional circumstances, a committee member should be permitted to hire an additional assistant. Each assistant to a committee member shall be paid at a rate of one-fifth the rate for a committee member.

(6) The expenses authorized for a committee established under Annex 10–B.3 (Extraordinary Challenge Procedure), shall be as follows:

(c) travel expenses: include the transportation costs of the committee members and assistants, their accommodations and meals, as well as related taxes and insurance. Travel arrangements shall be made and travel expenses reimbursed, in accordance with the administrative guidelines applied by the responsible Secretariat; and

(d) administrative expenses: include, among others, telephone calls, courier services, fax, stationery, rent of locations used for hearings and deliberations, interpreter services, court reporters, or any other person or service contracted by the responsible Secretariat to support the proceeding.

(7) Each committee member and assistant shall keep and render a final account of his or her time and expenses to the responsible Secretariat, and the committee shall keep and render a final account to the responsible Secretariat of its administrative expenses. Each committee member and assistant shall submit this account, including relevant supporting documentation, such as invoices, in accordance with the administrative guidelines of the responsible Secretariat. A committee member or assistant may submit requests for payment of remuneration or reimbursement for expenses during the proceeding on a recommended quarterly basis throughout an ongoing dispute. Committee members and assistants should submit any final requests for payment of remuneration or reimbursement within 60 days of the filing of a Notice of Completion of Extraordinary Challenge.

(8) All requests for payment shall be subject to review by the responsible Secretariat. The responsible Secretariat shall make payments for the remuneration of committee members and assistants, and for expenses in accordance with the administrative guidelines applied by the responsible Secretariat, using resources provided equally by the involved Parties, and in coordination with the involved Parties. No responsible Secretariat shall be obligated to pay any remuneration or expense in connection with a committee prior to receiving the contributions of the involved Parties.

(9) The responsible Secretariat shall submit to the involved Parties a final report on payments made in connection with a dispute. On request of an involved Party, the responsible Secretariat shall submit to the involved Parties a report of payments made to date at any time during the committee proceedings.

(10) In case of resignation or removal of a committee member or assistant, or if a committee issues an Order terminating a proceeding, the responsible Secretariat will make payment of the remuneration and expenses owed up until the date of resignation or removal of the committee member or assistant, or the date of the Order terminating the proceeding, using resources provided equally by the involved Parties. A committee member's or assistant's final account of time or expenses must follow the procedures in paragraph 7 and should be submitted within 60 days of the date of their resignation, or removal, or of an Order terminating the committee proceeding.

Proprietary Information and Privileged Information

20. (1) If proprietary information has been filed in a panel review that is the subject of an extraordinary challenge proceeding, every committee member, assistant to a committee member, court

reporter, interpreter, and translator shall provide the responsible Secretariat, physically or electronically,[1] with a Proprietary Information Access Application.

(2) Upon receipt of a Proprietary Information Access Application, the responsible Secretary shall file the Proprietary Information Access Application either physically, one original and any additional copies required, or electronically, with the appropriate investigating authority.

(3) The investigating authority shall issue the Proprietary Information Access Order and provide the responsible Secretariat with the original and any additional copies of those documents required by the responsible Secretariat.

(4) Upon receipt of a Proprietary Information Access Order, the responsible Secretary shall transmit the original Proprietary Information Access Order to the appropriate committee member, assistant to a committee member, court reporter, interpreter or translator.

21. (1) A committee member, assistant to a committee member, court reporter, interpreter, or translator who amends or modifies a Proprietary Information Access Application shall provide a copy of the amendment or modification to the responsible Secretariat.

(2) Upon receipt of an amendment or modification to a Proprietary Information Access Application, the responsible Secretary shall file the amendment or modification with the appropriate investigating authority and any additional copies required by the investigating authority.

(3) Upon receipt of an amendment or modification to a Proprietary Information Access Application, the investigating authority shall, as appropriate, amend, modify or revoke the Proprietary Information Access Order and provide the responsible Secretariat with the original of the amendment, modification or notice of revocation and any additional copies of the document required by the responsible Secretariat.

(4) Upon receipt of an amendment or modification to a Proprietary Information Access Order or a notice of revocation, the responsible Secretary shall transmit the amendment, modification or notice of revocation to the appropriate committee member, assistant to a committee member, court reporter, interpreter or translator.

22. The responsible Secretary shall serve Proprietary Information Access Orders granted to committee members, assistants to committee members, court reporters, interpreters, or translators, and any amendments or modifications thereto or notices of revocation thereof, on all participants other than the investigating authority.

23. (1) A counsel of record, or a professional retained by, or under the control or direction of, a counsel of record, who has not been issued a Proprietary Information Access Order in the panel review or in these proceedings and who wishes disclosure of proprietary information in the file of an extraordinary challenge proceeding, must file a Proprietary Information Access Application, as follows:

(a) with the responsible Secretariat, two copies; and

(b) with the investigating authority, one original and any additional copies that the investigating authority requires.

(2) A Proprietary Information Access Application referred to in subrule (1) shall be served on all participants.

(3) Electronic means may be used to satisfy the service and filing requirements of subrules (1) and (2).[1]

(4) The investigating authority shall, no later than 10 days after a Proprietary Information Access Application is filed with it in accordance with subrule (1), serve on the person who filed the Proprietary Information Access Application a:

(a) Proprietary Information Access Order; or

(b) notification in writing setting out the reasons why a Proprietary Information Access Order is not issued.

24. (1) If an investigating authority:

(a) refuses to issue a Proprietary Information Access Order to a counsel of record or to a professional retained by, or under the control or direction of, a counsel of record; or

(b) issues a Proprietary Information Access Order with terms unacceptable to a counsel of record,

the counsel of record may file with the responsible Secretariat a Notice of Motion requesting that the committee review the decision of the investigating authority.

(2) If, after consideration of any response made by the investigating authority referred to in subrule (1), the committee decides that a Proprietary Information Access Order should be issued or that the terms of a Proprietary Information Access Order should be amended or modified, the committee shall so notify counsel for the investigating authority.

(3) If the final determination was made in the United States and the investigating authority fails to comply with the notification referred to in subrule (2), the committee may issue such orders as are just in the circumstances, including an order refusing to permit the investigating authority to make certain arguments in support of its case or striking certain arguments from its pleadings.

25. (1) If a Proprietary Information Access Order is issued to a person in an extraordinary challenge proceeding, the person shall file with the responsible Secretariat a copy of the Proprietary Information Access Order.

(2) If a Proprietary Information Access Order is revoked, amended or modified by an investigating authority, the investigating authority shall provide to the responsible Secretariat and to all participants a copy of the Notice of Revocation, amendment or modification.

26. In an extraordinary challenge proceeding that commences with a Request for an Extraordinary Challenge Committee pursuant to Article 10.12.13(a)(i) (Review of Final Antidumping and Countervailing Duty Determinations) of the Agreement, personal information shall be kept confidential:

(a) if a Notice of Motion is filed pursuant to subrule 45(1)(c),

(i) until the committee makes an order referred to in subrule 49(1)(a), or

(ii) if the committee makes an order referred to in subrule 49(1)(b), indefinitely, unless otherwise ordered by the committee; and

(b) in any other case, until the day after the expiration of the time period fixed, pursuant to Rule 45, for filing a Notice of Motion referred to in subrule 45(1)(c).

27. If a person alleges that the terms of a Proprietary Information Access Application or Proprietary Information Access Order have been violated, the committee shall refer the allegations to the investigating authority for investigation and, if applicable, the imposition of sanctions in accordance with section 77.034 of the *Special Import Measures Act,* as amended, section 777(f) of the *Tariff Act of 1930,* as amended, or article 93 of the *Ley de Comercio Exterior.*

Pleadings and Simultaneous Translation of Extraordinary Challenge Proceedings in Canada

28. Rules 29 to 31 apply with respect to an extraordinary challenge of a panel review of a final determination made in Canada.

[1] For greater certainty, for electronic filings, the Mexican Secretariat will verify the authenticity of the application and the documents submitted.

[1] For greater certainty, for electronic filings with respect to subrule 23(1)(b), the Mexican investigating authority may verify the authenticity of the application and the documents submitted.

29. A person, panelist, or committee member may use either English or French in any document or oral proceeding.

30. (1) Subject to subrule (2), any order or decision including the reasons for it, issued by a committee shall be made available simultaneously in both English and French if:

(a) in the opinion of the committee, the order or decision is in respect of a question of law of general public interest or importance; or

(b) the proceedings leading to the issuance of the order or decision were conducted in whole or in part in both English and French.

(2) If an order or decision:

(a) issued by a committee is not required by subrule (1) to be made available simultaneously in English and French; or

(b) is required by subrule (1)(a) to be made available simultaneously in both English and French but the committee is of the opinion that to make the order or decision available simultaneously in both English and French would occasion a delay prejudicial to the public interest or result in injustice or hardship to any participant,

the order or decision, including the reasons therefor, shall be issued in the first instance in either English or French and thereafter at the earliest possible time in the other language, each version to be effective from the time the first version is effective.

(3) Nothing in subrule (1) or (2) shall be construed as prohibiting the oral delivery in either English or French of any order or decision or any reasons therefor.

(4) No order or decision is invalid by reason only that it was not made or issued in both English and French.

31. (1) Any oral proceeding conducted in both English and French shall be translated simultaneously.

(2) If a participant requests simultaneous translation of an extraordinary challenge proceeding, the request shall be made as early as possible in the proceedings.

(3) If a committee is of the opinion that there is a public interest in the extraordinary challenge proceedings, the committee may direct the responsible Secretary to arrange for simultaneous translation of the oral proceedings, if any.

Part II: Written Proceedings (Rules 32–44)

Filing, Service, and Communications

32. (1) Subject to subrule 34(1) and, if applicable, Rule 36, a document is filed with the Secretariat when the responsible Secretariat receives the document, during its normal business hours and within the time period fixed for filing, physically, with one original and two copies, or when the document is filed by electronic means.

(2) The responsible Secretariat shall also acknowledge receipt, physically or electronically, to the party filing the document.

(3) Acknowledgement pursuant to subrule (2) does not constitute a waiver of any time period fixed for filing or an acknowledgement that the document has been filed in accordance with these Rules.

33. (1) All documents filed by a participant, other than documents required by Rule 62 to be served by the responsible Secretary and documents referred to in subrule 42(2), Rule 43, subrule 44(2)(a) and Rule 45 shall be served by the participant on the counsel of record of each of the other participants or, if another participant is not represented by counsel, on the other participant.

(2) If an electronic filing platform agreed upon by the involved Parties is used for filing, electronic notification by the filing platform shall satisfy the service requirements of this Rule.

(3) Subject to subrules 34(1) and 38(a), a document may be served by:

(a) mailing or delivering a copy of the document to the service address of the participant by expedited delivery courier or expedited mail service;

(b) transmitting a copy of the document to the electronic service address of the participant;

(c) personal service on the participant; or

(d) any means, including the use of an electronic filing platform agreed upon by the involved Parties, that the responsible Secretariat, in consultation with participants, may direct.

(4) A proof of service shall appear on, or be affixed to, all documents referred to in subrule (1).

(5) If a document is served by expedited delivery courier or expedited mail service, the date of service set out in the affidavit of service or certificate of service shall be the day on which the document is consigned to the expedited delivery courier or expedited mail service.

(6) If a document is served electronically, the date of service shall be the day on which the document is sent by the sender.

34. (1) If, under these Rules, a document containing proprietary, privileged, or personal information is required to be filed under seal with the Secretariat or is required to be served under seal, the document shall be filed or served in accordance with this Rule and, if applicable, in accordance with Rule 36.

(2) A document filed or served under seal shall be:

(a) separate from all other documents;

(b) clearly marked:

(i) with respect to an extraordinary challenge of a panel review of a final determination made in Canada,

(A) in the case of a document containing proprietary information, ''Proprietary'', ''Confidential'', ''De nature exclusive'' or ''Confidentiel'',

(B) in the case of a document containing privileged information, ''Privileged'' or ''Protégé'', and

(C) in the case of a document containing personal information, ''Personal Information'' or ''Renseignements personnels''; and

(ii) with respect to an extraordinary challenge of a panel review of a final determination made in Mexico,

(A) in the case of a document containing proprietary information, ''Confidencial'',

(B) in the case of a document containing privileged information, ''Privilegiada'', and

(C) in the case of a document containing personal information, ''Información Personal''; and

(iii) with respect to an extraordinary challenge of a panel review of a final determination made in the United States,

(A) in the case of a document containing proprietary information, ''Proprietary'',

(B) in the case of a document containing privileged information, ''Privileged'', and

(C) in the case of a document containing personal information, ''Personal Information''; and

(e) inside:

(i) an opaque inner wrapper and an opaque outer wrapper, if filed or served physically,

(ii) a cover sheet, if filed or served electronically.

(3) An inner wrapper or cover sheet referred to in subrule (2)(c) shall indicate:

(a) that proprietary, privileged, or personal information is enclosed, as the case may be; and

(b) the Secretariat file number of the extraordinary challenge proceeding.

35. Filing or service of proprietary, privileged, or personal information with the Secretariat does not constitute a waiver of the designation of the information as proprietary, privileged, or personal information.

36. (1) If a participant files a pleading that contains proprietary information, the participant shall file two sets of the pleading in the following manner:

(a) one set containing the proprietary information shall be filed under seal and, with respect to an extraordinary challenge of a panel review of a final determination made in:

(i) Canada, shall be labelled ''Proprietary'', ''Confidential'', ''Confidentiel'' or ''De nature exclusive'', with the top of each page that contains proprietary information marked with the word ''Proprietary'', ''Confidential'', ''Confidentiel'' or ''De nature exclusive'' and with the proprietary information enclosed in brackets,

(ii) Mexico, shall be labelled ''Confidencial'', with the top of each page that contains proprietary information marked with the word ''Confidencial'' and with the proprietary information enclosed in brackets, and

(iii) the United States, shall be labelled ''Proprietary'' with the top of each page that contains proprietary information marked with the word ''Proprietary'' and with the proprietary information enclosed in brackets; and

(b) no later than one day following the day on which the set of pleadings referred to in subrule (1)(a) is filed, another set not containing proprietary information shall be filed and, with respect to an extraordinary challenge of a panel review of a final determination made in:

(i) Canada, shall be labelled ''Non-Proprietary'', ''Non-Confidential'', ''Non confidentiel'' or ''De nature non exclusive'',

(ii) Mexico, shall be labelled ''No confidencial'', and

(iii) the United States, shall be labelled ''Non-Proprietary'';

with each page from which proprietary information has been deleted marked to indicate the location from which the proprietary information was deleted.

(2) If a participant files a pleading that contains privileged information, the participant shall file two sets of the pleading in the following manner:

(a) one set containing the privileged information shall be filed under seal and, with respect to an extraordinary challenge of a panel review of a final determination made in:

(i) Canada, shall be labelled ''Privileged'' or ''Protégé'', with the top of each page that contains privileged information marked with the word ''Privileged'' or ''Protégé'' and with the privileged information enclosed in brackets,

(ii) for Mexico, shall be labelled ''Privilegiada'', with the top of each page that contains privileged information marked with the word ''Privilegiada'' and with the privileged information enclosed in brackets, and

(iii) the United States, shall be labelled ''Privileged'', with the top of each page that contains privileged information marked with the word ''Privileged'' and with the privileged information enclosed in brackets; and

(b) no later than one day following the day on which the set of pleadings referred to in subrule (2)(a) is filed, another set not containing privileged information shall be filed and, with respect to an extraordinary challenge of a panel review of a final determination made in:

(i) Canada, shall be labelled ''Non-Privileged'' or ''Non protégé'',

(ii) Mexico, shall be labelled ''No privilegiada'', and

(iii) the United States, shall be labelled ''Non-Privileged'';

with each page from which privileged information has been deleted marked to indicate the location from which the privileged information was deleted.

(3) If a participant files a pleading that contains personal information, the pleading shall be filed under seal and, with respect to an extraordinary challenge of a panel review of a final determination made in:

(a) Canada, shall be labelled ''Personal Information'' or ''Renseignements personnels'', with the top of each page that contains personal information marked with the words ''Personal Information'' or ''Renseignements personnels'' and with the personal information enclosed in brackets;

(b) Mexico, shall be labelled ''Información Personal'', with the top of each page that contains personal information marked with the words ''Información personal'' and with the personal information enclosed in brackets; and

(c) the United States, shall be labelled ''Personal Information'', with the top of each page that contains personal information marked with the words ''Personal Information'' and with the personal information enclosed in brackets.

37. (1) Subject to subrule (2), a document containing proprietary or privileged information shall be filed under seal in accordance with Rule 34 and shall be served only on the investigating authority and on those participants who have been granted access to the information under a Proprietary Information Access Order.

(2) If all proprietary information contained in a document was submitted to the investigating authority by one participant, the document shall be served on that participant even if that participant has not been granted access to proprietary information under a Proprietary Information Access Order.

(3) A document containing personal information shall be filed under seal in accordance with Rule 34 and shall be served only on persons or participants who have been granted access to the information under an order of the committee.

38. If proprietary, privileged, or personal information is disclosed to a person in an extraordinary challenge proceeding, the person shall not:

(a) file, serve, or otherwise communicate the proprietary, privileged, or personal information by unsecure electronic means except as authorized by the terms of a Proprietary Information Access Order; or

(b) communicate the proprietary, privileged, or personal information by telephone.

39. Service on an investigating authority does not constitute service on a Party and service on a Party does not constitute service on an investigating authority.

Form and Content of Pleadings

40. (1) Every pleading filed in an extraordinary challenge proceeding shall contain the following information:

(a) the title of, and any Secretariat file number assigned for, the extraordinary challenge proceeding;

(b) a brief descriptive title of the pleading;

(c) the name of the participant filing the pleading;

(d) the name of counsel of record for the participant;

(e) the service address, as defined in Rule 5; and

(f) the telephone number and electronic mail address of the counsel of record of the participant or, if the participant is not represented by counsel, the telephone number and electronic mail address of the participant.

(2) Every pleading filed in an extraordinary challenge proceeding shall be on paper 8½ x 11 inches (216 millimeters by 279 millimeters) in size. The text of the pleading shall be printed, typewritten or reproduced legibly on one side only with a margin of approximately 1½ inches (40 millimeters) on the left-hand side with double spacing between each line of text, except for quotations of more than 50 words, which shall be indented and single-spaced. Footnotes, titles, schedules, tables, graphs, and columns of figures shall be presented in a readable form. Briefs and appendices shall be securely bound along the left-hand margin.

(3) If a pleading is filed by electronic means, that pleading shall be formatted in a manner that, if printed, it would meet the requirements of subrule (2).

(4) Every pleading filed on behalf of a participant in an extraordinary challenge proceeding shall be signed by written or electronic signature, by counsel for the participant or, if the participant is not represented by counsel, by the participant.

Requests for an Extraordinary Challenge Committee

41. (1) If a Party, in its discretion, files with the responsible Secretary a Request for an Extraordinary Challenge Committee referred to in Article 10.12.13(a)(ii) (Review of Final Antidumping and Countervailing Duty Determinations) or (iii) (Review of Final Antidumping and Countervailing Duty Determinations) of the Agreement, the Party shall file the Request (model form available from the Secretariat) no later than 30 days after the issuance, pursuant to Rule 81(2) of the Article 10.12 Binational Panel Rules, of the Notice of Final Panel Action in the panel review that is the subject of the Request.

(2) If a Party, in its discretion, files with the responsible Secretary a Request for an Extraordinary Challenge Committee referred to in Article 10.12.13(a)(i) (Review of Final Antidumping and Countervailing Duty Determinations) of the Agreement, the Party shall file the Request (model form available from the Secretariat):

(a) no later than 30 days after the issuance, pursuant to Rule 81(2) of the Article 10.12 Binational Panel Rules, of the Notice of Final Panel Action in the panel review that is the subject of the Request; or

(b) subject to subrule (3), if the Party gained knowledge of the action of the panelist giving rise to the allegation more than 30 days after the panel issued a Notice of Final Panel Action, no more than 30 days after gaining knowledge of the action of the panelist.

(3) No Request for an Extraordinary Challenge Committee referred to in subrule (2) may be filed if two years or more have elapsed since the effective date of the Notice of Completion of Panel Review.

(4) Notwithstanding subrules (1) to (3), the running of the time periods referred to in this section:

(a) shall be suspended in the circumstances set out in Article 10.13.11(b) (Safeguarding the Panel Review System) of the Agreement; and

(b) if suspended under subrule (4)(a), shall be resumed in the circumstances set out in Articles 10.13.12 (Safeguarding the Panel Review System) and 10.13.13 (Safeguarding the Panel Review System) of the Agreement.

42. (1) Subject to subrule (2), every Request for an Extraordinary Challenge Committee shall be in writing and shall:

(a) include a concise statement of the allegations relied on, together with a concise statement of how the actions alleged have materially affected the panel's decision and the way in which the integrity of the panel review process is threatened;

(b) contain the name of the Party in the panel review, name of counsel, service address, telephone number, and electronic mail address; and

(c) if the panel decision was made in Canada, state whether the Party filing the Request for an Extraordinary Challenge Committee:

(i) intends to use English or French in pleadings and oral proceedings before the committee, and

(ii) requests simultaneous translation of any oral proceedings.

(2) If a Request for an Extraordinary Challenge Committee contains an allegation referred to in Article 10.12.13(a)(i) (Review of Final Antidumping and Countervailing Duty Determinations) of the Agreement, the identity of the panelist against whom such an allegation is made shall be revealed only in a confidential annex filed together with the Request and shall be disclosed only in accordance with Rule 60.

43. (1) Every Request for an Extraordinary Challenge Committee (model form available from the Secretariat) shall be accompanied by:

(a) those items of the record of the panel review relevant to the allegations contained in the Request; and

(b) an Index of the items referred to in subrule (1)(a).

(2) If a Request contains an allegation referred to in Article 10.12.13(a)(i) (Review of Final Antidumping and Countervailing Duty Determinations) of the Agreement, the Request shall be accompanied by, in addition to the requirements of subrule (1),

(a) any other material relevant to the allegations contained in the Request; and

(b) if the Request is filed more than 30 days after the panel issued a Notice of Final Panel Action pursuant to Rule 81(2) of the Article 10.12 Binational Panel Rules, an affidavit certifying that the Party gained knowledge of the action of the panelist giving rise to the allegation no more than 30 days preceding the filing of the Request.

Notices of Appearance

44. (1) No later than 10 days after the Request for an Extraordinary Challenge Committee is filed, a Party or participant in the panel review who proposes to participate in the extraordinary challenge proceeding shall file with the responsible Secretariat a Notice of Appearance (model form available from the Secretariat) containing the following information:

(a) the name of the Party or participant, name of counsel, service address, telephone number and electronic mail address;

(b) a statement as to whether appearance is made:

(i) in support of the Request, or

(ii) in opposition to the Request; and

(c) if the extraordinary challenge is in respect of a panel review of a final determination made in Canada, a statement as to whether the person filing the Notice of Appearance:

(i) intends to use English or French in pleadings and oral proceedings before the committee, and

(ii) requests simultaneous translation of any oral proceedings.

(2) If a Party or participant referred to in subrule (1) proposes to rely on a document in the record of the panel review that is not specified in the Index filed with the Request for an Extraordinary Challenge Committee, the Party or participant shall file, with the Notice of Appearance:

(a) the document; and

(b) a statement identifying the document and requesting its inclusion in the extraordinary challenge record.

(3) On receipt of a document referred to in subrule (2), the responsible Secretary shall include the document in the extraordinary challenge record.

45. (1) No later than 10 days after a Request for an Extraordinary Challenge Committee referred to in Article 10.12.13(a)(i) (Review of Final Antidumping and Countervailing Duty Determinations) of the Agreement is filed, a panelist against whom an allegation contained in the Request is made and who proposes to participate in the extraordinary challenge proceeding:

(a) must file a Notice of Appearance;

(b) may file, under seal, documents to be included in the extraordinary challenge record relevant to the panelist's defense against the allegation; and

(c) may file an *ex parte* motion requesting that the extraordinary challenge proceeding be conducted in camera.

(2) If a committee issues an order pursuant to subrule 49(1)(a), a panelist

who filed documents described in subrule (1)(b) may, no later than five days after issuance of the order, withdraw any of those documents.

(3) If a panelist withdraws documents pursuant to subrule (2), the committee shall not consider those documents.

Filing and Content of Briefs and Appendices

46. (1) The Party who has filed the Request for an Extraordinary Challenge Committee and every participant who has filed a Notice of Appearance under subrule 44(1)(b)(i) shall file a brief, setting forth grounds and arguments in support of the Request, no later than 21 days after the Request for an Extraordinary Challenge Committee is filed.

(2) Every participant who has filed a Notice of Appearance under subrule 44(1)(b)(ii) shall file a brief, setting forth grounds and arguments in opposition to the Request for an Extraordinary Challenge Committee, no later than 21 days after the expiration of the time period for filing of briefs referred to in subrule (1).

(3) The Party who has filed the Request for an Extraordinary Challenge Committee and every participant who has filed a Notice of Appearance under subrule 44(1)(b)(i) may file a brief, replying to the grounds and arguments set forth in the briefs filed pursuant to subrule (2), no later than 10 days after the expiration of the time period for filing of briefs referred to in subrule (2). Reply briefs shall be limited to rebuttal of matters raised in the briefs filed pursuant to subrule (2).

(4) Every brief filed under this Rule shall be in the form required by Rule 47.

(5) Appendices shall be filed with the briefs.

47. (1) Briefs shall contain information, in the following order, divided into five parts:

Part I

(a) a table of contents; and

(b) a table of authorities cited:

The table of authorities shall contain references to all treaties, statutes, and regulations cited, any cases primarily relied on in the briefs, set out alphabetically, and all other documents referred to except documents from the administrative record. The table of authorities shall refer to the page(s) of the brief where each authority is cited and mark, with an asterisk in the margin, those authorities primarily relied on.

Part II: A Statement of the Case

This Part shall contain a concise statement of the relevant facts with references to the panel record by page and, if applicable, by line.

Part III: A Statement of the Issues

(a) in the brief of the Party who files the Request for an Extraordinary Challenge Committee, this part shall contain a concise statement of the issues; and

(b) in the brief of any other participant, this part shall contain a concise statement of the position of the participant with respect to the issues.

Part IV: Argument

This Part shall consist of the argument, setting out concisely the points of law relating to the issues, with applicable citations to authorities and the panel record.

Part V: Relief

This Part shall consist of a concise statement precisely identifying the relief requested.

(2) Paragraphs in Parts I to V of a brief may be numbered consecutively.

(3) Authorities referred to in the briefs shall be included in an appendix, which shall be organized as follows: a table of contents, copies of all treaty and statutory references, references to regulations, cases primarily relied on in the briefs, set out alphabetically, all documents relied on from the panel record, and all other materials relied on.

Motions

48. (1) Motions, other than motions referred to in subrule 45(1)(c), may be considered at the discretion of the committee.

(2) A committee may dispose of a motion based upon the pleadings filed on the motion.

(3) A committee may hear oral argument in person or, subject to subrule 38(b), direct that a motion be heard by means of a telephone or video conference call with the participants.

Part III: Conduct of Oral Proceedings (Rules 49–52)

49. (1) The order of a committee on a motion referred to in subrule 45(1)(c) shall set out:

(a) that the proceedings shall not be held in camera; or

(b) that the proceedings shall be held in camera; and

(i) that all the participants shall keep confidential all information received with respect to the extraordinary challenge proceeding and shall use the information solely for the purposes of the proceeding, and

(ii) which documents containing personal information the responsible Secretary shall serve under seal and on whom the documents shall be served.

(2) The responsible Secretary shall not serve any documents containing personal information until the time period for withdrawal of any documents pursuant to subrule 45(2) has expired.

50. A committee may decide the procedures to be followed in the extraordinary challenge proceeding and may, for that purpose, hold a pre-hearing conference to determine such matters as the presentation of evidence and of oral argument.

51. The decision as to whether oral argument will be heard shall be in the discretion of the committee.

Oral Proceedings in Camera

52. During that part of oral proceedings in which proprietary information or privileged information is presented, a committee shall not permit any person other than the following persons to be present:

(a) the person presenting the proprietary information or privileged information;

(b) a person who has been granted access to the proprietary information or privileged information under a Proprietary Information Access Order or an order of the panel or committee;

(c) in the case of privileged information, a person as to whom the confidentiality of the privileged information has been waived; and

(d) officials of, and counsel for, the investigating authority.

Part IV: Responsibilities of the Secretariat (Rules 53–64)

53. The normal business hours of the Secretariat, during which the offices of the Secretariat shall be open to the public, shall be from 9:00 a.m. to 5:00 p.m. on each weekday other than, in the case of the:

(a) Canadian Section of the Secretariat, legal holidays of that Section;

(b) Mexican Section of the Secretariat, legal holidays of that Section; and

(c) United States Section of the Secretariat, legal holidays of that Section.

54. On the completion of the selection of the committee members, the responsible Secretary must notify the participants and the other involved Secretary of the names of the committee members.

55. The responsible Secretary shall provide administrative support for each extraordinary challenge proceeding and shall make the arrangements necessary for meetings and any oral proceedings, including, if required, interpreters to provide simultaneous translation.

56. Each involved Secretary must maintain a file for each extraordinary

challenge, comprised of either the original or a copy of all documents filed, whether or not filed in accordance with these Rules.

57. The responsible Secretary shall forward to the other involved Secretary a copy of all documents filed with the responsible Secretary and of all orders and decisions issued by a committee.

58. If under these Rules a responsible Secretary is required to publish a notice or other document in the official publication of the involved Parties, the responsible Secretary and the other involved Secretary shall cause the notice or the other document to be published in the official publication of the country in which that Section of the Secretariat is located.

59. (1) If a document containing proprietary information or privileged information is filed with the responsible Secretariat, each involved Secretary shall ensure that:

(a) the document is stored, maintained, handled, and distributed in accordance with the terms of an applicable Proprietary Information Access Order;

(b) the inner wrapper or cover sheet of the document is clearly marked to indicate that it contains proprietary information or privileged information; and

(c) access to the document is limited to:

(i) in the case of proprietary information, officials of, and counsel for, the investigating authority, the person who submitted the proprietary information to the investigating authority and counsel of record for that person, and any persons who have been granted access to the information under a Proprietary Information Access Order, and

(ii) in the case of privileged information relied upon in an extraordinary challenge of a decision of a panel with respect to a final determination made in the United States, committee members and their assistants and persons with respect to whom the panel ordered disclosure of the privileged information under Rule 56 of the Article 10.12 Binational Panel Rules, if those persons have filed with the responsible Secretariat a Proprietary Information Access Order with respect to the document.

(2) If a document containing personal information is filed with the responsible Secretariat, each involved Secretary shall ensure that:

(a) the document is stored, maintained, handled, and, distributed in accordance with the terms of any applicable Proprietary Information Access Order;

(b) the inner wrapper or cover sheet of the document is clearly marked to indicate that it contains personal information; and

(c) access to the document is limited to persons granted access to the information pursuant to subrule 49(1)(b).

60. No document filed in an extraordinary challenge proceeding shall be removed from the offices of the Secretariat except in the ordinary course of the business of the Secretariat or pursuant to the direction of a committee.

61. (1) Each involved Secretary shall permit access by any person to information in the file of an extraordinary challenge proceeding that is not proprietary information, privileged information or personal information.

(2) Each involved Secretary shall, in accordance with the terms of any applicable Proprietary Information Access Order or order of a panel or committee, permit access to proprietary information, privileged information or personal information in the file of an extraordinary challenge proceeding.

(3) Each involved Secretary shall, on request and on payment of the prescribed fee, provide copies of information in the file of an extraordinary challenge proceeding to any person who has been given access to that information.

62. (1) If a Request for an Extraordinary Challenge Committee pursuant to Article 10.12.13(a)(ii) or (iii) (Review of Final Antidumping and Countervailing Duty Determinations) of the Agreement is filed with the responsible Secretariat, the responsible Secretary shall, upon receipt thereof,

(a) forward a copy of the Request and Index to the other involved Secretary; and

(b) serve a copy of the Request and Index on the other involved Party and on the participants in the panel review, together with a statement setting out the date on which the Request was filed and stating that all briefs of:

(i) the Party who has filed the Request and of every participant who files a Notice of Appearance in support of the Request shall be filed no later than 21 days after the date of filing of the Request,

(ii) every participant who files a Notice of Appearance in opposition to the Request shall be filed no later than 21 days after the expiration of the time period, referred to in subrule (1)(b)(i), for filing of briefs, and

(iii) the Party who has filed the Request and of every participant who files a brief under subrule (1)(b)(i) in reply to the grounds and arguments set forth in the briefs filed pursuant to subrule (1)(b)(ii), shall be filed no later than 10 days after the expiration of the time period, referred to in subrule (1)(b)(ii), for filing of briefs.

(2) If a Request for an Extraordinary Challenge Committee pursuant to Article 10.12.13(a)(i) (Review of Final Antidumping and Countervailing Duty Determinations) of the Agreement is filed, the responsible Secretary shall, upon receipt thereof,

(a) forward a copy of the Request, Index and annex to the other involved Secretary; and

(b) serve a copy of the Request, Index and annex on the other involved Party, on the panelist against whom the allegation contained in the Request is made and on the participants in the panel review, together with a statement setting out the date on which the Request was filed and stating that all briefs of:

(i) the Party who has filed the Request and of every participant who files a Notice of Appearance in support of the Request shall be filed no later than 21 days after the date of filing of the Request,

(ii) every participant who files a Notice of Appearance in opposition to the Request shall be filed no later than 21 days after the expiration of the time period, referred to in subrule (2)(b)(i), for filing of briefs, and

(iii) the Party who has filed the Request and of every participant who files a brief under subrule (2)(b)(i) in reply to the grounds and arguments set forth in the briefs filed pursuant to subrule (2)(b)(ii) shall be filed no later than 10 days after the expiration of the time period, referred to in subrule (2)(b)(ii), for filing of briefs.

(3) The responsible Secretary must serve orders and decisions of a committee and Notices of Completion of Extraordinary Challenge on the participants.

(4) If the decision of a committee referred to in subrule (3) relates to a panel review of a final determination made in Canada, the decision shall be served by registered mail.

63. The responsible Secretary must cause Notice of a Final Decision of a committee issued pursuant to Rule 67, and any order that the committee directs the Secretary to publish, to be published in the official publications of the involved Parties.

64. If the time period fixed for filing an *ex parte* motion referred to in subrule 45(1)(c) has expired, the responsible Secretary shall serve on all participants:

(a) if no motion is filed pursuant to that subrule, the documents referred to in Rules 43 and 45;

(b) if the committee issues an order referred to in subrule 49(1)(a), the documents referred to in Rules 43 and 45 in accordance with any order of the committee; and

(c) if the committee issues an order referred to in subrule 49(1)(b), the documents referred to in Rules 43 and 45, in accordance with subrule 49(1)(b)(ii) and any order made by the committee.

Part V: Orders and Decisions (Rules 65–67)

65. All orders and decisions of a committee shall be made by a majority of the votes of all committee members.

66. (1) If a participant files a Notice of Motion requesting dismissal of an extraordinary challenge proceeding, the committee may issue an order dismissing the proceeding.

(2) If all the participants consent to the motion referred to in subrule (1) and an affidavit to that effect is filed, or if all participants file Notices of Motion requesting dismissal, the extraordinary challenge proceeding is terminated.

67. (1) A final decision of a committee shall:

(a) affirm the decision of the panel;

(b) vacate the decision of the panel; or

(c) remand the decision of the panel to the panel for action not inconsistent with the final decision of the committee.

(2) Every final decision of a committee shall be issued in writing with reasons, together with any dissenting or concurring opinions of the committee members.

(3) Subrule (2) shall not be construed as prohibiting the oral delivery of the decision of a committee.

Part VI: Completion of Extraordinary Challenges (Rules 68–73)

68. If all participants consent to the termination of the proceeding pursuant to Rule 66, the responsible Secretary shall cause to be published in the official publications of the involved Parties a Notice of Completion of Extraordinary Challenge, effective on the day after the day on which the requirements of Rule 66 have been met.

69. If a committee issues its final decision, the responsible Secretary shall cause to be published in the official publications of the involved Parties a Notice of Completion of Extraordinary Challenge, effective on the day after the day on which:

(a) the committee affirms the decision of the panel;

(b) the committee vacates the decision of the panel; or

(c) if the committee remands the decision of the panel, the day the responsible Secretary gives notice to the committee that the panel has given notice that it has taken action not inconsistent with the committee's decision.

70. The committee members are discharged from their duties on the day on which a Notice of Completion of Extraordinary Challenge is effective.

Stays and Suspensions

71. (1) A Party may make a request, pursuant to Article 10.13.11(a)(ii) (Safeguarding the Panel Review System) of the Agreement, that an ongoing extraordinary challenge proceeding be stayed by filing the request with the responsible Secretariat.

(2) A Party who files a request under subrule (1) shall forthwith give written notice of the request to the other involved Party and to the other involved Secretariat.

(3) On receipt of a request under subrule (1), the responsible Secretary shall:

(a) immediately give written notice of the stay of the extraordinary challenge proceedings to all participants in the extraordinary challenge proceedings; and

(b) publish a notice of the stay of the extraordinary challenge proceedings in the official publications of the involved Parties.

72. On receipt of a report containing an affirmative finding with respect to a ground specified in Article 10.13.1 (Safeguarding the Panel Review System) of the Agreement, the responsible Secretary for extraordinary challenge proceedings referred to in Article 10.13.11(a)(i) (Safeguarding the Panel Review System) of the Agreement shall:

(a) immediately give notice in writing to all participants in those proceedings; and

(b) publish a notice of the affirmative finding in the official publications of the involved Parties.

73. (1) A Party who intends to suspend the operation of Article 10.12 (Review of Final Antidumping and Countervailing Duty Determinations) of the Agreement pursuant to Articles 10.13.8 or 10.13.9 (Safeguarding the Panel Review System) of the Agreement shall endeavor to give written notice of that intention to the other involved Party and to the involved Secretaries at least five days prior to the suspension.

(2) On receipt of a notice under subrule (1), the involved Secretaries shall publish a notice of the suspension in the official publications of the involved Parties.

RULES OF PROCEDURE FOR ARTICLE 10.13

(SPECIAL COMMITTEES)

Application

1. These Rules are established in accordance with Annex 10–B.4 (Special Committee Procedures) of the Agreement and apply to all special committee proceedings conducted pursuant to Article 10.13 (Safeguarding the Panel Review System) of the Agreement. These Rules will be published in Canada in the *Canada Gazette,* in Mexico in the *Diario Oficial de la Federación,* and in the United States in the **Federal Register**.

Short Title

2. These Rules may be cited as the Special Committee Rules.

Statement of General Intent

3. These Rules apply to special committee proceedings conducted pursuant to Article 10.13 (Safeguarding the Panel Review System) of the Agreement, unless the involved Parties otherwise agree. If a procedural question arises that is not covered by these Rules, a special committee may adopt an appropriate procedure that is not inconsistent with the Agreement.

4. In the event of any inconsistency between these Rules and the Agreement, the Agreement shall prevail.

Definitions and Interpretation

5. For the purposes of these Rules:

Agreement means the Agreement signed between Canada, Mexico, and the United States on November 30, 2018, as amended;

Code of Conduct means the code of conduct established by the Parties pursuant to Article 10.17 (Code of Conduct) of the Agreement;

Complaining Party means a Party who requests, pursuant to Article 10.13.2 (Safeguarding the Panel Review System) of the Agreement, that a special committee be established;

involved Secretariat means the responsible Secretariat or the Section of the Secretariat located in the country of the other involved Party;

legal holiday, for a Party's Section of the Secretariat, means every Saturday, Sunday, and any other day designated by that Party as a holiday for the purposes of these Rules and notified by that Party to its Section of the Secretariat and by that Section to the other Sections of the Secretariat and the other Parties;

official publication means in the case of the Government of:

(a) Canada, the *Canada Gazette;*

(b) Mexico, the *Diario Oficial de la Federación;* and

(c) the United States, the **Federal Register**;

Party means the Government of Canada, the Government of Mexico or the Government of the United States;

Responding Party means the Party against whom an allegation is made under Article 10.13.1 (Safeguarding the Panel Review System) of the Agreement;

responsible Secretariat means the Section of the Secretariat of the Responding Party;

responsible Secretary means the Secretary of the responsible Secretariat;

Secretariat means the Secretariat established pursuant to Article 30.6 (The Secretariat) of the Agreement;

Secretary means the Secretary of the United States Section of the Secretariat, the Secretary of the Mexican Section of the Secretariat, or the Secretary of the Canadian Section of the Secretariat and includes any person authorized to act on behalf of that Secretary; and

special committee means a special committee established pursuant to Article 10.13 (Safeguarding the Panel Review System) of the Agreement.

6. The definitions set forth in Article 10.8 (Definitions) of the Agreement apply to these Rules.

7. When these Rules require that notice be given, it must be given in writing.

Code of Conduct

8. Candidates being considered for appointment to a special committee, special committee members and their assistants, and staff, must comply with the Code of Conduct established under Article 10.17 (Code of Conduct) of the Agreement.

9. The responsible Secretariat shall provide a copy of the Code of Conduct to each candidate being considered for appointment to serve as a special committee member, and to each individual selected to serve as a special committee member as well as to their assistants and staff.

10. If a Party believes that a special committee member, assistant, or staff to a special committee member is in violation of the Code of Conduct, the Party shall immediately notify the responsible Secretary in writing of the alleged violation. The responsible Secretary shall promptly notify the other involved Secretary and the involved Parties of the allegations.

Internal Functioning of Special Committees

11. (1) Subject to subrule (2), unless the involved Parties otherwise agree, special committee meetings shall take place at the offices of the responsible Secretariat or at such alternative location as the special committee members may agree.

(2) A special committee may conduct meetings or exchange information by any means, including by electronic mail, telephone, or video conference.

12. The members of a special committee must select from among themselves a chair, who must preside over all meetings and hearings of the special committee.

13. The chair of the special committee must fix the date and time of its meetings in consultation with other special committee members and the responsible Secretary.

14. All reports, findings, determinations, and decisions of a special committee shall be made or issued by a majority vote of all members of the special committee.

15. A special committee proceeding commences on the day on which a request for a special committee is filed with the responsible Secretariat and terminates on the day on which a notice of completion of the special committee proceeding is issued pursuant to Rule 43.

16. (1) A special committee may adopt internal procedures of its own, not inconsistent with these Rules, for routine administrative matters.

(2) A special committee may delegate to its chair the authority to make decisions regarding internal procedures or routine administrative matters.

17. The terms of reference of a special committee shall be limited to:

(a) making a finding as to whether any allegations set out in Article 10.13.1 (Safeguarding the Panel Review System) of the Agreement made by the Complaining Party regarding the application of the Responding Party's domestic law are substantiated;

(b) determining whether a suspension of benefits by the Complaining Party pursuant to Article 10.13.8(b) (Safeguarding the Panel Review System) of the Agreement is manifestly excessive; and

(c) determining whether the Responding Party has corrected a problem with respect to which the special committee has made an affirmative finding.

Special Committee Remuneration and Expenses

18. (1) The involved Parties shall bear equally the remuneration and expenses of special committee members selected pursuant to Article 10.13.5 (Safeguarding the Panel Review System), and of their assistants, and all administrative expenses of the committee.

(2) Unless the involved Parties agree otherwise, remuneration for special committee members shall be paid at the rate for non-governmental panelists used by the WTO on the date a request for Special Committee is made pursuant to Article 10.13 (Safeguarding the Panel Review System).

(3) Unless the involved Parties agree otherwise, travel expenses shall be paid at the Daily Subsistence Allowance rate for the location of the hearing established by the United Nations International Civil Service Commission on the date a request for Special Committee is made pursuant to Article 10.13 (Safeguarding the Panel Review System).

(4) Each special committee member may hire one assistant to provide research, translation, or interpretation support, unless a special committee member requires an additional assistant and the involved Parties agree that, due to exceptional circumstances, the special committee member should be permitted to hire an additional assistant. Each assistant to a special committee member shall be paid at a rate of one-fifth the rate for a special committee member.

(5) The expenses authorized for a special committee established pursuant to Article 10.13 (Safeguarding the Panel Review System), shall be as follows:

(f) travel expenses: include the transportation costs of the special committee members and assistants, their accommodations and meals, as well as related taxes and insurance. Travel arrangements shall be made and travel expenses reimbursed, in accordance with the administrative guidelines applied by the responsible Secretariat; and

(g) administrative expenses: include, among others, telephone calls, courier services, fax, stationery, rent of locations used for hearings and deliberations, interpreter services, court reporters, or any other person or service contracted by the responsible Secretariat to support the proceeding.

(6) Each special committee member and assistant shall keep and render a final account of his or her time and expenses to the responsible Secretariat, and the special committee shall keep and render a final account to the responsible Secretariat of its administrative expenses. Each special committee member and assistant shall submit this account, including relevant supporting documentation, such as invoices, in accordance with the administrative guidelines of the responsible Secretariat. A special

committee member or assistant may submit requests for payment of remuneration or reimbursement for expenses during the proceeding on a recommended quarterly basis throughout an ongoing dispute. Special committee members and assistants should submit any final requests for payment of remuneration or reimbursement within 60 days of the filing of a notice of completion of the special committee proceeding.

(7) All requests for payment shall be subject to review by the responsible Secretariat. The responsible Secretariat shall make payments for the remuneration of special committee members and assistants, and for expenses in accordance with the administrative guidelines applied by the responsible Secretariat, using resources provided equally by the involved Parties, and in coordination with the involved Parties. No responsible Secretariat shall be obligated to pay any remuneration or expense in connection with a special committee prior to receiving the contributions of the involved Parties.

(8) The responsible Secretariat shall submit to the involved Parties a final report on payments made in connection with a dispute. On request of an involved Party, the responsible Secretariat shall submit to the involved Parties a report of payments made to date at any time during the special committee proceedings.

(9) In case of resignation or removal of a special committee member or assistant, the responsible Secretariat will make payment of the remuneration and expenses owed up until the date of resignation or removal of this special committee member or assistant, using resources provided equally by the involved Parties. A special committee member's or assistant's final account of time or expenses must follow the procedures in paragraph 6 and should be submitted within 60 days of the date of their resignation or removal.

Filing, Service, and Communications

19. A document to be filed by an involved Party must be filed either physically, with two copies, or electronically, with the responsible Secretariat, and must also:

(a) be served on the other involved Party by express courier, overnight mail, or by any other means agreed upon by the involved Parties; and

(b) when filed, be accompanied by a proof of service certifying that the document has been served on the other involved Party, indicating the manner, date, and time of service.

Written Submissions

20. All written submissions and responses filed with a responsible Secretariat shall be accompanied by two copies thereof.

21. (1) A request for the establishment of a special committee under Article 10.13.2 (Safeguarding the Panel Review System) of the Agreement shall be made by filing the request with the responsible Secretariat.

(2) On the filing of a request under subrule (1), the responsible Secretary and the other involved Secretary shall cause a notice of the filing of the request to be published in the official publications of the countries in which their Sections of the Secretariat are located.

22. The written initial submission of a Complaining Party shall be filed with the responsible Secretariat no later than 10 days after the date on which the last member of the special committee is appointed.

23. A written response by the Responding Party shall be filed with the responsible Secretariat no later than 20 days after the filing of the initial submission of the Complaining Party.

24. A special committee may allow each involved Party the opportunity to make an equal number of further written submissions, no later than such time as may be fixed by the special committee, having regard to the time limits fixed by Annex 10–B.4 (Special Committee Procedures) of the Agreement.

25. The responsible Secretary must forward to the other involved Secretary a copy of all documents filed with the responsible Secretariat and of all reports, findings, determinations, and decisions issued by the special committee.

Hearings

26. (1) At least one hearing shall be held before the special committee presents its initial report.

(2) The date and time of hearings shall be fixed by the special committee in consultation with the involved Parties and the responsible Secretary.

(3) A verbatim transcript shall be taken of all hearings.

27. Unless the involved Parties otherwise agree, special committee hearings shall take place at the offices of the responsible Secretariat.

28. (1) All special committee members must be present during hearings.

(2) No later than five days before the date of a hearing, each involved Party shall deliver to the responsible Secretariat and to the other involved Party a list of the names of the persons who will present oral arguments at the hearing on behalf of that Party and of other representatives or advisers of the Party who will be attending the hearing.

29. Oral proceedings shall be conducted in the following order, ensuring that each involved Party is given equal time:

(a) the argument of the Complaining Party;

(b) the argument of the Responding Party;

(c) a reply of the Complaining Party; and

(d) a counter-reply of the Responding Party.

30. At the request of an involved Party or at the initiative of the special committee, with the agreement of both involved Parties, and subject to such terms and conditions as both involved Parties may agree upon, the special committee may call upon any person to provide information concerning the matter in dispute.

Language of Proceedings

31. Written and oral proceedings may be in either English, French, or Spanish, or in any combination thereof.

32. Unless the involved Parties otherwise agree, the reports, findings, determinations, and decisions of a special committee shall be issued in an official language of the Responding Party and, if necessary, shall be promptly translated into an official language of the other involved Party.

Special Committee Deliberations

33. (1) The deliberations of a special committee shall take place in private and remain confidential.

(2) Only special committee members may take part in the deliberations of a special committee.

(3) Staff of the involved Secretariats, assistants to the special committee members, and any necessary support staff may be present during deliberations of a special committee by permission of the special committee.

Reports

34. (1) In accordance with paragraph (b) of Annex 10–B.4 (Special Committee Procedures) of the Agreement, a special committee must prepare and present to the involved Parties an initial report, wherever practicable, no later than 60 days after the appointment of the last member of the special committee.

(2) The involved Parties may comment in writing or, at the request of the special committee, orally, on an initial report of a special committee no later than 14 days after the initial report is presented.

35. An initial report of a special committee shall be kept confidential.

36. (1) A special committee must issue a final report, together with any separate opinions rendered by individual special committee members, no later than 30 days after the presentation of its initial report.

(2) Any separate opinions rendered by individual special committee members must be anonymous.

(3) On the issuance of a final report under subrule (1), the responsible Secretary must immediately forward copies of the report to the involved Parties.

(4) Unless the involved Parties otherwise agree:

(a) no later than 10 days after the final report is forwarded to the involved Parties, the involved Secretaries must cause a notice that a final report has been issued by a special committee to be published in the official publications of the involved Parties, indicating that copies of the report and of any separate opinions by individual special committee members and written views of either involved Party are available to the public at the offices of the responsible Secretariat; and

(b) the responsible Secretariat must make available to the public copies of the final report of a special committee, together with any separate opinions by individual special committee members, and any written views that either involved Party may wish to be published.

Reconvening of Special Committee

37. If a special committee has made an affirmative finding with respect to grounds specified in Article 10.13.1 (Safeguarding the Panel Review System) of the Agreement, a Responding Party may request that the special committee be reconvened by filing a request with the responsible Secretariat, if the Responding Party is requesting that the special committee determine whether:

(a) the Responding Party has corrected a problem with respect to which the special committee has made an affirmative finding, at any time after the affirmative finding was made; or

(b) a suspension of benefits by the Complaining Party under Article 10.13.8 (Safeguarding the Panel Review System) of the Agreement is manifestly excessive, at any time after the suspension was made.

38. (1) If a request referred to in subrule 37(a) is filed before the fortieth day of the 60-day consultation period referred to in Article 10.13.8 (Safeguarding the Panel Review System) of the Agreement, the special committee must endeavor to present a report containing its determination to the involved Parties before the sixtieth day of that period, and may for that purpose make such orders as to filing of written submissions and responses and the holding of a hearing as the special committee considers necessary under the circumstances.

(2) Rules 39 to 41 apply with respect to requests referred to in subrule 37(a) that are filed on or after the fortieth day of the 60-day consultation period referred to in Article 10.13.8 (Safeguarding the Panel Review System) of the Agreement and to requests referred to in subrule 37(b).

39. (1) At the time of filing a request pursuant to Rule 37, the Responding Party shall file a written submission in support of the request.

(2) A Complaining Party shall file a written response to a submission referred to in subrule (1) no later than 20 days after that submission is filed.

40. (1) At the time of filing a request pursuant to Rule 37 or a written response pursuant to subrule 39(2), an involved Party may request an opportunity to present oral argument in support of its request or response.

(2) If an involved Party requests an opportunity to present oral argument pursuant to subrule (1), the special committee may hold a hearing, at which both involved Parties shall be granted an equal opportunity to present oral argument.

41. The special committee must, no later than 45 days of the filing of a request pursuant to Rule 37, present to the involved Parties a written report containing its determination pursuant to Article 10.13.10 (Safeguarding the Panel Review System) of the Agreement.

42. Subrules 36(2) to (4) apply, with such modifications as are necessary, to reports referred to in subrule 38(1) and Rule 41.

Completion of Special Committee Proceedings

43. (1) On completion of a special committee proceeding, as determined by the special committee in consultation with the involved Parties, the special committee must request the responsible Secretary to issue a notice of completion of the proceeding.

(2) A notice referred to in subrule (1) is effective the day after it is issued.

(3) The responsible Secretary must cause a notice issued under subrule (1) to be published in the official publications of the involved Parties.

44. The members of a special committee are discharged from their duties on the day on which a notice of completion of the special committee proceeding is effective.

Confidentiality

45. All written submissions to, and communications with, a special committee and all documents filed with the involved Secretariats shall be kept confidential.

46. (1) All hearings of a special committee, and all transcripts thereof, shall be kept confidential.

(2) It is the responsibility of each involved Party to ensure that the persons attending oral proceedings of a special committee on its behalf maintain the confidentiality of the proceedings.

Ex Parte Contacts

47. (1) No special committee or member of a special committee shall meet or contact one involved Party in the absence of the other involved Party.

(2) No special committee member shall discuss a matter before the special committee with the involved Parties in the absence of other special committee members.

Extension and Computation of Time

48. A time period fixed by these Rules may be extended with the consent of both involved Parties or by a decision of a special committee.

49. (1) In computing any time period fixed in or under these Rules, the day from which the time period begins to run shall be excluded and, subject to subrule (2), the last day of the time period shall be included.

(2) If the last day of a time period computed in accordance with subrule (1) falls on a legal holiday of the responsible Secretariat or on any other day on which the offices of that Section are closed by order of the government or because of unforeseen circumstances outside that Party's control, that day and any other legal holidays of the responsible Secretariat immediately following that day shall be excluded from the computation.

(3) In computing any time period of five days or less fixed in these Rules or by a decision of a special committee, any legal holiday or any other day on which the offices of that Section are closed by order of the government or because of unforeseen circumstances outside that Party's control, that falls within the time period shall be excluded from the computation.

Responsibilities of the Responsible Secretary

50. The responsible Secretary shall provide administrative support for each special committee proceeding and shall make the arrangements necessary for the hearings and meetings of the special committee, including the provision of court reporters and, if required,

interpreters to provide simultaneous translation.

51. The responsible Secretary must maintain a file for each special committee proceeding, comprised of the original or a copy of all documents filed, whether or not filed in accordance with these Rules, in the special committee proceeding.

Death or Incapacity

52. If a special committee member is disqualified, dies, or otherwise becomes unable to fulfil special committee duties:

(a) special committee proceedings and computations of time shall be suspended, pending the appointment of a substitute special committee member; and

(b) if the disability, disqualification or death occurs after oral argument has begun, the chair may order that the matter be reheard, on such terms as are appropriate, after selection of a substitute special committee member.

Translation and Interpretation

53. (1) Subject to Rule 54, each involved Party shall, within a reasonable period of time:

(a) after the appointment of the last special committee member, advise the responsible Secretary in writing of the language in which its written submissions will be made and in which it wishes to receive the written submissions of the other involved Party; and

(b) before the date of a hearing, advise the responsible Secretary in writing of the language in which it will present oral arguments at the hearing and in which it wishes to hear oral arguments.

(2) On receipt of an advisement submitted pursuant to subrule (1), the responsible Secretary must promptly notify the other involved Secretary, the other involved Party and the special committee.

54. (1) In lieu of the procedure set out in Rule 53, a Party may advise its Secretary of the language in which:

(a) its written submissions will be made in all special committee proceedings and in which it wishes to receive written submissions of any other Party involved in a special committee proceeding; and

(b) it will present oral arguments, and in which it wishes to hear oral arguments, at all special committee hearings.

(2) On receipt of an advisement submitted pursuant to subrule (1), a Secretary must promptly notify the other Secretaries and Parties accordingly.

55. If the responsible Secretary is advised that written submissions or oral arguments in a special committee proceeding will be in more than one language or on the basis of a request of a special committee member, the responsible Secretary must arrange for the translation of the written submission(s) or for the provision of interpreters to provide simultaneous translation at the hearing, as the case may be.

56. Any time period applicable to a special committee proceeding shall be suspended for the period necessary to complete the translation of any written submission.

57. (1) The costs incurred in the preparation of a translation of a written submission shall be borne by the Party filing the submission.

(2) Costs for interpretation of oral arguments and for the translation of the special committee's reports shall be shared equally by the involved Parties.

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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 applicable 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 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 10, 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. MALINOV, Nikolay Simeonov (Cyrillic: МАЛИНОВ, Николай Симеонов) (a.k.a. MALINOV, Nikolai; a.k.a. MALINOV, Nikolai Simeonov), Sredna Gora Street 131, Sofia, Bulgaria; DOB 12 Sep 1968; POB Sofia, Bulgaria; nationality Bulgaria; Gender Male; National ID No. 6809126520 (Bulgaria); Personal ID Card 640466277 (Bulgaria) issued 28 Jun 2010 (individual) [GLOMAG].

   Designated pursuant to section 1(a)(ii)(B)(1) of Executive Order 13818 of December 20, 2017, "Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption," 82 FR 60839 (Dec. 26, 2017) (E.O. 13818 or the "Order") for being a foreign person who is a current or former government official, or a person acting for or on behalf of such an official, who is responsible for or complicit in, or has directly or indirectly engaged in, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery.

2. GORANOV, Vladislav Ivanov (Cyrillic: ГОРАНОВ, Владислав Иванов) (a.k.a. GORANOV, Vladimir; a.k.a. GORANOV, Vladislav), II Krasna Polyana R.D., NO 226, Apt. 78, Sofia, Bulgaria; DOB 30 Apr 1977; POB Pleven, Bulgaria; nationality Bulgaria; Gender Male; National ID No. 7704304020 (Bulgaria) (individual) [GLOMAG].

   Designated pursuant to section 1(a)(ii)(B)(1) of E.O. 13818 for being a foreign person who is a current or former government official, or a person acting for or on behalf of such an official, who is responsible for or complicit in, or has directly or indirectly engaged in, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery.

3. GENOV, Ivan Kirov (Cyrillic: ГЕНОВ, Иван Киров) (a.k.a. GENOV, Ivan), Bulgaria; DOB 19 May 1953; POB Gita, Bulgaria; nationality Bulgaria; Gender Male; National ID No. 5305197607 (Bulgaria) (individual) [GLOMAG].

   Designated pursuant to section 1(a)(ii)(B)(1) of E.O. 13818 for being a foreign person who is a current or former government official, or a person acting for or on behalf of such an official, who is responsible for or complicit in, or has directly or indirectly engaged in, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery.

4. NIKOLOV, Aleksandar Hristov (a.k.a. NIKOLOV, Aleksandar (Cyrillic: НИКОЛОВ, Александър); a.k.a. NIKOLOV, Aleksandr; a.k.a. NIKOLOV, Alexander Hristov; a.k.a.

NIKOLOV, Alexandr Hristov), GK3, BL22, AP13, Kozloduy, Vratsa 3320, Bulgaria; DOB 19 Feb 1962; POB Belene, Bulgaria; nationality Bulgaria; Gender Male; Passport 385595825 (Bulgaria) expires Nov 2023; National ID No. 6202193988 (Bulgaria) (individual) [GLOMAG].

Designated pursuant to section 1(a)(ii)(B)(1) of E.O. 13818 for being a foreign person who is a current or former government official, or a person acting for or on behalf of such an official, who is responsible for or complicit in, or has directly or indirectly engaged in, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery.

5. OVCHAROV, Rumen Stoyanov (Cyrillic: ОВЧАРОВ, Румен Стоянов) (a.k.a. OVCHAROV, Rumen; a.k.a. OVTCHAROV, Roumen Stoyanov), 19B, Silivria Str., 1404, Sofia, Bulgaria; DOB 05 Jul 1952; POB Burgas, Bulgaria; nationality Bulgaria; Gender Male; Passport 384932216 (Bulgaria) expires 08 Nov 2022; National ID No. 5207056287 (Bulgaria) (individual) [GLOMAG].

   Designated pursuant to section 1(a)(ii)(B)(1) of E.O. 13818 for being a foreign person who is a current or former government official, or a person acting for or on behalf of such an official, who is responsible for or complicit in, or has directly or indirectly engaged in, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery.

Entities:

1. INTER TRADE 2021 EOOD (Cyrillic: ИНТЕР ТРЕЙД 2021), Rikkardo Vakkarini 10A, VH. 2, AP. Atelie 3, 1404, Sofia, Bulgaria; Organization Established Date 27 Mar 2017; V.A.T. Number BG204517463 (Bulgaria); Business Registration Number 204517463 (Bulgaria) [GLOMAG] (Linked To: MALINOV, Nikolay Simeonov).

   Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, MALINOV, Nikolay Simeonov, a person whose property and interests in property are blocked pursuant to this Order.

2. MS KONSULT 2016 EOOD (Cyrillic: МС КОНСУЛТ 2016 ЕООД) (a.k.a. MS CONSULT 216), Sredna Gora, 131, 1000, Sofia, Bulgaria; Organization Established Date 2008; V.A.T. Number BG200297144 (Bulgaria); Business Registration Number 200297144 (Bulgaria) [GLOMAG] (Linked To: MALINOV, Nikolay Simeonov).

   Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, MALINOV, Nikolay Simeonov, a person whose property and interests in property are blocked pursuant to this Order.

3. RUSSOPHILES FOR THE REVIVAL OF THE FATHERLAND POLITICAL PARTY (Cyrillic: ПОЛИТИЧЕСКА ПАРТНЯ РУСОФИЛИ ЗА ВЪЗРАЖДАНЕ НА ОТЕЧЕСТВОТО) (a.k.a. FATHERLAND'S REVIVAL; a.k.a. REVIVAL OF THE FATHERLAND POLITICAL PARTY (Cyrillic: ПОЛИТИЧЕСКА ПАРТНЯ

ВЪЗРАЖДАНЕ НА ОТЕЧЕСТВОТО)), 21 Mihail Marinov Street, Sofia, Bulgaria; Organization Type: Activities of political organizations [GLOMAG] (Linked To: MALINOV, Nikolay Simeonov).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, MALINOV, Nikolay Simeonov, a person whose property and interests in property are blocked pursuant to this Order.

4. RUSSOPHILES NATIONAL MOVEMENT (a.k.a. BULGARIAN NATIONAL MOVEMENT OF RUSSOPHILES; a.k.a. THE RUSSOPHILE NATIONAL MOVEMENT ASSOCIATION (Cyrillic: СДРУЖЕНИЕ НАЦИАОНАЛНО ДВИЖЕНИЕ РУСОФИЛИ)), Georgi S. Rakovski, 108, 1000, Sofia, Bulgaria; Organization Established Date 2003; Business Registration Number 131049199 (Bulgaria) [GLOMAG] (Linked To: MALINOV, Nikolay Simeonov).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, MALINOV, Nikolay Simeonov, a person whose property and interests in property are blocked pursuant to this Order.

5. TRILEMMA CONSULTING LTD EOOD (Cyrillic: ТРИЛЕМА КАНСЪЛТИНГ ЕООД) (a.k.a. TRILEMA CONSULTING LTD; a.k.a. TRILEMMA CONSULTING LTD), UL. Odrin, BL. 14, VH. V, ET 10, AP. 100, 1303, Sofia, Bulgaria; Organization Established Date 14 Aug 2020; V.A.T. Number BG206196472 (Bulgaria); Business Registration Number 206196472 (Bulgaria) [GLOMAG] (Linked To: GORANOV, Vladislav Ivanov).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, GORANOV, Vladislav Ivanov, a person whose property and interests in property are blocked pursuant to this Order.

Dated: February 10, 2023.

Andrea Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–03288 Filed 2–15–23; 8:45 am]

BILLING CODE 4810–AL–C

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request Relating to Return of Excise Tax on Undistributed Income of Real Estate Investment Trusts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning the collection of information return of excise tax on undistributed income of real estate investment trusts.

DATES: Written comments should be received on or before April 17, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov*. Include OMB control number 1545–1013 or Request Relating to Return of Excise Tax on Undistributed Income of Real Estate Investment Trusts.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis at (202) 317–5751, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.L.Dennis@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Request Relating to Return of Excise Tax on Undistributed Income of Real Estate Investment Trusts.

OMB Number: 1545–1013.

Form Number: 8612.

Abstract: Form 8612 is used by real estate investment trusts to compute and pay the excise tax on undistributed income imposed under section 4981 of the Internal Revenue Code. The IRS uses

the information to verify that the correct amount of tax has been reported.

Current Actions: There are no changes to burden.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 20.

Estimated Time per Respondent: 9 hours, 48 minutes.

Estimated Total Annual Burden Hours: 196 hours.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 10, 2023.

Kerry L. Dennis,

Tax Analyst.

[FR Doc. 2023–03247 Filed 2–15–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0793]

Agency Information Collection Activity Under OMB Review: VA Health Professional Scholarship Programs (HPSP, VIOMPSP, VHVMAESP and EACFMAF)

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs (VA), will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0793.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20420, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0793'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–3521.

Title: VA Health Professional Scholarship Programs (HPSP, VIOMPSP, VHVMAESP and EACFMAF)—VA Forms 10–0491, 10–0491a, 10–0491c—n.

OMB Control Number: 2900–0793.

Type of Review: Revision of a currently approved collection.

Abstract: This is a currently approved collection of forms used by VHA to administer health care professional scholarship programs. The Department of Veterans Affairs (VA) Health Professional Scholarship Program (HPSP) and the VA Visual Impairment and Orientation and Mobility Professionals Scholarship Program (VIOMPSP) were authorized under Public Law 111–163 on May 5, 2010, and extended through December 31, 2033, by Section 301 of Public Law 115–182, VA Mission Act of 2018. On June 6, 2018, section 304 of Public Law 115–182, the John S. McCain III, Daniel K. Akaka, and Samuel R. Johnson VA Maintaining Internal Systems and Strengthening Integrated Outside Networks Act of 2018, or the VA MISSION Act of 2018, established the Veterans Healing Veterans Medical Access and Education Scholarship Program (VHVMAESP). The VA Educational Assistance for Certain Former Members of the Armed Forces (EACFMAF) Program was authorized under section 246 of Public Law 115–141, Consolidated Appropriations Act of 2018. Legal authority for this data collection is also found under 38 U.S.C., Part I, Chapter 5, § 527, which authorizes the collection of data that will allow measurement and evaluation of VA programs, the goal of which is improved health care for Veterans, and under 38 CFR 17.600–17.612 (HPSP), § 17.625–17.636 (VIOMPSP), § 17.613–17.618 (VHVMAESP), and § 17.535–17.539 (EACFMAF).

These programs help address health care workforce needs and allow VA to provide services to the public by awarding scholarships to non-VA employees who will be required to become VA employees in the professions for which they were educated under these programs. This information collection is necessary for VA to determine an applicant's eligibility to receive a scholarship award and compliance with program requirements.

1. Academic Verification, VA Form 10–0491.
2. Addendum to Application, VA Form 10–0491a.
3. Annual VA Employment Deferment Verification, VA Form 10–0491c.
4. Education Program Completion Notice—Service Obligation Placement, VA Form 10–0491d.
5. Evaluation Recommendation Form, VA Form 10–0491e.
6. HPSP and EACFMAF Agreement, VA Form 10–0491f.
7. Application, VA Form 10–0491g.
8. Notice of Approaching Graduation, VA Form 10–0491h.
9. Notice of Change and/or Annual Academic Status Report, VA Form 10–0491i.
10. Request for Deferment for Advanced Education, VA Form 10–0491j.
11. VA Scholarship Offer Response, VA Form 10–0491k.
12. VIOMPSP Agreement, VA Form 10–0491l.

13. Mobility Agreement, VA Form 10–0491m.

14. VHVMAESP Agreement, VA Form 10–0491n.

Each program uses the forms in this collection for applications, verifications, recommendations, etc. However, there are distinct Agreement forms for specific programs, which will be used by scholarship awardees for the appropriate program.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 87 FR 237 on December 12, 2022, pages 76102 and 76103.

Total Annual Number of Responses = 1,950.

Total Annual Time Burden = 7,619 hours.

HPSP

Affected Public: Individuals or households.

Estimated Annual Burden: 6,687 hours.

Estimated Average Burden Per Respondent: 3.93 hours.

Frequency of Response: Once annually.

Estimated Number of Respondents: 1,700.

VIOMPSP

Affected Public: Individuals or households.

Estimated Annual Burden: 304 hours.

Estimated Average Burden per Respondent: 3.04 hours.

Frequency of Response: Once annually.

Estimated Number of Respondents: 100.

VHVMAESP

Affected Public: Individuals or households.

Estimated Annual Burden: 216 hours.

Estimated Average Burden per Respondent: 4.32 hours.

Frequency of Response: Once annually.

Estimated Number of Respondents: 50.

EACFMAF

Affected Public: Individuals or households.

Estimated Annual Burden: 412 hours.

Estimated Average Burden per Respondent: 4.12 hours.

Frequency of Response: Once annually.

Estimated Number of Respondents: 100.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023–03276 Filed 2–15–23; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 88 Thursday,

No. 32 February 16, 2023

Part II

Department of Education

48 CFR Parts 3401, 3402, 3403, et al.
Education Acquisition Regulation; Proposed Rule

DEPARTMENT OF EDUCATION

48 CFR Parts 3401, 3402, 3403, 3404, 3406, 3407, 3408, 3409, 3412, 3416, 3417, 3419, 3424, 3428, 3430, 3431, 3432, 3433, 3437, 3439, 3442, 3443, 3447 and 3452

[Docket ID ED–2023–OFO–0002]

RIN 1890–AA20

Education Acquisition Regulation

AGENCY: Office of Finance and Operations, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary of Education proposes to modify the Department of Education Acquisition Regulation (EDAR) to revise aspects of those regulations that are out-of-date or redundant with other U.S. Department of Education (Department) policies and procedures and to accurately implement the current Federal Acquisition Regulation (FAR) and Department policies.

DATES: We must receive your comments on or before April 3, 2023.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at *regulations.gov.* However, if you require an accommodation or cannot otherwise submit your comments via *regulations.gov,* please contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

The Department strongly encourages you to submit any comments or attachments in Microsoft Word format. If you must submit a comment in Adobe Portable Document Format (PDF), we strongly encourage you to convert the PDF to print-to-PDF format or to use some other commonly used searchable text format. Please do not submit the PDF in a scanned format. Using a print-to-PDF format allows the Department to electronically search your submissions.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov,* including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''FAQ.''

Privacy Note: The Department's policy is to make comments received from members of the public available for public viewing on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, you should be careful to include in your comments only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: April Bolton-Smith, U.S. Department of Education, 400 Maryland Avenue SW, Room 5B243, Washington, DC 20202–4331. Telephone: (202) 453–6317. Email: *april.bolton-smith@ed.gov.* You may also email your questions to *SAMI_Policy@ed.gov,* but as described above, comments must be submitted via the Federal eRulemaking Portal at *www.regulations.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:

Invitation to Comment: We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations. Please provide relevant information and data whenever possible, even if there is no specific solicitation of data and other supporting materials in the request for comment. Please do not submit comments that are outside the scope of the specific proposals in this notice of proposed rulemaking (NPRM), as we are not required to respond to such comments.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities. Please also feel free to offer for our consideration any alternative approaches to the subjects addressed by the proposed regulations.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing *Regulations.gov.* You may also inspect the comments in person. To schedule a time to inspect comments, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed regulations. To schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

The uniform regulation for the procurement of supplies and services by Federal Departments and Agencies, the FAR, was promulgated on September 19, 1983 (48 FR 42102). The FAR is codified in title 48, chapter 1, of the Code of Federal Regulations. The Department promulgated the EDAR to implement the FAR on May 26, 1988 (53 FR 19118). The last revision of the EDAR was published in the **Federal Register** on March 8, 2011 (76 FR 12796). The Department published an NPRM on July 16, 2014 (79 FR 41511), but due to changing internal priorities those proposed rules were never finalized.

Significant Proposed Regulations

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory changes that are technical or otherwise minor in effect.

These proposed regulations would amend the EDAR as follows:

Subchapter A—General

Part 3401—ED Acquisition Regulation System

FAR: FAR part 1 (Federal Acquisition Regulations System) sets forth the purpose, authority, and structure of the FAR, authorizes agency FAR supplements and deviations from the FAR, and discusses career development, contracting authority, and responsibilities.

Current Regulations: The current EDAR contains subparts and sections that paraphrase or are redundant with the FAR, as well as information that is more appropriate for internal policy and procedures. The numbering of the current regulations is inconsistent with the numbering of the FAR.

Proposed Regulations: The Department proposes to revise sections 3401.000, 3401.104, and 3401.602–3 and to remove sections 3401.105, 3401.105–2, and 3401.105–3, 3401.301, 3401.304, and 3401.401, subpart 3401.5 (consisting of sections 3401.501 and 3401.501–2), and sections 3401.670,

3401.670–1, and 3401.670–2. Additionally, in subpart 3401.6, ''Career Development, Contracting Authority, and Responsibilities,'' the proposed regulations would redesignate section 3401.670–3 as section 3401.604–70 to be consistent with the FAR 1.604.

Reasons: The proposed changes remove sections that are unnecessary and redundant with the FAR. Additionally, on March 16, 2011, section 1.604 was added to the FAR. This proposed change would update the EDAR to be consistent with the FAR numbering scheme.

Part 3402—Definitions of Words and Terms

FAR: FAR part 2 (Definitions of Words and Terms) defines words and terms that are frequently used in the FAR.

Current Regulations: The current EDAR defines the terms Chief Acquisition Officer (CAO), Chief of the Contracting Office (COCO), Contracting Officer's Representative (COR), Department of ED, Head of the Contracting Activity (HCA), Performance-Based Organization (PBO), and Senior Procurement Executive (SPE). The current EDAR does not define ''requiring activity.'' The current EDAR contains a separate section 3402.101–70 for abbreviations and acronyms.

Proposed Regulations: The Department proposes to remove the definitions of ''Chief Acquisition Officer'' and ''Contracting Officer's Representative'' and to add a definition of ''requiring activity.'' Additionally, the Department proposes to clarify that the Head of Contracting for Federal Student Aid (FSA) Acquisition is the Executive Director, Acquisition Directorate. Finally, the Department proposes to remove section 3402.101–70 (Abbreviations and acronyms) as a stand-alone section and to relocate the acronyms to be part of the definitions.

Reasons: We remove the terms ''Chief Acquisition Officer'' and ''Contracting Officer's Representative'' to eliminate duplication with the FAR, where these terms are defined. We include a definition of ''requiring activity'' because this term is used in a proposed new clause that addresses requirements under the Family Educational Rights and Privacy Act (FERPA).

Part 3403—Improper Business Practices and Personal Conflicts of Interest

FAR: FAR part 3 (Improper Business Practices and Personal Conflicts of Interest) regulates standards of conduct, gratuities to Government personnel, reports of suspected antitrust violations, contingent fees, and contracts with Government employees or organizations owned or controlled by them.

Current Regulations: The current EDAR requires Department personnel to report violations of the gratuities clause, antitrust violations, and misrepresentation or violation of the covenant against contingent fees.

Proposed Regulations: The Department is proposing to add section 3403.104–7 to identify the Senior Procurement Executive (SPE) as the agency head for the purposes of FAR 3.104–7(d)(2)(ii)(B) and to add section 3403.204, revise section 3403.602, and add subparts 3403.7 and 3403.9 to identify the SPE as the agency head's designee for the purposes of FAR 3.204, 3.602, 3.704, 3.705, 3.905, and 3.906. The Department is proposing to remove section 3403.101–3 and to renumber current section 3403.409 to proposed section 3403.405.

Reasons: The proposed revisions remove a section of the EDAR that is more appropriate for internal policy guidance and improve administrative efficiency by identifying the official delegated the authority to provide exceptions and sign determinations identified in FAR 3.1, 3.2, 3.6, 3.7, and 3.9.

Part 3404—Administrative and Information Matters

FAR: FAR part 4 (Administrative and Information Matters) sets forth requirements for contract execution, documentation, retention, and reporting.

Current Regulations: The current EDAR does not address this FAR part.

Proposed Regulations: The Department proposes to add part 3404, ''Administrative Matters,'' to subchapter A, consisting of sections 3404.000 and 3404.001 and subparts 3404.4, 3404.7, and 3404.8. In section 3404.001, we propose to define ''Federal record'' and ''records inventory.'' The Department proposes to include sections 3404.470 and 3404.470–1 in proposed subpart 3404.4 to prescribe the use of the clause at 3452.204–71, ''Contractor security vetting requirements,'' in all solicitations and contracts when it is anticipated that contractor employees will have access to proprietary or sensitive Department information. The Department proposes to add subpart 3404.7, consisting of sections 3404.710 and 3404.770, to prescribe the use of the clause at 3452.204–70, ''Records management,'' in all solicitations and contracts where contractors will receive, create, work with, or otherwise handle Federal records. The Department proposes to add subpart 3404.8, consisting of sections 3404.804 and 3404.804–5, to require the contracting officer to ensure that the contractor has provided written affirmation that all Federal records under the contract have been transferred to the Department prior to closeout of the contract file.

Reasons: These additions are necessary to provide contractors with the personnel security screening requirements for contractor employees who will require access to proprietary or sensitive Department information, including, but not limited to, ''Controlled Unclassified Information'' as defined in 32 CFR part 2002, Department information technology (IT) systems, and Department facilities or space, or who will perform duties in a school or location where children are present. Additionally, these additions are necessary to provide contractors guidance on the handling of Federal records, often containing personally identifiable information (PII), both during and after performance of contracts.

Subchapter B—Competition and Acquisition Planning

Part 3406—Competition Requirements

FAR: FAR part 6 (Competition Requirements) regulates how agencies compete various contract actions.

Current Regulations: The current EDAR does not identify the agency head for purposes of FAR 6.302–2 (Unusual and compelling urgency).

Proposed Regulations: The proposed changes would add section 3406.302–2 to identify the SPE as the agency head's designee for purposes of FAR 6.302–2(d)(1)(ii) and (d)(2)(ii).

Reasons: To improve administrative efficiency, the proposed changes would identify the agency head for purposes of FAR 6.302–2(d)(1)(ii) and (d)(2)(ii).

Part 3407—Acquisition Planning

FAR: FAR part 7 (Acquisition Planning) sets forth requirements for pre-solicitation activities that must be addressed by the Government, identifies analysis of requirements for contractor versus Government performance, and identifies how to determine if work is inherently governmental.

Current Regulations: The current EDAR does not address this part of the FAR.

Proposed Regulations: The Department proposes to add part 3407, ''Acquisition Planning,'' to subchapter B to identify the SPE as the agency head's designee for the purposes of FAR 7.103.

Reasons: To improve administrative efficiency, the proposed changes to the regulations would clearly identify the

appropriate official for making determinations under FAR 7.1.

PART 3408—Required Sources of Supplies and Services

FAR: FAR part 8 (Required Sources of Supplies and Services) mandates certain sources and details how agencies must use those sources.

Current Regulations: The current EDAR requires a printing clause in section 3408.870 to clarify when the printing clause at 3452.208–71 is required.

Proposed Regulations: The Department proposes to remove section 3408.870.

Reasons: Since the EDAR was last updated in 2011, there has been a significant reduction in printing by contractors. As such, the clause is not being used by the contracting activities and is no longer necessary.

Part 3409—Contractor Qualifications

FAR: FAR part 9 (Contractor Qualifications) prescribes policies, standards, and procedures for determining whether prospective contractors are responsible.

Current Regulations: The current section 3409.507 of EDAR includes a section that includes a contractor certification related to conflict of interest (COI) with regard to contracts and orders above the simplified acquisition threshold.

Proposed Regulations: The Department proposes to revise section 3409.507–2 and remove section 3409.570.

Reason: The proposed changes would revise section 3409.507–2 to remove text in the instruction to contracting officers that is inaccurate and remove section 3409.570 because it is unnecessary, as COI requirements are sufficiently covered in FAR part 9.

Part 3412—Acquisition of Commercial Products and Commercial Services

FAR: FAR part 12 (Acquisition of Commercial Products and Commercial Services) prescribes policies and procedures unique to the acquisition of commercial products, including commercial components, and commercial services.

Current Regulations: The current EDAR permits the HCA to approve waivers in accordance with FAR 12.302(c).

Proposed Regulations: The Department proposes to add section 3412.301 to prescribe the use of the clause at 3452.224–73, ''Protection of student privacy in compliance with FERPA,'' in all solicitations or contracts, including those for the acquisition of commercial products and commercial services, when a requiring activity has provided notification that the contractor will collect or receive access to PII from student education records in connection with carrying out an audit, evaluation, study, compliance review, or other Federal law enforcement activity on behalf of the Department.

Reason: The proposed change to the regulations would clarify that the FERPA clause at 3452.224–73 applies to the acquisition of commercial products and commercial services.

Part 3416—Types of Contracts

FAR: FAR part 16 (Types of Contracts) describes the various contract types and consideration in determining the type of contract to use for a particular acquisition.

Current Regulations: The current EDAR has outdated cost principles citations in section 3416.307 that refer to the Office of Management and Budget (OMB) cost principles that were rescinded with the issuance of 2 CFR part 200 (Uniform Guidance). Additionally, the current EDAR incorrectly states that an award term that is earned is affected by unilateral modification.

Proposed Regulations: The Department proposes to update the outdated citations in section 3416.307 and to revise section 3416.470(f)(2) to require bilateral modification to extend a contract for an earned award term period. Additionally, the Department proposes to add subpart 3416.5, to include section 3416.505, to identify the Deputy Director of Contracts and Acquisition Management (CAM) as the agency head for purposes of FAR 16.505(b)(8).

Reasons: These revisions would update outdated citations and correct errors in the current EDAR, as well as identify the Department's task-order and delivery-order ombudsman, which is required in FAR 16.505(b)(8).

Part 3417—Special Contracting Methods

FAR: FAR part 17 (Special Contracting Methods) includes requirements for options and interagency acquisitions under the Economy Act.

Current Regulations: The Department proposes to add section 3417.104 to identify the SPE as the agency head for the purposes of FAR 17.104(b).

Reasons: The changes are necessary to clearly identify the appropriate official for making determinations under FAR 17.104(b).

Subchapter D—Socioeconomic Programs

Part 3419—Small Business Programs

FAR: FAR part 19 (Small Business Programs) describes requirements for and the availability of contracting preference programs for small businesses.

Current Regulations: The current regulations identify regulatory flexibilities afforded to Federal Student Aid (FSA).

Proposed Regulations: The Department proposes to correct the location of the Office of Small and Disadvantaged Business Utilization in section 3419.201–70 and to align the numbering of section 3419.502–4 to the FAR, resulting in a change from section 3419.502–4 to section 3419.502–70. Additionally, the Department proposes to add section 3418.502–8 and subpart 3419.8, to include section 3419.810, to identify the SPE as the agency head for the purposes of FAR 19.502–8 and to identify the HCA as the agency head for the purposes of FAR in 19.812(d).

Reasons: The proposed changes would update and correct inaccuracies in current sections of part 3419 and would identify the appropriate official for making determinations under FAR 19.5 and 19.8.

Part 3424—Protection of Privacy and Freedom of Information

FAR: FAR part 24 (Protection of Privacy and Freedom of Information) prescribes policies and procedures that apply to requirements of the Privacy Act of 1974, as amended (Privacy Act), OMB Circular A–130, and the Freedom of Information Act.

Current Regulations: The current EDAR does not address the statutory requirement that the Department comply with FERPA requirements to safeguard the privacy of student education records.

Proposed Regulations: The Department proposes to add subpart 3424.7 to prescribe the use of the clause at 3452.224–73, ''Protection of student privacy in compliance with FERPA,'' in all solicitations and contracts, including those for the acquisition of commercial products and commercial services, where a contractor will collect or receive access to PII from student education records in connection with carrying out an audit, evaluation, study, compliance review, or other Federal law enforcement activity on the behalf of the Department.

Reasons: This addition is necessary to ensure that the Department complies with FERPA requirements.

Subchapter E—General Contracting Requirements

Part 3428—Bonds and Insurance

FAR: FAR part 28 (Bonds and Insurance) regulates the appropriate use and requirements for bonds and insurance under Federal contracts.

Current Regulations: The current EDAR, section 3428.311–2 (Agency solicitation provisions and contract clauses), requires a clause specifying when insurance is mandatory.

Proposed Regulation: The Department proposes to clarify in section 3428.311–2 that the clause is required in all solicitations and contracts when a cost-reimbursement contract is contemplated.

Reasons: The proposed change is necessary to remove ambiguity about when the clause is required.

Part 3430—Cost Accounting Standards Administration

FAR: FAR part 30 (Cost Accounting Standards Administration) includes sections on the administration of contractor financial systems and responsibility for disclosure.

Current Regulations: The current EDAR does not address this part of the FAR.

Proposed Regulations: The Department proposes to add part 3430, ''Cost Accounting Standards Administration,'' to include section 3430.201–5, to identify the SPE as the head of the agency for purposes of FAR 30.201–5(a) and (b).

Reasons: The proposed change to the regulation would clearly identify the appropriate official for making determinations under FAR 30.201–5.

Part 3431—Contract Cost Principles and Procedures

FAR: FAR part 31 (Contract Cost Principles and Procedures) includes sections regulating costs under contracts with commercial, educational, and nonprofit organizations.

Current Regulations: The current EDAR does not address this part of the FAR.

Proposed Regulations: The Department proposes to add part 3431, ''Contract Cost Principles and Procedures.'' Within part 3431, the Department proposes to add subpart 3431.1, consisting of section 3431.101, to identify the SPE as the agency head's designee for the purposes of FAR 31.101 and to add subpart 3431.2, to include section 3431.205–71, to prescribe the use of the clause at 3452.231–71 (Invitational travel costs) to prohibit the use of contract funds to pay for noncontractor travel unless authorized by the contracting officer in advance.

Reasons: The proposed changes to the regulations would clearly identify the appropriate official for making determinations under FAR 31.101 and 31.205–6 and would ensure adequate control over contract funds used to pay for noncontractor travel.

Part 3432—Contract Financing

FAR: FAR part 32 (Contract Financing) regulates the types of financing the Government may make available to contractors, including advance payments.

Current Regulations: The current EDAR designates the HCA as the official authorized to approve types of financing in subpart 3432.4 (Advance Payments for Non-Commercial Items) and section 3432.705–2 (Clauses for limitation for cost or funds), which prescribes the use of the clause at 3452.232–70 (Limitation of cost or funds) and the provisions in the clause at 3452.232–71 (Incremental funding) for cost-reimbursement contracts.

Proposed Regulations: The Department proposes to add sections 3432.000 (Scope of part), 3432.006, and 3432.006–3 to identify Department personnel responsibilities and procedures that must be followed when there is any suspected instance of fraud involved in payment requests.

The Department also proposes to redesignate sections 3432.705 and 3432.705–2 to sections 3432.706 and 3432.706–2, respectively, and to designate paragraphs (a) and (b) in the current section 3432.705–2 to paragraphs (c) and (d) in the redesignated section 3432.706–2.

Additionally, the Department proposes to add paragraph (e) to section 3432.705–2 to permit a contracting officer to add the clause at 3432.232–72 that allows for the incremental funding of fixed price contracts when certain conditions are met.

Reasons: The proposed changes identify the appropriate official and procedure to report suspected instances of fraud involved in payments requests. The proposed changes also align the EDAR to the proper FAR sections. Additionally, the proposed changes address a mission-critical need to incrementally fund fixed price, severable service contracts when certain conditions are met.

Part 3433—Protests, Disputes, and Appeals

FAR: FAR part 33 (Protests, Disputes, and Appeals) regulates the Government's actions when a protest is filed with the agency or the U.S. Government Accountability Office and when disputes occur under contracts.

Current Regulations: The current EDAR designates the HCA as the official authorized to approve a determination to continue with performance after receipt of a protest.

Proposed Regulations: The Department proposes to revise section 3433.103 to clarify that the contracting officer should receive the agency-level protest unless the protestor requests an independent review. Requests for independent reviews would be decided by the HCA, or SPE if the HCA is not at least one level above the contracting officer. These proposed changes would also clarify that the independent review is an alternative to the contracting officer's decision and not an appeal, and direct contracting officers to include the clause at 3452.233–70 (Agency level protests) in all solicitations.

Reasons: These proposed changes would clarify the Department's process for agency level protests and, consistent with FAR 33.103(d)(4), they designate the Department officials who are responsible for conducting the review and clarify that the independent review is an alternative to the contracting officer's decision and not an appeal.

Subchapter F—Special Categories of Contracting

Part 3437—Service Contracting

FAR: FAR part 37 (Service Contracting) regulates various types of service contracts and performance-based acquisition.

Current Regulations: The EDAR currently contains section 3437.270 (Services of consultants clauses), which prescribes the use of the clause at 3452.237–70 (Services of consultants) in all cost-reimbursement contracts and solicitations. This clause requires the contractor to obtain the contracting officer's written approval to use certain consultants under a cost-type contract.

Proposed Regulations: The Department proposes to add section 3437.204 and revise section 3437.270 within subpart 3437.2 and to add section 3437.601 to subpart 3437.6. Proposed section 3437.204 would identify the HCA as the agency head for the purposes of FAR 37.204. The Department proposes to revise section 3437.270 to clarify that the clause at 3452.237–70 (Services of consultants) is to be used in all solicitations and resultant cost-reimbursements contracts for consultant services that do not provide services to FSA. The Department proposes to add section 3437.601 to establish the Department's policy that all new service contracts be

performance-based, unless approved by the HCA.

Reasons: These changes would clearly identify the official responsible for the guidelines for determining the availability of personnel for the purposes of FAR 37.204, add necessary language to clarify that the Services of Consultants clause should only be included when the solicitation or resultant contract involves consultant services, and clarify current practice to establish the minimum requirements to be contained in any new service contract.

Part 3439—Acquisition of Information Technology

FAR: FAR part 39 (Acquisition of Information Technology) regulates the acquisition of information technology.

Current Regulations: The current EDAR contains multiple information technology initiatives and standards requirements for internet Protocol version 6 and security requirements.

Proposed Regulations: The Department proposes to revise the heading of section 3439.702 to align with updated clause language and to require the use of the clause at 3452.239–71 (Department information security and privacy requirements) in all solicitations and contracts. The Department proposes to remove section 3439.703.

Reasons: Current section 3439.702 applies only when contractor employees will have access to Department-controlled facilities or space, or when the work involves the design, operation, repair, or maintenance of information systems and access to sensitive but classified information. To ensure that Department information security and privacy requirements are broadly applied to all contracts involving information technology, the proposed change would require that contracting officers use the clause at 3452.239–71 in all solicitations and contracts. Current section 3439.703 prescribes the use of the clause at 3452.239–73, which requires Federal Desktop Core Configuration (FDCC) compatibility in all solicitations and contracts where software will be developed or operated on any system using the FDCC. The FDCC has been replaced with the United States Government Configuration Baseline (USGCB). The requirement to comply with the USGCB is included in the EDAR clause at 3452.239–71; therefore, section 3452.239–73 is obsolete and no longer required.

Subchapter G—Contract Management

Part 3442—Contract Administration and Audit Services

FAR: FAR part 42 (Contract Administration and Audit Services) requires use of a contractor performance information system and contracting monitoring; it also governs other contract administration functions.

Current Regulations: The current EDAR contains sections on contract monitoring and the accessibility of meetings, conferences, and seminars to persons with disabilities.

Proposed Regulations: The Department proposes to revise section 3442.7101 in subpart 3442.71 to clarify the use of the clause at 3452.242–73 (Accessibility of meetings, conferences, and seminars to persons with disabilities) is mandatory in all solicitations and contracts where conferences are contemplated.

Reasons: The current regulation is ambiguous as to the application of the accessibility clause, and this change would clarify when it must be used.

Part 3443—Contract Modifications

FAR: FAR part 43 (Contract Modifications) prescribes policies and procedures for preparing and processing contract modifications for all types of contracts.

Current Regulations: The current EDAR contains a section requiring contracting officers to insert a clause substantially the same as the clause at 3452.243–70 (Key personnel) in all solicitations and resultant cost-reimbursement contracts in which it is essential for the contracting officer to be notified of changes to key personnel.

Proposed Regulations: The proposed changes to section 3443.107 would remove the limitation of this clause to cost-reimbursement contracts.

Reasons: This change would allow contracting officers to be notified of key personnel changes in all contracts, where appropriate.

Part 3447—Transportation

FAR: FAR part 47 (Transportation) includes sections regulating transportation-related services, transportation in supply contracts, and transportation by U.S. flag carriers and vessels.

Current Regulations: The current EDAR specifies in section 3447.701 that the contracting officer must use clause 3452.247–70 (Foreign travel) in all solicitations and resultant cost reimbursement contracts.

Proposed Regulations: The Department proposes to revise section 3447.701 to clarify that the contracting officer must insert the clause at 3452.247–70 (Foreign travel) in all solicitations and resultant cost-reimbursement contracts where foreign travel is contemplated.

Reasons: This change would clarify when the contracting officer must use the clause at 3452.247–70.

Subchapter H—Clauses and Forms

Part 3452—Solicitations Provisions and Contract Clauses

FAR: FAR part 52 (Solicitation Provisions and Contract Clauses) is the part of the FAR containing all FAR provisions and clauses required or recommended for inclusion in solicitations and contracts, as prescribed in the preceding parts of the FAR.

Current Regulations: The current EDAR includes in part 3452, ''Solicitation Provisions and Contract Clauses,'' text for 30 provisions and clauses, all of which are prescribed in the preceding parts of EDAR.

Proposed Regulations: The Department proposes to add section 3452.204–70 to implement records management guidance provided by the National Archives and Records Administration (NARA) consistent with applicable law and regulations; add section 3452.204–71 as a stand-alone clause that identifies contractor security vetting requirements (formally included with IT security requirements); revise section 3452.216–71(e) to require bilateral modifications rather than unilateral modifications in cases of earned award term periods; revise sections 3452.224–71 and 3452.224–72 to reflect updated requirements with regard to research activities involving human subjects; add section 3452.224–73 to ensure the protection of student privacy in compliance with FERPA; add section 3452.231–71 to identify invitational travel as an unallowable cost without written consent; add section 3452.232–72 to permit incremental funding of fixed price contracts; add section 3452.233–70 to clarify the process for agency-level protests; revise section 3452.239–70 to conform with OMB policy on completing the transition to internet Protocol version 6 (IPv6); revise section 3452.239–71 to separate out contractor security vetting requirements and to update Department IT security requirements; and revise section 3452.243–70 to allow its application in all solicitations and contracts.

Additionally, the Department proposes to remove sections 3452.208–71, 3452.239–72, and 3452.239–73.

Reasons: The proposed additions and revisions to this part of the EDAR are

consistent with the changes to the prescription language in the preceding parts and would update the provisions and clauses to more accurately reflect current regulations and policy. Specifically, section 3452.204–70 is proposed to comply with NARA regulations to ensure that the Department has proper oversight of Department records that are in the possession of Department contractors, including inventorying all records that are created, managed, and stored by Department contractors, as well as ensuring proper disposition of the records when the contract ends.

Section 3452.204–71 is proposed as a stand-alone clause because it was previously combined with IT security requirements. We are proposing to separate the two clauses because not all contracts that involve IT security also involve personnel security (and vice versa). As such, it is more appropriate to convey the requirements in separate clauses.

We are proposing to revise section 3452.216–71(e) because the current EDAR incorrectly states that an award term that is earned is affected by unilateral contract modification. This proposed revision to the clause would correct this error and would require bilateral modification.

The proposed revisions to sections 3452.224–71 and 3452.224–72 are necessary to update the clause language to conform with updates to Human Subject Research regulations found in 34 CFR part 97.

Section 3452.224–73 is proposed to ensure that contractors are advised of their obligations to protect student privacy in compliance with FERPA.

Section 3452.231–71 is proposed to ensure that travel by non-contractor employees is permissible and in accordance with Department policy and the Federal Travel Regulations.

Section 3452.232–72 is proposed because the Department often does not have sufficient funding during a continuing resolution to fully fund mission critical and high dollar fixed price contracts. This proposed clause is required to allow the Department to incrementally fund fixed-price, severable service contracts in a way that clearly delineates the rights and responsibilities of the Government and the contractor in compliance with the Anti-Deficiency Act.

Section 3452.233–70 is proposed because the current EDAR does not clearly identify the process for agency-level protests or clarify that the independent review, as specified in the FAR, is an alternative to the contracting officer's decision and not an appeal.

We are proposing revisions to section 3452.239–70 because the current clause is not in compliance with current OMB policy on the requirement to transition to IPv6.

We are proposing revisions to section 3452.239–71 because the clause previously contained personnel security requirements, which are now proposed in a separate, stand-alone clause. Additionally, the proposed clause would update outdated IT cybersecurity requirements and would implement a requirement that contractors not only comply with the Department's current cybersecurity and privacy requirements at the time of contract award, but also future requirements. This is necessary because of the ever evolving and changing landscape with regard to cybersecurity requirements, and to ensure that contractors that do business with the Department are keeping current with these requirements to protect the Department's data and information.

We are proposing revisions to section 3452.243–70 to give contracting officers the flexibility of including the key personnel clause in all solicitations and contracts that require it, rather than limiting it to only non-commercial contracts.

Additionally, section 3452.208–71 is no longer required because there has been a significant reduction in printing by contractors since the EDAR was last updated. This clause is not currently being used by the Contracting Activities.

Also, section 3452.239–72 is no longer required because the Department's information security and privacy requirements are now included in all contracts and solicitations (per the revised section 3439.702). Previously, section 3452.239–71 provided notice to offerors of the Department's security requirements and section 3452.239–72 prescribed the requirements. Because the requirements are now in section 3452.239–71, current section 3452.239–72 is unnecessary.

Finally, section 3452.239–73 is no longer required because the FDCC has been replaced with the USGCB. The requirement to comply with the USGCB is included in the EDAR clause at 3452.239–71; therefore, section 3452.239–73 is obsolete and no longer required.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

We have reviewed these proposed regulations under Executive Order 12866 and have determined that this proposed regulatory action is not a significant regulatory action subject to review by OMB under section 6(3)(A) of Executive Order 12866.

We have also reviewed these proposed regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We issue these proposed regulations only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on an analysis of anticipated costs and benefits, we believe that these proposed regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

Potential Costs and Benefits

We have reviewed the changes proposed in this NPRM in accordance with Executive Order 12866 and do not believe that these changes would generate a considerable increase in burden. Most changes proposed in this NPRM either remove parts of the EDAR that are redundant or duplicate the FAR; identify the proper ''agency head'' designee for certain sections of the FAR; or make minor revisions to improve clarity and application. Most of these proposed changes would not generate any costs.

The NPRM includes a proposed change to revise the Human Subjects Research clause and prescription to comply with updated policy and regulations on human subject research. This change would not result in significant costs; its impact would be limited to contracts that include, or are likely to include, research activities involving human subjects covered under 34 CFR part 97.

We also propose to revise the internet Protocol version 6 (IPv6) clause to conform with an OMB policy on completing the transition to IPv6. The proposed change to the clause is not material and would not generate any significant costs. Application will be limited to solicitations and resulting contracts for hardware and software.

We propose to add a contract closeout requirement to require that the contracting officer receive written affirmation that all Federal records have been transferred to the Department. Because this would not change the underlying requirement regarding final disposition of all Government-Owned/Contractor-Held Federal records, its impact would be limited to the requirement that the contracting officer receive written affirmation of such disposition.

We also propose to add seven new contract clauses. Four of these (requiring compliance with information security and privacy requirements; requiring compliance with contractor security vetting requirements, including undergoing a personnel security screening; establishing requirements and safeguards for contractors that collect or receive PII from student education records to ensure compliance with FERPA; and permitting incremental funding of fixed price contracts) are already used in contracts. As a result, these four changes would not result in any added burden or costs.

The NPRM includes three new clauses. They are:

- A clause to require the contractor to comply with records management laws, regulations, and policies, including safeguarding Federal records and transferring Federal records back to the Department at the end of the contract;
- A clause to require prior approval for noncontractor invitational travel; and
- A clause to provide notice to the contractor on where to submit an agency-level protest and advisement to the public that a protester has the right to request an independent review.

The records management clause requires the contractor to comply with all applicable records management laws and regulations, as well as NARA records policies, including the Federal Records Act (44 U.S.C. chapters 21, 29, 31, and 33), NARA regulations at 36 CFR chapter XII, subchapter B, including 36 CFR part 1236, and those policies associated with the safeguarding of Federal records covered by the Privacy Act. While some of these requirements are already being applied to contracts in practice, there are some new requirements, in particular that Department staff will need to maintain Records Inventories. The nature and the substance of increased burden would not be significant.

The noncontractor invitational travel clause would prohibit the use of contract funds to pay for noncontractor invitational travel unless authorized by the contracting officer in advance. This would ensure adequate control over contract funds used to pay for noncontractor invitational travel. The impact of this proposed change would be minimal. The agency-level protest clause would provide notice to the contractor on where to submit an agency-level protest and would advise the public that a protester has the right to request an independent review. These proposed changes would not result in any significant costs or burden. The right to request an independent review is already codified in the FAR.

Many of the proposed changes would result in benefits to the public. Because the EDAR has not been updated in more than ten years, it contains outdated and unused clauses.

Additionally, it has citations to outdated laws and regulations and contains sections that are duplicative of the FAR or that are more appropriate for internal procedures and policies. The proposed changes would streamline the EDAR, make it easier to read, and would reflect current and updated requirements.

Regulatory Flexibility Act Certification

The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The proposed regulations would not directly regulate any small entities. For this reason, these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulatory action does not contain any information collection requirements.

Intergovernmental Review

These regulations are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document 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.

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List of Subjects

48 CFR Parts 3401, 3402, 3404, 3406, 3407, 3408, 3409, 3412, 3416, 3417, 3424, 3428, 3430, 3431, 3437, 3439, 3444, 3447, and 3452

Government procurement.

48 CFR Part 3403

Antitrust, Conflict of interest, Government procurement.

48 CFR Part 3419

Government procurement, Small businesses.

48 CFR Parts 3432, 3442, and 3443

Accounting, Government procurement.

48 CFR Part 3433

Administrative practice and procedure, Government procurement.

Miguel A. Cardona,
Secretary of Education.

Accordingly, the Secretary proposes to amend title 48 of the Code of Federal Regulations, chapter 34 as follows:

PART 3401—ED ACQUISITION REGULATION SYSTEM

■ 1. The authority citation for part 3401 continues to read as follows:

Authority: 5 U.S.C. 301 and 20 U.S.C. 1018a.

■ 2. Revise section 3401.000 to read as follows:

3401.000 Scope of part.

This part establishes a system of Department of Education (Department) acquisition regulations, referred to as the Department of Education Acquisition Regulation (EDAR), for the codification and publication of policies and procedures of the Department that implement and supplement the Federal Acquisition Regulation (FAR).

■ 3. Revise section 3401.104 to read as follows:

3401.104 Applicability.

(a) The FAR and the EDAR apply to all Department contracts, as defined in FAR part 2, except where expressly excluded. The EDAR implements or supplements the FAR and incorporates, together with the FAR, Department policies, procedures, contract clauses, solicitation provisions, and forms that govern the contracting process or otherwise control the relationship between the Department, including its sub-organizations, and contractors or prospective contractors.

(b) The statute at 20 U.S.C. 1018a provides the PBO with procurement authority and flexibility associated with sections (a)–(l) of the statute.

3401.105, 3401.105–2, and 3401.105–3 [Removed]

■ 4. Remove sections 3401.105, 3401.105–2, and 3401.105–3.

3401.301 [Removed]

■ 5. Remove section 3401.301.

3401.304 [Removed]

■ 6. Remove section 3401.304.

3401.401 [Removed]

■ 7. Remove section 3401.401.

Subpart 3401.5 [Removed]

■ 8. Remove subpart 3401.5, consisting of sections 3401.501 and 3401.501–2.

■ 9. Revise section 3401.602–3 to read as follows:

3401.602–3 Ratification of unauthorized commitments.

(a) *Definitions.* As used in this subpart, commitment includes issuance of letters of intent and arrangements for free vendor services or use of equipment with the promise or the appearance of commitment that a contract, modification, or order will, or may, be awarded.

(b) *Policy.* (1) The Government is not bound by agreements with, or contractual commitments made to, prospective contractors by individuals who do not have delegated contracting authority or by contracting officers acting in excess of the limits of their delegated authority. Unauthorized commitments do not follow the appropriate process for the expenditure of Government funds. Consequently, the Government may not be able to ratify certain actions, putting a contractor at risk for taking direction from a Federal official other than the contracting officer. See FAR 1.602–1. Government employees responsible for unauthorized commitments are subject to disciplinary action.

(2) The HCA must review and sign or reject all ratification requests, with the exception that the Chief of the Contracting Office is authorized to review and sign or reject ratification requests for unauthorized commitments up to $25,000.

3401.670 [Removed]

■ 10. Remove section 3401.670.

3401.670–1 [Removed]

■ 11. Remove section 3401.670–1.

3401.670–2 [Removed]

■ 12. Remove section 3401.670–2.

3401.670–3 [Redesignated as 3401.604–70]

■ 13. Redesignate section 3401.670–3 as section 3401.604–70.

PART 3402—DEFINITIONS OF WORDS AND TERMS

■ 14. The authority citation for part 3402 continues to read as follows:

Authority: 5 U.S.C. 301 and 20 U.S.C. 1018a.

■ 15. Amend section 3402.101 by:

■ a. Removing the definition of ''Chief Acquisition Officer''.

■ b. Revising the definition of ''Chief of the Contracting Office''.

■ c. Removing the definition of ''Contracting Officer's Representative''.

■ d. Revising the definition of ''Head of the Contracting Activity''.

■ e. Adding a definition of ''Requiring activity'' in alphabetical order.

The revisions and addition read as follows:

3402.101 Definitions.

* * * * *

Chief of the Contracting Office or *COCO* means an official serving in the contracting activity (Contracts and Acquisition Management (CAM) or Federal Student Aid (FSA) Acquisitions) as the manager of a group that awards and administers contracts for a principal office of the Department. *See also* definition of *Head of the Contracting Activity* or *HCA* in this section.

* * * * *

Head of the Contracting Activity or *HCA* means those officials within the Department who have responsibility for and manage an acquisition organization and usually hold unlimited procurement authority. The Executive Director, Acquisitions Director, Federal Student Aid, is the HCA for FSA. The Director, Contracts and Acquisitions Management (CAM), is the HCA for all other Departmental program offices and all boards, commissions, and councils under the management control of the Department.

* * * * *

Requiring activity means the principal office charged with meeting or supporting a mission and delivering requirements. The requiring activity is responsible for obtaining funding or developing the program objectives. The requiring activity may also be the organizational unit that submits a

written requirement or statement of need for services required by a contract.

* * * * *

3402.101–70 [Removed]

■ 16. Remove section 3402.101–70.

PART 3403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

■ 17. The authority citation for part 3403 continues to read as follows:

Authority: 5 U.S.C. 301.

3403.101–3 [Removed]

■ 18. Remove section 3403.101–3.

■ 19. Add sections 3403.104 and 3403.104–7 to read as follows:

3403.104 Procurement integrity.

3403.104–7 Violations or possible violations.

(d)(2)(ii)(B) The Senior Procurement Executive (SPE) is the agency head for the purposes of FAR 3.104–7(d)(2)(ii)(B).

■ 20. Add section 3403.204 to read as follows:

3403.204 Treatment of violations.

(a) The SPE is the agency head's designee for the purposes of FAR 3.204.

3403.409 [Redesignated as 3403.405]

■ 21. Redesignate section 3403.409 as section 3403.405.

■ 22. Revise section 3403.602 to read as follows:

3403.602 Exceptions.

The SPE is the agency head's designee for the purposes of FAR 3.602.

■ 23. Add subpart 3403.7 to read as follows:

Subpart 3403.7—Voiding and Rescinding Contracts

Sec.
3403.704 Policy.
3403.705 Procedures.

Subpart 3403.7—Voiding and Rescinding Contracts

3403.704 Policy.

(a) The Senior Procurement Executive (SPE) is the agency head's designee for the purposes of FAR 3.704.

3403.705 Procedures.

(a) *Reporting.* The SPE is the agency head's designee for the purposes of FAR 3.705.

■ 24. Add subpart 3403.9 to read as follows:

Subpart 3403.9—Whistleblower Protections for Contractor Employees

Sec.
3403.905 Procedures for investigating complaints.
3403.906 Remedies.

Subpart 3403.9—Whistleblower Protections for Contractor Employees

3403.905 Procedures for investigating complaints.

(c) The Senior Procurement Executive (SPE) is the agency head's designee for the purposes of FAR 3.905.

3403.906 Remedies.

(a) The SPE is the agency head's designee for the purposes of FAR 3.906.

■ 25. Add part 3404 to subchapter A to read as follows:

PART 3404—ADMINISTRATIVE AND INFORMATION MATTERS

Sec.
3404.000 Scope of part.
3404.001 Definitions.

Subpart 3404.4—Safeguarding Classified Information Within Industry

3404.470 Contractor security vetting requirements.
3404.470–1 Contract clause.

Subpart 3404.7—Contractor Records Retention

3404.710 Contractor officer records management responsibilities.
3404.770 Contract clause.

Subpart 3404.8—Government Contract Files

3404.804 Closeout of contract files.
3404.804–5 Procedures for closing out contract files.

Authority: 5 U.S.C. 301; 40 U.S.C. 121(c); and 41 U.S.C. 3102.

3404.000 Scope of part.

3404.001 Definitions.

Federal record, as defined in 44 U.S.C. 3301, means all recorded information, regardless of form or characteristics, made or received by the Department under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by the Department or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the U.S. Government or because of the informational value of data in them.

Records inventory means a descriptive listing of each Federal record series or system that a contractor creates, receives, or maintains in performance of the contract, together with an indication of its location, retention, custodian, volume, and other pertinent data.

Subpart 3404.4—Safeguarding Classified Information Within Industry

3404.470 Contractor security vetting requirements.

3404.470–1 Contract clause.

The contracting officer must include the clause at 3452.204–71, Contractor security vetting requirements, in solicitations and contracts when it is anticipated that contractor employees will have access to proprietary or sensitive Department information including ''Controlled Unclassified Information'' as defined in 32 CFR 2002.4(h), Department Information Technology (IT) systems, contractor systems operated with Department data or interfacing with Department systems, or Department facilities/space, or perform duties in a school or in a location where children are present.

Subpart 3404.7—Contractor Records Retention

3404.710 Contractor officer records management responsibilities.

(a) Contracting officers must obtain a records inventory from the requiring activity and include it in each solicitation and contract. At least annually, contracting officers must obtain from the requiring activity a current, accurate, and complete records inventory for inclusion in the contract or confirmation, in writing, that the records inventory currently incorporated in the contract is accurate and complete.

(b) Upon notification from the contractor of any unlawful or accidental removal, defacing, alteration, or destruction of Federal records, including all forms of mutilation, the contracting officer must notify the requiring activity, the Department Records Officer, and the HCA within one business day.

3404.770 Contract clause.

The contracting officer must insert the clause at 3452.204–70, Records management, in all solicitations and contracts where the contractor will receive, create, work with, or otherwise handle Federal records, as defined in 44 U.S.C. 3301(a), regardless of the medium in which the record exists.

Subpart 3404.8—Government Contract Files

3404.804 Closeout of contract files.

3404.804–5 Procedures for closing out contract files.

(a)(16) The contractor has provided written affirmation that the contractor has transferred all Federal records that

the contractor created, received, or maintained in performance of the contract to the Federal Government, and the contractor has not retained a copy of any Federal record that contains information covered by 32 CFR part 2002 or that is generally protected from public disclosure by an exemption under the Freedom of Information Act (FOIA) with the exception, for the purposes of FOIA, of information that exclusively implicates the exemption 4 interests of the contractor.

PART 3406—COMPETITION REQUIREMENTS

■ 26. The authority citation for part 3406 continues to read as follows:

Authority: 5 U.S.C. 301; 41 U.S.C. 418(a) and (b); and 20 U.S.C. 1018a.

■ 27. Add section 3406.302–2 to read as follows:

3406.302–2 Unusual and compelling urgency.

(d)(1)(ii) The Senior Procurement Executive (SPE) is the agency head's designee for the purposes of FAR 6.302–2(d)(1)(ii).

(d)(2)(ii) The SPE is the agency head's designee for the purposes of FAR 6.302–2(d)(2)(ii).

■ 28. Add part 3407 to subchapter B to read as follows:

PART 3407—ACQUISITION PLANNING

Subpart 3407.1—Acquisition Plans

Sec.
3407.103 Agency head responsibilities.

Authority: 5 U.S.C. 301.

Subpart 3407.1—Acquisition Plans

3407.103 Agency head responsibilities.

The Senior Procurement Executive (SPE) is the agency head's designee for the purposes of FAR 7.103.

PART 3408—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 29. The authority citation for part 3408 continues to read as follows:

Authority: 5 U.S.C. 301, unless otherwise noted.

3408.870 [Removed]

■ 30. Remove section 3408.870.

PART 3409—CONTRACTOR QUALIFICATIONS

■ 31. The authority citation for part 3409 continues to read as follows:

Authority: 5 U.S.C. 301.

■ 32. Revise section 3409.507–2 to read as follows:

3409.507–2 Contract clause.

The contracting officer must insert the clause at 3452.209–71 (Conflict of interest) in all contracts for services above the simplified acquisition threshold.

3409.570 [Removed]

■ 33. Remove section 3409.570.

PART 3412—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

■ 34. The authority citation for part 3412 continues to read as follows:

Authority: 5 U.S.C. 301 and 20 U.S.C. 1018a.

■ 35. Add section 3412.301 to read as follows:

3412.301 Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services.

(f)(1) The clause at 3452.224–73 has been authorized for inclusion in acquisition of commercial products and commercial services. Refer to 3424.70 for provisions related to the use of this clause.

PART 3416—TYPES OF CONTRACTS

■ 36. The authority citation for part 3416 continues to read as follows:

Authority: 5 U.S.C. 301 and 20 U.S.C. 1018a.

■ 37. Revise section 3416.307 to read as follows:

3416.307 Contract clauses.

(a) If the clause at FAR 52.216–7 (Allowable Cost and Payment) is used in a contract with a hospital, the contracting officer must modify the clause by deleting the words ''Federal Acquisition Regulation (FAR) subpart 31.2'' from paragraph (a)(1) and substituting ''45 CFR part 75, appendix IX.''

(b) The contracting officer must insert the clause at 3452.216–70 (Additional cost principles) in all solicitations of and resultant cost-reimbursement contracts with nonprofit organizations other than educational institutions, hospitals, or organizations listed in 2 CFR part 200, subpart E.

■ 38. Amend section 3416.470 by revising paragraph (f)(2) to read as follows:

3416.470 Award-term contracting.

* * * * *

(f) * * *

(2) The extension of the contract as a result of an earned award term period is affected by a bilateral contract modification.

* * * * *

■ 39. Add subpart 3416.5 to read as follows:

Subpart 3416.5—Indefinite-Delivery Contracts

3416.505 Ordering.

(b)(8) *Task-order and delivery-order ombudsman.* The Deputy Director of CAM is the agency head's designee for the purposes of FAR 16.505(b)(8).

PART 3417—SPECIAL CONTRACTING METHODS

■ 40. The authority citation for part 3417 continues to read as follows:

Authority: 31 U.S.C. 1535 and 20 U.S.C. 1018a.

■ 41. Add subpart 3417.1 to read as follows:

Subpart 3417.1—Multiyear Contracting

3417.104 General.

(b) The Senior Procurement Executive (SPE) is the agency head for the purposes of FAR 17.104(b).

■ 42. Revise section 3417.207 to read as follows:

3417.207 Exercise of options.

(c) For contracts that contain the clause at 3452.204–70, Records management, in addition to the requirements at FAR 17.207(c), the contracting officer may exercise an option only after:

(1) Obtaining the requiring activity's written confirmation that the records inventory currently incorporated in the contract is current, accurate, and complete; or

(2) Obtaining a revised up-to-date records inventory from the requiring activity.

(3) The contracting officer must include the up-to-date records inventory in the contract by separate, bilateral modification.

PART 3419—SMALL BUSINESS PROGRAMS

■ 43. The authority citation for part 3419 continues to read as follows:

Authority: 5 U.S.C. 301 and 20 U.S.C. 1018a.

■ 44. Revise section 3419.201–70 to read as follows:

3419.201–70 Office of Small and Disadvantaged Business Utilization (OSDBU).

The Office of Small and Disadvantaged Business Utilization (OSDBU) is responsible for facilitating

the implementation of the Small Business Act, as described in FAR 19.201. The OSDBU develops rules, policy, procedures, and guidelines for the effective administration of the Department's small business program.

3419.502–4 [Redesignated as 3419.502–70]

■ 45. Redesignate section 3419.502–4 as section 3419.502–70.

■ 46. Add section 3419.502–8 to read as follows:

3419.502–8 Rejecting Small Business Administration recommendations.

(d) The Senior Procurement Executive (SPE) is the agency head for the purposes of FAR 19.502–8.

■ 47. Add subpart 3419.8 to read as follows:

Subpart 3419.8—Contracting With the Small Business Administration (the 8(a) Program)

Sec.
3419.810 SBA appeals.
3419.812 Contract administration.

Subpart 3419.8—Contracting With the Small Business Administration (the 8(a) Program)

3419.810 SBA appeals.

(a) The SPE is the agency head for the purposes of FAR 19.810.

3419.812 Contract administration.

(d) The HCA is the agency head for the purposes of FAR 19.812(d).

PART 3424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

■ 48. The authority citation for part 3424 continues to read as follows:

Authority: 5 U.S.C. 301.

■ 49. Add subpart 3424.7 to read as follows:

Subpart 3424.7—The Family Educational Rights and Privacy Act

Sec.
3424.701 Authority.
3424.702 Policy.
3424.703 Procedures.
3424.704 Contract clause.

Subpart 3424.7—The Family Educational Rights and Privacy Act

3424.701 Authority.

This subpart implements the Family Educational Rights and Privacy Act (FERPA or the Act), 20 U.S.C. 1232g. Additional FERPA-implementing regulations are found at 34 CFR part 99.

3424.702 Policy.

It is the Department's policy to designate as its authorized representative, for purposes of compliance with FERPA, any contractor that will collect or receive access to personally identifiable information (PII) from student education records in connection with the conduct of an audit, evaluation, study, compliance review, or other Federal law enforcement activity. The Department will notify such contractors, or prospective contractors, prior to award or during contract performance of their obligations to protect student privacy in compliance with FERPA. Further, the Department will incorporate into all relevant solicitations and contracts the provisions and clauses needed to implement FERPA requirements. The aforementioned policies do not apply to Federal Student Aid (FSA) contracts for the origination, servicing, or collection of student financial aid, provided such contracts do not include tasks relating to the conduct of an audit, evaluation, study, compliance review, or other enforcement activity.

3424.703 Procedures.

During acquisition planning, the requiring activity, in consultation with the Department's Senior Agency Official for Privacy (SAOP) and Director of the Student Privacy Policy Office (SPPO Director), must review requirements to determine whether the contract will require the Department to share PII from students' education records with its contractor or authorize its contractor to collect such PII from students' education records for the purposes of conducting a study, evaluation, or audit of a federally supported education program, or the enforcement of Federal legal requirements that relate to such education programs. The requiring activity must notify the contracting officer of the determination.

3424.704 Contract clause.

The contracting officer must insert the clause at 3452.224–73 in all solicitations and contracts, including those for the acquisition of commercial products and commercial services, when a requiring activity has provided notification that a contractor will collect or receive access to PII from student education records in connection with carrying out an audit, evaluation, study, compliance review, or other Federal law enforcement activity on behalf of the Department. The contracting officer must fill out paragraph (b) of the clause at 3452.224–73 with the type(s) of PII to be collected or accessed by contractor.

PART 3428—BONDS AND INSURANCE

■ 50. The authority citation for part 3428 continues to read as follows:

Authority: 5 U.S.C. 301.

■ 51. Revise section 3428.311–2 to read as follows:

3428.311–2 Agency solicitation provisions and contract clauses.

The contracting officer must insert the clause at 3452.228–70 (Required insurance) in all solicitations and contracts when a cost-reimbursement contract is contemplated.

■ 52. Add part 3430 to subchapter E to read as follows:

PART 3430—COST ACCOUNTING STANDARDS ADMINISTRATIONS

Subpart 3430.2—CAS Program Requirements

Sec.
3430.201 Contract requirements.
3430.201–5 Waiver.

Authority: 5 U.S.C. 301; 40 U.S.C. 121(c); and 41 U.S.C. 3102.

Subpart 3430.2—CAS Program Requirements

3430.201 Contract requirements.

3430.201–5 Waiver.

(a) The Senior Procurement Executive (SPE) is the head of the agency for the purposes of FAR 30.201–5(a) and (b).

■ 53. Add part 3431 to subchapter E to read as follows:

PART 3431—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 3431.1—Applicability

Sec.
3431.101 Objectives.

Subpart 3431.2—Contracts With Commercial Organizations

3431.205 Selected costs.
3431.205–71 Noncontractor travel.

Authority: 5 U.S.C. 301; 40 U.S.C. 121(c); and 41 U.S.C. 3102.

Subpart 3431.1—Applicability

3431.101 Objectives.

The Senior Procurement Executive (SPE) is the agency head's designee for the purposes of FAR 31.101.

Subpart 3431.2—Contracts With Commercial Organizations

3431.205 Selected costs.

3431.205–71 Noncontractor travel.

The contracting officer may insert the clause at 3452.231–71 (Invitational travel costs) in solicitations and contracts when travel by other than Federal or contractor personnel will be required in performance of the contract.

PART 3432—CONTRACT FINANCING

■ 54. The authority citation for part 3432 continues to read as follows:

Authority: 5 U.S.C. 301.

■ 55. Add sections 3432.000, 3432.006, and 3432.006–3 to read as follows:

3432.000 Scope of part.

3432.006 Reduction or suspension of contract payments upon finding of fraud.

3432.006–3 Responsibilities.

(b) Department personnel must report immediately and in writing any apparent or suspected instance where the contractor's request for advance, partial, or progress payments is based on fraud. The report must be made to the contracting officer and the Assistant Inspector General for Investigations. The report must outline the events, acts, or conditions that indicate the apparent or suspected violation and include all pertinent documents. The Assistant Inspector General for Investigations will investigate, as appropriate. If appropriate, the Office of the Inspector General will provide a report to the SPE.

3432.705 and 3432.705–2 [Redesignated as 3432.706 and 3432.706–2]

■ 56. Sections 3432.705 and 3432.705–2 are redesignated as sections 3432.706 and 3432.706–2.

■ 57. Amend newly redesignated section 3432.706–2 by:

■ a. Redesignating paragraphs (a) and (b) as paragraphs (c) and (d); and

■ b. Adding paragraph (e).

The addition reads as follows:

3432.705–2 Clauses for limitation of cost or funds.

* * * * *

(e)(1) The contracting officer must insert the clause at 3452.232–72 (Limitation of Government's obligation) in solicitations and resultant incrementally funded fixed-price contracts or contract line items (CLIN(s)) of such contracts only if—

(i) Sufficient funds are not available to the Department at the time of contract award or exercise of option to fully fund the contract, option, or CLIN(s); and

(ii) The contract (excluding any options), any exercised option, or CLIN(s)—

(A) Is for severable services; and

(B) Does not exceed one year in length; and

(C) Is incrementally funded using funds available (unexpired) as of the date the funds are obligated; or

(D) Congress has otherwise authorized incremental funding.

(2) When a partially funded contract contains the clause at 3452.232–72 (Limitation of Government's obligation) upon learning that the contractor is approaching the price of the contract or the limit of the funds allotted to the contract or specified CLIN(s) or upon receipt of the contractor's notice under paragraph (b) of the clause at 3452.232–72, the contracting officer must promptly obtain funding information pertinent to the continuation of the applicable CLIN(s) or contract and notify the contractor in writing. This notification must provide that—

(i)(A) Additional funds have been allotted, in a specified amount;

(B) The contract or applicable CLIN(s) is not to be further funded;

(C) The contract or applicable CLIN(s) is to be terminated; or

(D) The Government is considering whether to allot additional funds;

(ii) The contractor is entitled by the contract terms to stop work on applicable CLIN(s) when the funding limit is reached; and

(iii) Any work beyond the funding limit will be at the contractor's risk.

(3) Upon learning that a partially funded contract will receive no further funds, the contracting officer must promptly give the contractor written notice of the decision not to provide funds.

(4) The contracting officer must ensure that sufficient funds are allotted to the contract or applicable CLIN(s) to cover the total amount payable to the contractor in the event of termination for the convenience of the Government.

(5) The Government must not accept supplies or services under an incrementally funded contract or CLIN(s) once funding limits are reached until the contracting officer has given the contractor notice, to be confirmed in writing, that funds are available.

(6) Government personnel encouraging a contractor to continue work in the absence of funds will incur a violation of Revised Statutes section 3679 (31 U.S.C. 1341) that may subject the violator to civil or criminal penalties.

(7) An incrementally funded fixed-price contract and/or CLIN(s) must be fully funded as soon as funds are available.

(8) The contracting officer must insert the information required in the table in paragraph (l) of the clause at 3452.232–72. Since the funds allotted must cover costs of termination of the applicable CLIN(s) for the Government's convenience, the contractor must provide the last date of performance subject to the contracting officer's concurrence. The contracting officer may revise the contractor's notification period in paragraph (b) of the clause from ''ninety'' to ''thirty'' or ''sixty'' days, as appropriate.

PART 3433—PROTESTS, DISPUTES, AND APPEALS

■ 58. The authority citation for part 3433 continues to read as follows:

Authority: 5 U.S.C. 301.

■ 59. Revise section 3433.103 to read as follows:

3433.103 Protests to the agency.

(d)(4)(i) All protests to the agency must be submitted to the contracting officer identified in the solicitation. Interested parties may request an independent review of their protest as an alternative to consideration by the contracting officer. If a protest is silent on this matter, the contracting officer will decide the protest. The Department will not consider an appeal of the contracting officer's protest decision.

(ii) If the protester requests an independent review, the HCA will decide the protest. In the event the HCA is not at least one level above the contracting officer, or if the HCA has been substantially involved in the procurement, the SPE will decide the protest.

(iii) Contracting officers must include the provision at 3452.233–70 in solicitations.

(f)(3) The contracting officer's HCA must approve the justification or determination to continue performance.

PART 3437—SERVICE CONTRACTING

■ 60. The authority citation for part 3437 continues to read as follows:

Authority: 5 U.S.C. 301 and 20 U.S.C. 1018a.

■ 61. Revise subpart 3437.2 to read as follows:

Subpart 3437.2—Advisory and Assistance Services

Sec.
3437.204 Guidelines for determining availability of personnel.
3437.270 Services of consultants clause.

Subpart 3437.2—Advisory and Assistance Services

3437.204 Guidelines for determining availability of personnel.

The HCA is the agency head for the purposes of FAR 37.204.

3437.270 Services of consultants clause.

The contracting officer must insert the clause at 3452.237–70 (Services of consultants) in all solicitations and resultant cost-reimbursement contracts for consultant services that do not provide services to Federal Student Aid (FSA).

■ 62. Add section 3437.601 to read as follows:

3437.601 General.

It is the Department's policy that all new service contracts must be performance-based, with clearly defined deliverables and performance standards. Any deviations from this policy must be fully justified in writing and approved by the HCA.

PART 3439—ACQUISITION OF INFORMATION TECHNOLOGY

■ 63. The authority citation for part 3439 continues to read as follows:

Authority: 5 U.S.C. 301 and 20 U.S.C. 1018a.

■ 64. Revise section 3439.702 to read as follows:

3439.702 Department information security and privacy requirements.

The contracting officer must include the clause at 3452.239–71 (Department information security and privacy requirements) in all solicitations and contracts.

3439.703 [Removed]

■ 65. Remove section 3439.703.

PART 3442—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 66. The authority citation for part 3442 continues to read as follows:

Authority: 5 U.S.C. 301.

■ 67. Revise section 3442.7101 to read as follows:

3442.7101 Policy and clause.

(a) It is the policy of the Department that all meetings, conferences, and seminars be accessible to persons with disabilities.

(b) The contracting officer must insert the clause at 3452.242–73 (Accessibility of meetings, conferences, and seminars to persons with disabilities) in all solicitations and contracts where conferences are contemplated.

PART 3443—CONTRACT MODIFICATIONS

■ 68. The authority citation for part 3443 continues to read as follows:

Authority: 5 U.S.C. 301.

■ 69. Revise section 3443.107 to read as follows:

3443.107 Contract clause.

The contracting officer must insert a clause substantially the same as the clause at 3452.243–70 (Key personnel) in all solicitations and contracts in which it will be essential for the contracting officer to be notified that a change of designated key personnel is to take place by the contractor.

PART 3447—TRANSPORTATION

■ 70. The authority citation for part 3447 continues to read as follows:

Authority: 5 U.S.C. 301.

■ 71. Revise section 3447.701 to read as follows:

3447.701 Foreign travel clause.

The contracting officer must insert the clause at 3452.247–70 (Foreign travel) in all solicitations and resultant cost-reimbursement contracts where foreign travel is contemplated.

PART 3452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 72. The authority citation for part 3452 continues to read as follows:

Authority: 5 U.S.C. 301.

■ 73. Add section 3452.204–70 to read as follows:

3452.204–70 Records management.

As prescribed in 3404.770, insert the following clause:

Records Management (Date)

A. Applicability

This clause applies to all Contractors and subcontractors that receive, create, work with, or otherwise handle Federal records, as defined in paragraph B, regardless of the medium in which the record exists.

B. Definitions

''Federal record,'' as defined in 44 U.S.C. 3301, means all recorded information, regardless of form or characteristics, made or received by the Department under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by the Department or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the U.S. Government or because of the informational value of data in them.

''Records inventory,'' as used in this clause, means a descriptive listing of each Federal record series or system that a Contractor creates, receives, or maintains in performance of its contract with the Department, together with an indication of its location, retention, custodian, volume, and other pertinent data.

C. Requirements

1. The Contractor shall comply with all applicable records management laws and regulations, as well as National Archives and Records Administration (NARA) records policies, including the Federal Records Act (44 U.S.C. chapters 21, 29, 31, and 33), NARA regulations at 36 CFR chapter XII, subchapter B, including 36 CFR part 1236, and those policies associated with the safeguarding of Federal records covered by the Privacy Act of 1974, as amended (Privacy Act) (5 U.S.C. 552a). These laws, regulations, and policies include the appropriate preservation of all Federal records, regardless of form or characteristics, mode of transmission, or state of completion.

2. In accordance with 36 CFR 1222.32, all data created for U.S. Government use and delivered to, or falling under the legal control of, the U.S. Government are Federal records subject to the provisions of 44 U.S.C. chapters 21, 29, 31, and 33, the Freedom of Information Act, as amended (FOIA) (5 U.S.C. 552), and the Privacy Act, and must be managed and scheduled for disposition only as permitted by Federal statute or regulation.

3. In accordance with 36 CFR 1222.32, the Contractor shall maintain and manage all Federal records created for U.S. Government use, created during performance of this contract, and/or delivered to, or under the legal control of, the U.S. Government in accordance with Federal law. Electronic Federal records and associated metadata specified for delivery under this contract must be accompanied by sufficient technical documentation to facilitate their understanding and use.

4. This contract includes a records inventory, which the Department maintains as current, accurate, and complete.

(a) Upon Contracting Officer request, the Contractor shall provide input and assistance in maintaining the current, accurate, and complete state of the records inventory.

(b) If the Contractor creates, receives, or maintains a Federal record series or system that is not included in the records inventory, the Contractor shall notify the Contracting Officer within five business days of the Contractor's creation, receipt, or maintenance of such Federal record series or system, and provide the Contracting Officer with all information necessary for the Department to appropriately update the records inventory.

(c) Any necessary update to the records inventory will be effectuated by a modification to the contract.

5. The U.S. Government reserves the right to inspect, at any time, Contractor and subcontractor policies, procedures, and strategies for ensuring that Federal records are appropriately maintained.

6. The Contractor is responsible for preventing the alienation or unauthorized destruction of Federal records under this contract, including all forms of mutilation. Federal records may not be removed from the legal custody of the Department or destroyed except in accordance with the provisions of this contract and the Federal Records Act. Willful and unlawful destruction, damage, or alienation of Federal records is subject to the fines and penalties imposed by 18 U.S.C. 2701. The Contractor shall report any unlawful or accidental removal, defacing, alteration, or destruction of Federal records to the Contracting Officer within one business day.

7. The Contractor shall ensure that the appropriate personnel, administrative, technical, and physical safeguards are established to ensure the security and confidentiality of all Federal records in

accordance with this contract and applicable law.

8. The Contractor shall not remove material from U.S. Government facilities or systems, or facilities or systems operated or maintained on the U.S. Government's behalf, without the express prior written authorization of the Contracting Officer.

9. The Contractor shall not create or maintain any Federal records containing any non-public Department information not specified or authorized by this contract.

10. (a) During the term of this contract, the Contractor shall not (i) disclose any Federal record, or any copy thereof, that contains information covered by 32 CFR part 2002 or FOIA (with the exception, for the purposes of FOIA, of information that exclusively implicates the exemption 4 interests of the Contractor); or (ii) sell any Federal record, or any copy thereof.

(b) After expiration or termination of this contract, the Contractor shall not retain or have access to any Federal record, or any copy thereof, that contains information covered by 32 CFR part 2002 or that is generally protected from public disclosure by an exemption under FOIA with the exception, for the purposes of FOIA, of information that exclusively implicates the exemption 4 interests of the Contractor.

(c) Under no circumstances shall the Contractor destroy Federal records except in accordance with the provisions of this contract and the Federal Records Act.

11. All Contractor employees assigned to this contract who create, work with, or otherwise handle Federal records are required to complete Department-provided records management training. The Contractor is responsible for confirming training has been completed according to Department policies, including initial training and any annual or refresher training.

12. The Contractor is required to notify the Contracting Officer of any contractual relationship (sub-contractor) in support of this contract requiring the disclosure of information, documentary material and/or Federal records generated under, or relating to, contracts. The Contractor (and any sub-contractor) is required to abide by U.S. Government and the Department's guidance for protecting sensitive, proprietary information, classified, and controlled unclassified information.

(a) The Contractor shall incorporate the substance of this clause, its terms and requirements including this paragraph, in all subcontracts requiring the disclosure to a subcontractor of information, documentary material, and/or Federal records generated under, or relating to, the performance of this contract, and require written subcontractor acknowledgement of the same.

(b) Violation by a subcontractor of any provision set forth in this clause will be attributed to the Contractor.

(End of Clause)

■ 74. Add section 3452.204–71 to read as follows:

3452.204–71 Contractor security vetting requirements.

As prescribed in 3404.470–1, insert the following clause:

Contractor Security Vetting Requirements (Date)

(a) The Contractor and its subcontractors shall comply with Department of Education personnel, cyber, privacy, and security policy requirements set forth in ''Contractor Security Vetting Requirements'' at *http://www.ed.gov/fund/contract/about/bsp.html.*

(b) Contractor employees who will have access to proprietary or sensitive Department information including ''Controlled Unclassified Information'' as defined in 32 CFR 2002.4(h), Department IT systems, Contractor systems operated with Department data or interfacing with Department systems, or Department facilities or space, or perform duties in a school or in a location where children are present, must undergo a personnel security screening and receive a favorable determination and are subject to reinvestigation as described in the ''Contractor Vetting Security Requirements.'' Compliance with the ''Contractor Vetting Security Requirements,'' as amended, is required.

(c) The type of security investigation required to commence work on a Department contract is dictated by the position designation determination assigned by the Department. All Department Contractor positions are designated commensurate with their position risk/sensitivity, in accordance with title 5 of the Code of Federal Regulations (5 CFR 731.106) and OPM's Position Designation Tool (PDT) located at: *https://pdt.nbis.mil/.* The position designation determines the risk level and the corresponding level of background investigations required.

(d) The Contractor shall comply with all Contractor position designations established by the Department.

(e) The following are the Contractor employee positions required under this contract and their designated risk levels:

High Risk (HR): (Specify HR positions or Insert ''Not Applicable'')

Moderate Risk (MR): (Specify MR positions or Insert ''Not Applicable'')

Low Risk (LR): Specify LR positions or Insert ''Not Applicable'')

(f) For performance-based contracts where the Department has not identified required labor categories for Contractor positions, the Department considers the risk sensitivity of the services to be performed and the access to Department facilities and systems that will be required during performance, to determine the uniform Contractor position risk level designation for all Contractor employees who will be providing services under the contract. The uniform Contractor position risk level designation applicable to this performance-based contract is: (Contracting Officer to complete with overall risk level; or insert ''Not Applicable'').

(g) Only U.S. citizens will be eligible for employment on contracts requiring a Low Risk/Public Trust, Moderate Risk/Public Trust, High Risk/Public Trust, or a National Security designation.

(h) An approved waiver, in accordance with the ''Contractor Vetting Security Requirements,'' is required for any exception to the requirements of paragraph (g) of this section.

(i) The Contractor shall—

(1) Comply with the Principal Office (PO) processing requirements for personnel security screening;

(2) Ensure that no Contractor employee is placed in a higher risk position than for which the employee is approved;

(3) Ensure Contractor employees submit required security forms for reinvestigation in accordance with the time frames set forth in the ''Contractor Vetting Security Requirements'';

(4) Report to the COR any information (*e.g.,* personal conduct, criminal conduct, financial difficulties) that would raise a concern about the suitability of a Contractor employee or whether a Contractor employee's continued employment would promote the efficiency of the service or violate the public trust;

(5) Protect sensitive and Privacy Act-protected information, including ''Controlled Unclassified Information'' as defined in 32 CFR 2002.4(h), from unauthorized access, use, or misuse by its Contractor employees, prevent unauthorized access by others, and report any instances of unauthorized access, use, or misuse to the COR;

(6) Report to the COR any removal of a Contractor employee from a contract within one business day if removed for cause or within two business days if otherwise removed;

(7) Upon the occurrence of any of the events listed under paragraph (b) of FAR Clause 52.204–9, Personal Identity Verification of Contractor Personnel, return a PIV ID to the COR within seven business days of the Contractor employee's departure; and

(8) Report to the COR any change to job activities that could result in a change in the Contractor employee's position or the need for increased security access.

(j) Failure to comply with any of the personnel security requirements in the ''Contractor Security Vetting Requirements'' at *http://www.ed.gov/fund/contract/about/bsp.html,* may result in a termination of the contract for default or cause.

(End of Clause)

3452.208–71 [Removed]

■ 75. Remove section 3452.208–71.

■ 76. Amend section 3452.216–71 by revising the date of the clause and paragraph (e) to read as follows:

3452.216–71 Award-Term.

* * * * *

Award-Term (Date)

* * * * *

(e) The contract term or ordering period requires bilateral modification to reflect the ATRB's decision to award and the Contractor's agreement to accept an Award Term. If the contract term or ordering period has one year remaining, the operation of the contract Award

Term feature will cease and the contract term or ordering period will not extend beyond the maximum term stated in the contract.

* * * * *

■ 77. Revise section 3452.224–71 to read as follows:

3452.224–71 Notice about research activities involving human subjects.

As prescribed in 3424.170, insert the following provision in any solicitation where a resultant contract will include, or is likely to include, research activities involving human subjects covered under 34 CFR part 97:

Notice About Research Activities Involving Human Subjects (Date)

(a) Applicable Regulations. In accordance with Department of Education regulations on the protection of human subjects, title 34, Code of Federal Regulations, part 97 (the Regulations), Contractors and subcontractors, engaged in covered (nonexempt) research activities are required to establish and maintain procedures for the protection of human subjects. In addition, the Contractor must notify other entities (known to the Contractor) engaged in the covered research activities of their responsibility to comply with the Regulations.

(b) Definitions.

(1) The Regulations define research as ''a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.'' (34 CFR 97.102(l)). If an activity follows a deliberate plan designed to develop or contribute to generalizable knowledge, it is research. Research includes activities that meet this definition, whether or not they are conducted under a program considered research for other purposes. For example, some demonstration and service programs may include research activities (34 CFR 97.102(l)).

(2) The Regulations define a human subject as a living individual about whom an investigator (whether professional or student) conducting research obtains data through intervention or interaction with the individual or obtains, uses, studies, analyzes, or generates identifiable private information. (34 CFR 97.102(e)(1)). Under this definition:

(i) The investigator gathers information about a living person through—

(A) Intervention—Manipulating the subject's environment for research purposes, as might occur when a new instructional technique is tested; or

(B) Interaction—Communicating or interacting with the individual, as occurs with surveys and interviews.

(ii) Identifiable private information is private information about a living person that can be linked to that individual (the identity of the subject is or may be readily ascertained by the investigator or associated with the information).

(iii) Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information that has been provided for specific purposes by an individual and that an individual can reasonably expect will not be made public (for example, a school health record).

(c) Exemptions. 34 CFR 97.104(d) provides exemptions from the Federal Policy for the Protection of Human Subjects for research activities in which the only involvement of human subjects will be in one or more of the categories set forth in 34 CFR 97.104(d). However, if the research subjects are children, the exemption at 34 CFR 97.104(d)(2) (*i.e.,* research involving the use of educational tests, survey procedures, interview procedures or observation of public behavior) is modified by 34 CFR 97.401(b), as explained in paragraph (d) of this provision.

(d) Children as research subjects. 34 CFR 97.402(a) defines children as ''persons who have not attained the legal age for consent to interventions or procedures involved in the research, under the applicable law of the jurisdiction in which the research will be conducted.'' 34 CFR 97.401(b) provides that, if the research involves children as subjects—

(1) The exemption in 34 CFR 97.104(d)(2) does not apply to activities involving—

(i) Survey or interview procedures involving children as subjects; or

(ii) Observations of public behavior of children in which the investigator or investigators will not participate in the activities being observed.

(2) The exemption in 34 CFR 97.104(d)(2) continues to apply, unmodified, by 34 CFR 97.401(b), to—

(i) Educational tests; and

(ii) Observations of public behavior in which the investigator or investigators will not participate in the activities being observed.

(e) Proposal Instructions. An offeror proposing to do research that involves human subjects must provide information to the Department on the proposed exempt and nonexempt research activities. The offeror should submit this information as an attachment to its technical proposal. No specific page limitation applies to this requirement, but the offeror should be brief and to the point.

(1) For exempt research activities involving human subjects, the offeror should identify the exemption(s) that applies and provide sufficient information to allow the Department to determine that the designated exemption(s) is appropriate.

(2) For nonexempt research activities involving human subjects, the offeror must cover the following seven points in the information it provides to the Department. This seven-point narrative can usually be provided in two pages or less:

(i) *Human subjects' involvement and characteristics:* Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, institutionalized individuals, or others who are likely to be vulnerable.

(ii) *Sources of materials:* Identify the sources of research material obtained from or about individually identifiable living human subjects in the form of specimens, records, or data.

(iii) *Recruitment and informed consent:* Describe plans for the recruitment of subjects and the consent procedures to be followed.

(iv) *Potential risks:* Describe potential risks (physical, psychological, social, financial, legal, educational, or other) and assess their likelihood and seriousness. Where appropriate, discuss alternative interventions and procedures that might be advantageous to the subjects.

(v) *Protection against risk:* Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess the likely effectiveness of such procedures. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(vi) *Importance of knowledge to be gained:* Discuss why the risks to the subjects are reasonable in relation to the importance of the knowledge that may reasonably be expected to result.

(vii) *Collaborating sites:* If research involving human subjects will take place at collaborating site(s), name the sites and briefly describe their involvement or role in the research.

(3) If a reasonable potential exists that a need to conduct research involving human subjects may be identified after award of the contract and the offeror's proposal contains no definite plans for such research, the offeror should briefly describe the circumstances and nature of the potential research involving human subjects.

(f) Assurances and certifications.

(1) In accordance with the Regulations and the terms of this provision, all Contractors and subcontractors that will be engaged in research activities involving human subjects shall be required to comply with the requirements for Assurances and Institutional Review Board approvals, as set forth in the contract clause 3452.224–72 (Research activities involving human subjects).

(2) The Contracting Officer reserves the right to require that the offeror have or apply for the assurance and provide documentation of Institutional Review Board (IRB) approval of the proposed research prior to award. Based on 34 CFR 97.114 Cooperative Research, any institution involved in cooperative research projects (*i.e.,* research projects covered by this Regulation that involve more than one institution) shall enter into a joint review arrangement or rely upon the approval of a single IRB (sIRB) and a reliance agreement for any research conducted within the United States.

(g) Additional information:

(1) The Regulations, and related information on the protection of human research subjects, can be found on the Department's protection of human subjects in research website: *https://www2.ed.gov/about/offices/list/ocfo/humansub.html.*

(2) Offerors may also contact the following office to obtain information about the

Regulations, the protection of human subjects, and related policies and guidelines: Protection of Human Subjects Coordinator, U.S. Department of Education, Office of Finance and Operations, Office of Acquisition, Grants, and Risk Management, 400 Maryland Avenue SW, Washington, DC 20202–4331. Email: *HumanSubjectsResearch@ed.gov*.

(End of Provision)

■ 78. Revise section 3452.224–72 to read as follows:

3452.224–72 Research activities involving human subjects.

As prescribed in 3424.170, insert the following clause in any contract that includes research activities involving human subjects covered under 34 CFR part 97:

Research Activities Involving Human Subjects (Date)

(a) In accordance with Department of Education (the ''Department'') regulations on the protection of human subjects in research, title 34, Code of Federal Regulations, part 97 (the Regulations), Contractors and subcontractors engaged in covered (nonexempt) research activities shall establish and maintain procedures for the protection of human subjects. The Contractor must include the substance of this clause in all subcontracts. In addition, the Contractor shall notify other entities (known to the Contractor) engaged in the covered research activities of their responsibility to comply with the regulations. The definitions in 34 CFR 97.102 apply to this clause. As used in this clause, ''covered research'' means research involving human subjects that is not exempt under 34 CFR 97.104 and 97.401(b).

(b) If the Department determines that proposed research activities involving human subjects are covered (*i.e.,* not exempt under the regulations), the Contracting Officer (CO) or Contacting Officer's Representative (COR) will require the Contractor to apply for the Federal Wide Assurance from the Office for Human Research Protections, U.S. Department of Health and Human Services, if the Contractor does not already have certification on file. The CO will also require that the Contractor obtain and send to the Department documentation of Institutional Review Board (IRB) review and approval of the proposed research.

(c) Under no condition shall the Contractor conduct, or allow to be conducted, any research activity involving human subjects prior to the Department's receipt of the certification that the proposed research has been reviewed and approved by the IRB (34 CFR 97.103(f)). No research involving human subjects shall be initiated under this contract until the Contractor has provided the CO (or the COR) a properly completed certification form certifying IRB review and approval of the research activity, and the CO or COR has acknowledged the receipt of such certification.

(d) In accordance with 34 CFR 97.109(f)(1), unless IRB or the Department determines otherwise, continuing review of research is not required in the following conditions:

1. Research is eligible for expedited review;

2. Research is reviewed by the IRB in accordance with the limited IRB review as described 34 CFR 97.104(d)(2)(iii); or

3. Research that is part of the IRB-approved study that has progressed to the point that it involves only one or both of the following:

i. data analysis, including analysis of identifiable private information or identifiable biospecimens, or

ii. accessing follow-up clinical data from interventions that subjects would undergo as part of clinical care.

(1) For each activity under this contract that requires continuing review, the Contractor shall submit an annual written representation to the CO or COR stating whether research activities have been reviewed and approved by the IRB within the previous 12 months. The Contractor may use the form titled ''U.S. Department of Health and Human Services (HHS) Subpart C Certification Form'' for this representation. For multi-institutional projects, the Contractor shall provide this representation on its behalf and on behalf of any subcontractor engaged in research activities for which continuing IRB reviews are required.

(2) If the IRB disapproves, suspends, terminates, or requires modification of any research activities under this contract, the Contractor shall immediately notify the CO in writing of the IRB's action.

(e) The Contractor shall bear full responsibility for performing, as safely as is feasible, all activities under this contract involving the use of human subjects and for complying with all applicable regulations and requirements concerning human subjects. Neither the Contractor, subcontractor, agents of the Contractor, or employees of the Contractor, nor any person, organization, institution, or group of any kind involved in the performance of such activities under this contract, shall be deemed to constitute an agent or employee of the Department or of the Federal government with respect to such activities. The Contractor agrees to discharge its obligations, duties, and undertakings and the work pursuant thereto, whether requiring professional judgment or otherwise, as an independent contractor without imputing liability on the part of the Government for the acts of the Contractor, subcontractor, or their employees.

(f) Upon discovery of any noncompliance with any of the requirements or standards as stated in this clause, the Contractor shall correct such noncompliance as soon as practicable, typically no later than 1 business day. If the CO determines, in consultation with the Protection of Human Subjects Coordinator, Office of Acquisition, Grants, and Risk Management, Office of Finance and Operations, or the sponsoring office, that the Contractor is not in compliance with the requirements or standards stated in this clause, the CO may suspend work under this contract, in whole or in part, until it is determined that the Contractor has corrected such noncompliance and the CO authorizes the continuation of work.

1. Initial notice of suspension. The initial notice of suspension under this clause may be communicated orally or in writing by the CO.

2. Notice of suspension of work. The CO shall provide written notice of suspension of work under this clause. The notice shall contain the following:

a. The effective date of suspension of work.

b. The requirements and/or standards for which the Contractor is out of compliance.

c. Any special instructions for the suspension of work.

3. Authorization to resume work. If the CO determines that the noncompliance has been remedied and it is in the best interest of the Government, the CO may authorize work to resume under the contract. The CO will provide written notice to the Contractor of such authorization.

(g) Non-compliance with the requirements or standards as stated in this clause may result in the Government termination of this contract for default, in full or in part, in accordance with FAR 49.401. Such termination may be in lieu of or in addition to suspension of work under the contract. Nothing herein shall be construed to limit the Government's right to terminate the contract for failure to fully comply with such requirements or standards.

(h) The Regulations, and related information on the protection of human research subjects, can be found on the Department's protection of human subjects in research website: *https://www2.ed.gov/about/offices/list/ocfo/humansub.html*.

Contractors may also contact the following office to obtain information about the regulations for the protection of human subjects and related policies and guidelines: Protection of Human Subjects Coordinator, U.S. Department of Education Office of Finance and Operations, Office of Acquisition, Grants, and Risk Management, 400 Maryland Avenue SW, Washington, DC 20202–4331. Email: *HumanSubjectsResearch@ed.gov*.

(End of Clause)

■ 79. Add section 3452.224–73 to read as follows:

3452.224–73 Protection of student privacy in compliance with FERPA.

As prescribed in 3424.704, insert the following clause in solicitations and contracts:

Protection of Student Privacy in Compliance With FERPA (Date)

(a) Pursuant to the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and its implementing regulations, 34 CFR part 99, the Department designates the Contractor to serve as an authorized representative of the Secretary of Education, solely for the purpose of carrying out an audit or evaluation of federally supported education programs, the enforcement or compliance with Federal legal requirements that relate to federally supported education programs, or conducting a study for or on behalf of the Department, to develop, validate, or administer predictive tests, administer student aid programs, or improve instruction, as specified in the statement of

work, the schedule, and other similar documents to the contract.

(b) The Contractor shall collect or receive access to the following personally identifiable information from student education records that is protected by FERPA: [specify the PII from student education records to be collected or accessed by the Contractor, as identified by the requiring activity] (collectively, the PII).

(c) The Contractor shall only use the PII to meet the purpose set forth in paragraph (a) of this clause and for the activity, scope, and duration specified in the statement of work, the schedule, and other similar documents to the contract. Prior to collecting or receiving access to the PII, the Contractor shall establish policies and procedures, consistent with FERPA and other Federal confidentiality and privacy provisions, to protect the PII from further disclosure (except back to the Department) and unauthorized use, including limiting use of the PII to only authorized representatives with legitimate interests in the purpose set forth in paragraph (a) of this clause.

(d) To the extent required to ensure the Contractor's compliance with the provisions of FERPA and other Federal provisions, the Contractor shall afford the Department and its authorized agents access to all of the facilities, installations, technical capabilities, operations, documentation, records, databases, policies, procedures, and systems of the Contractor and any subcontractor.

(e) The Contractor shall limit access to the PII to the Contractor's personnel who require the PII to satisfy the Contractor's obligations under the contract.

(f) If the Contractor collects or receives access to the PII to conduct a study for, or on behalf of, an educational agency or institution, then the Contractor shall conduct such study in a manner that does not permit personal identification of parents and students by anyone other than representatives of the Contractor, or subcontractors, with legitimate interests in the study.

(g) Once the purpose for which the PII was collected or accessed is fully satisfied, the Contractor shall notify the Department immediately and seek the Department's instruction and authorization regarding destruction of the PII in accordance with law.

(h) If the Contractor subcontracts any of the contract work requiring collection or access to the PII, then the Contractor shall include this clause (including this paragraph (h)) in any such subcontract and, further, the Contractor shall ensure that subcontractors at any tier comply with all terms, conditions, and obligations imposed on the Contractor herein and under FERPA.

(i) Violation by a subcontractor of any provision set forth in this clause will be attributed to the Contractor.

(End of Clause)

■ 80. Add section 3452.231–71 to read as follows:

3452.231–71 Invitational travel costs.

As prescribed in 3431.205–71, insert a provision substantially the same as the following:

Invitational Travel Costs (Date)

No invitational travel, which is defined as Official Government travel conducted by a non-Federal employee in order to provide a ''Direct Service'' (*e.g.,* presenting on a topic, serving as a facilitator, serving on a Federal Advisory Committee Act, or advising in an area of expertise to the Government, may be provided under this contract or in association with this contract unless consent is provided below. The cost of invitational travel under this contract not identified in the consent section of this clause is unallowable unless the Contractor receives written consent from the Contracting Officer prior to the incurrence of the cost. If the Contractor wishes to be reimbursed for a cost related to invitational travel, a request must be in writing at least 21 days prior to the day that costs would be incurred. The Contractor must include in its request the following: why the invitational travel cost is integral to fulfill a Government requirement in the contract, and the proposed cost that must be in accordance with Federal Travel Regulations. The lack of a timely response from the Contracting Officer must not constitute constructive acceptance of the allowability of the proposed charge.

Consent is hereby given to the Contractor to _____.

(End of Clause)

■ 81. Add section 3452.232–72 to read as follows:

3452.232–72 Limitation of Government's obligation.

As prescribed in 3432.705–2(c), insert the following clause. The Contracting Officer may vary the 90-day period from 90 to 30 or 60 days and the 85 percent from 85 to 75 percent. ''Task Order,'' ''contract,'' or other appropriate designation may be substituted for ''CLIN(s)'' wherever that word appears in the clause:

Limitation of Government's Obligation (Date)

Sufficient funds are not presently available to cover the total price of the CLIN(s) listed in paragraph (l) below. The CLIN(s) identified in paragraph (l) below are incrementally funded to cover the identified period of performance. Additional funds are intended to be allotted to the applicable CLIN(s) by contract modification up to and including the full price of the entire period of performance. This notwithstanding, the Government will not be obligated to pay the Contractor for amounts payable in excess of the amount actually allotted, nor will the Contractor be obligated to perform in excess of such amount.

(a) The CLIN(s) in paragraph (l) of this clause is/are incrementally funded. Paragraph (l) also lists the allotment amount presently available for payment and allotted to the CLIN(s), inclusive of any termination costs for the Government's convenience, and the allotment schedule that provides the last date of Contractor performance for which it is estimated the allotted amount will cover. The parties contemplate that the Government may allot additional funds incrementally to the applicable CLIN(s) under the contract, up to the full price specified in the contract. The Contractor agrees to perform work under the applicable CLIN(s) up to the point at which the total amount paid and payable by the Government under the contract for the applicable CLIN(s), including estimated costs in the event of termination of those CLIN(s) for the Government's convenience, approximates the total amount currently allotted to such CLIN(s).

(b) Notwithstanding the dates specified in the allotment schedule in paragraph (l) of this clause, the Contractor shall notify the Contracting Officer in writing at least ninety (90) days prior to the date when, in the Contractor's best judgment, the work will reach the point at which the total amount payable by the Government, including any cost for termination for the Government's convenience, will approximate 85 percent of the total amount then allotted to the contract for performance of the applicable CLIN(s). The notification will state (1) the estimated date when that point will be reached, and (2) an estimate of additional funding, if any, needed to continue performance of applicable CLIN(s) up to the date in paragraph (l) of this clause, or to a mutually agreed upon substitute date.

(c) If, after notification pursuant to paragraph (b) of this clause, additional funds are not allotted by the date identified in paragraph (l), the date identified in the Contractor's notification, or by an agreed substitute date, upon the Contractor's written request, the Contracting Officer may terminate for the Government's convenience any CLIN(s) for which additional funds have not been allotted. If the Contractor estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request to terminate the applicable CLIN(s), and the Contracting Officer may terminate such CLIN(s) on that later date. In no event is the Contractor authorized to continue work on those CLIN(s) beyond the time when the amount payable, to include costs of termination for the Government's convenience, is equal to the funds allotted.

(d) If, solely by reason of failure of the Government to allot additional funds, by the dates indicated in paragraph (l) of this clause, in amounts sufficient for timely performance of the CLIN(s) identified in paragraph (l) of this clause, the Contractor incurs additional costs or is delayed in the performance of the work under this contract and if additional funds are allotted, the Contractor may request an equitable adjustment to the price or prices (including appropriate target, billing, and ceiling prices, where applicable) of the applicable CLIN(s), or in the time of delivery, or both, by written request to the Contacting Officer with sufficient documentation to support such equitable adjustment. Failure to agree to any such equitable adjustment hereunder will be a dispute concerning a question of fact within the meaning of the clause titled ''Disputes.'' Notwithstanding anything to the contrary herein, in no event will an equitable adjustment under this paragraph (d) be due to the Contractor for costs that arise from or relate to the

Contractor's breach of the notification obligations in paragraph (b) of this clause.

(e) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause-

(1) The Government is not obligated to pay for goods or services, to include reimbursement of costs for termination for the Government's convenience, in excess of the total amount allotted by the Government to the CLIN(s) identified in paragraph (l) of this clause; and

(2) The Contractor is not authorized to continue performance of the CLIN(s) identified in paragraph (l) of this clause in excess of the amount allotted by the Government to the applicable CLIN(s).

(3) As used in this clause, the total amount payable by the Government in the event of termination of applicable CLIN(s) for convenience includes reasonable costs, profit, and termination settlement costs for those item(s).

(f) No communication or representation in any form other than in writing from the Contracting Officer shall affect the amount allotted by the Government to this contract and applicable CLIN(s). The Government is not obligated to reimburse the Contractor for any costs in excess of the total amount allotted by the Government to the applicable CLIN(s), whether incurred during the course of the contract or as a result of termination.

(g) The Government may at any time prior to termination allot additional funds for the performance of the CLIN(s) identified in paragraph (l) of this clause.

(h) When additional funds are allotted for continued performance of the CLIN(s) identified in paragraph (l) of this clause, the parties will agree as to the period of contract performance that will be covered by the funds. The provisions of this clause will apply in like manner to the additional allotted funds and agreed substitute date, and the contract will be modified accordingly.

(i) The termination provisions of this clause do not limit the rights of the Government to terminate the contract, in whole or in part, for cause in the event of any breach or default by the Contractor. The provisions of this clause are limited to the work and allotment of funds for the CLIN(s) set forth in paragraph (l) of this clause. This clause no longer applies once the contract is fully funded except with regard to the rights or obligations of the parties concerning equitable adjustments negotiated under paragraph (d) of this clause.

(j) Nothing in this clause affects the right of the Government to terminate this contract, in whole or in part, for convenience or cause.

(k) Nothing in this clause shall be construed as authorization of voluntary services whose acceptance is otherwise prohibited under 31 U.S.C. 1342.

(l) Incremental funds are allotted to the CLIN(s) under this contract as follows:

CLIN	Amount allotted	Last date of performance

(End of Clause)

■ 82. Add section 3452.233–70 to read as follows:

3452.233–70 Agency level protests.

As prescribed in 3433.103, insert the following clause:

Agency Level Protests (Date)

All protests to the agency must be submitted to the Contracting Officer. In accordance with FAR 33.103(d)(4), interested parties may request an independent review at a level above the Contracting Officer as an alternative to consideration by the Contracting Officer. If a protest is silent on this matter, consideration and decision will be made by the Contracting Officer.

(End of Clause)

■ 83. Revise section 3452.239–70 to read as follows:

3452.239–70 Internet Protocol version 6 (IPv6).

As prescribed in 3439.701, insert the following clause in all solicitations and resulting contracts for hardware and software:

Internet Protocol Version 6 (Date)

(a) Any system hardware, software, firmware, or networked component (voice, video, or data) developed, procured, or acquired in support or performance of this contract shall be capable of transmitting, receiving, processing, forwarding, and storing digital information across system boundaries utilizing the next-generation internet Protocol (IP) version 6 (IPv6) as defined in revised USGv6 profile (most recent version of NIST Special Publication 500–267B) and NISTv6 profile (most recent version of NIST Special Publication 500–267A).

(b) Specifically, any new IP product or system developed, acquired, or produced must—

(1) Provide IPv6 technical capabilities as outlined in the most recent version of USGv6 Capabilities Table (UCT);

(2) Maintain interoperability with both IPv6 and any existing IPv4 systems and products; and

(3) Have available Contractor/vendor IPv6 technical support for development and implementation and fielded product management.

(c) Any exceptions to the use of IPv6 require the agency's CIO to give advance, written approval.

(End of Clause)

■ 84. Revise section 3452.239–71 to read as follows:

3452.239–71 Department information security and privacy requirements.

As prescribed in 3439.702, include the following clause in all solicitations and contracts.

Department Information Security and Privacy Requirements (Date)

(a) The Contractor shall, at all times, maintain compliance with the most current version of Department security requirements as set forth in ''Department Information Security and Privacy Requirements.'' These requirements are posted at *http://www.ed.gov/fund/contract/about/bsp.html*.

(b) The Contractor shall incorporate the substance of this clause, its terms and requirements, including this paragraph, in all subcontracts, and require written subcontractor acknowledgement of the same. Violation by a subcontractor of any provision set forth in this clause will be attributed to the Contractor.

(c) Failure to comply with this clause, including the embedded Department Information Security and Privacy Requirements, may result in a termination of the contract for default or cause.

(d) Performance of this contract [ ] does include [ ] does not include the following: access to, collection of, or maintenance of information on behalf of the Department; or Department information technology (IT) products, systems, or hardware that are (1) used or operated by the Contractor on behalf of the Department, or (2) used in the performance of services or the furnishing of products. IT products, systems, hardware, and services include agency-hosted, outsourced, and cloud-based solutions, as well as incidental IT equipment that is acquired by the Contractor to support contract performance. When ''does include'' is selected, the categorizations shown below apply:

(1) In accordance with the Federal Information Processing Standard (FIPS 199), Standards for Security Categorization of Federal Information and Information Systems, the Information Security Categorization applicable to each security objective has been determined to be:

Confidentiality: [ ] Low [ ] Moderate [ ] High

Integrity: [ ] Low [ ] Moderate [ ] High

Availability: [ ] Low [ ] Moderate [ ] High

Overall Risk Level: [ ] Low [ ] Moderate [ ] High

(2) Performance of this contract [ ] does involve [ ] does not involve Personally Identifiable information (PII) as defined in OMB A–130 (2016).

(3) Performance of this contract [ ] does involve [ ] does not involve ''Controlled

Unclassified Information'' as defined in 32 CFR 2002.4(h).

(End of Clause)

3452.239–72 [Removed]

■ 85. Remove section 3452.239–72.

3452.239–73 [Removed]

■ 86. Remove section 3452.239–73.

■ 87. Revise section 3452.243–70 to read as follows:

3452.243–70 Key personnel.

As prescribed in 3443.107, insert a clause substantially the same as the following in all solicitations and resultant contracts in which it will be essential for the Contracting Officer to be notified that a change of designated key personnel is to take place by the contractor:

Key Personnel (Date)

(a) The personnel designated as key personnel in this contract are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified individuals to other programs, or otherwise substituting any other personnel for specified personnel, the Contractor shall notify the Contracting Officer reasonably in advance and submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the contract effort. No diversion or substitution shall be made by the Contractor without written consent of the Contracting Officer; provided, that the Contracting Officer may ratify a diversion or substitution in writing and that ratification shall constitute the consent of the Contracting Officer required by this clause. The contract shall be modified to reflect the addition or deletion of key personnel.

(b) The following personnel have been identified as Key Personnel in the performance of this contract:

Labor category Name
[Insert category.] [Insert name.]

(End of Clause)

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